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Contents

Federal Register

Vol. 64, No. 112

Friday, June 11, 1999

Separate Parts In This Issue

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register

Vol. 64, No. 112

Friday, June 11, 1999

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 353, 870, and 890

RINS 3206–AG02 and 3206–AH15

Reemployment Rights of Employees Performing Military Duty

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) which was enacted into law on October 13, 1994. The law and these regulations safeguard the job rights of Federal employees who leave their employment to perform duty with the uniformed services.

These regulations also implement provisions that expand on the coverage of the affected employees under the Federal Employees' Group Life Insurance (FEGLI) Program and the Federal Employees Health Benefits (FEHB) Program. The regulations were developed in consultation with the Departments of Labor and Defense.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: For parts 213 or 353: Raleigh M. Neville, (202) 606–0830. For parts 870 or 890: Abby L. Block, (202) 606–0004.

SUPPLEMENTARY INFORMATION: OPM published for comment on September 1, 1995 (at 60 FR 45650), and October 30, 1995 (at 60 FR 55173), interim regulations implementing the new USERRA law.

Comments on Part 353

We received comments from two agencies on the restoration-to-duty aspect of the law in 5 CFR part 353. We also received two comments from an agency on the health and life insurance changes in parts 870 and 890.

Section 4314 of title 38, United States Code, enacted as part of USERRA, requires OPM to place in other agencies a National Guard technician when the adjutant general of a State determines that it is ''impossible or unreasonable'' to reemploy the person in a dual status military/civilian technician position.

One commenter suggested that we make clear in the final regulations that National Guard technicians who fail to maintain active military membership in the Guard for reasons within their control (such as misconduct, military retirement, failure to meet weight or security requirements, etc.) are not eligible for the special mandatory placement in other agencies provided under section 4314 of title 38.

We agree that the law was not intended to provide a mandatory placement right in other agencies for Guard technicians who lose their military membership for reasons within their control. To do so would be to extend an extraordinary employment benefit to Guard technicians far beyond that accorded to any other group—including disabled combat veterans and others who have lost Federal jobs for reasons outside their control. Such a placement provision would also be contrary to the stated purpose of USERRA—which is to encourage and protect ''noncareer service'' that lasts no more than a cumulative total of 5 years, with some exceptions for training and emergency call-ups. (See 38 U.S.C. 4301)

Such a policy would also be inconsistent with 5 U.S.C. 3329—a provision that was enacted specifically to protect long-term Guard members, but which, significantly, provides only for priority placement in the Department of Defense, not mandatory placement in other agencies. (This is just one of a number of special protections already provided for technicians; for example, 5 U.S.C. 3304 gives technicians who are removed involuntarily a 1-year window of opportunity to be appointed noncompetitively to another civil service job.)

Finally, National Guard technicians knew that they were making a career decision when they volunteered for extended active duty with the Guard. These technicians were not merely absent from their technician positions (as envisioned by the law); rather, they had abandoned their jobs in order to pursue careers in the military. Interruption of that career for reasons within the individual's control should no more entitle the Guard member to mandatory job rights in another agency than would loss of Reserve membership for a Reservist or, for that matter, loss of a career choice for any other Government or private sector employee. We have, therefore, amended final regulation 5 CFR 353.110(a)(1)(iii) accordingly.

This commenter also suggested that we amend 5 CFR 353.211 to make clear that, because the term ''employer,'' as it pertains to National Guard technicians, means the Adjutant General of a State, these technicians may no longer appeal to the Merit Systems Protection Board (MSPB) a State's failure to reemploy them; they must now go to court. We have made this change. (Note, however, that this does not affect a technician's right to appeal to MSPB OPM's failure to place the individual under 38 U.S.C. 4314(d).)

A commenter suggested that we delete the word ''substantially'' in the third sentence in 5 CFR 353.108 (pertaining to the effect of performance and conduct on restoration rights for both injured employees and those on military duty), saying that this ''will eliminate the suggestion that something less than substantial is acceptable.'' Actually, this section says that an employee may not be denied restoration rights unless he or she was separated ''for cause that is substantially unrelated to the injury or to the performance of uniformed service.'' There is no implication that restoration can be denied when the separation was something less than ''substantially unrelated'' to the injury or military duty. This standard will be maintained.

This commenter also suggested that in 5 CFR 353.109 (concerning a transfer of function to another agency), we substitute the words from the statute ''of like seniority, status, and pay'' for ''equivalent'' in denoting the position to which the position to which the person is entitled. Actually, ''equivalent position,'' in this context, has long been interpreted as ''like seniority, status, and pay.'' We note, too, that ''seniority'' is already included in the definition of ''status.'' We did not include the term separately, here, however, because seniority is not typically a factor for Federal positions and is thus not commonly used.

This commenter also questions whether OPM should create a 30-day standard in 5 CFR 353.207 by which time agencies must restore an employee who has been absent on military duty for more than 30 days. The agency suggests that it may be preferable to require prompt or reasonable reemployment, instead. The 30-day standard has been in effect for many years and has been consistently applied by MSPB in such a way as to require prompt and reasonable reemployment by an agency. In this connection, it should be noted that 30 days is the maximum an agency can delay a restoration. It is conceivable that by changing this to a standard without a definite time limit, situations may devolve in which it may be considered ''reasonable'' for an agency to restore someone long after 30 days have elapsed.

Because of questions about the applicability of USERRA and other laws to U.S. citizens located outside of the United States, one commenter suggested that we clarify what USERRA does, in fact, cover civil service employees stationed overseas. We have amended 5 CFR 353.103 to do so.

Other comments dealt with editorial and clerical errors.

Comments on Parts 870 and 890

OPM received two comments from a Federal agency on the interim regulations. One commenter suggested that the sentence added at the end of 5 CFR 870.501(d) be added to section 870.501(a) instead. Although we did not accept this suggestion as stated, we amended paragraph section 870.501(a) to clarify that the last sentence of section 870.501(d) is an exception. We also eliminated the words ''in nonpay status'' from the last sentence of section 870.501(d) because it is possible to be in a pay status and eligible for USERRA benefits at the same time.

These changes were incorporated into the final FEGLI regulations that were published in the **Federal Register** on September 17, 1997 (62 FR 48731).

One commenter objected to three phrases in 5 CFR 890.303(i) and one in section 890.304: (1) ''on the date that the absence to serve in the uniform services begins,'' (2) ''enters on military furlough or,'' (3) ''provided the employee continues to be entitled to benefits under part 353,'' and (4) ''or the date entitlement to of this chapter.'' Since these phrases reflect the requirements of USERRA, we cannot accept this suggestion. For example, under the provisions of USERRA a separated employee who leaves military service and does not return to his or her civilian position within the time limit set by the law loses eligibility for continued health benefits coverage.

One commenter suggests we delete the words ''but not earlier than the date the enrollment would otherwise terminate under paragraph (a)(1)(v)'' as not applicable to employees with continued coverage under USERRA. (See 5 CFR 390.304) Paragraph (a)(1)(v) reflects the provisions of the FEHB law and regulations giving employees who are in nonpay status continued entitlement to FEHB coverage for 365 days. The FEHB entitlement remains even if entitlement to coverage under USERRA is lost. Therefore, we have not accepted this suggestion.

One commenter suggests amending the interim regulations to specify that the regulations apply to employees who met the requirements of USERRA on October 13, 1994, so that they would cover employees whose insurance terminated due to separation for military service, but who met the USERRA requirements on or after that date. We have amended the interim regulations to clarify that they apply to separated employees as well as employees in nonpay status who met the USERRA requirements on October 13, 1994.

Both commenters object to the requirement that the employee pay the full premium (both employee and Government shares) plus an additional 2 percent after the initial 365 days of coverage. One commenter also objects to the requirement that the employee pay premiums on a current basis after the first 365 days. There is no statutory authority for the Government to pay its share for coverage beyond 365 days, nor is there statutory authority for OPM to waive the Government share after 365 days in nonpay status. Therefore, employees must pay it. Further, since USERRA is patterned after COBRA, 29 U.S.C. 1161, *et seq.*, (which requires private sector employers to provide continued group health coverage to separated employees for a period of 18 months at a cost to the individual of up to 102 percent of the premium), we have patterned these regulations after the temporary continuation of coverage (TCC) provision of the FEHB law, 5 U.S.C. 8905(a), (the FEHB equivalent to COBRA) to the extent applicable. The TCC provisions are not applicable for the first 365 days because, under FEHB law and regulation, the employees and the Government continue to pay their respective shares for that period.

Both the FEGLI and FEHB regulations have been amended to show that employees who separate to perform military service are considered to be employees for the purpose of continuing these benefits. The FEHB regulations have also been amended to show that FEHB coverage may continue for up to 18 months after the employee enters military service.

In addition to these changes, we added the phrase ''or similar authority'' each time we refer to 5 CFR part 353 in the FEGLI and FEHB regulations. This change clarifies that the FEGLI and FEHB provisions also apply to entities covered by the FEGLI and FEHB regulations but not by part 353.

The interim regulations for part 870 were adopted as final and published in the **Federal Register** on September 17, 1997.

Technical and Clarifying Amendments

We have amended the final regulations to reflect perfecting changes made by the Veterans' Benefits Improvements Act of 1996 (which includes USERRA technical amendments), enacted into law on October 9, 1996.

We have also amended 5 CFR 353.106(c) to provide that agencies not only have an obligation to consider employees absent on military duty for any promotion they may have been entitled to, but also to any ''incident or advantage of employment.''

These regulations were developed in consultation with the Departments of Labor and Defense.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal agencies.

List of Subjects in Parts 213, 353, 870, and 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is adopting the interim regulations amending 5 CFR parts 213, 353, 870, and 890, which were published at 60 FR 45650 and 60 FR 55173 on September 1, 1995, and October 30, 1995, respectively, as final regulations with the following changes:

PART 353—RESTORATION TO DUTY FROM UNIFORMED SERVICE OR COMPENSABLE INJURY

1. The authority citation for 5 CFR part 353 continues to read as follows:

Authority: 38 U.S.C. 4301 et. seq., and 5 U.S.C. 8151.

2. Section 353.103 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 353.103 Persons covered.

(a) The provisions of this part pertaining to the uniformed services cover each agency employee who enters into such service regardless of whether the employee is located in the United States or overseas. * * *

* * * * *

3. Section 353.106 is amended by adding a new sentence at the end of paragraph (c) and by adding paragraphs (c)(1), (c)(2), and (c)(3) to read as follows:

§ 353.106 Personnel actions during employee's absence.

* * * * *

(c) * * * In addition, agencies have an obligation to consider employees absent on military duty for any incident or advantage of employment that they may have been entitled to had they not been absent. This is determined by:

(1) Considering whether the ''incident or advantage'' is one generally granted to all employees in that workplace and whether it was denied solely because of absence for military service;

(2) Considering whether the person absent on military duty was treated the same as if the person had remained at work; and

(3) Considering whether it was reasonably certain that the benefit would have accrued to the employee but for the absence for military service.

4–5. In § 353.110 paragraph (a)(2) is amended by removing the word ''time'' from the first sentence and paragraph (a)(1)(iii) is revised to read as follows:

§ 353.110 OPM placement assistance.

(a) * * *

(1) * * *

(iii) National Guard technicians when the Adjutant General of a State determines that it is impossible or unreasonable to reemploy a technician otherwise eligible for restoration under 38 U.S.C. 4304 and 4312 (pertaining to character and length of service), and the technician is a noncareer military member who was separated invountarily from the Guard for reasons beyond his or her control; and

* * * * *

6. Section 353.203(a)(4)(ii) is revised to read as follows:

§ 353.203 Length of service.

(a) * * *

(4) * * *

(ii) Ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or the Congress, as determined by the Secretary concerned.

* * * * *

§ 353.208 [Amended]

7. Section 353.208 is amended by removing the number 6 before the word ''permitted'' in the first sentence of the section.

8. Section 353.210 is revised to read as follows:

§ 353.210 Department of Labor assistance to applicants and employees.

USERRA requires the Department of Labor's Veterans' Employment and Training Service [VETS] to provide employment and reemployment assistance to any Federal employee or applicant who requests it. VETS staff will attempt to resolve employment disputes brought to investigate. If dispute resolution proves unsuccessful, VETS will, at the request of the employee, refer the matter to the Office of the Special Counsel for representation before the Merit Systems Protection Board (MSPB).

9. In § 353.211 paragraph (b) is amended by adding two new sentences at the end to read as follows:

§ 353.211 Appeal rights.

* * * * *

(b) * * * However, National Guard technicians do not have the right to appeal to MSPB a denial of reemployment rights by the Adjutant General. Technicians may file complaints with the appropriate district court in accordance with 38 U.S.C. 4323 (USERRA).

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

10. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102(f) also issued under sec. 153 of Pub. L. 104–134, 110 Stat 1321; section 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L is also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

11. Section 890.303 is amended by revising paragraph (i) to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(i) *Service in the uniformed services.* The enrollment of an individual who separates to enter the uniformed services under conditions that entitle him or her to benefits under part 353 of this chapter, or similar authority, may continue for the 18-month period beginning on the date that the absence to serve in the uniformed services begins, provided that the individual continues to be entitled to benefits under part 353 of this chapter, or similar authority. The enrollment of an employee who enters on military furlough or is placed in nonpay status to serve in the uniformed services may continue for the 18-month period beginning on the date that the absence to serve in the uniformed service begins, provided that the employee continues to be entitled to benefits under part 353 of this chapter, or similar authority. An employee in nonpay status is entitled to continued coverage under paragraph (e) of this section if the employee's entitlement to benefits under part 353 of this chapter, or similar authority, ends before the expiration of 365 days in nonpay status. The enrollment of an employee who met the requirements of chapter 43 of title 38, United States Code, on October 13, 1994, may continue for the 18-month period beginning on the date that the absence to serve in the uniformed services began, provided that the employee continues to be entitled to continued coverage under part 353 of this chapter, or similar authority. If the enrollment of such an employee had terminated due to the expiration of 365 days in nonpay status or because of the employee's separation from service, it may be reinstated for the remainder of the 18-month period beginning on the date that the absence to service in the uniformed service began, provided that the employee continues to be entitled to continued coverage under part 353 of this chapter, or similar authority.

12. In § 890.304 paragraphs (a)(1)(vi), (a)(1)(vii), and (a)(1)(viii) are revised to read as follows:

§ 890.304 Termination of enrollment.

(a) * * *

(1) * * *

(vi) The day he or she is separated, furloughed, or placed on leave of absence to serve in the uniformed services under conditions entitling him or her to benefits under part 353 of this chapter, or similar authority, for the purpose of performing duty not limited to 30 days or less, provided the employee elects in writing to have the enrollment so terminated.

(vii) For an employee who separates to serve in the uniformed services under conditions entitling him or her to benefits under part 353 of this chapter, or similar authority, for the purpose of performing duty not limited to 30 days or less, the date that is 18 months after the date that the absence to serve in the uniformed services began or the date entitlement to benefits under part 353 of this chapter, or similar authority, ends, whichever is earlier, unless the enrollment is terminated under paragraph (a)(1)(vi) of this section.

(viii) For an employee who is furloughed or placed on leave of absence under conditions entitling him or her to benefits under part 353 of this chapter, or similar authority, the date that is 18 months after the date that the absence to serve in the uniformed services began or the date entitlement to benefits under part 353 of this chapter, or similar authority, ends, whichever is earlier, but not earlier than the date the enrollment would otherwise terminate under paragraph (a)(1)(v) of this section.

* * * * *

13. In § 890.305 paragraph (a) is revised to read as follows:

§ 890.305 Reinstatement of enrollment after military service.

(a) The enrollment of an employee or annuitant whose enrollment was terminated under § 890.304(a)(1)(vi), (vii), or (viii) or § 890.304(b)(4)(iii) is automatically reinstated on the day the employee is restored to a civilian position under the provisions of part 353 of this chapter, or similar authority, or on the day the annuitant is separated from the uniformed services, as the case may be.

* * * * *

14. In § 890.501 paragraphs (e), (f), and (g) are revised to read as follows:

§ 890.501 Government contributions.

* * * * *

(e) Except as provided in paragraphs (f) and (g) of this section, the employing office must make a contribution for an employee for each pay period during which the enrollment continues.

(f) Temporary employees enrolled under 5 U.S.C. 8906a must pay the full subscription charge including the Government contribution. Employees with provisional appointments under § 316.403 of this chapter are not considered to be enrolled under 5 U.S.C. 8906a for the purposes of this paragraph.

(g) The Government contribution for an employee who enters the uniformed services and whose enrollment continues under § 890.303(i) ceases after 365 days in nonpay status.

15. In § 890.502 paragraph (f) is revised to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(f) *Uniformed services.* (1) Except as provided in paragraph (f)(2) of this section, an employee whose coverage continues under § 890.303(i) is responsible for payment of the employee share of the cost of enrollment for every pay period for which the enrollment continues for the first 365 days of continued coverage as set forth under paragraph (b) of this section. For coverage that continues after 365 days in nonpay status, the employee must pay, on a current basis, the full subscription charge, including both the employee and Government shares, plus an additional 2 percent of the full subscription charge.

(2) Payment of the employee's share of the cost of enrollment is waived for the first 365 days of continued coverage in the case of an employee whose coverage continues under § 890.303(e) following furlough or placement on leave of absence under the provisions of part 353 of this chapter, or similar authority, or under § 890.303(i) if the employee was ordered to active duty before September 1, 1995, under section 12301, 12304, 12306, 12307, or 688 of title 10, United States Code, in support of Operation Desert Storm.

[FR Doc. 99–14846 Filed 6–10–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–273–AD; Amendment 39–11192; AD 99–12–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 737–200C series airplanes, that currently requires a one-time external detailed visual inspection to detect cracks of the fuselage skin in the lower lobe cargo compartment; repetitive internal detailed visual inspections to detect cracks of the frames in the lower lobe cargo compartment; and repair of cracked parts. That AD also provides for an optional preventative modification that constitutes terminating action for the repetitive inspections. This amendment requires accomplishment of the previously optional terminating modification. This amendment is prompted by reports of cracking in the body frames between stringers 19 left and 25 left and at body stations 360 to 500B. The actions specified by this AD are intended to prevent opening or loss of the cargo door during flight, and consequent rapid decompression of the airplane.

DATES: Effective July 16, 1999.

The incorporation by reference of Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; and Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993; as listed in the regulations, was approved previously by the Director of the Federal Register as of August 9, 1993 (58 FR 36863, July 9, 1993).

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

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–13–02, amendment 39–8615 (58 FR 36863, July 9, 1993), which is applicable to all Boeing Model 737–200C series airplanes, was published in the **Federal Register** on February 1, 1999 (64 FR 4791). The action proposed to continue to require a one-time external detailed visual inspection to detect cracks of the fuselage skin in the lower lobe cargo compartment; repetitive internal detailed visual inspections to detect cracks of the frames in the lower lobe cargo compartment; and repair of cracked parts. The action also proposed to require accomplishment of the previously optional terminating modification.

Comments

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

There are approximately 90 airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD.

The inspections that are currently required by AD 93–13–02, and retained in this AD, take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $12,960, or $720 per airplane, per inspection cycle.

The new modification that is required by this new AD will take approximately 160 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $5,500 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $271,800, or $15,100 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8615 (58 FR 36863, July 9, 1993), and by adding a new airworthiness directive (AD), amendment 39–11192, to read as follows:

99–12–08 Boeing: Amendment 39–11192. Docket 98–NM–273–AD. Supersedes AD 93–13–02, Amendment 39–8615.

Applicability: All Model 737–200C series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) 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 opening or loss of the cargo door during flight, and consequent rapid decompression of the airplane, accomplish the following:

Restatement of Requirements of AD 93–13–02

(a) Prior to the accumulation of 29,000 flight cycles or within 250 flight cycles after August 9, 1993 (the effective date AD 93–13–02, amendment 39–8615), whichever occurs later, accomplish an external detailed visual inspection to detect cracks of the fuselage skin between stringers 19 left and 25 left and at body stations 360 to 540, in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. If any crack is found, prior to further flight, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform an internal detailed visual inspection to detect cracks of the frames between stringers 19 left and 25 left and at body stations 360 to 500B, in accordance with either service bulletin.

(2) Repair all cracks in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Within 3,000 flight cycles after completing the requirements of paragraph (a) of this AD, unless accomplished within the last 6,000 flight cycles prior to August 9, 1993, perform an internal detailed visual inspection to detect cracks of the frames between stringers 19 left and 25 left and at body stations 360 to 500B, in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. Thereafter, repeat the internal detailed visual inspection at intervals not to exceed 9,000 flight cycles. If any crack is found, prior to further flight, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) If any crack is found that does not exceed the limits specified in the Boeing 737 Structural Repair Manual (SRM), repair the crack in accordance with the Boeing 737 SRM. Repeat the internal detailed visual inspection thereafter at intervals not to exceed 9,000 flight cycles.

(2) If any crack is found that exceeds the limits specified in the Boeing 737 SRM, repair the crack in accordance with a method approved by the Manager, Seattle ACO. Repeat the internal detailed visual inspection thereafter at intervals not to exceed 9,000 flight cycles.

New Requirements of This AD

(c) Prior to the accumulation of 75,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, install doublers on the frames located between stringers 19 left and 25 left and at body stations 360 to 500B, in accordance with Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(d)(2) Alternative methods of compliance approved previously in accordance with AD 93–13–02, amendment 39–8615, are approved as alternative methods of compliance with this AD.

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraphs (a)(2), (b)(1), and (b)(2) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. The incorporation by reference of these documents was approved previously by the Director of the **Federal Register** as of August 9, 1993 (58 FR 36863, July 9, 1993). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 16, 1999.

Issued in Renton, Washington, on June 4, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14821 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–91–AD; Amendment 39–11190; AD 99–12–06]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. VN 411B Very High Frequency (VHF) Navigation Receivers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires replacing certain AlliedSignal Inc. VN 411B VHF navigation receivers installed on aircraft if the receivers do not have Modification 21 incorporated. This AD is the result of a report of navigation receiver interference during landing operations. The actions specified by this AD are intended to prevent VHF navigation receiver interference from frequency modulation (FM) radio station broadcasts, which could cause distortion of the navigation audio and deflection of the desired flight path of the airplane during landing operations with possible loss of control of the airplane.

DATES: Effective July 23, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 23, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from AlliedSignal, Inc. 23500 W. 105th Street, Olathe, Kansas 66051–1950. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–91–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Souter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134, facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain AlliedSignal Inc. VN 411B very high frequency (VHF) navigation receivers installed in aircraft was published in the **Federal Register** as a supplement notice of proposed rulemaking (NPRM) on December 22, 1998 (63 FR 70698). The supplemental NPRM proposed to require replacing any VHF navigation receiver that does not have Modification 21 incorporated with one where an AlliedSignal Bendix/King-owned service center has incorporated Modification 21. Accomplishment of the proposed action as specified in the supplemental NPRM would be in accordance with AlliedSignal Bendix/King Service Bulletin VN 411B–21, dated November 1996.

The NPRM was the result of a report of navigation receiver interference during landing operations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 19 VHF navigation receivers in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per receiver to accomplish this action, and that the average labor rate is approximately $60 an hour. The manufacturer is not charging the owner/operator for exchanging the navigation receiver unit and is offering 2 workhours of labor warranty credit to accomplish this action. Based on these figures, this AD imposes no cost impact on U.S. operators. The FAA has no way of determining if any of the affected airplanes have navigation receivers with Modification 21 incorporated.

Compliance Time of This AD

The condition specified by this AD is not caused by actual hours time-in-service (TIS) of the aircraft where the affected VHF navigation receivers are installed. The need for replacing the VHF navigation receiver with one that incorporates hardware modifications has no correlation to the number of times the equipment is utilized or the age of the equipment. For this reason, the compliance time of this AD is presented in calendar time instead of hours TIS.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–12–06 AlliedSignal Inc.: Amendment 39–11190; Docket No. 95–CE–91–AD.

Applicability: The following very high frequency (VHF) navigation receivers that are installed on, but not limited to, Learjet Model 31A, Fokker Model F27–50, and British Aerospace Model ATP airplanes:

—VN 411B, BPN 3614004–4101, all serial numbers, that are currently at Modification Status 18, 19, or 20;
—VN 411B, BPN/KPN 3614004–4101/066–1101–00, all serial numbers, that are currently at Modification Status 18, 19, or 20;
—VN 411B, P/N 066–1101–00, serial numbers up to and including 4229, that are currently at Modification Status 18, 19, or 20; and
—VN 411B, P/N 066–1101–31/40/50, serial numbers up to and including 10799, that are currently at Modification Status 19 or 20.

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

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

To prevent VHF navigation receiver interference from frequency modulation (FM) radio station broadcast frequencies, which could cause distortion of the navigation audio and deflection of the desired flight path of the airplane during landing operations with possible loss of control of the airplane, accomplish the following:

(a) Within the next 90 calendar days after the effective date of this AD or upon replacement or repair of any affected AlliedSignal VHF navigation receiver, whichever occurs first, remove the navigation receiver and install one where an AlliedSignal Bendix/King service center has incorporated Modification 21, in accordance with AlliedSignal Bendix/King Service Bulletin VN 411B–21, dated November 1996.

(b) As of the effective date of this AD, no person may install, on any airplane, one of the affected VHF navigation receivers that does not have Modification 21 incorporated in accordance with AlliedSignal Bendix/King Service Bulletin VN 411B–21, dated November 1996.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(e) The removal and installation required by this AD shall be done in accordance with AlliedSignal Bendix/King Service Bulletin VN 411B–21, dated November 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal, Inc., 23500 W. 105th Street, Olathe, Kansas 66051–1950. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on July 23, 1999.

Issued in Kansas City, Missouri, on June 2, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14537 Filed 6–10–99; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–127–AD; Amendment 39–11191; AD 99–12–07]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 1900D airplanes. This AD requires replacing the passenger oxygen container and mask assembly with an improved design passenger oxygen container and mask assembly. This AD is the result of an incident where a passenger had put on the oxygen mask and the lanyard pin did not automatically pull and initiate oxygen flow during a loss of airplane pressurization while in-flight. The actions specified by this AD are intended to prevent the above situation from occurring on other airplanes, which could result in passenger injury if the lanyard pin is not manually pulled in a timely manner.

DATES: Effective July 23, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–127–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul C. DeVore, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model 1900D airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 1, 1999 (64 FR 9939). The NPRM proposed to require replacing the existing passenger oxygen container and mask assembly, part number (P/N) 129–384005–3, with an improved design passenger oxygen container and mask assembly, P/N 129–384005–5. Accomplishment of the proposed replacement as specified in the NPRM would be accomplished by incorporating Puritan Bennett Kit No. 280041–00: Lanyard Retrofit Drop Out Box, which contains all the necessary parts and instructions.

The NPRM was the result of an incident where a passenger had put on the oxygen mask and the lanyard pin did not automatically pull and initiate oxygen flow during a loss of airplane pressurization while in-flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the NPRM and no comments were received on the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Differences Between the Service Information and This AD

The compliance time presented in Raytheon Service Bulletin SB 35–3233, Issued: December, 1998, is ''as soon as possible after receipt of this Service Bulletin, but no later than 600 hours after receipt of this Service Bulletin.'' The FAA concurs that the action should be accomplished as soon as possible, but has no way of enforcing this compliance time. The FAA also assumes that what Raytheon means by ''600 hours after receipt of this Service Bulletin'' is 600 hours time-in-service (TIS).

In order to assure that the replacement required by this AD is accomplished within a reasonable period of time without inadvertently grounding the affected airplanes, the FAA is utilizing a compliance time of ''within the next 200 hours TIS after the effective date of this AD''.

Cost Impact

The FAA estimates that 300 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the replacement, and that the average labor rate is approximately $60 an hour. Parts will be provided at no cost to the owners/operators of the affected airplanes. Based on the figures presented above, the total cost impact of this AD on U.S. operators is estimated to be $72,000, or $240 per airplane.

Raytheon is also offering warranty credit for labor, as well as parts, provided that all paperwork is submitted to the manufacturer no later than December 31, 1999.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–12–07 Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by the Beech Aircraft Corporation): Amendment 39–11191; Docket No. 98–CE–127–AD.

Applicability: Model 1900D airplanes, serial numbers UE–1 through UE–338, certificated in any category.

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

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

To prevent failure of the oxygen mask lanyard pin to automatically pull and initiate oxygen flow during a loss of airplane pressurization while in-flight, which could result in passenger injury if the lanyard pin is not manually pulled in a timely manner, accomplish the following:

(a) Within the next 200 hours time-in-service after the effective date of this AD, replace the passenger oxygen container and mask assembly, part number 129–384005–3 (or FAA-approved equivalent part number), with an improved design passenger oxygen container and mask assembly, part number 129–384005–5 (or FAA-approved equivalent part number). Accomplish this replacement by incorporating Puritan-Bennett Kit No. 280041–00: Lanyard Retrofit Drop Out Box, which contains all the necessary parts and instructions. This kit is referenced in Raytheon Mandatory Service Bulletin SB 35–3233, Issued: December, 1998.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a passenger oxygen container and mask assembly that is not of an improved design, part number 129–384005–5 (or FAA-approved equivalent part number).

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(e) The replacements required by this AD shall be done in accordance with Puritan-Bennett Kit No. 280041-00: Lanyard Retrofit Drop Out Box, Revision A01, dated October 21, 1998, as referenced in Raytheon Mandatory Service Bulletin SB 35–3233, Issued: December, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on July 23, 1999.

Issued in Kansas City, Missouri, on June 2, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14536 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41453A, International Series Release No. 1198A, File No. S7–4–99]

RIN 3235–AH68

Exemption of the Securities of the Kingdom of Sweden Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule that was published on June 2, 1999 (64 FR 29550). The regulation relates to the designation of debt obligations issued by the Kingdom of Sweden as ''exempted securities'' for the purpose of marketing and trading futures contracts on those securities in the United States.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Joshua Kans, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001, at 202/942–0079.

SUPPLEMENTARY INFORMATION: On May 26, 1999, the Commission issued a final rule amending Rule 3a12–8 to designate debt obligations issued by the Kingdom of Sweden as ''exempted securities'' for the purpose of marketing and trading futures contracts on those securities in the United States. The amendment became effective on June 2, 1999, when the **Federal Register** published the final rule.

As published, the final regulation contains an error which may prove to be misleading and is in need of clarification.

Accordingly, the publication on June 2, 1999 of the final regulation that was the subject of FR Doc. 99–13927 is corrected as follows:

PART 240—[CORRECTED]

On page 29553, in the text beginning on the second column and continuing onto the third column, the mandatory language for amendment 2 is corrected to read:

''2. Section 240.3a12–8 is amended by removing the word ''or'' at the end of paragraph (a)(1)(xix), removing the period at the end of paragraph (a)(1)(xx) and adding '';or'' in its place, and adding paragraph (a)(1)(xix), to read as follows:''

Dated: June 7, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14866 Filed 6–10–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM99–6–000; Order No. 604]

Electronic Service of Documents

Issued May 26, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending Rule 2010(f) (18 CFR 385.2010(f)) to permit participants to proceedings before the Commission voluntarily to serve documents on one another by electronic means. This revision is intended to give the participants more flexibility in meeting the service requirements, and to encourage participants to gain experience with electronic service. This change is an important step in the Commission's plan to convert to broad-based electronic filing.

DATES: This final rule is effective July 12, 1999.

FOR FURTHER INFORMATION CONTACT:

Brooks Carter, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 501–8145;

Wilbur Miller, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 208–0953.

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

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System

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

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

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending 18 CFR 385.2010 to allow for electronic service of documents in certain circumstances. The Commission is modifying the existing service rule to make clear that willing participants may serve and receive documents by electronic means. This revision is intended to give participants more flexibility in meeting the service requirements, and to encourage participants to gain experience with electronic service. This change is an important step in the Commission's plan to convert to broad-based electronic filing.

II. Background

In order to increase the efficiency with which it carries out its program responsibilities, the Commission is moving forward with measures to use information technology to reduce the amount of paperwork required in proceedings before the Commission. One part of that effort, and the subject of this rulemaking, is to make document service more efficient by employing electronic means where the participants so agree. This rule follows the Commission's action in 86 FERC ¶ 61,324 (1999) (rehearing pending), in which it amended its complaint procedures, in 18 CFR 385.206(c), to allow service of complaints by electronic mail.

Both the legislative and executive branches of the Federal Government have set as goals the substitution of electronic means of communication and information storage for paper means. For example, the Government Paperwork Elimination Act directs agencies to provide for the optional use and acceptance of electronic documents and signatures, and electronic record-keeping, where practical, by October 2003.[1] Similarly, Office of Management and Budget Circular A–130 requires agencies to employ electronic information collection techniques where such means will reduce the burden on the public, increase efficiency, reduce costs, and help provide better service.[2]

On May 13, 1998, the Commission issued a request for comments and notice of intent to hold a technical conference in its Electronic Filings Initiative, Docket No. PL 98–1–000. The Commission stated, *inter alia,* that it intended to clarify its rules to facilitate the use of electronic service.[3] It also presented the question whether it should encourage electronic service among parties over the Internet.[4]

Most commenters and participants at the conference favored some form of electronic service, including the following recommendations: (a) allowing participants to reach agreement among themselves regarding electronic service; (b) allowing electronic service over the Internet; (c) allowing e-mail notice of filing with a reference to a copy of the filing on the filer's or the Commission's web site; and (d) use of a server to facilitate electronic service by the Commission and by participants in proceedings.

The Commission continues to believe that electronic service among participants should be encouraged. The revision contained in this rulemaking is preliminary to the separate task of implementing procedures governing electronic filing of documents.

III. Discussion

Rule 2010(f) currently states that service may be effected by first-class United States mail or better, or ''[b]y delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt.'' The current rule does not provide specifically for electronic service. To make clear that such service is permissible, the Commission is amending the service rule to add the express option of service by electronic means among participants who voluntarily agree to use electronic service.

This rule is only intended to address service among participants, and does not change the rules for filings made with the Commission. Electronic filing with the Commission will be the subject of a future rulemaking.

This rule leaves it up to individual participants to come to agreement about the use of electronic service. It will not be necessary for every participant in a particular case to agree to use electronic service. Agreements need not be reciprocal. For instance, if participant A prefers to receive service electronically, participant B could agree to serve A electronically even if B did not want electronic service.

Under this rule, participants should not discriminate in their use of electronic service. For instance, if multiple participants agree to serve one another documents in a particular format via e-mail, they cannot refuse to serve another willing participant the same way. However, the rule contains no restriction on the number or variety of methods of electronic service that can be used in a particular matter. Some participants could agree to receive service in one format, while at the same time other participants could agree to receive service in another format.

Depending on the software used for creation of documents, the page numbering of documents may vary depending on the fonts, margins and other formatting options used. The Commission recognizes that such formatting differences can create problems in accurate citation to documents filed with the Commission. But such problems should be surmountable. To ensure a consistent citation format for documents officially filed with the Commission, participants should cite to the official version of the filed document in compliance with Rule 2003(c).[5]

Under this rule, in matters set for hearing before an Administrative Law Judge (ALJ), the ALJ should consult the participants to determine where use of electronic service is appropriate. One difficulty in litigated cases is that many of the documents served are not filed with the Commission, which may complicate the issue of which version of a document should be used for citation purposes. Moreover, Rule 403(c)[6] requires that responses to discovery be under oath or certified as true and accurate. The Commission believes that the ALJs are in the best position to determine whether participants may serve responses to discovery via electronic means, and if electronic service is permitted, how to satisfy the oath/certification requirement.

The Commission recognizes that some methods of electronic service, under

[1] Pub. L. 105–277, Sections 1702–1704.

[2] Circular A–130, Para. 8.a.1(k).

[3] 63 FR 27532 (May 13, 1998).

[4] Id.

[5] 18 CFR 385.2003(c).

[6] 18 CFR 385.403(c).

some circumstances, may not be as reliable as other traditional means of service. Participants under this rule will need to consider how to verify service. Some participants' mail systems may provide notification that a recipient has received a transmission. If that type of system verification were not available, the transmitter could agree to notify the recipients by telephone to let them know that they were being served, and the recipient could assume the obligation to notify the transmitter if the service was not received. Alternatively, the document itself could request that the recipient notify the transmitter that the document had been received. If the transmitter did not receive timely notification of receipt, it would contact the intended recipient to learn whether the document was successfully received.

The Commission has considered the potential effect of this final rule on Year 2000 preparations and has concluded that the rule will not have any adverse impact on Year 2000 readiness.

Due to the limited scope of this rule, the Commission is issuing it as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only a matter of agency procedure. Furthermore, it merely clarifies the existing service rule to provide electronic service as an option expressly. Electronic service has in fact already been used in some Commission proceedings. Finally, the rule is entirely voluntary; no participant can be required to send or receive service electronically. Therefore, the Commission finds notice and comment procedures to be unnecessary.

Although the Commission invites participants to agree to use electronic service, this rulemaking does not include any change regarding service on or by the Office of the Secretary (OSEC); service on OSEC must be made via the more traditional methods of service found in Section 2010(f)(1) and (2).

To the extent that the regulations regarding a particular type of document place additional requirements on service, those rules will prevail over the generic rule on service. For instance, sections 4.22 and 375.314 require service or notification by certified mail; those requirements cannot be met by electronic service at this time. No changes to these regulations are being made at this time.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of rules that will have a significant impact on a substantial number of small entities.[7] The Commission is not required to make such analyses if a rule would not have such an effect.

The Commission does not believe that this rule will have such an impact on small entities. Most companies regulated by the Commission do not fall within the RFA's definition of small entity.[8] Further, the filing requirements of small entities are not impacted by this rule. No participants are required to use electronic service; they will do so only voluntarily. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[9] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Among these are rules that are clarifying, corrective, or procedural, or that do not substantively change the effect of the regulations being amended.[10] This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

VI. Information Collection Statement

The following collection of information contained in this rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[11] FERC identifies the information provided under 18 CFR Part 385 as FERC–601.

Public Reporting Burden: Estimated Annual Burden: The burden estimates for complying with current paper service regulations are reflected in all of the Commission's information collections which require service by the applicant or parties to a proceeding. As part of the Commission's ongoing efforts to streamline the regulatory process, the Commission has consolidated the burden hours associated with the service of documents to a proceeding under single collection of information for easier reference.[12] FERC–601 has been designated to be that point of reference. The total burden estimates for service under these existing information collections, based on 10,000 applications and 10,000 intervenors per year are as follows:

Data collection	No. of respondents (applicants plus intervenors)	No. of documents	No. of responses	Hours per response	Total annual hours
FERC–601 (see footnote 12)	20,000	40,000	1,000,000	0.50	500,000

Record keeping adds an additional 20,000 hours. Therefore, the total annual hours for Service under the current regulations, (Reporting + record keeping) = 520,000 hours.

Based on the Commission's experience with electronic service of documents, it is estimated that about 20% of the 1,000,000 responses will be served electronically in the first year, 30% in the second year, and 40% in the third year, at a burden rate of 0.25 hours per document. This includes an allowance for the overhead of working out electronic service agreements, maintaining Internet addresses, and storing electronic records. The current

[7] 5 U.S.C. 601–612.

[8] 5 U.S.C. 601(3) provides the definition of small business concern.

[9] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[10] 18 CFR 380.4(a)(2)(ii).

[11] 44 U.S.C. 3507(d).

[12] Currently, the burden hours are attributed to the following collections of information approved by OMB: 1902–0082; 1902-0083; 1902–0096; 1902–0098; 1902–0058; 1902–0115; 1902–0073; 1902–0060; 1902–0062; 1902–0153; 1902–0154; 1902–0155; 1902-0086; 1902–0089; 1902–0128.

annual reporting burden for proposed FERC–601, based on current regulations, is 520,000 hours.

The comparison of burden under the pre-existing and new regulation for the estimated number of documents that will be served electronically is:

BURDEN HOURS FOR 3 YEAR PERIOD

Form of service	First Year reduction 20%	Second Year reduction 30%	Third Year Reduction 40%	Total burden hours
Current (all paper)	520,000	520,000	520,000	1,560,000
New (paper or optional electronic)	470,000	445,000	420,000	1,335,000

The burden reduction under the revised regulation is estimated to be 225,000 hours over three years.

Information Collection Costs: The Commission has projected the cost savings over three years to be approximately $11,800,000. The Commission assumes that there are no other startup costs, such as having to acquire Internet access. The program is voluntary and contingent on agreement of the parties, so that no one is required to obtain Internet access if they do not have it for other business purposes.

(The Commission makes the assumption that the average cost for a Commission employee is comparable to the costs for industry. This assumption equates to total number of reporting hours ÷ 2,080 hours in the work year × $109,889 (current costs for FERC employee-salary + benefits). A true reflection of the costs to industry should be based on market prices for the resources necessary to comply with the information collection. Financial costs include both non-recurring costs such as the cost of capital investments necessary to fulfill the information collection and recurring costs such as the cost of operating and maintaining capital investments.)

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[13] Accordingly, pursuant to OMB regulations, the Commission is providing notice of this revised information collection to OMB.

Title: FERC–601, Electronic Service.

Action: Proposed Data Collection.

OMB Control No. (See footnote 12).

The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: On occasion.

Necessity of Information: This rule adds an optional method for service of documents. Because it is voluntary, parties will be able to determine for themselves the benefits costs of electronic service, in particular the cost savings, over the traditional method of serving documents. The Commission believes that the rule will, in many cases, make service of documents quicker, more reliable and less expensive than the other existing options. Internal Review: The Commission already requires in most instances that parties filing documents in proceedings before it serve those documents upon other interested parties. This requirement is necessary to ensure fundamental fairness in the Commission's proceedings. This rule does not add any requirement, but instead adds an alternative method of a voluntary nature to accomplish service. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements. Parties receiving service require the documents in order to inform themselves of arguments being made, and evidence and other information being submitted, in Commission proceedings. The parties use this information to form and develop their own positions and contentions.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202)208–1415, fax: (202)273–0873, e-mail: mike.miller@ferc.fed.us.

For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC, 20503. Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395–3087, fax: (202)395–7285.

VII. Congressional Review

The provisions of 5 U.S.C. 801, regarding Congressional review of rulemakings, do not apply to this rulemaking because it concerns agency procedure and practice and will not substantially affect the rights and obligations of non-agency parties. 5 U.S.C. 804(3)(C).

VIII. Effective Date

This regulation becomes effective July 12, 1999. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By The Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, part 385, chapter I, title 18, *Code of Federal Regulations*, is hereby amended as set forth below.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C 60502; 49 App. U.S.C. 1–85.

2. Section 385.2010(f) is revised to read as follows:

§ 385.2010 Service (Rule 2010).

* * * * *

(f) *Methods of service.* Service of any document must be made:

(1) By United States mail, first-class or better;

(2) By delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt; or

(3) By electronic means to participants who have agreed to receive

[13] 5 CFR 1320.12.

service via the specified electronic means.

* * * * *

[FR Doc. 99–13986 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 556

Oral Dosage Form New Animal Drugs; Neomycin Sulfate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The supplemental NADA provides for use of neomycin sulfate in turkey drinking water for the control of mortality associated with *Escherichia coli* organisms susceptible to neomycin sulfate in growing turkeys. The regulations are also amended to provide for a tolerance for neomycin residues in edible turkey tissues and an acceptable daily intake (ADI).

EFFECTIVE DATE: June 11, 1999.

FOR FURTHER INFORMATION CONTACT: William T. Flynn, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7570.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed supplemental NADA 11–315 that provides for use of Neomix® 325 and Neomix® AG 325 (neomycin sulfate) soluble powder in turkey drinking water for the control of mortality associated with *E. coli* organisms susceptible to neomycin sulfate in growing turkeys. The supplemental NADA is approved as of May 5, 1999, and 21 CFR 520.1484 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, a tolerance for residues of neomycin in edible tissues of turkeys has not been previously established. Section 556.430 is amended editorially to reflect current format, to provide tolerances for neomycin residues in edible turkey tissue, and to provide an ADI for neomycin.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval for use in turkey drinking water qualifies for 3 years of marketing exclusivity beginning May 5, 1999, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for this approval and conducted or sponsored by the applicant. The 3 years marketing exclusivity is limited to use of the drug for the control of mortality associated with *E. coli* organisms susceptible to neomycin sulfate in growing turkeys.

FDA has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment. Therefore, an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1484 is revised to read as follows:

§ 520.1484 Neomycin sulfate soluble powder.

(a) *Specifications*. Neomycin sulfate soluble powder contains 20.3 grams of neomycin sulfate (equivalent to 14.2 grams of neomycin base) per ounce.

(b) *Sponsors*. See 000069, 046573, 050604, and 051259 in § 510.600(c) of this chapter for use as in paragraph (d)(1) of this section. See 000009 for use as in paragraphs (d)(1) and (d)(2) of this section.

(c) *Related tolerances*. See § 556.430 of this chapter.

(d) *Conditions of use*–(1) *Cattle (excluding veal calves), swine, sheep, and goats*.

(i) *Amount*. 10 milligrams of neomycin sulfate per pound of body weight per day (22 milligrams per kilogram) in divided doses for a maximum of 14 days.

(ii) *Indications for use*. For the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin sulfate in cattle (excluding veal calves), swine, sheep, and goats.

(iii) *Limitations*. Add to drinking water or milk; not for use in liquid supplements. Prepare a fresh solution daily. If symptoms persist after using this preparation for 2 or 3 days, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms, but not to exceed a total of 14 consecutive days. Discontinue treatment prior to slaughter as follows: Cattle (not for use in veal calves), 1 day; sheep, 2 days; swine and goats, 3 days.

(2) *Turkeys*–(i) *Amount*. 10 milligrams of neomycin sulfate per pound of body weight per day (22 milligrams per kilogram) for 5 days.

(ii) *Indications for use*. For the control of mortality associated with *E. coli* organisms susceptible to neomycin sulfate in growing turkeys.

(iii) *Limitations*. Add to drinking water; not for use in liquid supplements. Prepare a fresh solution daily. If symptoms persist after using this preparation for 2 or 3 days, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms, but not to exceed a total of 5 consecutive days.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.430 is revised to read as follows:

§ 556.430 Neomycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of neomycin is 6 micrograms per kilogram of body weight per day.

(b) *Tolerances.* Tolerances are established for residues of parent neomycin in uncooked edible tissues as follows:

(1) *Cattle, swine, sheep, and goats.* 7.2 parts per million (ppm) in kidney (target tissue) and fat, 3.6 ppm in liver, and 1.2 ppm in muscle.

(2) *Turkeys.* 7.2 ppm in skin with adhearing fat, 3.6 ppm in liver, and 1.2 ppm in muscle.

(3) *Milk.* A tolerance is established for residues of parent neomycin of 0.15 ppm.

Dated: May 28, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–14924 Filed 6–10–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC036–2017; FRL–6356–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are converting the conditional approval of the District of Columbia's (the District's) enhanced vehicle inspection and maintenance (I/M) program which was granted on June 2, 1998 (63 FR 29955) to a full approval. The District's I/M program was conditionally approved as a revision to its State Implementation Plan (SIP) in the rule published on June 2, 1998. The sole condition imposed in EPA's June 2, 1998 conditional approval was that the District's enhanced I/M program begin on or before April 30, 1999. The District began testing vehicles on April 26, 1999, and fulfilled its condition for full approval of the I/M program. The District's program meets all the requirements of the Clean Air Act for enhanced I/M.

DATES: This rule is effective on August 10, 1999, unless EPA receives adverse written comment by July 12, 1999. If adverse comment is received, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You may inspect copies of the documents relevant to this action during normal business hours at the following locations: Air Protection Division, 14th floor, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and District of Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Avenue, S.E., Washington, DC 20020. Please contact Catherine L., Magliocchetti at (215) 814–2174 if you wish to arrange an appointment to view the docket at the Philadelphia office.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174 , or by e-mail at magliocchetti.catherine@epa.gov.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

What action is EPA taking today?
Who is affected by this action?
Who will benefit from this action?

What Action is EPA Taking Today?

In this action, we are converting our conditional approval of the District's I/M program as a revision to the SIP to a full approval. The District's enhanced I/M program was conditionally approved and made part of the District's SIP in a rule published on June 2, 1998 (63 FR 29955).

The sole condition imposed in the June 2, 1998 conditional approval was that the District's enhanced I/M program begin on or before April 30, 1999. The District began testing vehicles on April 26, 1999, and thereby has fulfilled the sole condition necessary for full approval of the I/M program. Because the District has fulfilled the condition imposed in the June 2, 1998 rule, we are converting our conditional approval of the I/M SIP to a full approval.

Who is Affected by This Action?

It is important to note that our action today does not impose any new requirements on District residents; we are merely giving full versus conditional federal approval to the District law and regulations that are already in place to implement an enhanced I/M program. Those laws and regulations were made part of the District's SIP by the final rule published on June 2, 1998 (63 FR 29955).

Who Will Benefit From This Program?

The residents of the District will benefit from this program, which is designed to keep vehicles maintained and operating within pollution control standards. And, since air pollution does not recognize political boundaries, neighboring states' residents will also benefit from implementation of this program which is designed to prevent excessive vehicle pollution.

EPA Action

EPA is converting its conditional approval approval of the District's enhanced I/M SIP to full approval. An extensive discussion of the District's I/M plan and our rationale for its approval was provided in the previous final rule which conditionally approved the I/M SIP (see 63 FR 29955 and 63 FR 15118) and in our Technical Support Document, dated March 10, 1998. This action to convert our conditional approval to full approval is being published without prior proposal because we view this as a noncontroversial revision and we anticipate no adverse comment. However, in a separate document in this **Federal Register** publication, we are proposing to this action should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse comment by July 12, 1999. Should we receive such comments, we will publish a withdrawal and inform the public that this action will not take effect. Anyone interested in commenting on this action should do so at this time. If no such comments are received, you are advised that this action will be effective on August 10, 1999.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

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

C. Executive Order 13045

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

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

D. Executive Order 13084

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action converting the conditional approval of the District of Columbia's enhanced inspection and maintenance program SIP revision to a full approval 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Enhanced Inspection and Maintenance (I/M).

Dated: May 27, 1999

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

2. In § 52.470, an entry for Title 18, Chapters 4, 6, 7, 11, 26 and 99 is added at the end of the table in paragraph (c) in the ''EPA Approved Regulations in the District of Columbia SIP'' to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/Subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Title 18—Vehicles and Traffic				
Chapter 4 Motor Vehicle Title and Registration				
Section 411	Registration of Motor Vehicles: General Provisions.	10/10/86	June 11, 1999.	
Section 412	Refusal of Registration	10/17/97	June 11, 1999.	
Section 413	Application for Registration	9/16/83	June 11, 1999.	
Section 429	Enforcement of Registration and Reciprocity Requirements.	3/4/83	June 11, 1999.	
Chapter 6 Inspection of Motor Vehicles				
Section 600	General Provisions	4/23/82	June 11, 1999.	
Section 602	Inspection Stickers	3/15/85	June 11, 1999.	
Section 603	Vehicle Inspection: Approved Vehicles.	6/29/74; Recodified 4/1/81	June 11, 1999.	
Section 604	Vehicle Inspection: Rejected Vehicles.	11/23/84	4/10/86 51 FR 12322.	
Section 606	Vehicle Inspection: Condemned Vehicles.	6/29/74; Recodified 4/1/81	June 11, 1999.	
Section 607	Placement of Inspection Stickers on Vehicles.	4/7/77; Recodified 4/1/81	June 11, 1999.	
Section 608	Lost, Mutilated or Detached Inspection Stickers.	6/30/72; Recodified 4/1/81	June 11, 1999.	
Section 609	Inspection of Non-Registered Motor Vehicles.	6/30/72; Recodified 4/1/81	June 11, 1999.	
Section 617	Inspection Certification	7/22/94	June 11, 1999.	
Section 618	Automotive Emissions Repair Technician.	7/22/94	June 11, 1999.	
Section 619	Vehicle Emission Recall Compliance.	10/17/97	June 11, 1999.	
Chapter 7 Motor Vehicle Equipment				
Section 701	Historic Motor Vehicles	2/25/78; Recodified 4/1/81	June 11, 1999.	
Section 750	Exhaust Emission Systems.	4/26/77; Recodified 4/1/81	June 11, 1999.	
Section 751	Compliance with Exhaust Emission Standards.	7/22/94	June 11, 1999.	
Section 752	Maximum Allowable Levels of Exhaust Components.	10/17/97	June 11, 1999.	
Section 753	Inspection of Exhaust Emission Systems.	5/23/83	4/10/86 51 FR 12322.	
Section 754	Federal Transient Emissions Test: Testing Procedures.	7/22/94	June 11, 1999.	
Section 755	Federal Transient Emissions Test: Equipment.	7/22/94	June 11, 1999.	
Section 756	Federal Transient Emissions Test: Quality Assurance Procedures.	7/22/94	June 11, 1999.	

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP—Continued

State citation	Title/Subject	State effective date	EPA approval date	Comments
Chapter 11 Motor Vehicle Offenses and Penalties				
Section 1101	Offenses Related to Title, Registration, and Identification Tags.	6/30/72; Recodified 4/1/81	June 11, 1999.	
Section 1103	Offenses Related to Inspection Stickers.	6/30/72; Recodified 4/1/81	June 11, 1999.	
Section 1104	False Statements, Alterations, Forgery, and Dishonest Checks.	11/29/91	June 11, 1999.	
Section 1110	Penalties for Violations	11/29/91	June 11, 1999.	
Chapter 26 Civil Fines for Moving and Non-Moving Violations				
Section 2600.1	Infraction: Inspection, Registration Certificate, Tags.	8/31/90	June 11, 1999.	
Chapter 99 Definitions				
Section 9901	Definitions	10/17/97	June 11, 1999.	

§ 52.473 [Amended]

3. In section 52.473, paragraph (a) is reserved.

[FR Doc. 99–14593 Filed 6–10–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300690B; FRL–6076–5]

RIN 2070–AB78

Certain Plant Regulators; Cytokinins, Auxins, Gibberellins, Ethylene, and Pelargonic Acid; Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of the active ingredients cytokinins, auxins, gibberellins, ethylene, and pelargonic acid in or on all food commodities, when used as plant regulators and applied to plants, seeds, or cuttings and on all food commodities after harvest. It does not apply to residues of these substances that are intended to be produced and used in living plants (also known as plant-pesticides), which are being addressed in a future rulemaking. This regulation also removes any existing crop-specific tolerances and/or exemptions from the requirement of a tolerance for the subject active ingredients and such tolerances are considered to be reassessed as required by the Food Quality Protection Act of 1996 (FQPA). This regulation eliminates the need to establish maximum permissible levels for residues of the subject active ingredients. EPA has established this regulation on its own initiative to facilitate the addition of new crops, application rates, and uses to the labels of products containing the listed active ingredients when used as plant regulators.

DATES: This regulation is effective June 11, 1999. Objections and requests for hearings must be received by EPA on or before August 10, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300690B], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300690B], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300690B]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th fl., CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8263, Greenway.Denise@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you in determining whether or not this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section at the beginning of this preamble.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available support documents from the EPA Internet Home Page at http://www.epa.gov/. 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/, or go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/op/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300690B. The official record consists of any documents that are 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 Highway, 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.''

II. Background

In the **Federal Register** of October 23, 1998 (63 FR 56882) (FRL–6019–7), EPA issued a proposal pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) to amend 40 CFR part 180 by establishing exemptions from the requirement of a tolerance for the active ingredients cytokinins (specifically: aqueous extract of seaweed meal and kinetin); auxins (specifically: indole-3-acetic acid and indole-3-butyric acid); gibberellins [gibberellic acids (GA3 and GA4 + GA7), and sodium or potassium gibberellate]; ethylene; and pelargonic acid, in or on all food commodities, when used as plant regulators on plants, seeds, or cuttings and on all food commodities, after harvest, in accordance with good agricultural practices. EPA concurrently proposed the revision or revocation and removal of any existing crop-specific tolerances and/or exemptions from the requirement of tolerances for the listed active ingredients when used as plant regulators. In taking this action the EPA will consider those tolerances and/or exemptions to be reassessed (FFDCA 408(q) as amended by the FQPA of 1996).

The Agency has selected this group of plant regulators as the subject of this rule due to their non-toxic mode of action, low toxicity profile, low application rates, and the expectation that plant regulator uses will not significantly increase their intake above normally consumed levels. There are additional plant regulator active ingredients which may meet the selection criteria. The Agency may, in the future, propose a similar document addressing other candidate plant regulator active ingredients.

All of the subject active ingredients are currently registered plant regulators, with the exception of indole-3-acetic acid. The Agency discourages the establishment (or existence) of tolerances, or exemptions from the requirement of a tolerance, for active ingredients for which there are no registered pesticide products. Therefore, the proposal stated that any subsequent Final Rule would not include indole-3-acetic acid (a naturally occurring analog of indole-3-butyric acid) in the tolerance exemption for auxins, unless during the comment period specific requests that it be included were received. Such requests were required to document the commentor's intention to promptly submit upon publication of the Final Rule an application to register a plant regulator product containing indole-3-acetic acid as an active ingredient.

The Agency made the proposal upon its own initiative to facilitate the addition of new crops, application rates, and uses to the labels of products containing the listed active ingredients when used as plant regulators. A plant regulator is defined by EPA as ''...any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof...'' (Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 2(v)).

Additionally, plant regulators are characterized by their low rates of application; high application rates of the same compounds often are herbicidal.

III. Response to Public Comments

In the **Federal Register** of January 8, 1999 (64 FR 1157), the Agency reopened and extended by 30 days the original comment period associated with the proposal of October 23, 1998. The 30-day extension was in response to requests from the public for additional time to comment on the Proposed Rule. There were thirteen comments: eight in support, two pledging to register indole-3-acetic acid, two concerned with data compensation issues and one seeking the addition of 1-naphthaleneacetic acid (NAA) to the list of subject active ingredients.

The American Phytopathological Society (APS), the California Citrus Quality Council, and the Wilbur-Ellis Company wrote in general support of the Proposed Rule. The Interregional Research Project No. 4 (IR-4) wrote in support of the inclusion of the gibberellins. Westbridge Agricultural Products; Atlantic Laboratories, Inc.; and Acadian Seaplants Limited supported the proposal in general, and the inclusion of cytokinins in particular. Aqua-10 Laboratories supported the proposal in general, and the inclusion of cytokinins, auxins, and gibberellins in particular.

The APS letter also offered the view that the subject plant regulator active ingredients ought not be regulated by EPA under FIFRA.

Agency Response: Deregulation of the subject active ingredients under section 25(b) of FIFRA (exemption) is beyond the scope of this Final Rule.

Plant Biotech, Inc. and JH Biotech, Inc. alerted the Agency of their intention to submit applications for the registration of products containing the active ingredient indole-3-acetic acid. This was in response to the Agency's statement that indole-3-acetic acid would not be included as an auxin exempted from the requirement of a tolerance in the Final Rule unless a documented commitment to register pesticide products containing it as an active ingredient was received during the comment period.

Agency Response: The auxin indole-3-acetic acid has been retained as a subject active ingredient exempted from the requirement of a tolerance by this Final Rule.

AMVAC Chemical Corporation wrote in support of the proposal, and also requested that the Agency add to the Final Rule, under auxins, plant regulators based on 1-naphthaleneacetic acid (NAA). The company argued that, ''the NAA products met the Agency's specified criteria for inclusion in the Rule.''

Agency Response: First, the proposal and this Final Rule address active ingredients, not the end-use products formulated from the subject active ingredients. Second, the reach of the Final Rule cannot exceed that of the proposal; NAA and related compounds were not addressed in the proposal and so cannot be included in the Final Rule. Third, the proposal acknowledged that active ingredients other than those included may meet the selection criteria, and stated that such active ingredients may be considered in the future should the Agency prepare a similar document. Fourth, the data sets reviewed for the subject active ingredients are complete in that all were registered post FIFRA 1984, thus meeting the current data requirements, or were (or are a naturally occurring analog of) the subject of an existing Reregistration Eligibility Document (RED). Only upon the completion of the pending NAA RED can a decision on its candidacy for a broad tolerance exemption be assessed.

Abbott Laboratories and Agtrol International wrote seeking assurance that their FIFRA data compensation privileges for gibberellins data would not be lost as a result of the establishment of the exemption from tolerance for that plant regulator active ingredient.

Agency Response: The standard for establishment of a tolerance exemption under section 408(c)(2) does not include a consideration of the effects such exemption may have regarding FIFRA compensation rights. In addition, the establishment of an exemption from the requirement of a tolerance for residues of a pesticide under FFDCA does not alter existing FIFRA data requirements or the need to comply with the data compensation provisions of FIFRA. Applicants for FIFRA registrations will continue to be required to submit or cite supporting data on the subject plant regulator active ingredients, or obtain waivers from the data requirements. The citation of compensable data (as defined by FIFRA section 3(c)) still must be accompanied by an offer to pay.

IV. Risk Assessment and Statutory Findings

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Based on the information and data considered and discussed in the proposal, the Agency has determined that use of these pesticides as plant regulators will not pose a dietary risk under reasonably foreseeable circumstances. Accordingly, EPA concludes that, in amending 40 CFR part 180, to establish the exemptions as proposed, there is a reasonable certainty that no harm to the general population, including infants and children, will result from aggregate exposure to the pesticide chemical residues of the subject active ingredients, when used as plant regulators.

In reaching this conclusion, EPA considered the potential cumulative effects from substances with a common mechanism of toxicity. The subject plant regulator active ingredients are found in most plants, and some are synthesized structural analogs which function like those occurring naturally. The amounts found in or applied to plants are low enough to regulate growth by a variety of different modes of action without being toxic to the plant (non-toxic modes of action). In addition, toxicological studies on the subject plant regulators at high dose levels (at or above limit doses) identified no toxic endpoints for risk assessment, and these substances are naturally occurring in the normal human diet. Therefore, EPA concluded there was no significant potential for cumulative effects for the subject active ingredients.

V. Objections and Hearing Requests

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

Any person may, by August 10, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VII. 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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: May 17, 1999.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.224 [Removed]

2. By removing § 180.224.

3. Section 180.1016 paragraph (a) is revised to read as follows:

§ 180.1016 Ethylene; exemption from the requirement of a tolerance.

* * * * *

(a) For all food commodities, it is used as a plant regulator on plants, seeds, or cuttings and on all food commodities after harvest and when applied in accordance with good agricultural practices.

* * * * *

§ 180.1042 [Removed]

4. By removing § 180.1042.

5. By revising § 180.1098, to read as follows:

§ 180.1098 Gibberellins [Gibberellic Acids (GA3 and GA4 + GA7), and Sodium or Potassium Gibberellate]; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of gibberellins [gibberellic acids (GA3 and GA4 + GA7), and sodium or potassium gibberellate] in or on all food commodities when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

§ 180.1099 [Removed]

6. By removing § 180.1099.

7. By adding new §§ 180.1157 and 180.1158 to subpart D to read as follows:

§ 180.1157 Cytokinins; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of cytokinins (specifically: aqueous extract of seaweed meal and kinetin) in or on all food commodities when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

§ 180.1158 Auxins; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of auxins (specifically: indole-3-acetic acid and indole-3-butyric acid) in or on all food commodities when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

8. Section 180.1159 paragraph (a) is revised to read as follows:

§ 180.1159 Pelargonic acid; exemption from the requirement of tolerances.

(a) An exemption from the requirement of a tolerance is established for residues of pelargonic acid in or on all food commodities when used as a plant regulator on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

* * * * *

[FR Doc. 99–14864 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300878; FRL–6086–6]

RIN 2070–AB78

Sulfosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sulfosate (the trimethylsulfonium salt of glyphosate, also known as glyphosate-trimesium) in or on poultry meat by-products (mbyp) and in cattle, goat, hog, sheep, and horse kidney and mbyp, except kidney. This regulation increases the tolerances for residues of sulfosate in cattle, goat, hog, sheep, and horse fat and meat; in milk; in eggs; in or on soybean seed; in soybean hulls; and in aspirated grain fractions. This regulation revokes the existing tolerances in poultry, cattle, goat, hog, sheep, and horse liver and mbyp (except liver). Zeneca Ag. Products requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 11, 1999. Objections and requests for hearings must be received by EPA on or before August 10, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300878], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300878], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300878]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5697, tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1999 (64 FR 17171) (FRL–6071–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Zeneca Ag Products, PO Box 751, Wilmington, DE 19897. This notice included a summary of the petition prepared by Zeneca Ag Products, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.489 be amended by establishing tolerances for residues of the herbicide sulfosate, in or on cattle, goat, hog, sheep, and horse kidney at 3.5 parts per million (ppm); in cattle, goat, hog, sheep, and horse mbyp, except liver and kidney, at 1.0 ppm (due to an error, this tolerance was listed as 2.5 ppm in the notice of filing, at 64 FR 17171); and to increase the tolerance in cattle, goat, hog, sheep, and horse fat to 0.2 ppm; in cattle, goat, hog, sheep, and horse meat to 0.6 ppm; in cattle, goat, hog, sheep, and horse liver to 0.75 ppm; in milk to 1.1 ppm;; in or on soybean seed to 21 ppm (of which no more than 13 ppm is TMS); in soybean hulls to 45 ppm (of which no more than 25 ppm is TMS); and in aspirated grain fractions to 1,300 ppm (of which no more than 720 ppm is TMS).

Due to differences in methods for estimating residues in food commodities and EPA policy in expressing tolerances for residues in mbyp, liver, and kidney, EPA determined that modifications were needed to the following proposed tolerances: kidney of cattle, hogs, sheep, goats, and horses should be increased from 3.5 ppm to 6.0 ppm; meat by-products should be expressed in terms of ‘‘mbyp (except kidney)’’ at 1.5 ppm (instead of the requested 1.0 ppm); meat of cattle, hogs, sheep, goats, and horses should be increased from 0.6 ppm to 1.0 ppm; fat of cattle, hogs, sheep, goats, and horses should be increased from 0.2 ppm to 0.5 ppm; and milk should be increased from 1.1 ppm to 1.5 ppm. An amended new tolerance was not requested for eggs; the existing tolerance should be increased from 0.02 ppm to 0.05 ppm. In addition, the current tolerances for liver and mbyp (except liver) of cattle, hogs, sheep, goats, and horses should be deleted because they are covered by ‘‘mbyp (except kidney)’’. The current tolerance for poultry mbyp, now expressed as ‘‘mbyp (except liver)’’ should be expressed in terms of ‘‘mbyp’’, and the tolerance for poultry liver should be deleted because it is covered by the tolerance for ‘‘mbyp’’.

The differences in tolerances determined for these commodities are due to the following. Zeneca used an average of residues measured at the three dosing levels in animal feeding studies to estimate residues for animal commodities. Because residues of the PMG ion (*N*-(phosphonomethyl)glycine) measured in animal feeding studies were less than the limit of quantitation (LOQ) at lower dosing levels, EPA used residue levels measured at the highest dose rate (1,000 ppm) to calculate residues, resulting in higher values for tolerances for some animal commodities as described above. In addition, requested tolerances for mbyp of cattle, hogs, sheep, goats, and horses were expressed in terms of ’’mbyp except kidney and liver‘‘. However, the tolerance levels are higher than those needed to cover residues in liver and, therefore, liver is being deleted from the ‘‘except’’ clause. Similarly, existing tolerances for poultry mbyp must be revised to express the tolerance in terms of ‘‘poultry mbyp’’ and to delete the tolerance expressions for ‘‘poultry mbyp (except liver)’’ and ‘‘poultry liver’’.

I. Background and Statutory Findings

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

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

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of sulfosate and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of sulfosate in or on soybean, seed at 21 ppm (of which no more than 13 ppm is TMS); soybean hulls at 45 ppm (of which no more than 25 ppm is TMS); aspirated grain fractions at 1,300 ppm (of which no more than 720 ppm is TMS); kidney of cattle, hogs, sheep, goats, and horses at 6.0 ppm; mbyp (except kidney) of cattle, hogs, sheep, goats, and horses at 1.5 ppm; meat of cattle, hogs, sheep, goats, and horses at 1.0 ppm; fat of cattle, hogs, sheep, goats, and horses at 0.5 ppm; milk at 1.5 ppm; poultry mbyp at 0.1 ppm; poultry meat at 0.05 ppm; poultry fat at 0.05 ppm; and eggs at 0.05 ppm. EPA’s assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sulfosate are discussed in Unit II. A. of the **Federal Register** document published on September 11, 1998 (63 FR 48597)(FRL–6026–6). Please note that this unit included a typographical error. In the discussion of the feeding carcinogenicity study in mice, ''79'' should have been ''7.9'' in the following phrase: ''In addition, there was increased incidence of white matter degeneration in the lumbar region of the spinal cord (males only) (2, 3, 4, 4, 79% response, controls to high dose)...''.

B. Toxicological Endpoints

The toxicological endpoints for sulfosate are discussed in Unit II. B. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.489) for the residues of sulfosate in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from sulfosate as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated (PCT) as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

For the acute analysis, tolerance level residues and 100% crop treated (CT) were used. For the chronic analysis, tolerance level residues, anticipated residue levels for soybean commodities based on field trial data, treatment of 20 percent of soybeans in the United States with sulfosate, and PCT information obtained from public and proprietary databases for other crops were used. To estimate percent of crop treated, typically a range of estimates are supplied, and the upper end of this range is assumed for the exposure assessment. By using the upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. The registrant submitted a projected market share percentage of 20% for soybeans. EPA scientists determined that this value is a reasonable conservative usage estimate based on comparison to the market share of other herbicides presently applied to herbicide-tolerant crops. Therefore, 20% was used in the chronic analysis for soybeans. For soybeans, the percent of the crop that can be treated with sulfosate will be capped at 14,500,000 acres (20% of the 1998 soybean acreage) by the sulfosate registration.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. Based on the above information, EPA finds that the PCT information is reliable and has a valid basis. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing sulfosate in a particular area.

i. *Acute exposure and risk.* Acute food risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The %PADs (Populated adjusted dose, RfD adjusted for 3x FQPA safety factor, %RfD/3) were below the Agency's level of concern at the 95th percentile for the U.S. population and all subgroups, with the highest exposure of 42% PAD in the subgroup all infants (< 1 year). The results of this analysis indicate that the acute risk from sulfosate residues on food is below the Agency's level of concern.

ii. *Chronic exposure and risk.* The chronic food analysis for sulfosate was conducted using use anticipated residues for some commodities and PCT information. Tolerance level residue values were used for the majority of the commodities. The %PADs were below HED's level of concern for the U.S. population and all subgroups, with the highest exposure of 26% PAD in the subgroup Children (1–6 years old). The results of this analysis indicate that the chronic risk from sulfosate residues on food is below the Agency's level of concern.

2. *From drinking water.* EPA does not have monitoring data available to perform a quantitative drinking water risk assessment for sulfosate at this time. In a previous risk assessment for the use of sulfosate in/on corn, wheat, pome fruit, and soybeans, ground and surface water exposure estimates were calculated for sulfosate at a maximum annual application rate of 4.75 lbs a.i./acre (see 63 FR 48597). For this risk assessment for the use of sulfosate on soybeans, the Agency estimated ground and surface water exposures using the values provided in the previous risk assessment and adjusting for the current maximum annual application rate of 8 lbs a.i./acre.

i. *Acute exposure and risk.* Estimated acute drinking water levels of concern (DWLOCs) range from 2,000 parts per billion (ppb) for infants < 1 year old to 10,500 ppb for the U.S. population. The estimated average concentration of sulfosate in surface water for acute exposure is 211 ppb. The estimated average concentration of sulfosate in groundwater is 0.00377 ppb. The estimated acute concentrations of sulfosate in surface water and groundwater are less than the acute DWLOCs for sulfosate. Therefore, taking into account the present uses and uses proposed in this action, OPP concludes with reasonable certainty that residues of sulfosate in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of acute aggregate human health risk at this time.

ii. *Chronic exposure and risk.* Estimated chronic DWLOCs range from 250 ppb for children 1–6 years old to 1,060 ppb for the U.S. population. The estimated average concentration of sulfosate in surface water for chronic exposure is 20 ppb. The estimated average concentration of sulfosate in groundwater is 0.00377 ppb. The estimated chronic concentrations of sulfosate in surface water and groundwater are less than the chronic DWLOCs for sulfosate. Therefore, taking into account the present uses and uses proposed in this action, OPP concludes with reasonable certainty that residues of sulfosate in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of chronic aggregate human health risk at this time.

3. *From non-dietary exposure.* Sulfosate is currently not registered for use on any residential non-food sites: Therefore, residential exposure to sulfosate residues will be through dietary exposure only.

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

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

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

1. *Acute risk.* Acute risk estimates associated with aggregate exposure to sulfosate in food and water do not exceed the Agency's level of concern. The acute dietary analysis for sulfosate is a highly conservative estimate of dietary exposure conducted using tolerance level residue values and 100%CT. For the U.S. population, 10% of the PAD is occupied by food exposure. For the most highly exposed subgroup, all infants (< 1 year), 42% of the PAD is occupied by food exposure. The maximum estimated concentrations of sulfosate in surface and ground water are less than OPP's DWLOCs for sulfosate as a contribution to acute aggregate exposure. Therefore, OPP concludes with reasonable certainty that residues of sulfosate in drinking water do not contribute significantly to the acute aggregate human health risk at the present time considering the present uses and the uses proposed in this action.

2. *Chronic risk.* Using anticipated residues for soybean commodities; tolerance level residue values were used for the remaining commodities; %crop treated information for soybeans, oranges, grapefruit, corn, peaches and wheat; and exposure assumptions described in this unit, EPA has concluded that aggregate exposure to sulfosate from food will utilize 9% of the PAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1–6 years old), discussed below. EPA generally has no concern for exposures below 100% of the PAD because the PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sulfosate in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the PAD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to sulfosate residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are no residential uses or exposure senarios, short- and intermediate-term aggregate exposure is not expected.

4. *Aggregate cancer risk for U.S. population.* Sulfosate was classified as a ''Group E'' carcinogen (no evidence for carcinogenicity in humans, see Unit II.B.4 of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to sulfosate residues.

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

1. *Safety factor for infants and children*— i. *In general.* The determination of the 3x safety factor for infants and children is discussed in Unit II.E.1.i. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

ii. *Developmental toxicity studies.* Developmental toxicity is discussed in Unit II.E.1.ii. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

iii. *Reproductive toxicity study.* Reproductive toxicity is discussed in Unit II.E.1.iii. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

iv. *Pre- and post-natal sensitivity.* Pre- and post-natal sensitivity is discussed in Unit II.E.1.iv. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

v. *Conclusion.* With the exception of the requested developmental neurotoxicity study, there is a complete toxicity database for sulfosate and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* Acute risk estimates associated with aggregate exposure to sulfosate in food and water do not exceed the Agency's level of concern. The acute food analysis for sulfosate is a highly conservative estimate of food exposure with the use of tolerance level residue values and 100%CT. For the most highly exposed subgroup, all infants (< 1 year), 42% of the PAD is occupied by food exposure. The maximum estimated concentrations of sulfosate in surface and ground water are less than EPA's DWLOCs for sulfosate infants and children as a contribution to acute aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of sulfosate in drinking water do not contribute significantly to the acute aggregate human health risk at the present time considering the present uses and the uses proposed in this action.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to sulfosate from food will utilize 26 percent of the RfD for infants and

children. EPA generally has no concern for exposures below 100% of the PAD because the PAD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sulfosate in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the PAD RfD.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to sulfosate residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residues in plants and animals is understood. EPA has determined that the tolerance expression for sulfosate must include both of the parent ions.

B. Analytical Enforcement Methodology

Analytical enforcement methodology for sulfosate is discussed in Unit III.B. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

The crop field trial data are adequate to support these tolerances.

D. International Residue Limits

There are no Codex, Canadian or Mexican tolerances or maximum residue limits for residues of sulfosate in the subject commodities. Therefore, a compatibility issue is not relevant to the proposed tolerances.

E. Rotational Crop Restrictions

EPA has previously reviewed two confined rotational crop studies for sulfosate and concluded that rotational crop restrictions were not required.

IV. Conclusion

Therefore, the tolerances are established for residues of sulfosate in soybean seed at 21 ppm (of which no more than 13 ppm is TMS); soybean hulls at 45 ppm (of which no more than 25 ppm is TMS); aspirated grain fractions at 1,300 ppm (of which no more than 720 ppm is TMS); kidney of cattle, hogs, sheep, goats, and horses at 6.0 ppm; mbyp (except kidney) of cattle, hogs, sheep, goats, and horses at 1.5 ppm; meat of cattle, hogs, sheep, goats, and horses at 1.0 ppm; fat of cattle, hogs, sheep, goats, and horses at 0.5 ppm; milk at 1.5 ppm; poultry mbyp at 0.1 ppm; and eggs at 0.05 ppm. In addition, the current tolerances for liver and mbyp (except liver) of cattle, hogs, sheep, goats, horses, and poultry are revoked.

V. Objections and Hearing Requests

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

Any person may, by August 10, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300878] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

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

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: June 8, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. In § 180.489 the table to paragraph (a) is amended as follows:

i. By removing the complete entries for cattle, liver; cattle, mbyp except liver; goats, liver; goats, mbyp, except liver; hogs, liver; hogs, mbyp except liver; horses, liver; horses, mbyp except liver; poultry, liver; poultry, mbyp except liver; sheep, liver; and sheep, mbyp except liver.

ii. By revising the entries for aspirated grain fractions; cattle, fat; cattle, meat; eggs; goats, fat; goats, meat; hogs, fat; hogs, meat; horses, fat; horses, meat; milk; sheep, fat; sheep, meat; soybean, hulls; and soybean, seed.

iii. By adding entries for cattle, kidney; cattle, mbyp (except kidney); goats, kidney; goats, mbyp (except kidney); hogs, kidney; hogs, mbyp (except kidney); horses, kidney; horses, mbyp (except kidney); poultry, mbyp; sheep, kidney; and sheep, mbyp (except kidney).

The additions and revisions read as follows:

§ 180.489 Sulfosate (Sulfonium, trimethyl-salt with N- (phosphonomethyl)glycine (1:1)); tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	*
Aspirated grain fractions (of which no more than 720 ppm is TMS)	1,300
* * *	*
Cattle, fat	0.5
Cattle, kidney	6.0
Cattle, mbyp (except kidney)	1.5
Cattle, meat	1.0
* * *	*
Eggs	0.05
Goats, fat	0.5
Goats, kidney	6.0
Goats, mbyp (except kidney)	1.5
Goats, meat	1.0
* * *	*
Hogs, fat	0.5
Hogs, kidney	6.0
Hogs, mbyp (except kidney)	1.5
Hogs, meat	1.0
Horses, fat	0.5
Horses, kidney	6.0
Horses, mbyp (except kidney)	1.5
Horses, meat	1.0
Milk	1.5
* * *	*
Poultry, mbyp	0.1
* * *	*
Sheep, fat	0.5
Sheep, kidney	6.0
Sheep, mbyp (except kidney)	1.5
Sheep, meat	1.0
* * *	*
Soybean, hulls (of which no more than 25 ppm is TMS)	45
Soybean, seed (of which no more than 13 ppm is TMS)	21
* * *	*

* * * * *

[FR Doc. 99–14994 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–70; RM–9380]

Radio Broadcasting Services; Deer Lodge, Hamilton & Shelby, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 242C for Channel 240C3 at Hamilton, Montana, and modifies the license for Station KBMG at Hamilton, to specify operation on Channel 242C and substitutes Channel 245C1 for Channel 243C2 at Deer Lodge, Montana and modifies the license for Station KQRV at Deer Lodge to specify operation on Channel 245C1 in response to a petition filed by Marathon Media of Montana, L.P. and Robert C. Toole. *See* 64 FR 12923, March 16, 1999. The coordinates for Channel 242C at Hamilton are 46–48–09 and 113–58–21 and 46–06–03 and 112–57–00 for Channel 245C1 at Deer Lodge. To accommodate the substitutions at Deer Lodge and Hamilton, we shall also substitute Channel 244C1 for Channel 242C1 at Shelby, Montana, and modify the license for Station KZIN accordingly. The coordinates for Channel 244C1 are 48–19–42 and 112–02–03. Canadian concurrence has been received for the allotments at Shelby and Hamilton. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–70, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 240C3 and adding Channel 242C at Hamilton, by removing Channel 243C2 and adding Channel 245C1 at Deer Lodge, and by removing Channel 242C1 and adding Channel 244C1 at Shelby.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14793 Filed 6–10–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 112
Friday, June 11, 1999

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–054–1]

RIN 0579–AB02

Importation of Unmanufactured Wood Articles From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to add restrictions on the importation of pine and fir logs and lumber, as well as other unmanufactured wood articles, from Mexico. This change would require that these wood articles from Mexico meet certain treatment and handling requirements to be eligible for importation into the United States. We believe this action is necessary to prevent the introduction into the United States of dangerous plant pests, including forest pests, with unmanufactured wood articles from Mexico.

DATES: Consideration will be given only to comments received on or before August 10, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–054–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–054–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Jane E. Levy, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8295.

SUPPLEMENTARY INFORMATION:

Background

The unrestricted importation of logs, lumber, and other unmanufactured wood articles into the United States could pose a significant hazard of introducing plant pests detrimental to agriculture and to natural, cultivated, and urban forests. ''Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles,'' contained in 7 CFR 319.40–1 through 319.40–11 (and referred to below as the wood subpart), is intended to mitigate the plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles.

Currently, § 319.40–3(a) provides a general permit for the importation of unmanufactured wood articles (other than articles from certain subfamilies of the family Rutaceae) into the United States from Canada and from States in Mexico adjacent to the United States/Mexico border. A general permit means the written authorization provided in § 319.40–3; no separate paper permit is required. Under a general permit, unmanufactured wood articles from Canada and from Mexican States adjacent to the U.S. border may be imported into the United States provided they are accompanied by an importer document stating that the articles are derived from trees harvested in, and have never been moved outside, Canada or adjacent States in Mexico, and subject to the inspection and other requirements in § 319.40–9. Unmanufactured wood articles imported into the United States from adjacent States in Mexico in accordance with § 319.40–3(a) include, but are not limited to, logs, lumber, railroad ties, fence posts, firewood, solid wood packing material, and mesquite wood for cooking.

In contrast, unmanufactured wood articles from Mexican States that are not adjacent to the United States/Mexico border are subject to the more rigorous requirements of the wood subpart for importing wood articles from all other countries except Canada. These more rigorous requirements include requirements for treatment and other special handling to ensure freedom from plant pests. Section 319.40–5 provides import and entry requirements for specified regulated articles such as bamboo timber (§ 319.40–5(a)), tropical hardwoods (§ 319.40–5(c)), temperate hardwoods (§ 319.40–5(d)), and railroad ties (§ 319.40–5(f)). Section 319.40–6 provides universal importation options, including treatment and handling options, for unmanufactured wood articles imported into the United States, including logs (§ 319.40–6(a)), lumber (§ 319.40–6(b)), wood chips and bark chips (§ 319.40–6(c)), wood mulch, humus, compost, and litter (§ 319.40–6(d)), and cork and bark (§ 319.40–6(e)).

The less restrictive importation requirements for unmanufactured wood articles imported into the United States from Canada and the States of Mexico adjacent to the United States/Mexico border are based on the premise that the forests in the United States share a common forested boundary with Canada and adjacent States in Mexico and, therefore, share, to a reasonable degree, the same forest pests.

However, in February 1998, the Forest Service, U.S. Department of Agriculture (USDA), published a study entitled ''Pest Risk Assessment of the Importation into the United States of Unprocessed *Pinus* and *Abies* Logs from Mexico.'' [1] This pest risk assessment was requested by the Animal and Plant Health Inspection Service (APHIS), USDA, to evaluate the forest insect and pathogen complexes in the forests of the United States and the adjacent States of Mexico. The Forest Service's pest risk assessment shows that a significant pest risk exists in the movement of raw wood material into the United States from the adjacent States of Mexico. This conclusion has also been confirmed by USDA inspectors finding a number of dangerous plant pests on wood imports from adjacent States in Mexico during inspections at ports of entry along the United States/Mexico border.

The Forest Service's pest risk assessment clearly indicates that the mountain top forests of the adjacent States in Mexico, from which unmanufactured wood articles are moving into the United States, should be viewed as biological islands, not as an extension of the U.S. forest ecosystem. These biological islands

[1] For copies of this pest risk assessment, contact the person listed under **FOR FURTHER INFORMATION CONTACT** or access the assessment on the Forest Service's Forest Products Laboratory Web site at Internet address http://www.fpl.fs.fed.us/documents/fplgtr/fplgtr104.pdf

contain their own unique combination of forest pests, which are different than those currently found in the United States. Those pests have the potential to substantially harm U.S. forests if they become established in the United States.

In its research, the Forest Service used pine and fir pests as surrogates for determining the overall pest risk associated with all of the native trees grown in these isolated biological forested regions in Mexico. This method was used in order to keep the assessment manageable. Timber species of pine and fir were chosen specifically because: (1) They constitute the majority of the unmanufactured wood articles imported into the United States from Mexico; and (2) the pest complexes of pine and fir trees have been the focus of more research, and are, therefore, better understood than the pest complexes for many other genera of imported timber trees. APHIS concurs with the Forest Service that extrapolation of this type of data is scientifically both rational and defensible.

Based on the conclusions of the Forest Service's pest risk assessment, we are proposing to amend the wood subpart in three ways.

First, we propose to limit the use of a general permit under § 319.40–3(a) for unmanufacted wood articles imported from the adjacent States in Mexico. Under proposed § 319.40–3(a), only unmanufactured mesquite wood for cooking, unmanufactured wood for firewood, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes would be allowed importation under a general permit.[2] Mesquite is a woody species that is continuous on both sides of the United States/Mexico border and, therefore, presents little foreign pest risk. Firewood would not pose a significant pest risk because of its limited distribution and consumption near the border. Small, noncommercial packages of unmanufactured wood to be used for personal cooking or personal medicinal purposes also would not pose a significant pest risk because the packages would be limited in quantity and therefore easily inspected, and likely would be distributed and consumed near the border. Except as discussed below, all other unmanufactured wood articles from the adjacent States of Mexico would be allowed into the United States only in accordance with the importation and entry requirements in place for unmanufactured wood articles from the rest of Mexico and all other countries except Canada. This proposed rule would result in a more consistent regulation of unmanufactured wood articles from all the States of Mexico, as well as all other countries except Canada.

Second, we propose to amend § 319.40–5 to add an additional treatment option for pine and fir lumber from Mexico. Currently, the only treatment options for imported pine and fir lumber from Mexico are heat treatment (under § 319.40–7(c)) or heat treatment with moisture reduction (under § 319.40–7(d)) before importation into the United States, as required by § 319.40–6(b)(1); or heat treatment or heat treatment with moisture reduction within 30 days after release from the port of first arrival in the United States, at a U.S. facility operating under a compliance agreement with APHIS, as required by § 319.40–6(b)(2). However, based on conclusions of the Forest Service's pest risk assessment and on APHIS' evaluation of treatment options, we are proposing to allow standard industry cut lumber made from pine or fir species originating in Mexico to be imported into the United States from any State of Mexico if, prior to arrival, that lumber is 100 percent free of bark and fumigated with methyl bromide in accordance with schedule T–312 contained in the Plant Protection and Quarantine Treatment Manual, incorporated by reference at § 300.1, or with an initial methyl bromide concentration of at least 240 g/m^3 with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration. This treatment is effective against the pine and fir pests identified in the Forest Service's pest risk assessment.

Third, we propose to amend § 319.40–5 to add an additional treatment option, with a thickness requirement, to the importation of railroad ties from Mexico. Currently, pursuant to § 319.40–5(f), railroad ties from nonborder States of Mexico must be completely free of bark and accompanied by an importer document stating that the railroad ties will be pressure treated within 30 days following the date of importation to be eligible for importation into the United States. Because of the proposed change to the general permit section of the wood subpart described earlier, railroad ties from States of Mexico adjacent to the U.S. border would no longer be eligible for importation into the United States under a general permit. Based on conclusions of the Forest Service's pest risk assessment, we propose to amend § 319.40–5 to provide an additional treatment option for the importation of railroad ties from Mexico that would allow the importation of railroad ties (cross-ties) originating from all States in Mexico if they are 100 percent free of bark, no thicker than 8 inches, and fumigated with methyl bromide using the concentration levels specified in the paragraph above. Railroad ties may continue to be imported under current requirements that they be completely free of bark and pressure-treated with a preservative approved by the U.S. Environmental Protection Agency (EPA) within 30 days following the date of importation. Under the existing requirements, we would also allow Mexican railroad ties that are debarked in accordance with § 319.40–7(b) to be imported into the United States if the railroad ties have been heat treated in accordance with § 319.40–7(c).

These actions appear to be necessary to reduce the risk of the introduction of dangerous plant pests on unmanufactured wood articles moving from Mexico into the United States.

Use of Methyl Bromide

Methyl bromide is currently in widespread use as a fumigant. It is proposed as a treatment option for standard industry cut lumber made from pine or fir species and railroad ties from Mexico. The environmental effects of using methyl bromide, however, are being scrutinized by international, Federal, and State agencies. EPA, based on its evaluation of data concerning the ozone depletion potential of methyl bromide, published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018–65082). That rule froze methyl bromide production in the United States at 1991 levels and required the phasing out of domestic use of methyl bromide by the year 2001. EPA's methyl bromide regulations were issued under the authority of the Clean Air Act. Recently, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, amended the Clean Air Act. The amendments provide that the production of methyl bromide shall not terminate prior to January 1, 2005, and directs EPA to promulgate new rules to reduce and terminate the production, importation, and consumption of methyl bromide in accordance with the phaseout schedule of the Montreal Protocol. The Montreal Protocol, an international treaty governing the production and use of ozone-depleting chemicals, provides for a phaseout of methyl bromide, with an

[2] Other unmanufactured wood articles, such as solid and loose wood packing material and bamboo timber, would continue to be allowed importation into the United States under a general permit in accordance with § 319.40–3(b), (c), (d), and (e).

exemption for quarantine and preshipment uses, in developed countries by the year 2005 and in developing countries, including Mexico, by the year 2015. EPA has indicated that it will publish proposed and final regulations to achieve production and importation reductions from the 1991 base levels of methyl bromide as follows: 25 percent reduction in 1999, 50 percent reduction in 2001, 70 percent reduction in 2003, 100 percent reduction in 2005. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, further provides a quarantine-use exemption for the production, importation, consumption of methyl bromide to fumigate commodities entering or leaving the United States for purposes of complying with APHIS regulations. EPA has also indicated that it will work closely with USDA, State agricultural departments, and other stakeholders to define the preshipment and quarantine uses that will be exempt from the phaseout. Our proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years. Nonetheless, APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation.

Miscellaneous

We are also proposing to amend § 319.40–5(f) to require that pressure treatment of railroad ties be conducted at a U.S. facility under compliance agreement with APHIS. This would affect railroad ties imported from all countries except Canada. We propose this action to help ensure compliance with the requirement that railroad ties must be pressure treated within 30 days following the date of importation into the United States.

In § 319.40–3, paragraph (a) requires articles imported under general permit to be accompanied by an importer document. The importer document must state that the regulated articles are derived from trees that were harvested in, and have never moved outside, Canada or States in Mexico adjacent to the U.S. border. We are proposing to amend § 319.40–3(a) to remove the requirement that the importer document must state that the articles have never been moved outside Canada or States in Mexico adjacent to the U.S. border; the ''derived from'' requirement will remain. We are also proposing to amend § 319.40–3(a) to specify that the importer document only needs to accompany commercial shipments of unmanufactured wood articles imported into the United States under a general permit. With respect to Mexico, the importer document requirement currently helps ensure that logs and lumber from adjacent States in Mexico are not moved into other States in Mexico for processing or milling and then imported into the United States. However, because we are proposing to disallow movement under general permit for most unmanufactured wood articles from adjacent States in Mexico, this precaution would no longer be necessary. With respect to Canada, it is highly improbable that wood articles from Canada would be processed or milled in another country and then returned to Canada for export to the United States. Therefore, we do not believe that this requirement is necessary for unmanufactured wood articles imported into the United States from Canada. Further, it is not administratively feasible to require an importer document for noncommercial shipments of mesquite wood for cooking and firewood, or for small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal uses imported into the United States from States in Mexico adjacent to the United States border; therefore, we propose to specify that commercial shipments of unmanufactured wood articles imported from Canada, and commercial shipments of mesquite wood for cooking and firewood imported from adjacent States in Mexico, be accompanied by the importer document described above.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We are proposing to amend the wood subpart by adding a treatment option for pine and fir lumber and railroad ties imported from Mexico, and by adding that unmanufactured wood articles from Mexico's border States meet certain treatment and handling requirements to be eligible for importation into the United States. We believe this action is necessary to help prevent the introduction into the United States of dangerous plant pests, including forest pests, with unmanufactured wood articles from Mexico.

Because this proposal concerns unmanufactured wood articles, it would affect the importation into the United States of both hardwood and softwood species from Mexico. However, this analysis focuses on softwood lumber, particularly pine and fir, since it comprises nearly all the unmanufactured wood articles imported from Mexico. In 1997, imports of U.S. lumber from Mexico consisted of about 98 percent softwood species, by value, and only about 2 percent hardwood species. Also in 1997, 97 percent of U.S. imports of unmanufactured softwood articles from Mexico, not including solid wood packing material (SWPM) and continuously shaped softwood (which may be manufactured), were softwood lumber.

The value of U.S. production of softwood lumber in 1996 was about $16 billion. U.S. production of softwoods that year totaled 33.9 billion board feet (bbf), compared to 12.7 bbf of hardwoods. Softwood imports in 1996 reached 18.0 bbf, compared to exports of 1.9 bbf, for net imports of 16.1 bbf. In other words, U.S. supply of softwoods, not including stocks, was about 50 bbf (production + imports − exports), with about one-third of the nation's supply imported.

Values of 1997 U.S. imports and exports of some major categories of unmanufactured softwood articles are found in table 1, below. U.S. trade with both the whole world and Mexico is shown, allowing some insight into Mexico's share of U.S. imports, and the U.S. trade position overall for these commodities. By far, the main commodity is softwood lumber, for which U.S. imports, worth $7.3 billion, dwarfed U.S. exports, worth $1.1 billion. Of the commodities included in table 1, 93 percent of imports were softwood lumber. Softwood lumber imports from Mexico, at $97.6 million, represent 1 percent of total U.S. softwood lumber imports.

Continuously shaped softwood is a category that includes both manufactured and unmanufactured articles. Therefore, the value shown for these imports from Mexico ($120 million) overstates the value of imports that would be affected by the proposed rule. (On the other hand, there are other unmanufactured wood articles that enter from Mexico, such as solid wood packing material, that are not shown in this table.) As indicated, one-fourth of continuously shaped softwood that is imported into the United States comes from Mexico. As is the case of softwood lumber, the value of U.S. imports of these articles is several times greater than the value of exports.

The United States is a large net exporter of untreated softwood logs and poles, with 1997 exports valued at about $1.5 billion, compared to 1997 imports of $61 million. Of these imports, Mexico is a minor supplier, providing three percent of the total. Similarly, for fuel wood and railroad ties (not impregnated),[3] Mexico supplied only a small portion of total U.S. imports in 1997: 6 percent, in each instance.

In summary, unmanufactured softwood articles imported into the United States are predominantly lumber. Their value significantly outweighs that of exports of U.S. softwood lumber. In 1997, about one percent of softwood lumber imports, worth about $97.6 million, came from Mexico. Shipments from Mexico of continuously shaped softwood are of greater value ($120 million in 1997), but a large share may be manufactured articles. For softwood logs and poles, the United States is in a strong net export position, with the value of imports only about four percent of the value of exports. Importations from Mexico of softwood logs and poles, fuel wood, and railway ties represent small percentages of total U.S. imports of these commodities.

TABLE 1.—U.S. TRADE WITH MEXICO AND THE WORLD IN PRINCIPAL UNMANUFACTURED SOFTWOOD ARTICLES, 1997

Wood category	U.S. imports			U.S. exports		
	From the world (dollars)	From Mexico (dollars)	Percentage from Mexico	To the world (dollars)	To Mexico (dollars)	Percentage to Mexico
Softwood lumber	7,345,096,000	97,614,000	1	1,100,577,000	39,435,000	4
Softwood, continuously shaped	488,057,000	120,340,000	25	111,756,000	8,310,000	7
Softwood logs and poles, not treated	61,207,000	1,764,000	3	1,488,347,000	3,001,000	0.2
Fuel wood	6,220,000	377,000	6	5,601,000	170,000	3
Railway ties, not impregnated	3,850,000	232,000	6	8,938,000	11,000	0.1
Total	7,904,430,000	220,327,000	2.8	2,715,219,000	50,927,000	1.9

Source: Foreign Agriculture Service's Global Agricultural Trade System using data from the United Nations Statistical Office.
Notes: Listed commodities have the following six-digit codes from the Harmonized Tariff Schedule of the United States: softwood lumber, 440710; softwood, continuously shaped, 440910; softwood logs and poles, not treated, 440320; fuel wood, 440110; and railway ties, not impregnated, 440610. Continuously shaped softwood includes articles processed in various ways, such as wood molding. Many of these articles are ''manufactured,'' and therefore would not be affected by this proposed rule. Also, firewood included under the fuel wood category would not be affected by the proposed rule.

Since potential effects of the proposed rule largely concern imports of unmanufactured wood articles from Mexico's border States, it is necessary to estimate their share of Mexico's exports to the United States. Using data obtained from U.S. ports of entry, we estimate that affected commodities worth about $31.3 million came from Mexico's border States in 1997, which is slightly more than one-third of the value of all shipments of these articles from Mexico (see table 2).

El Paso, TX, is the principal port through which affected articles enter the United States. In 1997, approximately $81.7 million worth of these articles (89 percent of unmanufactured wood articles imported from Mexico) entered the United States through the port of El Paso. We estimate that 30 percent of these articles originated in Mexico's border States. Other U.S. border ports of entry report higher percentages coming from Mexico's border States—50 percent for Laredo, TX, and 100 percent for San Diego, CA, and Nogales, AZ—but the volumes of articles shipped were much smaller. Not surprisingly, most unmanufactured wood articles that enter through ports not near the United States/Mexico border (e.g., shipments by sea) originate from nonborder States in Mexico.

TABLE 2.—VALUE OF U.S. IMPORTS OF UNMANUFACTURED WOOD ARTICLES FROM ALL OF MEXICO AND FROM MEXICAN STATES ADJACENT TO THE UNITED STATES, BY PORT OF ENTRY, 1997

U.S. port of entry	Estimated value of imports from all of Mexico (dollars)	Estimated proportion of shipments from Mexico's border States (percentage)	Estimated value of imports from Mexico's border States (dollars)
El Paso, TX	81,730,000	30	24,519,000
San Diego, CA	5,551,000	100	5,551,000
Laredo, TX	1,859,000	50	929,500
Portland, OR	1,021,000	0	0
San Francisco, CA	735,000	0	0
Los Angeles, CA	591,000	0	0
Nogales, AZ	341,000	100	341,000
Mobile, AL	80,000	0	0
Total	91,908,000		31,340,500

Sources: Foreign Agriculture Service, Forest and Fishery Products Division, for the estimated values of imports; Plant Protection and Quarantine, APHIS, for the estimated proportion of shipments from Mexico's border States.
Note: Percentages of imports estimated as originating in Mexico's border states are based on numbers of shipments. Therefore, estimated values in the last column do not account for differences in shipment values. Available data does not permit a more accurate estimation of values. Also, shipments of unmanufactured hardwood articles that may be included in these values are assumed to be very minor.

[3] Impregnated railway ties are not considered unmanufactured wood articles.

The significance of these levels of import can be put in perspective by comparing them to U.S. production and trade levels overall. Unmanufactured wood articles include a variety of commodities, but the value of softwood lumber production in the United States offers a reasonable basis for comparison, since the major timber species that would be affected by the proposed rule are pine and fir. When continuously shaped softwood articles are not considered, less than 2 percent (about 1.4 percent) of unmanufactured softwood articles imported into the United States came from Mexico in 1997 (see table 1). Assuming imports contribute about one-third of total U.S. supply, imports from Mexico would, therefore, amount to about 0.5 percent of the U.S. supply of unmanufactured softwood articles. Further, if about one-third of Mexico's shipments originate in Mexico's border States, shipments from the border States would represent about 0.5 percent of unmanufactured softwood articles imported by the United States, or about 0.15 percent of U.S. supply.

Mention should be made of SWPM, such as wooden pallets, crates, packing blocks, and dunnage. This packing material is used to prevent damage to cargo during shipment. Currently, SWPM originating in Mexico's border States and Canada may contain bark; SWPM entering the United States from anywhere else in the world must be without bark or be heat treated, fumigated, or treated with preservatives. In addition, SWPM from China has additional requirements (see § 319.40–5(g)). The proposed rule would require that SWPM restrictions for Mexico's border States be the same as for the rest of the world except Canada and China.

An informal survey of the ports of entry shown in table 2 found that a negligible amount of SWPM that is untreated or not free of bark enters the United States from Mexico. None is reported to enter through El Paso, TX, San Diego, CA, San Francisco, CA, Los Angeles, CA, or Nogales, AZ, and less than 1 percent is reported for Laredo, TX, and Portland, OR. (No contact was made with Mobile, AL.) Clearly, nearly all SWPM from Mexico's border States already meets the entry requirements that would be imposed by this proposed rule. Therefore, potential economic effects with respect to SWPM imports need not be given further consideration.

Economic Consequences

Two parts of the proposed rule could have an impact on U.S. imports of unmanufactured wood articles from Mexico: (1) Adding methyl bromide fumigation as a treatment option for pine and fir lumber and railroad ties from Mexico; and (2) placing unmanufactured wood articles from Mexico's border States under the same treatment requirements, in general, as the rest of the Mexico.

Adding Methyl Bromide Fumigation Option for Pine and Fir Lumber and Railroad Ties

For railroad ties from nonborder States of Mexico, current regulations require that the ties be completely debarked and either heat treated prior to importation or pressure treated within 30 days following importation. Under this proposed rule, fumigation would become an available treatment option. Virtually all railroad ties imported into the United States from Mexico are pressure treated for commercial reasons (i.e., in addition to eliminating pests, it protects the ties from decay). We expect that this would continue, and that few importers would utilize the proposed fumigation method. In order to comply with the wood subpart, importers may choose to fumigate railroad ties prior to importation if the railroad ties will be pressure treated beyond 30 days following importation. In any event, importations of railroad ties from Mexico represent a small percentage of total U.S. imports of railroad ties (6 percent of total U.S. imports, valued at $232,000). Therefore, we expect that adding methyl bromide fumigation as a treatment option would have very little or no impact on importers of railroad ties.

For pine and fir lumber imported from nonborder States of Mexico, treatments available under the current regulations are heat treatment and heat treatment with moisture reduction. Under this proposed rule, fumigation would become an available treatment method. Kiln drying is a type of heat treatment with moisture reduction, and is the most common method used to treat lumber from Mexico. Kiln drying is used almost exclusively over other treatments for lumber because kiln drying is the industrial standard and it increases the economic value of the wood. For this reason, this analysis focuses on comparing the most common method, kiln drying, to the proposed alternative, methyl bromide fumigation.

In 1997, softwood lumber imported from Mexico cost an average of $318 per cubic meter ($750.48 per thousand board feet), according to data compiled by the Foreign Agricultural Service, USDA. This figure is higher than average domestic unmanufactured green softwood prices of $137.71 per cubic meter ($325 per thousand board feet) in Northern California because: (1) Higher valued ponderosa pine constitutes a large percentage of imports from Mexico; (2)lumber imported from Mexico is mostly ''shop grade'' lumber, often used for making molding; (3) reported prices of lumber imported from Mexico may include delivery costs (F.O.B. delivered), whereas prices for domestic lumber do not (F.O.B. mill); and (4) some of the lumber imported from Mexico may already be kiln dried, which commands a higher price.[4]

Costs associated with kiln drying pine and fir lumber range between approximately $12 and $20 per cubic meter. In comparison, methyl bromide fumigation is reported to cost about one-third of this amount, or between $4.60 and $6.90 per cubic meter.[5] There is not an appreciable difference in the time required to apply the two treatments. Methyl bromide fumigation of lumber requires 2 days for the actual treatment and up to 2 days for setup and dismantling and airing of the cargo. Kiln drying of lumber takes 3 to 4 days.

At first glance, it would appear that there could be cost savings for Mexican exporters of pine and fir lumber to the United States—and potentially lower prices for U.S. importers—by replacing kiln drying with methyl bromide fumigation. However, kiln drying serves other commercial purposes besides satisfying phytosanitary requirements. U.S. importers may prefer kiln dried lumber, whereby fumigation would only result in an unnecessary additional cost. Information is not available to estimate the percentage of imports that would be fumigated instead of kiln dried.

Irrespective of the proposed addition of methyl bromide as a treatment option, any potential costs of this proposed rule for producers and consumers in the United States are likely to be very minor. As discussed above, the value of softwood lumber imported from Mexico is estimated to be only 0.5 percent of the value of the U.S. supply of softwood lumber. If it happens that kiln drying remains the preferred treatment alternative after fumigation is allowed, most shipments of pine and fir lumber imported into the United States from nonborder States of Mexico would not be affected.

[4] Based on communication with the Foreign Agricultural Service, USDA.

[5] Estimated costs for kiln drying are based on communication with the Forest Products Laboratory, Forest Service, USDA. Estimated costs for fumigation are based on communications with fumigation companies operating at California ports and the Port of Baltimore.

No Longer Exempting Unmanufactured Wood Articles From Mexico's Border States

As a result of this proposed rule, unmanufactured wood articles from Mexico's border States would be subject to the same importation and entry requirements as unmanufactured wood articles from the rest of Mexico (except for mesquite wood for cooking and firewood and small, noncommercial packages of unmanufactured wood for personal cooking or medicinal purposes). This change would have its primary impact on softwood lumber, which constitutes the vast majority of all unmanufactured wood articles imported from Mexico's border States.

Currently, softwood lumber from Mexico's border States can be imported without restriction, provided that the lumber was derived from trees harvested in Mexico's border States and has never been moved outside those States. Under this proposal, lumber from Mexico's border States would have to be either heat treated, heat treated with moisture reduction, or fumigated with methyl bromide. As with lumber from the rest of Mexico, the most likely treatments chosen would be kiln drying, at a cost of $12 to $20 per cubic meter, or methyl bromide fumigation, which could be done for, at most, one-third the cost of kiln drying.

As stated previously in this document, the total value of unmanufactured wood articles imported from Mexico's border States in 1997 was approximately $31.3 million; almost all of these imports were softwood lumber. If we assume that all unmanufactured wood articles imported from Mexico's border States are untreated, and would be kiln dried or fumigated to comply with this proposed rule, the impact of requiring treatment would range between $565,000 and $1.6 million, depending on whether most importers choose to kiln dry or fumigate the wood. (This calculation was made by first assuming that all unmanufactured wood articles imported from Mexico's border States in 1997 were softwood lumber, and then by using the value of $318 per cubic meter of softwood lumber to arrive at a total of 98,428 cubic meters of softwood lumber imported from Mexico's border States, multiplied by the midpoint in the range of costs for kiln drying and fumigation.)

Some of the lumber imported from Mexico's border States may already be kiln dried and would not require additional treatment as a result of this proposed rule. We do not have data to estimate the quantity of lumber imports from Mexico's border States that is already kiln dried nor what percentage of imports would be fumigated rather than kiln dried under this proposal. We welcome public comments with information that would help us more precisely estimate total potential treatment costs.

This proposed rule would result in small additional cost for an extremely small fraction of the U.S. supply of unmanufactured softwood articles. The benefit of the proposed rule is greater protection of U.S. forests. The potential for exotic pest introduction via imports of unmanufactured wood articles necessitates rigorous mitigation measures. The cost to producers and consumers could range in the millions of dollars if these measures are not taken.[6] The cost of treating unmanufactured wood articles imported from Mexico's border States is small, compared to the possible consequences of not changing existing regulations.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of the proposed rule on small entities. The Small Business Administration (SBA) has established size criteria by Standard Industrial Classification for determining which economic entities meet the definition of a small firm. Data from the SBA was used to estimate the number of small entities potentially affected by this proposed rule.

The proposed rule would add a treatment option for railroad ties and pine and fir lumber from Mexico, and would add treatment and handling requirements for logs, lumber, and other unmanufactured wood articles imported from States in Mexico adjacent to the U.S. border. Entities most likely to be affected by the proposed rule are those that import pine and fir lumber. These entities include sawmills, lumber wholesalers, lumber retailers, wood article manufacturers, and general contractors of home construction. The SBA classifies sawmills and wood article manufacturers as small entities if fewer than 500 people are employed. Wood wholesalers and retailers are considered small with fewer than 100 employees. A general contractor is considered small with annual receipts of less than $17 million.

The number, size, and location of entities that actually import pine and fir lumber from Mexico could not be quantified by APHIS. According to SBA data, there are about 177,014 entities in these potentially affected industries. More than 87 percent of these firms, between approximately 154,029 and 155,447, are classified as small according to SBA criteria. Thus, the majority of firms likely to be affected by this proposed rule would be small entities. It is presumed that the majority of these entities would be ones located in the southwestern United States.

Given the small fraction of the U.S. supply of unmanufactured wood articles imported from Mexico, and the even smaller percentage originating in Mexico's border States, we expect that the effect of this proposed rule on small entities in the United States would be negligible. If the proposal is adopted, and kiln dried imports from nonborder States are instead fumigated, cost savings may be partly realized by U.S. buyers through lower prices. For imports from Mexico's border States, costs to U.S. buyers may increase due to the new treatment requirements. But as discussed above, treatment costs are a small fraction of total product costs, so any impact, negative or beneficial, would be slight.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

We have prepared an environmental assessment for this proposed rule. The assessment provides a preliminary basis for the conclusion that the importation of unmanufactured wood articles from Mexico under the conditions specified in this proposed rule would reduce the risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment.

We prepared the environmental assessment in accordance with: (1) The

[6] Estimates of economic losses if representative insects and pathogens of concern were introduced into the United States are in the ''Pest Risk Assessment of the Importation into the United States of Unprocessed *Pinus* and *Abies* Logs from Mexico,'' referred to previously in this document. Estimated costs of introduction range from less than $1 million to more than $50 million, depending on the pest. To obtain copies of this pest risk assessment, see the instructions under footnote 1 of this document.

National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

We invite you to comment on all aspects of this proposed rule, including the environmental assessment. For information on when and where to send your comments, please refer to the **DATES** and **ADDRESSES** sections near the beginning of this document.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB). The forms that we are proposing to require for the importation into the United States of certain unmanufactured wood articles from the adjacent States in Mexico have been approved by OMB for the importation of unmanufactured wood articles from other areas of Mexico and other countries. The time that would be needed for the completion of forms under this proposal is included in the paperwork hours approved by OMB for the affected CFR sections. The assigned OMB control number is 0579–0119.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.40–3, paragraph (a) would be amended as follows:

§ 319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.

(a) *Canada and Mexico.* (1) The following articles may be imported into the United States under general permit:

(i) From Canada: Regulated articles, other than regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae; and

(ii) From States in Mexico adjacent to the United States: Commercial and noncommercial shipments of mesquite wood for cooking and firewood, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes.

(2) Commercial shipments allowed in paragraph (a)(1) of this section are subject to the inspection and other requirements in § 319.40–9 and must be accompanied by an importer document stating that they are derived from trees harvested in Canada or States in Mexico adjacent to the United States border.

* * * * *

3. In § 319.40–5, paragraph (f) would be amended by adding the words ''at a U.S. facility under compliance agreement with APHIS'' immediately before the period, and a new paragraph (l) will be added to read as follows:

§ 319.40–5 Importation and entry requirements for specified articles.

* * * * *

(l) *Railroad ties and pine and fir lumber from Mexico.* Cross-ties (railroad ties) 8 inches or less at maximum thickness and lumber derived from pine and fir may be imported from Mexico into the United States if they:

(1) Originate from Mexico;

(2) Are 100 percent free of bark; and

(3) Are fumigated prior to arrival in the United States. The regulated article and the ambient air must be a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T–312 contained in the Treatment Manual. In lieu of the schedule T–312 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 240 g/m^3 with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration.

Done in Washington, DC, this 7th day of June 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–14844 Filed 6–10–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–62–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

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 all Boeing Model 737–600, –700, and –800 series airplanes, that currently requires an inspection of the power distribution panels (PDP) to verify proper installation of the power feeder terminals and associated hardware, and corrective actions, if necessary. That AD also requires repetitive torque checks of the terminal attachment screws. This action would add a requirement for repetitive replacement of the PDP rigid bus assembly with a new assembly. This proposal is prompted by reports of loss of electrical power from the engine-driven generators or the auxiliary power unit due to overheating, melting, and subsequent failure of the power feeder terminals. The actions specified by the proposed AD are intended to prevent such conditions, which could result in increased risk of fire and the loss of electrical power from the associated alternating current power source.

DATES: Comments must be received by July 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

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 shall 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 Number 99–NM–62–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, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 29, 1999, the FAA issued AD 99–08–03, amendment 39–11107 (64 FR 15920, April 2, 1999), applicable to all Boeing Model 737–600, –700, and –800 series airplanes, to require an inspection of the power distribution panels (PDP) to verify proper installation of the power feeder terminals and associated hardware, and corrective actions, if necessary. That action also requires repetitive torque checks of the terminal attachment screws. That action was prompted by reports of loss of electrical power from the engine-driven generators or the auxiliary power unit due to overheating, melting, and subsequent failure of the power feeder terminals. The requirements of that AD are intended to prevent such conditions, which could result in increased risk of fire and the loss of electrical power from the associated alternating current power source.

Actions Since Issuance of Previous Rule

In the preamble to AD 99–08–03, the FAA specified that the actions required by that AD were considered ''interim action'' and that the FAA was considering further rulemaking action to supersede that AD to require repetitive replacement of the PDP rigid bus assembly with a new assembly for all Boeing Model 737–600, –700, and –800 series airplanes. The FAA has determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Explanation of Requirements of Proposed Rule

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 99–08–03 to continue to require an inspection of the PDP's to verify proper installation of the power feeder terminals and associated hardware, and corrective actions, if necessary. This action also would continue to require repetitive torque checks of the terminal attachment screws. This proposed AD would add a requirement for repetitive replacement of the PDP rigid bus assembly with a new assembly.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 153 airplanes of the affected design in the worldwide fleet. The FAA estimates that 56 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 99–08–03 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $6,720, or $120 per airplane.

The new replacement that is proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $20,160, or $360 per airplane, per replacement cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11107 (64 FR 15920, April 2, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–62–AD. Supersedes AD 99–08–03, Amendment 39–11107.

Applicability: All Boeing Model 737–600, –700, and –800 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating, melting, and subsequent failure of the power feeder terminals, which could result in increased risk of fire and the loss of electrical power from the associated alternating current (AC) power source, accomplish the following:

Restatement of Requirements of AD 99–08–03, Amendment 39–11107:

Initial Inspection

(a) Within 90 days after April 19, 1999 (the effective date of AD 99–08–03, amendment 39–11107): Perform a one-time general visual inspection to verify proper installation of the power feeder terminals and associated hardware located in power distribution panels (PDP) P91 and P92, in accordance with the following procedures: Using a flashlight, inspect each of the six power feeder terminals by looking into the access holes located in the plastic cover of the rigid bus assembly. The holes are located on the aft face of PDP's P91 and P92. [Refer to the Boeing 737–600, –700, –800, –900 Airplane Maintenance Manual (AMM), Section 24–21–71/401, Figure 401 (Sheet 1), for the location of PDP P91 and P92.] On PDP P91, the holes are adjacent to terminal blocks TB5001 and TB5002. On PDP P92, the holes are adjacent to terminal blocks TB5005 and TB5006. There are a total of six holes per PDP. [Refer to the Boeing 737–600, –700, –800, –900 AMM, Section 24–21–71/401, Figure 401 (Sheet 2), for the location of the access holes on the PDP's.] Note that although each PDP has nine power feeder terminals, only the six terminals adjacent to the access holes require inspection. Verify that the power feeder terminal is properly installed and held in place on the busbar by the No. 8 socket head cap screw, and verify that the cap screw is inserted into the hole in the terminal. For the proper power feeder terminal and screw buildup, refer to the Boeing 737–600, –700, –800, –900 AMM, Chapter 24–21–71/401, Figure 401 (Sheet 4). The subject power feeder terminal is identified as item [7] and the cap screw as item [12]. This visual inspection does not require loosening or removing any fasteners. The inspection may require looking through the access hole at a slight angle to see the terminal clearly. The terminal can be identified by its shiny metal finish; the current transformer behind the terminal block is made of plastic with a flat black finish. If the power feeder terminal and No. 8 socket head cap screw are not assembled as shown in Boeing 737–600, –700, –800, –900 AMM, Section 24–21–71/401, Figure 401 (Sheet 4): Prior to further flight, replace the rigid bus assembly with a new assembly, in accordance with the procedures specified in Boeing 737–600, –700, –800, –900 AMM, Section 24–21–22.

Repetitive Torque Check

(b) Concurrent with the accomplishment of the requirements of paragraph (a) of this AD: Perform a torque check of the attachment screws of the power feeder terminals in accordance with the procedures specified in Boeing Maintenance Tip 737 MT 24–003, dated May 14, 1998. Repeat the torque check thereafter at intervals not to exceed 1,000 flight hours, in accordance with the maintenance tip.

New Requirements of This AD

Repetitive Replacement

(c) Within 1,000 flight hours after accomplishment of the eighth torque check required by paragraph (b) of this AD: Replace the PDP rigid bus assembly with a new assembly, in accordance with the procedures specified in Boeing 737–600, –700, –800, –900 AMM, Chapter 24–21–22. Repeat the replacement thereafter at intervals not to exceed 1,000 flight hours after every eighth torque check in accordance with the procedures specified in the AMM.

Alternative Methods of Compliance

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on June 4, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14817 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–40–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

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 certain Dornier Model 328–100 series airplanes. This proposal would require repetitive tests of the flight idle backup system of the propeller control system; repetitive inspections to determine the level of wear of the pins and bushings of the cam followers on the power lever rods of the engine controls; and follow-on corrective actions, if necessary. This proposal also would require eventual replacement of the power lever and condition lever rods of the engine controls with new, improved parts, which constitutes terminating action for the repetitive tests and inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the flight idle backup system. In the event of failure of the primary propeller control system, such failure of the flight idle backup system could lead to uncommanded movement of the pitch of the propeller blade to below flight idle and into reverse thrust during flight, and consequent reduced controllability of the airplane.

DATES: Comments must be received by July 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

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 shall 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 Number 99–NM–40–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, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received reports indicating that wear has been detected on the cam followers of the power lever rods of the engine controls. The LBA further advises that such wear, if not corrected, could lead to failure of the flight idle backup system. In the event that the pitch control unit of the primary propeller control system fails, such failure of the flight idle backup system could lead to uncommanded movement of the pitch of the propeller blade to below flight idle and into reverse thrust during flight, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998, which describes procedures for repetitive tests of the flight idle backup system of the propeller control system; repetitive detailed visual inspections to determine the level of wear of the pins and bushings of the cam followers on the power lever rods of the engine controls; and follow-on corrective actions, if necessary. The corrective actions include replacement of the power lever rods with new power lever rods, replacement of the pins and bushings with new pins and bushings, inspections of the pins and bushings for wear or looseness, and tests of the flight idle backup system at changed intervals.

Dornier also has issued Service Bulletin SB–328–76–268, Revision 1, dated December 9, 1998, which describes procedures for replacement of the power lever and condition lever rods of the engine controls with new, improved parts. This replacement eliminates the need for the repetitive tests of the flight idle backup system and repetitive inspections of the power lever rods.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directive 1998–344/3, dated February 11, 1999, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany 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 LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Foreign Service Information

Operators should note that Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, does not specify corrective actions if any discrepancy is found while performing the flight idle backup test. This proposed AD would require repair of any discrepancy to be accomplished in accordance with a method approved by either the FAA, or the LBA (or its delegated agent).

Cost Impact

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

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane, per inspection cycle.

It would take approximately 10 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $30,000, or $600 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier Luftfahrt GMBH: Docket 99–NM–40–AD.

Applicability: Model 328–100 series airplanes having serial numbers (S/N) 3005 through 3098 inclusive, and S/N 3100, 3103, 3104, 3106, 3107, 3109, and 3110, on which Dornier Service Bulletin SB–328–76–268, dated August 11, 1998, or Revision 1, dated December 9, 1998, has not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the flight idle backup system, which, in the event of failure of the primary propeller control system, could lead to uncommanded movement of the pitch of the propeller blade to below flight idle and into reverse thrust during flight, and consequent reduced controllability of the airplane, accomplish the following:

Flight Idle Backup Test

(a) Prior to the accumulation of 3,000 total flight hours, or within 3 days after the effective date of this AD, whichever occurs later, perform a test of the flight idle backup system of the propeller control system in accordance with Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998. If any discrepancy is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfahrt-Bundesamt (LBA) (or its delegated agent). Repeat the test thereafter at intervals not to exceed 1 day until accomplishment of the requirements of paragraph (c), (d), (e), or (f), as applicable.

Inspection of Cam Followers of Power Lever Rods

(b) Prior to the accumulation of 3,000 total flight hours, or within 7 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to determine the level of wear of the pins and bushings of the cam followers of the power lever rods of the engine controls, in accordance with Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998. Classify the level of wear for each power lever rod as specified in paragraphs (b)(1), (b)(2), and (b)(3) and accomplish the requirements of paragraph (c), (d), or (e) of this AD, as applicable, at the times specified in that paragraph.

(1) Type A wear: The bushing is worn such that the pin is visible in one or more locations.

(2) Type B wear: The bushing is worn, but the pin is not visible.

(3) Type C wear: The bushing is not worn.

Corrective Actions

(c) For power lever rods on which Type A wear is detected during the inspection required by paragraph (b) of this AD: Within 900 flight hours after accomplishment of that inspection, accomplish the requirements of paragraph (c)(1) or (c)(2) of this AD in accordance with Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998. Accomplishment of paragraph (c)(1) or (c)(2) terminates the tests required by paragraph (a) of this AD for that power lever rod only.

(1) Replace the power lever rod with a new power lever rod.

(2) Replace the pins and bushings with new pins and bushings, and accomplish paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Thereafter, accomplish follow-on inspections and corrective actions (i.e. inspections for wear or looseness of the replaced pins and bushings), at the times and in accordance with the Accomplishment Instructions of the alert service bulletin; and,

(ii) Within 900 flight hours after replacement of the pins and bushings, replace the power lever rod with a new power lever rod.

(d) For power lever rods on which Type B wear is detected during the inspection required by paragraph (b) of this AD: Thereafter, accomplish follow-on inspections and corrective actions at the times and in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998, until the requirements of paragraph (f) of this AD are accomplished.

(e) For power lever rods on which Type C wear is detected during the inspection required by paragraph (b) of this AD: Determination of Type C wear terminates the tests required by paragraph (a) of this AD for that power lever rod only. Thereafter, accomplish follow-on inspections and corrective actions at the times and in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998, until the requirements of paragraph (f) of this AD are accomplished.

Terminating Action

(f) Within 6 months after the effective date of this AD: Replace the power lever and condition lever rods of the engine controls with new, improved parts in accordance with Dornier Service Bulletin SB–328–76–268, Revision 1, dated December 9, 1998. Accomplishment of the replacement constitutes terminating action for the requirements of this AD.

Note 2: Replacement of the power lever and condition lever rods accomplished prior to the effective date of this AD in accordance with Dornier Service Bulletin SB–328–76–268, dated August 11, 1998, is considered acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 4: The subject of this AD is addressed in German airworthiness directive 1998–344/3, dated February 11, 1999.

Issued in Renton, Washington, on June 4, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14819 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–06–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that would have required modification of the off-wing emergency evacuation slide system. That proposal was prompted by reports that a certain type of off-wing escape slide aboard several airplanes separated from the airplane during flight. This new action revises the proposed rule by expanding the applicability to include additional airplanes. The actions specified by this new proposed AD are intended to prevent separation of the emergency evacuation slide from the airplane, which could result in damage to the fuselage and unavailability of an escape slide during an emergency evacuation.

DATES: Comments must be received by July 6, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

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 shall 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 Number 99–NM–06–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, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 17, 1999 (64 FR 7827). That NPRM would have required modification of the off-wing emergency evacuation slide system. That NPRM was prompted by reports that a certain type of off-wing escape slide aboard several airplanes deployed and separated from the airplane during flight. Such separation of the emergency evacuation slide from the airplane could result in damage to the fuselage and unavailability of an escape slide during an emergency evacuation.

Actions Since Issuance of Previous Proposal

Due consideration has been given to the comments received in response to the NPRM.

Request to Expand Applicability

One commenter requests that the applicability of the proposed rule be revised to add Boeing Model 757–300 series airplanes. The commenter states that the effectivity listing in Boeing Service Bulletin 757–25–0200, dated January 21, 1999 (which is cited in the proposal as an appropriate source of service information for accomplishment of the actions specified), is applicable to both Model 757–200 and –300 series airplanes.

The FAA concurs with the commenter's request, having determined that the effectivity listing in the service bulletin referenced by the commenter does indeed include Model 757–300 series airplanes. The applicability and cost impact information of this supplemental NPRM has been revised accordingly.

Request to Revise Certain Wording

In addition, the FAA has received a comment requesting that the word ''deployed'' be removed from the sentence in the preamble that currently reads, ''This proposal is prompted by reports that a certain * * * escape slide * * * deployed and separated from the airplane during flight.'' The commenter considers the word ''deployed'' to imply that the off-wing escape slide inflated. The commenter reports that, in all such cases where the off-wing slide was lost, it did not inflate but rather rotated out of its storage compartment and departed the airplane either in its packed configuration or in an unfurled condition.

The FAA concurs with the commenter's request. The purpose of the quoted statement is to explain the event that caused the unsafe condition. In light of the fact that the cause of the unsafe condition was inaccurately described, this supplemental NPRM has been revised to remove the word ''deployed'' from the summary section of the preamble.

Conclusion

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

Cost Impact

There are approximately 503 airplanes of the affected design in the worldwide fleet. The FAA estimates that 441 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes identified in Boeing Service Bulletin 757–25–0182, Revision 1 (301 U.S.-registered airplanes), it would take approximately 40 work hours per airplane to accomplish the proposed modification of the door latch system, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,450 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $1,158,850, or $3,850 per airplane.

For airplanes identified in Boeing Service Bulletin 757–25–0200 (441 U.S.-registered airplanes), it would take approximately 4 work hours to accomplish the proposed installation of the bumper assembly and placards, at an average labor rate of $60 per work hour. Required parts would cost approximately $457 per airplane. Based on these figures, the cost impact of the proposed installation on U.S. operators is estimated to be $307,377, or $697 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 99–NM–06–AD.

Applicability: Model 757–200 and –300 series airplanes equipped with off-wing emergency evacuation slides, as listed in Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997, or Boeing Service Bulletin 757–25–0200, dated January 21, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the emergency evacuation slide from the airplane, which could result in damage to the fuselage and unavailability of an escape slide during an emergency evacuation, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Modify the left and right off-wing emergency evacuation slide systems by accomplishment of paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes listed in Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997: Modify the door latch system of the left and right off-wing emergency evacuation slide systems in accordance with the service bulletin.

Note 2: Modification of the door latch system of the off-wing emergency evacuation slide system, prior to the effective date of this AD, in accordance with Boeing Service Bulletin 757–25–0182, dated October 10, 1996, is considered acceptable for compliance with paragraph (a)(1) of this AD.

(2) For airplanes listed in Boeing Service Bulletin 757–25–0200, dated January 21, 1999: Install a bumper assembly on the bottom of the left and right off-wing escape slide carriers, and install new placards in the area of the maintenance access door, in accordance with the service bulletin.

Alternative Methods of Compliance

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on June 4, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14820 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–35]

Proposed Modification of Class D Airspace and Class E Airspace; Terra Haute, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class D airspace and Class E airspace at Terra Haute, IN. An analysis of the controlled airspace required for the instrument approach procedure for Terra Haute International-Hulman Field Airport, in light of the recent runway extension for that airport, have resulted in the need to modify the Class D airspace and the Class E airspace extension to the Class D airspace. The purpose of this action is to provide adequate operations at the airport. This action would increase the radius of the Class D airspace and modify the Class E airspace extension, incorporating the increased radius, for this airport.

DATES: Comments must be received on or before July 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–35, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Airspace Docket No. 99–AGL–35.’’ The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D and associated Class E airspace at Terra Haute, IN, by increasing the radius of the Class D airspace and modifying the Class E airspace extension to the Class D airspace, incorporating the increased radius, for Terra Haute International-Hulman Field Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures and flight operations. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, Class E airspace areas designated as an extension to a Class D surface area are published in paragraph 6004, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 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 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL IN D Terra Haute, IN [Revised]

Terra Haute International-Hulman Field Airport, IN
(Lat. 39°27′05″ N., long. 087°18′27″ W.)
Terra Haute, Sky King Airport, OH
(Lat. 39°32′52″ N., long. 087°22′38″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 5.7-mile radius of the Terra Haute International-Hulman Field Airport, excluding that airspace within a 1.0-mile radius of Sky King Airport.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AGL IN E4 Terra Haute, IN [Revised]

Terra Haute International-Hulman Field Airport, IN
(Lat. 39°27′05″ N., long. 087°18′27″ W.)
Terra Haute VORTAC
(Lat. 39°29′20″ N., long. 087°14′56″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Terra Haute VORTAC 047° radial, extending from the 5.7-mile radius of the Terra Haute International-Hulman Field Airport to 10.5 miles northeast of the VORTAC.

* * * * *

Issued in Des Plaines, Illinois on May 27, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–14856 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–34]

Proposed Modification of Class E Airspace; Escanaba, MI

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Escanaba, MI. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 9 has been developed for Delta County Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before July 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–34, 2300 East Devon Avenue, Des Plaines, Illinois 60018

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–34.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Escanaba, MI, to accommodate aircraft executing the proposed ILS Rwy 9 SIAP at Delta County Airport, by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from the surface is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from the surface are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 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 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(Lat. 45°43′22″N., long. 87°05′37″W.)
Escanaba VORTAC
(Lat. 45° 43′ 22″N., long. 87° 05′ 37″W.)
Escanaba VORTAC
(Lat. 45° 43′ 22″N., long. 87° 05′ 23″W.)

Within a 4.3-mile radius of the Escanaba, Delat County airport, and within 2.6 miles each side of the Escanaba VORTAC 007° radial, extending from the 4.3-mile radius to 7.4 miles north of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 101° radial, extending from the 4.3-mile radius to 7.4 miles east of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 266° radial, extending from the 4.3-mile radius to 7.0 miles west of the VORTAC, and within 3.2-miles each side of the Escanaba VORTAC 171° radial, extending from the 4.3-mile radius to 7.0 miles south of the VORTAC.

* * * * *

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

* * * * *

AGL MI E5 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(lat. 45° 43′ 22″ N., long. 87° 05′ 37″W.)
Escanaba VORTAC
(lat. 45° 43′ 22″N., long. 87° 05′ 23″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Escanaba, Delta County Airport, and within 2.6 miles each side of the Escanaba VORTAC 007° radial, extending from the 6.8-miles radius to 7.4 miles north of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 101° radial, extending from the 6.8-mile radius to 7.8 miles east of the VORTAC, and within 2.6 miles north and 3.5 miles south of the Escanaba VORTAC 270° radial extending from the 6.8-mile radius to 11.7 miles west of the VORTAC, and within 3.2 miles each side of the Escanaba VORTAC 171° radial, extending from the 6.8-mile radius to 7.0 miles south of the VORTAC.

* * * * *

Issued in Des Plaines, Illinois on May 27, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–14855 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–36]

Proposed Revocation of Class E Airspace, Lafayette, Aretz Airport, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Class E airspace for Lafayette, Aretz Airport, IN. All instrument approach procedures for the Aretz Airport have been cancelled in preparation for the closure of the airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is no longer needed to contain aircraft executing instrument procedures. This action would revoke the Class E airspace for Lafayette, Aretz Airport, IN.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–36, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–36''. The postcard will be date/time stamped and returned to the commenter. all communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to revoke the existing Class E airspace area at Lafayette, Aretz Airport, IN. All instrument approach procedures for the Aretz Airport have been canceled in preparation for the closure of the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is no longer needed to contain aircraft executing instrument procedures. The area would be removed from the appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 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 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AGL IN E5 Lafayette, Aretz Airport, IN [Removed]

* * * * *

Issued in Des Plaines, Illinois on May 28, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–14857 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Initiation of Review of Management Plan/Regulations of the Channel Islands National Marine Sanctuary; Intent To Prepare a Draft Environmental Impact Statement and Management Plan; Scoping Meetings

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

ACTION: Initiation of review of management plan/regulations; intent to prepare environmental impact statement; scoping meetings.

SUMMARY: The Channel Islands National Marine Sanctuary (CINMS or Sanctuary) was designated in September 1980, and consists of 1,252 square nautical miles of open ocean and near shore habitat approximately 25 miles off the coast of Santa Barbara, California, encompassing the waters surrounding San Miguel, Santa Rosa, Santa Cruz, Anacapa and Santa Barbara Islands from mean high tide to six nautical miles offshore. The present management plan for the Sanctuary was completed in 1982. In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 et seq.), the Marine Sanctuaries Division (MSD) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA.

The proposed revised management plan will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: information collection and characterization; preparation and

release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately eighteen to twenty-four months. NOAA will conduct public scoping meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the sanctuary's management plan and regulations. The scoping meetings are scheduled for the weeks of June 21 and July 5, 1999, as detailed below.

DATES: Written comments should be received on or before July 27, 1999.

Scoping meetings will be held:

(1) Monday, June 21, 1999, 6:30pm in Lompoc.

(2) Tuesday, June 22, 1999, 6:30pm in Santa Barbara.

(3) Wednesday, June 23, 1999, 6:30pm in Oxnard.

(4) Thursday, June 24, 1999, 6:30pm in Long Beach.

(5) Friday, June 25, 1999, 6:30pm in Ventura.

(6) Wednesday, July 14, 1999, 2:00pm in Washington, D.C.

ADDRESSES: Written comments may be sent to the Channel Islands National Marine Sanctuary (Management Plan Review), 113 Harbor Way, Santa Barbara, California 93109. Comments will be available for public review at the same address.

Scoping meetings will be held at:

(1) Cabrillo High School, Room SS–5, 4350 Constellation Rd., Lompoc, CA 93456.

(2) Chase Palm Park Center, 323 East Cabrillo, Santa Barbara, CA 93103.

(3) Casa Sirena Hotel and Marina, 3605 Peninsula Rd., Oxnard, CA 93035.

(4) Long Beach Aquarium Theatre, Long Beach, CA 90802.

(5) Sheraton 4-Points, Windjammers Meeting Room, 1080 Navigation, Ventura, CA 93001.

(6) Herbert C. Hoover Building, 14th & Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Anne Walton, Management Plan Specialist, at (805) 884–1470.

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 4, 1999.

John Oliver,

Chief Financial Officer/Chief Administrative Officer, National Ocean Service.

[FR Doc. 99–14717 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–116824–98]

RIN 1545–AW91

Notice and Opportunity for Hearing Upon Filing of Notice of Lien; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the notification required to be provided to any taxpayer named in a notice of lien under section 6323.

DATES: The public hearing originally scheduled for Tuesday, June 15, 1999, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking, and notice of public hearing that appeared in the **Federal Register** on Friday, January 22, 1999 (64 FR 3461), announced that a public hearing was scheduled for Tuesday, June 15, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 6323 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Thursday, April 22, 1999. The outlines of topics to be addressed at the hearing were due on Tuesday, June 1, 1999.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of June 7, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, June 15, 1999, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–14797 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC036–2017–b; FRL–6356–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to convert our conditional approval of the District of Columbia's enhanced inspection and maintenance (I/M) program as a revision to the District of Columbia State Implemention Plan (SIP) to a full approval. In the ''Rules and Regulations'' section of this **Federal Register**, we are converting our conditional approval of the District's I/M SIP to a full approval as a direct final rule without prior proposal because we view this as a noncontroversial action and we anticipate no adverse comments. If we receive no adverse comments, we will not take further action on this proposed rule. If we receive adverse comments, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Anyone interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 12, 1999.

ADDRESSES: Send written comments to: David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You may inspect copies of the documents relevant to this action during normal business hours at the following locations: Air Protection Division, 14th floor, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and District of

Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Avenue, S.E., Washington, DC 20020. Please contact Catherine L. Magliocchetti at (215) 814–2174 if you wish to arrange an appointment to view the docket at the Philadelphia office.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174 , or by e-mail at magliocchetti.catherine@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Enhanced Inspection and Maintenance Program, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–14594 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 20

[CC Docket No. 94–102; DA 99–1049]

Compatibility of Wireless Services With Enhanced 911; Request for Comment on Wireless E911 Phase II Automatic Location Identification Requirements

AGENCY: Federal Communications Commission.

ACTION: Request for comment.

SUMMARY: This document requests comment on several issues relating to implementation of Phase II of the Commission's Enhanced 911 (E911) service rules. The Commission's E911 Rules require that covered wireless carriers deploy Automatic Location Identification (ALI) as part of E911 service beginning October 1, 2001, provided certain conditions are met. The Commission has expressed concern that the effect of this rule may not be technologically or competitively neutral for certain technologies, and expressed its willingness to consider such issues either in the E911 rulemaking or in response to requests for waivers. In response to a document released on December 24, 1998, a number of parties filed waiver requests and responsive pleadings. This document solicits comments on a variety of related issues in order to expedite decisionmaking on whether or not to promulgate Phase II standards in light of the potential availability of handset-based technologies.

DATES: Comments are due on or before June 17, 1999, and reply comments are due on or before July 2, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mindy Littell, 202–418–1310, or Dan Grosh, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Public Notice in CC Docket No. 94–102, DA 99–1049, released June 1, 1999. The complete text of the Public Notice is available for inspection and copying during normal business hours in the Reference Information Center, Federal Communications Commission, Court Yard Level, 445 12th Street, SW, Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), CY–B400, 445 12th Street, SW, Washington, DC 20554.

Synopsis of the Public Notice

1. Section 20.18(e) of the Commission's E911 rules currently require that covered wireless carriers deploy ALI as part of E911 service beginning October 1, 2001, provided certain conditions are met. This rule was adopted in the First Report and Order (61 FR 40348, August 2, 1996) and provides that covered carriers must provide the location of all 911 calls by longitude and latitude such that the accuracy for all calls is 125 meters or less using a Root Mean Square (RMS) methodology. The Commission, in a Memorandum Opinion and Order in this proceeding (63 FR 2631, January 16, 1998) (E911 Reconsideration Order), the Wireless Telecommunications Bureau (the Bureau) responded to concerns that the effect of section 20.18(e) might not be technologically and competitively neutral for some technologies that might be used to provide ALI, particularly handset-based technologies such as those using the Global Positioning Satellite (GPS) system. In addition, the Commission indicated its willingness to consider such issues either in the E911 rulemaking or in response to requests for waivers. In a Public Notice released late last year (64 FR 3478, January 22, 1999) (Waiver Public Notice), the Commission set forth guidelines and a filing schedule to assist those interested in filing waivers to section 20.18(e). The Waiver Public Notice also sought comment on the accuracy standards that should apply to handset-based solutions as part of the Phase II requirements or as a condition of any Phase II waiver that the Commission would grant. A number of parties filed waiver requests and other pleadings in response to the Waiver Public Notice.

2. In order to expedite decisionmaking on whether or not to promulgate Phase II standards in light of the potential availability of handset-based technologies, the Bureau released another Public Notice seeking targeted comment on: (1) whether to adopt standards for handset approaches similar to those outlined in two specific proposals submitted in the proceeding; (2) how specifically to handle the issues of roaming and handset turnover; and (3) whether the Commission should clarify or modify its methodology for determining ALI accuracy under Phase II. Comments submitted in response to this Public Notice will be included in the pending wireless E911 docket, and be utilized by the Commission in its further development of policies and rules for wireless E911 deployment, as well as potentially, in its consideration of the pending waiver requests.

3. First, based on the waiver petitions filed in response to the Waiver Public Notice and the comment received on those petitions, the Public Notice is seeking targeted comment on certain standards for handset-based solutions proposed by interested parties, including two proposals filed since the end of the formal pleading cycle on the Waiver Public Notice. Under both proposals, carriers deploying a handset-based solution would be required to start providing ALI on wireless 911 calls before the October 1, 2001, deadline and to provide ALI to a greater degree of accuracy than required under the Commission's rules.

4. One proposal was filed by SnapTrack, a developer of a handset-based solution incorporating GPS technology. SnapTrack has proposed conditions under which, it argues, carriers deploying a handset-based solution should be deemed compliant with the Phase II requirements. According to SnapTrack, the Commission should deem carriers to be in compliance if they: (1) begin to deploy location-capable handsets by January 1, 2001; (2) deploy only location-capable handsets after December 31, 2001; and (3) achieve location accuracy of 90 meters using circular error probability (CEP) methodology.

5. A second proposal was filed by APCO, an association of public safety communications officials. APCO proposed that the Commission permit a carrier to implement a handset-based

solution only if it deploys ALI-capable handsets according to a specific schedule and meets firm deadlines for achieving specific levels of ALI-capable handsets among all of its subscribers. Specifically, APCO proposes that the waiver conditions should include the following: (1) carriers must begin to offer ALI-capable handsets no later than January 1, 2001; at least 80 percent of handsets being deployed on the carrier's system must be ALI-capable as of December 31, 2001; and 100 percent of handsets being deployed on the carrier's system must be ALI capable as of December 31, 2002; (2) 25 percent of all phones in use on the carrier's system must be ALI-capable by the end of 2002, 50 percent must be ALI-capable by the end of 2003; 75 percent must be ALI-capable by the end of 2004; and 100 percent must be ALI-capable by the end of 2005; (3) carriers must commit to a specific average accuracy level substantially better than the current Phase II requirement; and (4) carriers must agree to implement technologies that meet industry standards for interfacing with all carriers and PSAPs.

6. Other parties proposed similar approaches relating to early deployment and increased accuracy. For instance, with regard to location accuracy, AirTouch has suggested that the Commission approve ALI-capable handsets that provide ALI with 90-meter accuracy and 70 percent reliability as determined using CEP. Similarly, Ameritech has suggested that the Commission require handset-based solutions to meet a two-dimensional location accuracy standard of 90 meters with 67 percent confidence.

7. On the other hand, some parties have argued that any change to the Commission's rules that permits something less than 100 percent compliance by October 1, 2001, will unduly delay the availability of ALI to all Americans. These parties assert that the public interest would not be served by permitting such a phased-in implementation schedule despite any putative benefits from an earlier start date and greater degree of accuracy.

8. Because the SnapTrack and APCO submissions were filed late in the waiver proceeding, preventing some interested parties from commenting on these proposals, and because the Bureau believes that targeted comment focused on specific proposals will expedite decisionmaking, it is seeking additional comments on these proposals.

9. In response to the Waiver Public Notice, petitioners and commenters provided limited information concerning steps to minimize the problems likely to be encountered by customers without ALI-capable handsets roaming outside of service areas that have adopted a network-based solution and into areas where a carrier has deployed a handset-based solution. One of the concerns is that, because the handsets of such ''roamers'' will lack the necessary equipment or software needed for the carrier's handset-based approach, the carrier may not provide ALI for all calls, as the Commission's rules require. Waiver proponents predict that roamer issues will be insubstantial and will disappear over time as a result of handset churn and the fact that manufacturers will take advantage of economies of scale and mass produce ALI-capable handsets. In addition, several parties contend that, even if a roamer cannot be located to Phase II specifications, the carrier will be able to provide the PSAP with Phase I-level location information. The Bureau requests additional information regarding the extent of roamers who may not have ALI-capable handsets and other concerns related to providing ALI for roamers without ALI-capable handsets. The Bureau also requests additional information with respect to the usefulness of Phase I location information as a back-up for wireless users without ALI-capable handsets.

10. The Bureau also requests comment on the issues of handset turnover and roaming. It noted that only one commenter specifically addressed the handling of subscribers who do not replace their handsets frequently. There is concern that this type of customer, when served by a carrier deploying a handset-based system, may not enjoy the public safety benefits of ALI for an extended period of time. One solution may be to impose an obligation upon carriers adopting a handset-based system to offer either to retrofit or to replace subscriber handsets to make them ALI-capable at the carrier's expense or, at a minimum, at a very substantial discount, if subscribers have not upgraded their handsets by a certain date. This would help ensure that customers who do not regularly upgrade their handsets will not be left without ALI following the deployment of a handset-based system in their service area. The Bureau seeks comment on the potential costs of such an approach and request suggestions on what period of time would be appropriate before the carrier would be obligated to retrofit or replace non-ALI-capable handsets of its subscribers.

11. Sprint commented that the best solution may be a combination of approaches. Specifically, Sprint favors deploying a handset-based system for new customers, along with establishing an interim network software solution capable of providing location information that would exceed Phase I requirements for those customers with non-GPS handsets and end users of other carriers roaming into a Sprint service area. Sprint argues that this software-based network system, while not as accurate as the traditional triangulation devices previously proposed, would be substantially less expensive and would provide sufficient accuracy to meet public safety needs. Specifically, Sprint contends that, were it to adopt a handset-based approach as its principal means of implementing Phase II E911 service, it would also install a software-based network solution that could provide location information with an accuracy within 285 meters for non-ALI-capable handsets. Sprint's submission appears to present a means by which carriers adopting a handset-based system could provide ALI for all calls, as required by the rules. The Bureau requests comment on this approach and the level of location accuracy that could be provided using this software-based network system.

12. In addition, the Bureau seeks comment on the appropriate methodology for determining ALI accuracy. In the E911 Reconsideration Order, Section 20.18(e) was amended to clarify that licensees subject to the section—regardless of the ALI technology utilized—must provide to the designated PSAP the location of all 911 calls by longitude and latitude such that the accuracy for all calls is 125 meters or less using a Root Mean Square (RMS) methodology. Since the rule's amendment, the Commission has received several filings indicating that it may be necessary to reevaluate the appropriate methodology for determining ALI accuracy. Specifically, filings and presentations by Ericsson and the Wireless E9–1–1 Implementation Ad Hoc (WEIAD) group seek clarification of the accuracy requirement. These parties argue that the RMS methodology adopted by the Commission should not apply to the ALI accuracy for all E911 calls because a small number of measurements that are very inaccurate will prevent a carrier from complying with the ALI requirement even if the vast majority of ALI measurements are less than 125 meters. In response to the waiver requests, Cell-Loc commented that confusion still exists regarding the meaning of an RMS accuracy specification. SnapTrack and other proponents of handset-based solutions advocate the use of CEP in evaluating

the accuracy of those systems. TruePosition, a proponent of a network-based solution, asserts that SnapTrack has mischaracterized the accuracy standard and the degree of market penetration necessary to exceed it.

13. Because of the importance of this issue with respect to all ALI technologies, the Bureau seeks additional comment on all of these arguments and invites recommendations on the appropriate methodology for measuring ALI accuracy, consistent with the Commission's goal of providing the best ALI accuracy for all callers.

Filing Schedules and Instructions

14. Interested parties may file comments on the topics raised in this document no later than June 17, 1999; reply comments must be filed on or before July 2, 1999.

Administrative Information

15. To file formally in this proceeding, commenters must file an original and five copies of all comments and reply comments. If parties want each Commissioner to receive a personal copy of their comments, an original and ten copies must be filed. All comments should reference CC Docket No. 94–102 and should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, TW–A325, S.W., Washington, D.C. 20554. One copy of all comments should be sent to Mindy Littell, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., 3–B103, Washington, DC 20554. One copy should also be sent to: International Transcription Service, Inc. (ITS), CY–B400, 445 12th Street, SW, Washington, DC 20554.

16. Because these comments will be included in CC Docket No. 94–102, and may be considered in the context of the ongoing wireless E911 rulemaking, we believe that it is appropriate to treat this as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. See 47 CFR 1.1200, 1.1206.

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 99–14930 Filed 6–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–214, RM–9546]

Radio Broadcasting Services; Camp Wood, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by La Radio Cristiana Network, Inc. proposing the substitution of Channel 251C3 for Channel 256A at Camp Wood, Texas, and modification of the construction permit for Station KAYG. The channel can be allotted to Camp Wood in compliance with the Commission's spacing requirements at coordinates 29–42–53 and 100–00–56. Mexican concurrence will be requested for this allotment. In accordance with Section 1.420(g) of the Commission's Rules, should another party indicate an interest in the Class C3 allotment, the modification cannot be implemented unless an equivalent class channel is also allotted to Camp Wood.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Barry D. Wood, Paul H. Brown, Wood, Maines & Brown Chartered, 1827 Jefferson Place, NW, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–214, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14794 Filed 6–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–144; DA 99–974]

Comments Requested on the Construction Requirements for Commercial Wide-Area 800 MHz Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio commercial licensees that are part of a wide area system following the decision by the U.S. Court of Appeals for the District of Columbia to remand to the Commission for further analysis its decision to adopt construction requirements for these licensees that differ from those adopted for Economic Area 800 MHz licensees.

DATES: Comments are due to be filed by July 12, 1999, and reply comments are due by July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Scott A. Mackoul or Don Johnson, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–7240.

SUPPLEMENTARY INFORMATION: This document, released May 21, 1999, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036 (202) 857–3800. The document is also available via the internet at http://www.fcc.gov/Bureaus/Wireless/Public Notices/1999/index.html.

Synopsis of Document

1. In this document, the Wireless Telecommunications Bureau (''Bureau'') requests comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio commercial licensees that are part of a wide area system (''wide-area licensees''). The Bureau seeks comment on this matter following the decision by the U.S. Court of Appeals for the District of Columbia in *Fresno Mobile Radio, Inc.* v. *F.C.C.* (165 F.3d 965, DC Cir., Feb 5, 1999) to remand to the Commission for further analysis its decision to adopt construction requirements for incumbent wide-area licensees that differ from those adopted for Economic Area (''EA'') 800 MHz licensees. The court held that the Commission did not adequately explain whether wide-area licensees are sufficiently different from EA 800 MHz or other geographic based licensees to warrant different construction requirements.

2. In this document, the Bureau seeks comment on whether the Commission should adopt on remand the construction requirements that were in effect for wide-area licensees prior to the *Fresno* decision. Section 90.629 of the Commission's rules states the current construction requirements of wide-area licensees. Initially, 800 MHz licensees were able to apply for a period of up to five years to construct and place their system in operation if an extended implementation period was justified. In 1995, the Commission stopped accepting requests for extended implementation, accelerated the termination date of existing implementation periods, and required licensees seeking to retain extended implementation to demonstrate compliance with section 90.629 of the Commission's rules. Because the court held that the Commission failed to adequately explain its rationale for adopting different construction requirements in the 800 MHz band, parties who support the Commission's decision are encouraged to explain fully why the agency's approach is reasonable.

3. In this document, the Bureau also solicits comment on whether the Commission should adopt for wide-area licensees construction requirements similar to those imposed on EA 800 MHz licensees and other licensees that are licensed on a geographic area basis. Parties who believe that construction requirements should be similar to geographic area licensees are encouraged to take into account the differences in the way the Commission licensed wide-area 800 MHz systems (i.e., by site-specific licensing) and geographic area licenses when addressing what should be the appropriate requirements for wide-area licensees. In order to determine whether a wide-area licensee has met the coverage requirements, these parties are also encouraged to address whether the Commission should measure the relevant population based on the entire wide-area, individual EAs located within a wide-area system, or some other alternative. In addition, interested parties are asked to address how the Commission should determine the new timetable for construction of wide-area systems. The Bureau stated that one option would be to adopt the three and five year benchmarks that were adopted for 800 MHz EA licensees, and begin the construction period as of the effective date of the new construction requirements. The Bureau asked for comment on whether the three and five year benchmarks for wide-area licensees would be fair to EA 800 MHz licensees given that wide-area licensees have already had a number of years to construct their systems. The Bureau also requested comment on alternative construction timetables, and on whether the Commission should require a wide-area licensee to construct a minimum number of frequencies throughout its wide-area system.

4. Additionally in this document, the Bureau also permits interested parties to present alternative proposals for construction requirements for wide-area licensees. Parties that do present alternative proposals are asked to consider that their proposals should balance the need to provide wide-area licensees with construction requirements that are not unduly burdensome with the need to ensure that wide-area licensees do not warehouse spectrum or unreasonably delay service to the public. Moreover, parties are asked to address the specific technical differences and similarities associated with constructing commercial wide-area 800 MHz SMR systems, EA 800 MHz systems, and other wireless services that are licensed on a geographic basis, and how these differences and similarities should affect the construction requirements for wide-area licensees.

Federal Communications Commission.

Jim Schlichting,

Deputy Bureau Chief, Wireless Telecommunications Bureau.

[FR Doc. 99–14835 Filed 6–10–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies Mr. W. A. Barr's petition to require warning systems on all vehicles to alert operators and the immediate public when a vehicle is not immobilized and may move after the operator exits the vehicle. Based on our analysis of his petition, we conclude that the cost of requiring the system requested by Mr. Barr would far exceed the potential benefits.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Flanigan, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Flanigan's telephone number is: (202) 366–4918. His facsimile number is (202) 366–4329.

Background

1980 Defect Investigation of Ford Vehicles

In 1980, we conducted an extensive investigation (Office of Defects Investigation (ODI) Case No. C8–02) of alleged safety-related defects in model year 1970 through 1979 Ford vehicles. On June 6, 1980, we made an initial determination that a safety-related defect existed in all of those vehicles. We determined that the park gear may not be securely engaged after an attempt to shift; that the transmission may shift to reverse by itself without warning, allowing the vehicle to move while unattended; and that such uncontrolled vehicle movement may result, and had resulted, in injury or death to vehicle occupants or pedestrians. However, the Secretary of Transportation never made a final determination of the existence of a safety-related defect. Instead, this investigation was terminated by a settlement agreement entered into on

December 30, 1980. The settlement agreement required Ford to send both warning letters and self-sticking labels to all owners of the subject vehicles. These letters and labels informed recipients of our determination and reminded them of proper procedures to follow when parking and leaving their vehicles. The proper procedure includes making sure the transmission is in the park position, setting the parking brake, and shutting off the engine.

Mid-1980's Petitions for Defect Investigation

On March 6, 1985, the Center for Auto Safety (CFAS) petitioned us to initiate an expedited defect investigation into the failure of automatic transmissions in 1966 through early 1980 Ford vehicles to hold or engage in park. CFAS stated that these vehicles have been the cause of more fatalities and injuries than any other defect since our 1980 settlement with Ford. CFAS believed that, because the terms of this settlement called for reopening the investigation if the warning labels failed to decrease park to reverse incidents, we should do so. CFAS stated that the reason for the supposed ineffectiveness was that the labels were not being placed in a significant number of vehicles. We denied this petition based mainly on the fact that there was no new technical information presented by CFAS which would alter our findings in the 1980 defect investigation. Also, the data showed that the number and rate of park to reverse incidents involving the subject Ford vehicles had declined in every year since the 1980 settlement. ODI compiled a report discussing the rationale for denying CFAS's petition that was published on July 3, 1985 (P85–15–30) (hereafter referred to as ''the 1985 ODI report'').

Mr. Barr petitioned us on December 4, 1986, and again on June 29, 1989, to commence a formal defect investigation to address not only Ford vehicles, but all vehicles with automatic transmissions. In these petitions, Mr. Barr asserted that any movement of a vehicle with no driver and with an automatic transmission which has been placed in the park position occurred because of an ''illusory park'' unless the shift lever was removed from the latched position after the driver exited the vehicle. He further asserted that the possibility of such an illusory park condition constituted a safety-related defect.

Mr. Barr stated that a vehicle's transmission is in an ''illusory park'' position when either the vehicle operator does not fully move the shift lever into the park position or the transmission components are degraded, broken, or maladjusted. He further states that, if a transmission is in illusory park, it will appear to the vehicle operator that the vehicle is immobilized upon exiting the vehicle. Two modes of park to reverse incidents could result when the vehicle is in illusory park. If the vehicle's engine is running, internal forces in the transmission could cause the park system to migrate to the reverse position. As a result, the vehicle would move rearward in powered reverse. If the vehicle's engine is not running and the transmission comes out of park, the vehicle could move forward or backward, depending on the grade of the roadway. Mr. Barr asserts that, unless the shift lever is manually removed from the latched park position after the operator has left the vehicle, any movement of a vehicle with no operator and an automatic transmission occurs because the vehicle was in the ''illusory park'' position.

We denied both of these petitions because there was no reason to expect that any further investigation of this matter would result in a determination that the vehicles in question contained a safety-related defect, because we had already conducted a thorough investigation on this subject for the 1985 ODI report.

The Current Petition for Rulemaking

On June 24, 1998, Mr. Barr petitioned us to conduct rulemaking to require a warning system on all vehicles that would alert operators and the immediate public when a vehicle is not immobilized and may move after the operator exits the vehicle. Mr. Barr states that ''it is reasonable that every empty vehicle with an automatic transmission which moves, does so because the selector lever was not in the park slot or was in the park slot but the park system linkage was broken or maladjusted so that the system could not properly place the pawl in its park position.'' He bases this assertion on analysis provided by Ford in response to our investigation. In Ford's response, it states that, if the driver shifts into park, it is impossible for the transmission to ''jump'' or ''slip'' into reverse unless a transmission component is broken or the control system is grossly maladjusted.

As a result of vehicles being placed into ''illusory park,'' Mr. Barr believes that there are 64 fatalities and 650 injuries annually. He derives these numbers first by citing data obtained from the 1985 ODI report. For this report, Fatality Analysis Reporting System (FARS) data for the period of 1975 through 1984 were searched for all incidents which involved driver-less vehicles and in which a pedestrian was killed. This search produced 443 records for an average of 44.3 fatalities per year. Mr. Barr also cites data submitted to us by Ford regarding the CFAS petition (P85–15) which lists fatalities caused by non-Ford vehicles with automatic transmissions. From this list, Mr. Barr extracted only the vehicles that were not contained in the FARS data used in the 1985 ODI report. From this he found an additional 197 fatalities during the same ten year period for an average of 19.7 per year. Adding the annual averages of 44.3 fatalities found in the FARS data to the 19.7 fatalities found in the list Ford submitted gives Mr. Barr his estimate of 64 fatalities per year.

Mr. Barr estimates the injury rate of 650 per year by using data contained in the 1985 ODI report. The report shows that ODI received reports on 4,597 injuries and 412 fatalities as a result of park to reverse incidents in all model year 1966 through 1979 Ford vehicles. This yields a ratio of 11.2 injuries per fatality. By assuming that this Ford vehicle ratio would be similar when comparing injuries to fatalities in all driver-less vehicle incidents, he estimated that the number of injuries would be approximately ten times the number of fatalities, thus coming up with the value of 650 injuries per year.

Because Mr. Barr believes that there is no feasible mechanical fix that would remedy the perceived problem, he petitioned us to implement new requirements for vehicles with automatic transmissions to have warning systems that alert the driver and/or nearby pedestrians when one of three situations occur. First, when the driver opens the driver side door and the transmission shift lever is not latched in park, a warning of this condition would be activated until the driver latches the shift lever in park or closes the door. Second, when the driver opens the driver side door and the park system linkage is broken or maladjusted, another warning annunciating that condition would be activated until the driver deactivates it by opening a manual switch. This switch would be automatically closed when the ignition is next activated. Third, if the driver ignores either of the first two warnings, a loud, audible, exterior warning would be activated to warn the driver and nearby pedestrians that the vehicle is not properly immobilized.

Agency Analysis of Mr. Barr's Petition

Based on our analysis of Mr. Barr's petition, we conclude that he has made a number of assumptions, many of which cause him to substantially overstate the problem size. For instance, in his petition, Mr. Barr asserted that ''it is reasonable that every empty vehicle with an automatic transmission that moves, does so because the selector lever was not in the park slot or was in the park slot but the park system linkage was broken or maladjusted so that the system could not properly place the pawl in its park position.'' The data obtained from the 1985 ODI report that he cites in the petition refer to vehicles in which there was no *driver* present and a pedestrian was killed. This does not necessarily mean that the vehicles were empty. As discussed below, in many of the cases, while they were driverless, there were other passengers present in the vehicles. One of these other passengers may have caused the transmission to move out of the park position by inadvertently bumping the shift lever. Further, if children are left unattended and unrestrained, they could play with the shift lever and take it out of park.

Cases of children moving the shift lever can be avoided by taking a few simple precautions. First, as required by all States, children should be restrained in a vehicle at all times. This would make it more difficult for them to access the shift lever. Also, children should not be left unattended. Second, most States also require that, when a vehicle is left unattended, the vehicle's transmission must be placed in the park position and the parking brake must be engaged. Moreover, many states require that the key be turned to the position which locks the ignition and must be removed. Most owners' manuals also contain these precautions. When these precautions are taken, it is highly unlikely for a passenger to be able to move the vehicle's shift lever out of the park position. And, if a vehicle's transmission was somehow jostled out of park by some means, the parking brake would be set and the engine would be off which would also make it highly unlikely for the vehicle to be involved in a park to reverse incident.

As stated above, we believe that Mr. Barr's estimates of fatalities caused by park to reverse incidents are substantially overstated. He used FARS data for a time span (1975 through 1984) that includes the vast majority of the Ford vehicles that were subject to the 1980 defect investigation. We believe a fair estimate of the current problem should not include a population of old vehicles that had an unusually high incidence of transmission problems in an analysis of the entire vehicle population. The rate of park to reverse incidents in the non-Ford vehicle population was much lower than that of the Ford vehicles during that time span. In fact, for model year 1970 through 1979 Ford vehicles, there were 72 fatalities reported to ODI between 1981 and 1985 that were apparently caused by a park to reverse incident. During this same period of time, a total of 26 such fatalities was reported to ODI that involved model year 1970 through 1979 General Motors (GM), Chrysler, and American Motors Corporation vehicles combined. Thus, the Ford vehicles apparently were involved in almost three times more park to reverse incidents than the next three largest manufacturers combined. For this reason, we believe that using the 1975 through 1984 FARS data will substantially overestimate the average number of fatalities that could be expected to occur in the late 1990's.

In addition, Mr. Barr's use of the 1975–1984 time period misses the effects of a significant amendment to Standard No. 114, Theft Protection. During the 1975–1984 time period examined by Mr. Barr, Standard No. 114 required that vehicles have a key locking system that prevents the vehicle's steering or forward self-mobility, or both, when the ignition key is removed. Significantly, Standard No. 114 at that time did not prohibit systems in which the transmission lever could be shifted when the vehicle is parked with the ignition locked.

That changed with our May 30, 1990, rule amending Standard No. 114 (55 FR 21868). Since September 1, 1992, when the changes became effective, Standard No. 114 has required the key-locking system to prevent removal of the key unless the transmission or transmission shift lever is locked in ''park'' or becomes locked in ''park'' as the direct result of removing the key. This was a significant change that required many manufacturers to redesign their automatic transmissions. Mr. Barr's use of 1975–1984 data completely misses the impacts of this upgrade of the safety standard. We conclude that the failure to consider this upgrade is another cause of Mr. Barr substantially overestimating the number of rollaway crashes.

Mr. Barr also used an inaccurate method in determining the number of annual injuries which occur as a result of park to reverse incidents. He cites our driverless vehicle injury and fatality reports for Ford's 1966 through 1979 model year vehicles and applies this ratio to all other manufacturers' vehicles. As stated above, the Ford vehicles exhibited an unusually high rate of involvement in park to reverse incidents and, therefore, should not be used to estimate the involvement of other non-Ford vehicles. Based on the significantly lower rate of involvement in park to reverse incidents of the non-Ford vehicles, we believe Mr. Barr's assumptions that the rate of injury will be approximately the same in both Ford and non-Ford vehicles and that data from 1975 through 1984 is still valid in the late 1990's caused him to substantially overestimate the expected injuries.

We do, however, recognize that some transmissions may contain defects that have the ability to create unsafe conditions by allowing vehicles to move after the driver believes that he or she has placed the transmission in park. However, we believe that Mr. Barr's approach to remedy these occasional problems is far too costly. His approach would be expensive as manufacturers would have to redesign transmissions to accommodate a sensor system to detect the multiple situations he describes when the transmission is not adequately placed in the park position. Internal and external annunciators would have to be installed that could produce a clear audible warning. Because transmission control systems can be electronically or mechanically-controlled, it is difficult to estimate an exact cost for the system. However, we believe it would exceed $20 per vehicle. With approximately 16,000,000 million vehicles produced annually in the U.S., this would put the annual cost of such a requirement at a minimum of $320,000,000, which would far exceed the likely anticipated benefits of such a requirement.

We will continue to investigate particular makes and models of vehicles on a case-by-case basis where there is information indicating the existence of a possible safety defect. Using this method, we can focus on a specific vehicle's specific problem. For instance, we have conducted defect investigations regarding defective gear selection indicators that may show that the vehicle is in park when actually it is not, water leakage into transmissions which could cause malfunctions, and broken internal components which could also cause malfunctions. In many cases, these investigations have led manufacturers to recall the vehicles to provide a remedy for the problem.

In accordance with 49 CFR part 552, this completes our review of the petition. We have concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, we deny Mr. Barr's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: June 7, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–14834 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 052599C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources; Reef Fish Resources of the Gulf of Mexico; Public Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to receive comments on its ‘‘Draft Amendment 12 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and South Atlantic, Including Environmental Assessment and Regulatory Impact Review,’’ and ‘‘Draft Amendment 17 to the Fishery Management Plan for Reef Fish Resources, Including Environmental Assessment and Regulatory Impact Review.’’

DATES: Written comments on the Draft Amendments will be accepted by the Gulf Council through July 14, 1999, but are preferred by July 1, 1999. The public hearings will be held in June. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments should be sent to, and copies of the draft amendments are available from, the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619. The public hearings will be held in Florida, Alabama, and Texas. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: Draft Amendment 12 contains provisions for extending the commercial king mackerel permit moratorium for 3 or 5 years from its current expiration date of October 15, 2000, in order to provide time for the Gulf and South Atlantic Councils to develop and implement a controlled access system for the king mackerel fishery. Draft Amendment 17 contains provisions for extending the commercial reef fish permit moratorium by 3, 4, or 5 years from its current expiration date of December 31, 2000, in order to provide time for the Gulf Council to develop and implement a controlled access system for the reef fish fishery.

A total of 4 public hearings on both draft amendments will be held to obtain public comments on these draft amendments. The public comment period for these draft amendments ends on July 14, 1999; however, the Council prefers to receive written comments by July 1, 1999.

Public hearings will be held from 7:00 p.m. to 10:00 p.m. at all of the following locations:

1. Monday, June 14, 1999—City Hall Auditorium, 3001 Municipal Drive, Madeira Beach, FL;
2. Tuesday, June 15, 1999—National Marine Fisheries Service Panama City Laboratory, 3500 Delwood Beach Road, Panama City FL;
3. Wednesday, June 16, 1999—Orange Beach Community Center, 27235 Canal Road, Orange Beach, AL; and
4. Thursday, June 17—Ellis Memorial Library, 700 West Avenue A, Port Aransas, TX.

Copies of the draft amendments can be obtained by calling 813–228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 7, 1999.

Dated: June 7, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–14903 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 112

Friday, June 11, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Director of Practice on June 28 and 29, 1999.

DATES: The meeting will be held on June 28 and 29, 1999, from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held in the Conference Room, Fourth Floor, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Conference Room on the fourth floor of the Franklin Court Building, 1099 14th St., N W., Washington, DC on Monday and Tuesday, June 28 and 29, 1999. from 8:30 AM to 5 PM each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 1999 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 1999 pension actuarial examination and the May 2000 basic actuarial examinations will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Public Law 92–463) that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 1999 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 2 PM on June 29 and will continue for as long as necessary to complete the discussion, but not beyond 3:30 PM. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person may also file written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications statements should be mailed no later than June 21, 1999 to Patrick W. McDonough, Joint Board for the Enrollment of Actuaries, Office of Director of Practice, Internal Revenue Service (C:AP:P), 1099 14th St., NW., Washington, DC 20005 or by facsimile to (202) 694–1876.

Dated: June 8, 1999.

Paulette Tino,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 99–14890 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Reinstatement of a Previously Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Commodity Credit Corporation's (CCC) intention to request a reinstatement of a previously approved information collection, under the Noninsured Crop Disaster Assistance Program (NAP). Assistance under the NAP is authorized by Section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), and implemented by regulations issued by CCC. Section 196(b) of the 1996 Act specifies that producers shall provide records and information as requested by the Secretary to carry out the program.

DATES: Comments on this notice must be received by August 10, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact G. Sean O'Neill, Chief, NAPB, PECD, FSA, USDA, STOP 0517, 1400 Independence Avenue, SW, Washington, D.C. 20250–0517; e-mail Sean__Oneill@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Noninsured Crop Disaster Assistance Program.

OMB Control Number: 0560–0175.

Type of Request: Reinstatement of a previously approved collection.

Abstract: The information which will be collected under OMB control number 0560–0175 will allow CCC to effectively administer noninsured crop disaster assistance authorized and mandated by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). The information collected allows CCC to provide assistance under the noninsured crop disaster assistance program for losses of commercial crops or other agricultural commodities (except livestock) for which catastrophic risk protection under section 508(b) of the Federal Crop Insurance Act is not available; and that is produced for food or fiber. Additionally, the 1996 Act specifically makes benefits available for floricultural, ornamental nursery, Christmas tree crops, turfgrass sod, seed crops, aquiculture (including ornamental fish), and industrial crops. The information collected is necessary to determine whether a producer, crop and commodity meet applicable conditions for assistance and to determine compliance with existing rules. When damage to a crop or commodity occurs as a result of a natural disaster, producers requesting NAP assistance must: (1) File a current crop year report of acreage; (2) file a notice of loss with the local FSA county office within 15 days of the occurrence or 15 days of the date damage to the crop or commodity becomes apparent; (3) certify production by the applicable acreage reporting date for the crop in the subsequent crop year; and (4) file an application for payment with the local FSA county office no later than the applicable acreage reporting date for the crop in the subsequent crop year. When a producer requests FSA to calculate an approved yield for a specific crop on the basis of actual yield versus reduced yields (i.e. transitional-yield (T-yield), assigned yield, zero yield, etc.), the producers must certify annually the planted acreage and production for the crop year prior to the applicable reporting dates.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 0.5554 hours per response.

Respondents: NAP crop producers.

Estimated Number of Respondents: 497,000.

Estimated Number of Responses per Respondent: 9.

Estimated Total Annual Burden on Respondents: 2,511,901 hours.

Proposed topics for comments include, but are not limited to: (1) Whether the collection of 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 burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of informational technology. Comments regarding this information collection requirement should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Agriculture, Washington, D.C. 20503, or to G. Sean O'Neill, Chief, Noninsured Assistance Program Branch; Production, Emergencies, and Compliance Division; Farm Service Agency; United States Department of Agriculture, STOP 0517, Room 3646-South Building, 1400 Independence Avenue, SW, Washington, D.C. 20250–0517; e-mail Sean__Oneill@wdc.fsa.usda.gov. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on June 7, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–14845 Filed 6–10–99; 8:45 am]

BILLING CODE 3410–05–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: July 12, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION:

On January 22, March 22, and April 9, 16, 23, and 30, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 3483, 13767, 17312, 18877, 19976 and 23267) of proposed additions to and deletions from the Procurement List:

Additions

The following comments pertain to Towbar Assembly, 3920–01–000–0559:

Comments were received from the current contractor. The commenter said the corporate unit which produces the towbar assemblies is a small business whose main customer is the U.S. Postal Service, and losing this contract for the Postal Service would have a major effect on corporate income and employment levels. The commenter did not provide details on these effects. According to data available to the Committee, this contract represents a percentage of the contractor's total sales which is below the level the Committee normally considers to constitute severe adverse impact on a company. Consequently, the Committee has concluded that addition of these towbar assemblies to the Procurement List is not likely to have a severe adverse impact on the contractor.

The addition of the towbar assemblies to the Procurement List will create employment for people who are blind. The unemployment rate of such people far exceeds that of people without disabilities. The Committee believes creating this employment outweighs the possible loss of jobs for some of the commenter's employees, who could more easily find other employment.

The following comments pertain to Vegetable Oil, 8945–00-NSH–0001:

Comments were received from one of the current contractors in response to a Committee request for sales data. The contractor indicated that it is a small business facing intense competition from larger businesses, and that the percentage decrease in its sales which it believed this Procurement List addition would cause would be devastating to the company.

This contractor is one of two currently supplying the Government's requirements of this vegetable oil. Its contract represents a somewhat smaller portion of its total sales than its comments indicated would cause a devastating impact. In addition, the nonprofit agency which will supply the vegetable oil after it is added to the Procurement List will phase in its production over a two year period, during which Government purchases of the vegetable oil from the commenting contractor are expected to increase. Consequently, the impact of the addition on the contractor will be less and more gradual than the contractor anticipated. Accordingly, the Committee does not believe the addition of the vegetable oil to the Procurement List will have a severe adverse impact on the contractor.

The following material pertains to all of the items being added to the Procurement List:

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Towbar Assembly
3920–01–000–0559
Vegetable Oil
8945–00-NSH–0001
(15% of the total Government requirement)

Services

Base Supply Center and Operation of Individual Equipment Element Store, Mountain Home Air Force Base, Idaho
Base Supply Center and Operation of Individual Equipment Element Store, Nellis Air Force Base, Nevada

Carwash Service

USDI, Bureau of Land Management, 1661 South Fourth Street, El Centro, California

Janitorial/Custodial

INS Detention Center, 1115 N. Imperial Highway, El Centro, California
Santa Ana Federal Building, 34 Civic Center Plaza, Santa Ana, California
U.S. Customhouse, 300 S. Ferry Street, Terminal Island, California

Photocopying Service

GPO Program #C294–S (FHWA Register)
(Requirements for the Government Printing Office, Washington, DC)

Security Services

Air Passenger Terminal, Travis Air Force Base, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Pencil, Mechanical 7520–00–164–8950
7520–0–268–9916
Fly Tent, Nylon, Polyurethane Coated
8340–00–102–6370
8340–01–185–5512

Beverly L. Milkman,
Executive Director.

[FR Doc. 99–14851 Filed 6–10–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 12, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center, 910th Air Lift Wing, Youngstown Air Reserve Station, Vienna, Ohio
NPA: The Clovernook Center, Opportunities for the Blind, Cincinnati, Ohio
Commissary Shelf Stocking, Custodial and Warehousing, Camp Pendleton, California
NPA: Job Options, Inc., San Diego, California
Operation of Peace Corps Warehouse and Distribution Center, 2416 Oakville Street, Alexandria, Virginia
NPA: Sheltered Occupational Center of Northern Virginia, Arlington, Virginia
Switchboard Operation, Langley Air Force Base, Virginia

NPA: Association for Retarded Citizens of the Peninsula, Inc, Hampton, Virginia

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 service 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 service proposed for deletion from the Procurement List.

The following service has been proposed for deletion from the Procurement List:

Grounds Maintenance, Basewide (except Military Family Housing), Kelly AFB, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–14852 Filed 6–10–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

EFFECTIVE DATE: June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson at (202) 482–1776, or Sergio Gonzalez at (202) 482–1779, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230.

POSTPONEMENT OF FINAL RESULTS OF ADMINISTRATIVE REVIEW: The Department published the preliminary results of the eleventh administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil on February 5, 1999 (64 FR 5767). The current deadline for the final results in this review is June 7, 1999. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department finds that it is not practicable to complete this administrative review within the original time frame due to the complex nature of certain issues in this review which require further consideration. Thus, the Department is extending the time limit for completion of the final results until August 4, 1999, which is 180 days after the date on which notice of the preliminary results was published in the **Federal Register**. *See* Memorandum to Robert S. LaRussa, dated June 7, 1999.

This extension is in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: June 7, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–14898 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Commerce; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–004. *Applicant:* U.S. Department of Commerce, Seattle, WA 98115–0700. *Instrument:* Multibeam Echosounder (Sonar). *Manufacturer:* ELAC NAUTIK, Germany. *Intended Use:* See notice at 64 FR 23056, April 29, 1999.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides dual frequency (50 kHz and 180 kHz) capability to allow a ship to perform a near-shore to off-shore survey mission using a depth range from less than 50 m to over 1000 m. The Naval Oceanographic Office advised May 27, 1999 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–14900 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–009. *Applicant:* University of Illinois at U/C, Purchasing Division, 207 Henry Administration Building, 506 S. Wright Street, Urbana, IL 61801. *Instrument:* Confocal Microscope Attachment. *Manufacturer:* Witec GmbH, Germany. *Intended Use*: The instrument will be used in conducting the experiments on the following materials: (1) Polymers—measurement of the light transmission at a wavelength of 5 microns as a function of position, (2) biomaterials—taking vibrational spectra in a liquid environment via reflection, (3) membranes—observation of molecules passing through the membrane in a liquid environment, (4) aluminum—using reflection spectroscopy to study the chemistry of corrosion in salt water and (5) superconductors—making microscopic circuits in high-Tc superconductors by selectively doping using UV light. In addition, the instrument will be used by students as a research tool in the course Physics 499 Thesis Research. Application accepted by Commissioner of Customs: May 7, 1999.

Docket Number: 99–010. *Applicant:* University of Wisconsin—Madison, Department of Physics, 1150 University Avenue, Madison, WI 53706. *Instrument:* Diagnostic Neutral Beam System. *Manufacturer:* Budker Institute of Nuclear Physics, Russia, CIS. *Intended Use:* The instrument is intended to be used for studies of plasma with emphasis on fluctuation and confinement studies. The instrument will also be used by graduate students to learn plasma diagnostic techniques, and collect and analyze scientific data which will be used in the course of their doctoral studies. Application accepted by Commissioner of Customs: May 13, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–14899 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval and availability of revision to the final revised management plan for the Sapelo Island National Estuarine Research Reserve, 1999–2004.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, has approved the revised Management Plan for the Sapelo Island National Estuarine Research Reserve (SINERR). The SINERR was designated in 1976 and has been operating under a Management Plan approved on December 18, 1990. Pursuant to Section 315 of the Coastal Zone Management Act, 16 U.S.C. Section 1461, and Section 921.33(c)of the implementing regulations, a state must revise its management plan at least every five years, or more often if necessary. This revision is Georgia's effort to comply with this requirement.

The revisions to the SINERR Management Plan include the items listed below,

1. The plan adds three full-time state positions to the SINERR staff; one each in research, education and management.

2. With Georgia General Assembly approved state funds, the SINERR has constructed a mainland interpretive center at the Meridian ferry dock. This 3,000 square foot elevated building is the primary public outreach facility for the SINERR. The center has a large exhibit hall, a 50-seat audio visual room, handicap-accessible facilities and a boardwalk.

3. Under a NOAA matching grant, an existing building on Sapelo Island has been converted into an education/research laboratory. The facility has an audio visual room, office and storage space, an educational laboratory and a wet laboratory to support SINERR education and research/monitoring programs.

4. The revised management plan includes the establishment of education and research task forces from a reorganized SINERR Advisory Committee. The Education Task Force is comprised of representatives from local education institutions, such as colleges, secondary schools, marine sciences programs and state agencies. The Research Task Force is comprised of representatives from the scientific and academic communities.

5. The revised management plan includes the printing and distribution of the SINERR Ecological Site Characterization. This document presents a history of human activity on Sapelo Island and describes the physical, biological and chemical parameters of the SINERR's various habitats.

The impacts of the SINERR Management Plan have not changed and the initial Environmental Impact Statement (EIS) prepared at the time of designation is still valid. NOAA has made the determination that the proposed project will not have a significant effect on the human environment and therefore qualifies for a categorical exclusion under NOAA Administrative Order 216–6. An environmental assessment will not be prepared.

Copies of the document can be obtained from the Sapelo Island National Estuarine Research Reserve, Department of Natural Resources, PO Box 15, Sapelo Island, GA 31327. (912) 485–2251.

FOR FURTHER INFORMATION CONTACT: Laurie McGilvray, OCRM, Estuarine Reserves Division, 1305 East-West Highway, 11th Floor (N/ORM5), Silver Spring, Maryland 20910, (301) 713–3155, Extension 158.

(Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves)

Dated: June 3, 1999.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–14907 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval and availability of revision to the final revised management plan for the Weeks Bay National Estuarine Research Reserve, 1998–2003.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management, has approved the revised Management Plan for the Weeks Bay National Estuarine Research Reserve (WBNERR). WBNERR was designated in 1986 and has been operating under a Management Plan approved in 1985. Pursuant to Section 315 of the Coastal Zone Management Act, 16 U.S.C., Section 1461, and Section 921.33(c) of the implementing regulations, a state must revise its management plan at least every five years, or more often if necessary. This revision is Alabama's effort to comply with this requirement.

The revisions to the WBNERR Management Plan provide a more complete and updated articulation of reserve goals, objectives, and activities in the areas of administration, research/monitoring, stewardship, education/interpretation, boundaries/acquisition/facilities construction, and the volunteer program for a five year period from 1998 to 2003. The plan will increase community awareness and understanding of the Weeks Bay estuary through Reserve programs and partnerships. Highlights include:

1. Staffing. The revised Management Plan increases Reserve staff, including the addition of a full-time Research Coordinator to manage the System-wide Monitoring Program, initiate research and secure research funds, and support third party research activities in the Reserve boundaries.

2. Future Boundary Expansion and Land Acquisition. The revised Management Plan identifies the five

tracts of land (191 acres) currently held by the Weeks Bay Reserve Foundation as areas to be incorporated into the Reserve boundaries in the future. It initiates a land acquisition plan that identifies and prioritizes key ecological areas for future acquisition and/or protection.

3. Core and Buffer Areas. The revised Management Plan establishes the water bottoms within the Reserve boundaries up to mean high tide as the core area of the Reserve and the Reserve land areas as buffer to protect the core and provide additional protection for estuarine-dependent species.

4. Facilities. Under the revised Management Plan, the Reserve administration will improve existing facilities and develop buildings and boardwalks adjacent to the Interpretive Center to optimize the stewardship function of the Reserve with respect to resource protection, research, and education while maintaining a low impact on the immediate resources in that area.

5. Education. The revised Management Plan calls for the design and implementation of comprehensive programs of education and interpretation for all audiences to strengthen understanding, appreciation and stewardship of estuaries, coastal habitats and associated watersheds.

6. Research, Monitoring, and Coastal Decision Making. The revised Management Plan provides for the use of the System-wide Monitoring Program information and other research to provide a basis within the watershed for better informed decisions on the part of public and private users of the watershed.

7. Resource Protection. The revised Management Plan incorporates portions of the Weeks Bay Watershed Management Plan which has been developed to improve the water quality in Weeks Bay and the Weeks Bay watershed.

8. Habitat Restoration. The revised Management Plan describes current restoration of Reserve habitats (e.g. the pitcher plant bog, the southwest Weeks Bay shoreline). It establishes a process to identify and prioritize other habitats that have been degraded by human impact or have been disturbed leading to decreased productivity/biodiversity within the Reserve ecosystem.

The impacts of the WBNERR Management Plan have not changed and the initial Environmental Impact Statement (EIS) prepared at the time of designation remains valid. NOAA has made the determination that the proposed project will not have a significant effect on the human environment and therefore qualifies for a categorical exclusion under NOAA Administrative Order 216–6. An environmental assessment will not be prepared.

Copies of the document can be obtained from the Weeks National Estuarine Research Reserve, 11300 US Highway 98, Fairhope, Alabama 36532. (334) 928–9792.

FOR FURTHER INFORMATION CONTACT: Nathalie Peter, OCRM, Estuarine Reserves Division, 1305 East-West Highway, 11th Floor (N/ORM5), Silver Spring, Maryland 20910. (301) 713–3132, extension 119.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: June 3, 1999.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–14906 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990520139–9139–01; I.D. 050799A]

RIN 0648–AM68

Disaster Assistance for Northeast Multispecies Fishery Failure

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

ACTION: Notice; request for comments.

SUMMARY: NMFS requests comments on a proposed plan for disbursing funds to assist persons who have incurred losses from a commercial fishery failure due to the declining stocks of groundfish which has caused harm to the Northeast multispecies fishery. This proposed plan contains criteria for eligibility, limitations and conditions for receiving disaster assistance.

DATES: Comments must be received by June 28, 1999.

ADDRESSES: Comments should be sent to: Kevin Chu, NMFS, 166 Water St., Woods Hole, MA 02543. Direct all written comments regarding Paperwork Reduction Act and collection of information burden estimates to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230, and to the Office of Management and Budget (OMB) at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kevin Chu, NMFS, Northeast Region ((508) 495–2367).

SUPPLEMENTARY INFORMATION: In the Emergency Supplemental Appropriations section of the FY 1999 Appropriations Act (Public Law No. 105–277), Congress appropriated $5,000,000 to NOAA to provide emergency disaster assistance to persons or entities in the Northeast multispecies fishery who have incurred economic losses from a commercial fishing failure under a fishery resource disaster declaration made in 1994 pursuant to section 308(b) of the Interjurisdictional Fisheries Act (IFA) of 1986. Although the funds are available until used, NMFS is not obligated to compensate every individual affected by the Northeast multispecies collapse or to expend all the funding on assistance.

Pursuant to his authority under this section of the IFA, former Secretary of Commerce Ron Brown declared a fishery resource disaster on March 18, 1994, for the Northeast multispecies fishery. This disaster has extended through this year and is expected to continue, causing a number of additional fishery closures in New England and economic hardship in the fishery.

The Gulf of Maine stocks of groundfish have declined drastically over the past three decades. Since the first declaration of a fishery disaster in 1994, recovery measures for Northeastern groundfish have improved the prospects for commercially important cod, haddock, and yellowtail flounder stocks on Georges Bank, but measures intended to protect Gulf of Maine cod have not been as successful. Gulf of Maine stocks of cod, white hake, American plaice, and yellowtail flounder remain overfished. The spawning biomass continues to decline, reducing the probability that sizable groups of new fish will be produced. As a result of the continued crisis in the Northeast multispecies fishery, a number of areas in the Gulf of Maine have been closed to many types of fishing gear for up to 3 months during the period of February through June 1999, resulting in lost fishing opportunities.

There have been many meetings of fishermen discussing the best use of these disaster assistance funds, including a number of meetings of a group called the Tri-state Conference, composed of fishermen from Massachusetts, New Hampshire and

Maine. NMFS' proposed plan was developed based on comments received from numerous fishermen and other interested persons, including but not limited to, a public hearing on March 19, 1999, in Portsmouth, NH.

The proposed plan has two components. First, there is a program to provide direct assistance by compensating Federal permit holders and crew for economic harm based on reductions in used Days-at-Sea (DAS) under the authority of Section 308(d) of the IFA. In exchange for this compensation, permit holders would commit to operating their vessels for research on fishery-related subjects and would provide personal economic and social data important for evaluating the effects of fishery management decisions. Second, NMFS intends to set aside a portion of the funds for the training and deployment of affected persons as at-sea data collectors aboard scallop fishing vessels. This document explains the proposed direct assistance program. It does not discuss the training and deployment part of the plan, which will be done under contract.

The proposed direct assistance plan has two goals: (1) To provide a mechanism to get financial assistance as quickly as possible to fishermen most affected by the groundfish collapse, and (2) to involve the industry in fisheries and gear research, thereby providing additional data for the long-term management of the fishery. This program would use a formula for calculating lost fishing opportunities as an indicator of the economic harm caused by the declining groundfish stocks.

NMFS seeks comments on the proposed disaster assistance program.

Definitions

Charter or party boat means any vessel that carries passengers for hire to engage in recreational fishing.

Commercial fishing or *fishing commercially* means fishing that is intended to, or results in, the barter, trade, transfer, or sale of fish.

Day(s)-at-Sea (DAS) means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land, or fishes for, possesses, or lands regulated species.

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid multispecies permit, any species of fish, the harvest of which is managed by 50 CFR part 648.

Fishing year means for the NE multispecies fishery, from May 1 through April 30 of the following year.

Northeast multispecies or *multispecies finfish* or *multispecies* means the following species:

American plaice—*Hippoglossoides platessoides.*

Atlantic cod—*Gadus morhua.*

Haddock—*Melanogrammus aeglefinus.*

Ocean Pout—*Macrozoarces americanus.*

Pollock—*Pollachius virens.*

Redfish—*Sebastes fasciatus.*

Red hake—*Urophycis chuss.*

Silver hake (whiting)—*Merluccius bilinearis.*

White hake—*Urophycis tenuis.*

Windowpane flounder—*Scophthalmus aquosus.*

Winter flounder—*Pleuronectes americanus.*

Witch flounder—*Glyptocephalus cynoglossus.*

Yellowtail flounder—*Pleuronectes ferrugineus.*

Multispecies permit means a permit issued by NMFS to fish for, possess, or land multispecies finfish in or from the Exclusive Economic Zone.

Regulated species means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake.

Compensation for Economic Harm as Measured by Unused Multispecies DAS

The proposed plan is to compensate fishermen for economic harm caused by the fishery collapse, using a calculation of unused multispecies DAS as a proxy for economic harm. Permit holders and crew members would be compensated based on any decrease in multispecies fishing activity in 1999 due to the area closures. The decrease would be calculated by comparing the multispecies days the vessel fished in February through June 1998 and the multispecies days the vessel fished in 1999 during the same closure months. The details of the compensation plan are provided here.

Eligibility

Permit holders would be eligible to participate in this program if they hold a currently valid Federal multispecies permit and landed and sold at least 10,000 lb (4535 kg) of multispecies finfish to federally permitted dealers between May 1, 1997, and April 30, 1998. Verification of the sale would be based only on dealer weigh-out reports submitted to NMFS prior to April 1, 1999.

Party/Charter vessels are not eligible for this program, because they were not technically excluded from fishing in the closed areas under Framework Adjustments 26 and 27.

By law, persons with net annual revenues from commercial fishing of $2 million or more are also not eligible to receive funds through this program. However, NMFS proposes a different maximum limit of $75,000 (or $150,000 if filing a joint tax return) on the net income from commercial fishing that an affected person could have received in 1998 to be eligible for compensation. Comments are requested on whether this limit is appropriate.

Any permit holder whose permit was sanctioned during the February through June 1999 closures cannot qualify for compensation from the period of the sanction.

Permit holders otherwise eligible for compensation who sold their vessels on or after February 1, 1999, would not be eligible to participate in this program. Persons who owned a vessel that held a valid multispecies permit during the 1998–99 fishing year and who purchased a new vessel after February 1, 1999, would be eligible based on the history of the vessel used during 1998.

Calculation of Historical Activity

A. For the purposes of this program, NMFS would define ''historical activity'' as fishing activity during 1998 (or, in some cases, 1997) in the areas listed here that were closed in 1999, excluding the Western Gulf of Maine closed area. NMFS would calculate the historical activity based on the number of DAS fished by each eligible vessel during 1998 in the following months and areas:

February—blocks 124–125

March—blocks 124–125

April—blocks 123–125, 130–133

May—blocks 129–133, 136–140

June—blocks 139–147, 152

Figure 1 shows the areas of these blocks.

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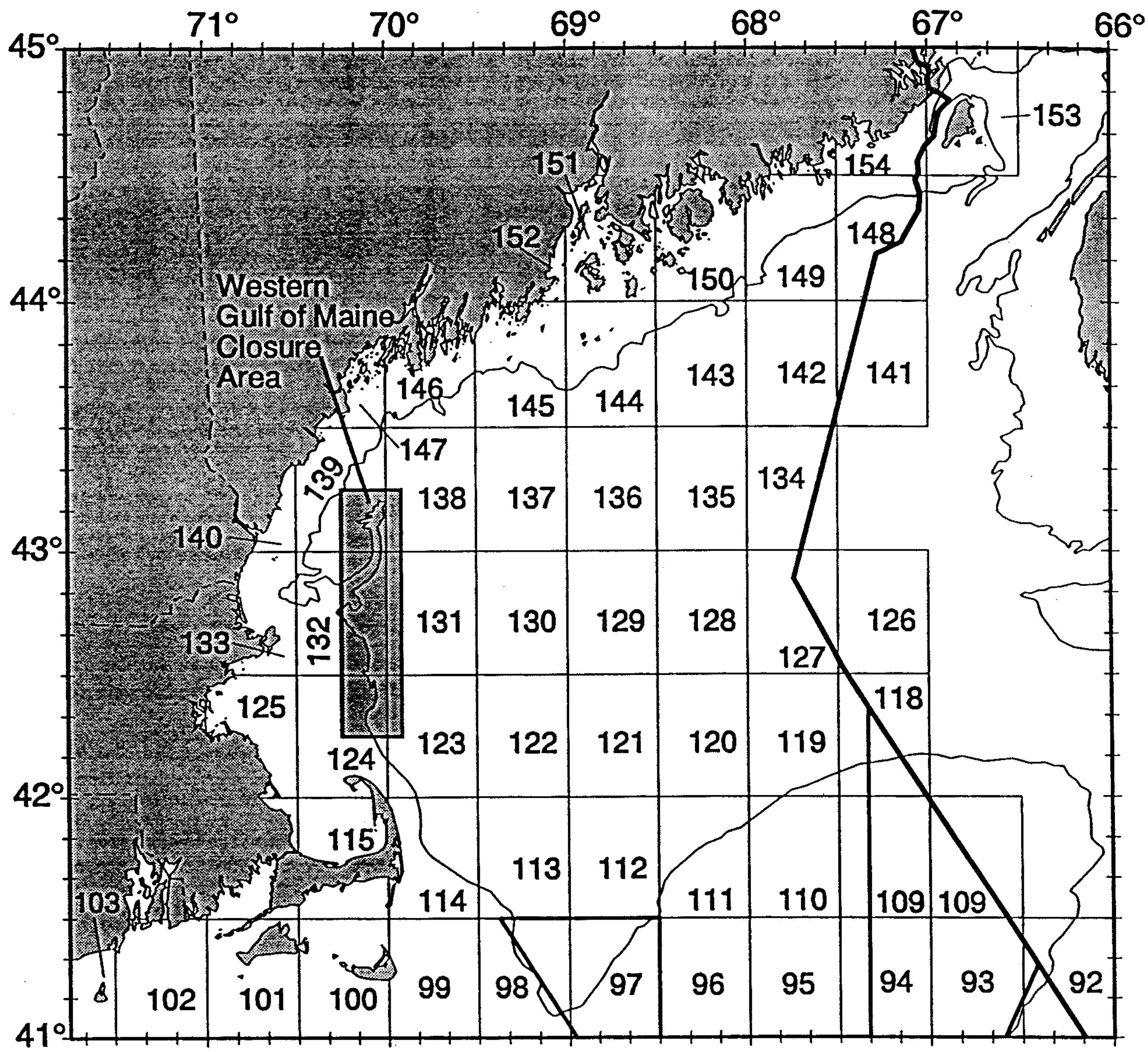

Figure 1. Gulf of Maine area closure reference blocks

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Note that in no case would DAS fished in the Western Gulf of Maine Closed Area be considered as historical activity, since that is considered a long-term, year-round closure.

B. There were some closures in March, May and June of 1998. Therefore, if a vessel used no DAS in May or June 1998, NMFS would calculate the number of DAS fished by that vessel in the appropriate areas during the same months of 1997. Some areas were closed from March 1 through March 30, 1998, but not closed on March 31 of that year. Therefore, if a vessel used either no DAS during March 1998 or only fished on March 31 of that year, NMFS would calculate the number of DAS fished by that vessel in the appropriate areas during the same months of 1997.

C. Some persons may have been prevented from fishing in 1998 due to illness or problems with their vessels. NMFS assumes that vessel owners have chosen fishing as their primary activity by virtue of their investment in their boats. Therefore, if there are two consecutive calendar months from February through June 1998 for which a vessel had no record of any fishing activity (e.g., negative reports were submitted for March and April 1998), NMFS would assume that the vessel was prevented from fishing by circumstances beyond the control of the vessel owner. In this circumstance, NMFS would calculate the number of multispecies DAS during those same months in 1997. If the 2-month gap in 1998 fishing activity was due to a permit sanction, however, NMFS would not consider 1997 fishing activity.

D. Calculation of multispecies DAS fished would be made to the nearest hour of fishing time and would then be rounded down to the nearest half day. A permit holder can receive no more compensation for economic harm than the level represented by the number of days of historical activity as calculated using this method.

E. The number of multispecies DAS fished during a fishing year plus the number of unused multispecies DAS for which a vessel receives compensation in that year cannot exceed the total number of multispecies DAS allocated to that vessel for that year.

Documentation Used To Determine Historical Activity

A. For vessels greater than 30 ft (9.14 m), NMFS would use vessel call-in system reports and vessel trip reports received by NMFS prior to April 1, 1999, to determine when a vessel fished in a 1999 closure area. If a trip was called in but no log report was submitted, or vice versa, the trip would not be included.

Some vessel trip reports have been submitted with insufficient information to determine whether the vessel fished in the closed areas, although this information is required. Under this proposed plan, the permit holder would not get credit for historical activity on any trips for which the logbooks were not filled out as required. NMFS specifically seeks comments on this provision.

B. For vessels 30 ft (9.14 m) or less, NMFS would base historical activity on vessel trip reports received by NMFS prior to April 1, 1999. (These vessels do not participate in the call in system.) The same problem of logbooks submitted without sufficient geographic information pertains to vessels under 30 ft (9.14 m) as for larger vessels. NMFS proposes to use the same solution for this category as it uses for vessels over 30 ft (9.14 m).

Documentation Used To Determine 1999 Activity

A. For vessels greater than 30 ft (9.14 m), NMFS would base activity on vessel call-in system reports.

B. For vessels 30 ft (9.14 m) or less, NMFS would base activity on vessel trip reports submitted as of the publication date of this document or, for May and June 1999, by the 15th day following each month. As required by regulations, every vessel trip report, including negative reports, must be submitted within 15 days of the end of each month. Vessels that have not submitted timely reports will not be eligible for compensation for that month. NMFS may compare dealer weigh-out reports and logbooks for May and June to confirm claims that no landings were made when no trip is reported.

Calculation of Economic Harm

A. For each month in which a vessel has historical activity, NMFS would tally the number of multispecies DAS fished in 1999 in areas that have not been closed. Economic harm would be calculated on a monthly basis as the historical DAS (multispecies DAS fished in the closed areas as described earlier) used that month minus the multispecies DAS used that month in 1999. For example, if a vessel has 10 DAS of historical activity in April 1998 and fished 5 DAS in April 1999, the permit holder and crew would be eligible for compensation for the equivalent of up to 5 DAS. If a vessel has 10 DAS of historical activity in April 1998 and fished 15 DAS outside the closed area in 1999, the permit holder and crew would not be eligible for compensation for economic harm for that month.

B. Compensation for economic harm would be at a rate of $1500 for each 24-hour DAS and $750 for each half DAS. This amount would be decreased to $900 per DAS if the permit holder does not designate crew to receive compensation. However, persons fishing alone may designate themselves as crew and receive the full compensation. (See Compensation for Crew) These amounts are consistent with NMFS estimates of the average net revenue and crew costs per multispecies DAS per vessel in the areas closed by Framework Adjustment 26.

C. A DAS for which a permit holder receives compensation would be considered a DAS used. For compensation received based on economic harm during the 1998–1999 fishing year (i.e., during the February, March and April 1999 closures), DAS for which a permit holder receives compensation cannot be carried over to the 1999–2000 fishing year. For compensation received based on economic harm during the 1999–2000 fishing year (i.e., during the May and June 1999 closures), DAS for which a permit holder receives compensation would be subtracted from the total allowable DAS for the year. For example, if a permit holder in the fleet DAS category is compensated for 10 DAS not used in June 1999, the total 1999–2000 DAS for the vessel s/he currently owns would be reduced from 88 to 78.

D. The number of DAS for which persons would receive compensation would be based on the total number of requests received by NMFS. No compensation would be paid until all requests are received and processed. Because compensation cannot be released until the universe of applicants is known, and because eligibility and unused DAS are calculated from official records held by NMFS and based on information required to be submitted to NMFS, there would be no appeals of NMFS determinations of eligibility or unused DAS.

E. If the total requests for compensation for economic harm exceed the funds available, the number of DAS for which each person is compensated would be reduced by the same proportion. If reduced, the proportional DAS for which each person is compensated would be rounded down to the nearest half day.

F. If the total requests for compensation for economic harm total less than the funds available, the excess funds would be used to defray costs in the following cooperative research program.

G. The agreement to participate in research in exchange for compensation through this program is binding. If a permit holder decides to withdraw from the program, he or she must return any compensation to NMFS, which will then be used to defray costs in the cooperative research program.

Compensation for Crew Members

NMFS would ask permit holders to identify crew members that have also been harmed by the groundfish collapse and to specify in the application the vessel's share system. Crew members will be compensated a portion of the vessel's total compensation, based on the vessel's share system. An eligible crew member is expected to have worked for the permit holder for at least 6 out of the last 10 months. NMFS will make a direct payment to each identified crew member based on the percentage share specified by the permit holder. It will pay the remainder of the vessel's compensation to the permit holder. Permit holders that do not specify any crew members for compensation would be compensated at a reduced rate of $900 per DAS. A permit holder fishing alone would designate him/herself as the captain of the vessel, thereby receiving the full $1500 per DAS discussed above.

Research Requirement

Vessels and crew members that receive compensation under this program would be required to participate in research projects for the number of days they were compensated. If NMFS cannot compensate persons at the full level requested, a permit holder's obligation for research would be only for the number of DAS for which compensation is received. Permit holders would not be required to use their allotted fishing DAS for this research. However, if a permit holder intended to land multispecies fish caught during the course of a research day, the permit holder would use a DAS, which would also count as a research day.

The cost of personnel (captain and crew) required to operate the vessel during this research would be borne by the permit holder. This would be a condition of receiving compensation. All other operation costs would be borne by the researcher.

If a permit holder is not asked to provide his/her vessel for research by September 30, 2000, this obligation will cease. Instead, the permit holder would be required to submit the last 5 years of Federal tax returns and complete a survey of economic and social data needed to better evaluate the impacts of fishery management measures. If this information it not received, the permit holder's DAS for the 2001–2002 fishing year would be reduced by the number of DAS for which he/she was compensated under this program. Note that this provision requires approval from OMB for this collection of information and could not come into effect until NMFS receives such approval.

If the vessel is sold while still under a research obligation, the commitment would transfer with the permit, which automatically transfers with the vessel upon sale, unless there is a purchase and sale agreement stating otherwise. The research requirement would not be voided by the sale of a vessel, unless the permit holder permanently retires the vessel's multispecies permit.

The research would be undertaken at a mutually agreed date before May 1, 2001. If a vessel is requested for research by September 30, 2000, and the research is not conducted before May 1, 2001, the vessel's allowed DAS for fishing year 2001–2002 will be reduced by the number of DAS for which it was committed for research. If crew members are compensated as part of this program and are still with the vessel, they would be expected to serve during the requested research period.

Application Process

A. NMFS would determine who is eligible to participate in the program based on dealer weigh-out reports and would calculate the maximum level of direct assistance for which the permit holder would be eligible.

B. NMFS would send letters and a copy of the final **Federal Register** document to all multispecies permit holders explaining the program, informing them whether they qualify to participate and, if so, the maximum amount of economic harm they can claim based on unused DAS. The letter would contain an application form that asks the permit holder to identify the number of eligible DAS for which the holder would seek compensation in exchange for a commitment from the permit holder to make his or her vessel available for research in the future, if requested. The permit holder would be required to identify crew members that should share in the compensation and to inform NMFS of the percentage of available compensation each crew member should get, based on the usual share system of the vessel. Permit holders would have 30 days from the date of mailing to respond to the invitation to participate. A date by which all responses must be postmarked would be included in the invitation to participate.

C. NMFS will tally the total eligible compensation requested for all applications received by the deadline. If the total eligible compensation requested is less than the funds available, NMFS will approve payment of the requested amounts. If the eligible compensation requested exceeds the funds available, NMFS will approve payment for each permit holder based on a prorated reduction in the number of DAS. The value of a DAS will remain the same, but fewer unused DAS will be compensated in this case. Partial DAS will be rounded downward to the nearest half DAS. Because the total DAS requested cannot be evaluated until the logbooks from the vessels under 30 ft (9.14 m) (which can be submitted up to July 15) have been entered in the NMFS database, compensation under this program should not be expected before September 1999.

D. NMFS will report payments disbursed under this program to the Internal Revenue Service and will issue IRS Form 1099–G to each recipient of compensation for economic harm.

Classification

Catalogue of Federal Domestic Assistance

This program will be listed in the Catalogue of Federal Domestic Assistance under number 11.452 (Unallied Industry Projects).

National Environmental Policy Act

NMFS will conduct an Environmental Assessment of this program prior to publication of the final rule. Comments on the potential impacts of this program on the quality of the human environment are requested.

Regulatory Flexibility Act

NMFS has conducted an initial regulatory flexibility review for this action, which is included here. The action is being taken as a result of concern about the economic impact of the declining groundfish stocks in the Gulf of Maine. The objective of the program is to compensate persons in the Northeast multispecies fishery who have incurred losses from a commercial fishing failure. The program to compensate fishermen for economic harm would be open to permit holders of a currently valid Northeast multispecies permit who landed 10,000 lb (4535 kg) of multispecies fish between May 1, 1997, and April 30, 1998, as recorded by dealer weigh-out reports. NMFS estimates fewer than 500 permit holders would qualify for compensation by having landed 10,000 lb (4535 kg) of multispecies fish and having historical activity in the areas closed in 1999. Assuming that on average, each permit holder employed one other crew member, there might be 1000 persons able to participate in this program.

The reporting or record-keeping requirements for this program include an initial form to indicate willingness to participate in the program. The form would also allow permit holders to identify crew members that should share in the compensation. The program would also require permit holders to provide the services of their vessels, if asked, for future research at a mutually agreed date and time, not to exceed 2 years in the future. The permit holders would be expected to cover the costs of captain and crew needed to operate the vessel during this research, which is estimated to be $700 on average. The other costs of operating the vessel would be covered by the researcher. Participation in the compensation program would be voluntary, and persons would not be expected to participate unless it was economically beneficial to do so. Permit holders would be expected to keep a record of the number of days they engaged in cooperative research. In addition, if a permit holder is not asked to engage in research by September 30, 2000, the proposed program calls for permit holders to submit 5 years of Federal income tax forms and to complete a survey of economic and social concerns instead, provided OMB approves this collection of information. Fishermen who have not kept copies of their tax returns would need to request copies from the IRS at a cost of $23.00 per return.

There are no Federal rules that duplicate, overlap, or conflict with the proposed action.

In providing assistance to alleviate the economic harm caused by the fishery decline, any significant economic impacts of this program are expected to be positive and are intentional. Therefore, NMFS has not considered alternatives that would minimize any significant economic impacts.

E.O. 12866

This proposed program has been determined to be significant for the purposes of E.O. 12866.

Paperwork Reduction Act (PRA)

This proposed program contains a collection-of-information requirement subject to review and approval by OMB under the PRA. An emergency clearance for the collection of information required to disburse these funds is being sought from OMB. This is a one-time collection of information. There would be no annual information collection burden. If NMFS continues this program, it will seek additional clearance for any required collection of information.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Public reporting burden for this collection of information is estimated at 1.5 hours per response, to submit a form indicating willingness to participate in the program. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see **ADDRESSES**).

Federal Policies and Procedures

Recipients of Federal assistance through this program are subject to all Federal laws and Federal and Department of Commerce (Commerce) policies, regulations, and procedures applicable to Federal financial assistance awards and must comply with general provisions that apply to all recipients under Commerce Federal assistance programs.

False Statements

A false statement on the application or any document submitted for consideration of financial assistance is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

Delinquent Federal Debts

No award of Federal funds shall be made if the would-be recipient has an outstanding delinquent Federal debt or fine until either: (a) the delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or, (c) other arrangements satisfactory to Commerce are made.

Internal Revenue Service (IRS) Information

An applicant classified for tax purposes as an individual, partnership, proprietorship, corporation, or medical corporation is required to submit a taxpayer identification number (TIN) (either social security number, employer identification number as applicable, or registered foreign organization number) on Form W–9, ''Payer's Request for Taxpayer Identification Number.'' Tax-exempt organizations and corporations (with the exception of medical corporations) are excluded from this requirement. Form W–9 shall be submitted to NOAA upon application for assistance. The TIN will be provided to the IRS by Commerce on Form 1099–G, ''Statement for Recipients of Certain Government Payments.''

Disclosure of a recipient's TIN is mandatory for Federal income tax reporting purposes under the authority of 26 U.S.C., section 6011 and 6109(d), and 26 CFR, 301.6109–1. This is to ensure the accuracy of income computation by the IRS. This information will be used to identify an individual who is compensated with Commerce funds or paid interest under the Prompt Payment Act.

Name Check

Recipients may be subject to a name check review process. Name checks are intended to reveal if they or any key individuals associated with an application for award have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on their management, honesty, or financial integrity. In the name check process, Commerce performs a credit check on businesses and individuals. A criminal background check on an individual's name is performed by the Federal Bureau of Investigation. There is no charge to recipients for the name check.

Audits

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, section 1 *et seq.*, an audit of the award of assistance may be conducted at any time. The Inspector General of

Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law. When the Office of the Inspector General (OIG) requires an audit on a Commerce award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with Commerce, or any other Federal, state or local audit entity.

Government-Wide Debarment and Suspension

You must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.'' Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, ''Non-procurement Debarment and Suspension'' and the related section of the certification form prescribed here applies.

Dated: June 4, 1999.

Andrew J. Kemmerer,

Acting Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 99–14788 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021699A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Hazards Investigation in Southern California

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals by harassment incidental to collecting marine seismic-reflection data offshore from southern California has been issued to the U.S. Geological Survey (USGS).

DATES: This authorization is effective from June 3, 1999, through July 31, 1999.

ADDRESSES: A copy of the application may be obtained by writing to Donna Wieting, Acting Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, or Christina Fahy, NMFS, 562–980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines ''harassment'' as:

> ...any act of pursuit, torment, or annoyance which
> (a) has the potential to injure a marine mammal or
> marine mammal stock in the wild; or (b) has the
> potential to disturb a marine mammal or marine mammal
> stock in the wild by causing disruption of behavioral
> patterns, including, but not limited to, migration,
> breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 15, 1999, NMFS received a request from the USGSfor authorization to take small numbers of several species of marine mammals by harassment incidental to collecting marine seismic-reflection data offshore from southern California. Seismic data was planned to be collected during a 2-week period between May and July 1999 to support studies of the regional landslide and earthquake hazards and to understand how saltwater invades coastal aquifers. A revised request was received on February 11, 1999.

Background

The USGS proposes to conduct a high-resolution seismic survey offshore from Southern California to investigate (1) the hazards posed by landslides and potential earthquake faults in the nearshore region from Santa Barbara to San Diego and (2) the invasion of seawater into freshwater aquifers that are critical to the water supply for people within the Los Angeles-San Pedro area. Both of these tasks are multi-year efforts that require using a small airgun.

Coastal Southern California is the most highly populated urban area along the U.S. Pacific coast. The primary objective of the USGS research is to provide information to help mitigate the earthquake threat to this area. The USGS emphasizes that the goal is not earthquake prediction but rather an assistance in determining what steps might be taken to minimize the devastation should a large quake occur. The regional earthquake threat is known to be high, and a major earthquake could adversely affect the well being of a large number of people.

Important geologic information that the USGS will derive from this project's seismic-reflection data concerns how earthquake deformation is distributed offshore; that is, where the active faults are and what the history of movement along them has been. This should improve understanding of the shifting pattern of deformation that occurred over both the long term (approximately the last 100,000 years) and short term (the last few thousand years). The USGS seeks to identify actively deforming structures that may constitute significant earthquake threats. The USGS also proposes to locate offshore landslides that might affect coastal areas. Not only major subsea landslides might affect the footings of coastal buildings, but also very large slides can generate local tsunamis. These large sea waves can be generated by seafloor movement that is produced either by landslides or by earthquakes. Knowing where large slides have occurred offshore will help locate areas susceptible to wave inundation.

Some faults that have produced earthquakes lie entirely offshore or extend into offshore areas where they can be studied using high-resolution seismic-reflection techniques. An example is the Rose Canyon fault, which, extending through the San Diego area, is considered to be the primary earthquake threat. This fault extends northward from La Jolla, beneath the inner continental shelf, and appears again onshore in the Los Angeles area. This fault and others like it near shore could generate moderate (M5-6) to large (M6-7) earthquakes.

Knowing the location and geometry of fault systems is critical to estimating the location and severity of ground shaking. Therefore, the results of this project will contribute to decisions involving land use, hazard zonation, insurance premiums, and building codes.

The proposed work is in collaboration with scientists at the Southern California Earthquake Center, which analyzes faults and earthquakes in onshore regions, and with scientists at the Scripps Institute of Oceanography, who measure strain (incremental movement) on offshore faults.

The USGS also wants to collect high-resolution seismic- reflection data to locate the sources and pathways of seawater that intrudes into freshwater aquifers below San Pedro. Ground water usage in the Los Angeles basin began in the mid-1800s. Today, more than 44,000 acre-feet of freshwater each year are extracted from the aquifers that underlie just the city of San Pedro. Extracting freshwater from coastal aquifers causes offshore salt water to flow toward areas of active pumping. To limit this salt-water intrusion, the Water Replenishment District and water purveyors in San Pedro are investing $2.7 million per year to inject freshwater underground to establish a zone of high water pressure in the aquifer. The resulting zone of high pressure will form a barrier between the invasive saltwater and the productive coastal aquifers.

USGS scientists in San Diego are working with the Los Angeles County Department of Public Works and the Water Replenishment District to develop a ground-water simulation model to predict fluid flow below San Pedro and nearby parts of the Los Angeles Basin. This model will eventually be used in managing water resources. The accuracy of the present model, however, is compromised by a paucity of information about aquifer geometry and about other geologic factors that might affect fluid flow. Data the USGS collects will be used to improve three-dimensional, fluid-flow models to aid in the management of water resources.

Because noise from seismic airguns and other acoustic instruments may result in the harassment or injury of marine mammals incidental to conducting the activity, an IHA under section 101(a)(5)(D) of the MMPA is warranted.

Fieldwork described here will be the third airgun survey that the USGS has conducted under close supervision by marine-mammal biologists. In March 1998, the USGS used a large (6500 in^3; 106 liters) airgun array in and around Puget Sound to study the regional earthquake hazard. The USGS employed 12 biologists, who worked on two ships continuously to oversee airgun operations. On several occasions, the USGS shut off the airguns when marine mammals entered safety zones that had been stipulated by NMFS under an IHA, and, when mammals left these zones, the USGS gradually ramped up the array as required to avoid harming wildlife. Marine mammal biologists reported that, during the survey, no overt distress was evident among the dense marine mammal populations, and, afterward, no unexplained marine mammal strandings occurred. In August 1998, the USGS surveyed offshore from Southern California, using a small airgun (40 in^3; 655 cm^3). Marine mammal biologists oversaw this activity, and the survey the USGS proposes here will be conducted with similar oversight.

Experimental Design

Marine studies conducted by the USGS focus on areas where natural hazards have their greatest potential impact on society. In Southern California, USGS studies will concern four areas. The first area in priority is the coastal zone and continental shelf between Los Angeles and San Diego, where much of the hazard appears to be associated with strike-slip faults, such as the Newport-Inglewood and Palos Verdes faults. The second study area lies offshore, in the Santa Monica, San Pedro, and San Diego Trough deeps, where rapid sedimentation has left a more complete record, relative to shallow-water areas, that the USGS can use to decipher earthquake history. The third area is the extension into the Santa Barbara Channel of major elements of onshore geology, including some large faults. The fourth area is the geologic boundary, marked generally by the Channel Islands, between the inner California Borderland (dominated by strike-slip faults) and the Santa Barbara Channel (dominated by compressional faults). The study proposed here focuses on the highest priority area, which lies near shore between Los Angeles and San Diego.

The seismic-reflection survey will last 14 days. From its experience collecting seismic-reflection data in this general area during 1998, the USGS proposed to conduct the 1999 survey sometime within the May through July window. The basis for this decision is its desire to avoid the gray whale migrations and the peak arrival of other mysticete whales during late summer.

The USGS has not yet determined the exact tracklines for the survey, but the USGS does know the areas where airgun use will be concentrated. Two of these areas are southwest and southeast of Los Angeles, and the third and largest one is west and northwest of San Diego. In these areas seismic-reflection data will be collected along a grid of lines that are about 2 km (1.2 mi) apart.

The USGS proposes to use a small airgun and 200-m (656–ft) long streamer to collect seismic-reflection data. The potential effect on marine mammals is from the airgun; mammals cannot become entangled in the streamer. The USGS will also use a low-powered, high-resolution seismic system to obtain detailed information about the very shallow geology. The seismic- reflection system will be onboard a vessel owned by a private contractor. Ocean-bottom seismometers will be deployed to measure the velocity of sound in shallow rocks to help unravel the recent history of fault motion. These seismometers are passive recorders and pose no threat to the environment.

Ship navigation will be accomplished using satellites of the Global Positioning System. The survey ship will be able to report accurate positions, which is important to mitigating the airgun's effect on marine mammals and to analyzing what impact, if any, airgun operations had on the environment.

The Seismic Sound Sources

During this survey, the USGS will operate two sound sources--an airgun and a high-resolution Huntec(TM) system. The main sound source will be a single small airgun of special type called a generator-injector, or GI-gun (trademark of Seismic Systems, Inc., Houston, TX). This type of airgun consists of two small airguns within a single steel body. The two small airguns are fired sequentially, with the precise timing required to stifle the bubble oscillations that typify sound pulses from a single airgun of common type. These oscillations impede detailed analysis of fault and aquifer structure. For arrays consisting of many airguns, bubble oscillations are canceled by careful selection of airgun sizes. The GI-gun is a mini-array that is carefully adjusted to achieve the desired bubble cancellation. Airguns and GI-guns with similar chamber sizes have similar peak output pressures.

The GI-gun for this survey has two equal-sized chambers of 35 in^3 (57 mm^3), and the gun will be fired every 12 seconds. Compressed air delivered to the GI-gun will have a pressure of about 3000 psi. The gun will be towed 12 meters (39.4 ft) behind the vessel and suspended from a float to maintain a depth of about 1 m (3.3 ft).

The manufacturer's literature indicates that a GI-gun of the size the USGS will use has a sound-pressure level (SPL) of about 220 dB re 1 μPa-m. In comparison, a 40–in^3 (65 mm^3) airgun has an SPL of 216 dB re 1 μPa-m (Richardson *et al.*, 1995). The GI-gun's output sound pulse has a duration of about 10 ms. The amplitude spectrum of this pulse, as shown by the manufacturer's data, indicates that most of the sound energy is at frequencies below 500 Hz. Field measurements by USGS personnel indicate that the GI-gun's emits low sound amplitudes at frequencies above 500 Hz. Thus, high-amplitude sound from this source is at frequencies that are outside the main hearing band of odontocetes and pinnipeds (Richardson *et al.*, 1995).

The high-resolution Huntec(TM) system uses an electrically powered sound source. In operation, the sound producing and recording hardware are towed behind the ship near the seabottom. The unit emits sound about every 0.5 seconds. This system provides highly detailed information about stratified sediment, so that dates obtained from fossils in sediment samples can be correlated with episodes of fault offset. The SPL for this unit is 210 dB re 1 μPa-m. The output-sound bandwidth is 0.5 kHz to 8 kHz, with the main peak at 4.5 kHz.

Description of Habitat and Marine Mammals Affected by the Activity

The Southern California Bight supports a diverse assemblage of 29 species of cetaceans (whales, dolphins, and porpoises) and 6 species of pinnipeds (seals and sea lions). The species of marine mammals that are likely to be present in the seismic research area during the year include the bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), killer whale (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern right whale dolphin (*Lissodelphis borealis*), Risso's dolphin (*Grampus griseus*), pilot whale (*Globicephala macrorhynchus*), Dall's porpoise (*Phocoenoides dalli*), sperm whale (*Physeter macrocephalus*), humpback whale (*Megaptera novaengliae*), gray whale (*Eschrichtius robustus*), blue whale (*Balaenoptera musculus*), minke whale (*Balaenoptera acutorostrata*), fin whale (*Balaenoptera physalus*), harbor seal (*Phoca vitulina*), elephant seal (*Mirounga angustirostris*), northern sea lion (*Eumetopias jubatus*), and California sea lion (*Zalophus californianus*), northern fur seal (*Callorhinus ursinus*) and sea otters (*Enhydra lutris*). General information on these species can be found in the USGS application and in Barlow *et al.* (1997). Please refer to those documents for information on the biology, distribution, and abundance of these species.

Potential Effects of Seismic Surveys on Marine Mammals

General Discussion

Seismic surveys are used to obtain data about rock formations up to several thousands of feet deep. These surveys are accomplished by transmitting sound waves into the earth, which are reflected off subsurface formations and recorded with detectors in the water column. A typical marine seismic source is an airgun array, which releases compressed air into the water creating an acoustical energy pulse that is directed downward toward the seabed. Hydrophones spaced along a streamer cable just below the surface of the water receive the reflected energy from the subsurface formations and transmit data to the seismic vessel. Onboard the vessel, the signals are amplified, digitized, and recorded on magnetic tape.

Disturbance by seismic noise is the principal means of taking by this activity. Vessel noise may provide a secondary source. Also, the physical presence of vessel(s) could lead to some non-acoustic effects involving visual or other cues.

Depending upon ambient conditions and the sensitivity of the receptor, underwater sounds produced by open-water seismic operations may be detectable some distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or by masking a signal of comparable frequency. An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source (or vessel) react to the generated sounds or to visual cues.

Seismic pulses are known to cause some species of whales, including gray whales, to behaviorally respond within a distance of several kilometers (Richardson *et al.*, 1995). Although some limited masking of low-frequency sounds is a possibility for those species of whales using low frequencies for communication, the intermittent nature of seismic source pulses will limit the extent of masking. Bowhead whales, for example, are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.*, 1986).

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations and seasons. Behavioral changes may be subtle alterations in surface-dive-respiration cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

Hearing damage is not expected to occur during the project. While it is not known whether a marine mammal very close to the airgun would be at risk of permanent hearing impairment, temporary threshold shift (TTS) is a theoretical possibility for animals very close to an airgun. However, planned monitoring and mitigation measures (described later in this document) are designed to detect marine mammals occurring near the seismic source(s) and to avoid, to the greatest extent practicable, exposing them to sound pulses that have any possibility of causing hearing damage, including TTS.

Maximum Sound-Exposure Levels for Marine Mammals

Loud continuous sounds can damage the hearing of marine mammals. However, the adverse effects of sound on mammals have been documented for exposure times that last for tens of seconds or minutes, but effects have not been documented for the brief pulses typical of the GI-gun (10 ms) and the Huntec(TM) system (0.3 ms). NMFS has long considered that the maximum SPLs to which marine mammals should be exposed from impulse sounds are 180 dB re 1 μPa_{RMS} for mysticetes and sperm whales, and 190 dB re 1 μPa_{RMS} for odontocetes and pinnipeds. More recently, scientists at two workshops on acoustic noise and marine mammals supported NMFS' determination.

At the time of its application, the USGS lacked detailed measurement of sound-transmission loss for the southern California offshore, so, based upon the best science available, the USGS estimated how SPL varies with distance from the airgun by assuming that sound decays according to 25Log(R). The coefficient 25 accounts approximately for the attenuation that is caused by the sound interacting with the seabottom. The USGS used this procedure to derive safety zone estimates based on the 220 dB SPL produced by the GI-gun, the larger of the two sound sources the USGS plans to use.

Assuming that the 25Log(R) decay that the USGS used to estimate safe distances from the airgun is correct, this indicates that an SPL of 190 dB re 1 μPa is attained about 16 m (52.5 ft) away from the airgun, and an SPL of 180 dB re 1 μPa is attained at about 40 m (131 ft) away. However, for precautionary reasons during field operations, the USGS proposes that, at all times, the safe distance for odontocetes and pinnipeds be 50 m (164 ft) and for mysticetes, 100 m (328 ft).

Comments and Responses

A notice of receipt of the application and proposed authorization was published on March 5, 1999 (64 FR 10644), and a 30-day public comment period was provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC), the California Coastal Commission (CCC), and one individual. The CCC asked a number of questions; those relevant to the application for an IHA are included here. Information on the authorization request and expected impact on marine mammal species, not subject to reviewer comments, can be found in the proposed authorization notice and is not repeated here, but is considered part of the record of decision, except as modified by this notice.

On May 11, 1999, the CCC objected to the USGS project and its consistency determination, even though the CCC staff had recommended approval (see CD–32–99). During the May 11, 1999, public hearing, the USGS modified its project to avoid operating within the 3–mile limit of State waters and to expand the marine mammal safety radius for odontocetes to be the same as mysticetes (i.e., 100 m (328 ft) safety zone) in order to ensure that marine mammals would be exposed to no greater than 180 dB sound levels. Nevertheless, even with these modifications, the CCC found the project was not consistent to the maximum extent practicable with the California Coastal Management Plan (CCMP).

The CCC further determined that alternative measures exist that would enable the project to be conducted in a manner consistent to the maximum extent practicable with the CCMP. One alternative measure identified by the CCC would require no night-time seismic activities. The CCC requirements are discussed later in this document. On May 28, 1999, the USGS submitted a letter to NMFS, requesting the CCC suggested modifications be made to their application for an IHA.

Comment 1: The MMC questions the statement in the USGS application that NMFS considers that the maximum sound pressure levels (SPLs) to which marine mammals can be exposed are 180 dB re 1 μPa_{RMS} * * * for mysticetes and sperm whales, and 190 dB re 1 μPa_{RMS} for odontocetes and pinnipeds. No citation was provided for this statement and, while the MMC is aware that the referenced sound levels were judged to be appropriate by the panel of experts convened by NMFS last September, the MMC was not aware that NMFS had accepted or made known the panel's findings in this regard. The MMC requests NMFS' rationale for these determinations.

Response: NMFS notes that the mentioned SPLs have been adopted by NMFS as the lower bound for Level A harassment authorizations for impulse sounds, such as from seismic airguns (please refer to 50 CFR 216.3 for a definition of Level A and Level B harassment), and have relatively long usage in establishing safety zones for marine mammals in such areas as the U.S. Beaufort Sea (see 61 FR 26501, May 28, 1996; 61 FR 38715, July 25, 1996; 62 FR 38263, July 17, 1997; and 63 FR 40505, July 29, 1998) and Puget Sound (see 62 FR 488817, September 17, 1997, and 63 FR 2213, January 14, 1998). The rationale for using these levels was provided first in an authorization to the Exxon Corporation for seismic work in southern California in 1995 (see 60 FR 53753, October 17, 1995). Because of the length of that discussion, it is not repeated here. However, since the time of that authorization, NMFS has questioned the reliability of using data on humans as surrogates for marine mammal impacts. As a result, until better scientific data on marine mammals are collected, NMFS has adopted a more precautionary level of 190 dB as the lower bound for Level A harassment for odontocetes and pinnipeds, and not the higher levels noted in the Exxon authorization.

NMFS wishes to clarify that, under section 101(a)(5)(D) of the MMPA, applicants may apply for a take by acoustic injury (Level A harassment); however, NMFS limits the use of authorizations for harassment involving the ''potential to injure'' to takings that may involve non-serious injury, such as TTS. Serious injury for marine mammals, such as permanent hearing loss within the species' primary hearing range, may lead fairly quickly to the animal's death. For example, if an application indicates that the short-term use of an acoustic source at its maximum output level has the potential to cause TTS in a marine mammal's hearing ability, that taking would constitute a Level A ''harassment'' take, since the animal's hearing ability would be expected to recover and, therefore, the section 101(a)(5)(D) application would be appropriate. However, if the acoustic source at its maximum level has the potential to cause a permanent threshold shift in a marine mammal's hearing ability or potentially could cause TTS over a significant period of time on the same animals, that activity will be considered by NMFS to be capable of causing serious injury to a marine mammal and, therefore, might not be appropriate for an IHA, unless effective mitigation was implemented to prevent more than non-serious injury.

It should also be understood that, while NMFS considers that the maximum SPLs to which marine mammals should be exposed from impulse sounds are 180 dB re 1 μPa_{RMS} for mysticetes and sperm whales and 190 dB re 1 μPa_{RMS} for odontocetes and pinnipeds, the definition of ''harassment'' in section 3 of the MMPA authorizes takes by harassment to include injury (Level A harassment). As mentioned previously, 180 dB/190 dB SPLs are considered by NMFS to be the *lowest* level of Level A harassment. This means that safety zones are established as a mitigation measure to reduce takings to the lowest level practicable as required by section 101(a)(5)(D)(ii)(I). Therefore, in accordance with section 101(a)(5)(D)(v), provided the applicant requested takes that included Level A harassment, the fact that a marine mammal entered the designated safety zone undetected is not considered a violation of the MMPA or of the IHA.

In any case, in order to obtain a certificate of compliance (required of the USGS by the Coastal Zone Management Act) from the CCC, the USGS must observe the more restrictive 180–dB criterion for both mysticetes and odontocetes. Accordingly, the USGS, in a letter to NMFS, amended its application to indicate that a safety zone of 100 m (328 ft) should be established, which is equivalent to 180 dB using 20Log(R) SPL.

Comment 2: The CCC asked, if the operation includes shallow water, why 25Log(R) is an appropriate dispersion model? Also, one of the two sources, the Huntec system, emits sound at or near the bottom (if at all). Again, is the 25Log(R) the appropriate dispersion model for this source. If the assumption that 25Log(R) is the correct attenuation factor, the MMC recommends, in order to protect marine mammals from serious injury, that a more conservative estimate of the attenuation rate be used to calculate the safety zones, or that measurements be made at the beginning of the surveys to confirm the assumed 25Log(R) within the horizontal distances less than the depth of the water column.

Response: The USGS notes that it used a 25Log(R) decay in SPL because acoustic modeling and measurements in the field show that sound decays quickly in water that overlies a sloping seabottom. In a medium with no acoustic interfaces, sound spreads spherically and SPL reduces at 20Log(R). A sloping bottom, however, causes sound to exit the water layer and beam into the underlying sediment, enhancing the transmission loss toward a beach (e.g., Jensen and Tindle, 1987; Deane and Buckingham, 1993; Glegg *et al.*, 1993; Richardson *et al.*, 1994; Jensen *et al.*, 1994). In fact, a zone of high transmission loss, an ''acoustic shadow zone,'' lies just offshore from a beach. This argues against the common misunderstanding that underwater sound intensifies up-slope toward a beach.

The enhanced transmission loss, relative to 20Log(R), that occurs over a sloping bottom has been verified by field measurements from scattered locations. The USGS, in conjunction with its 1997 seismic survey in Puget Sound (Fisher *et al.*, 1999) measured sound decay with distance from a 108–liter (L) airgun array (Bain, 1999). A least-squares, straight-line fit to data from ranges less than 10 km (5.4 nm) indicates that airgun sound decays at 29Log(R). In water 90 m (295 ft) deep off Los Angeles Harbor, USGS scientists measured a 26Log(R) transmission loss, using the same airgun the USGS will deploy this coming season. Off the Big Sur coast of central California, the SPL of a single 1.6 L airgun decreased at 25Log(R) decay toward the beach.

Greenridge Sciences, Inc.(1998) measured the transmission loss of airgun sound at Platform Harmony in the Santa Barbara Channel. Estimated loss was high, the coefficient of the logarithm is 48 to 60. Finally, measurements of acoustic thermometry (ATOC) sounds versus distance, in nearshore water that is 10 m (33 ft) to 80 m (262 ft) deep, indicate a high transmission loss (TL) of about 43Log(R).

Therefore, on the basis of abundant, numerical acoustic modeling and some field measurements, the USGS and NMFS believe that 25Log(R) is a conservative estimate of sound TL for airgun sounds over a sloping seabottom, like that offshore from southern California. In particular, sound that propagates into shallow water near and within the 3–mile (4.8 km) limit should decay sharply toward shore. However, the CCC will require the USGS to observe a 100–m (328–ft) safety radius around the airgun, which distance is consistent with the source level of the airgun and a 20Log(R) TL model. At this distance, received SPL would be 180 dB using a 20Log(R) TL model. Because a more conservative estimate of the attenuation rate has been used to calculate the safety zones measurements, NMFS does not consider it necessary for measurements to be made at the beginning of the surveys to confirm the TL.

The Huntec instrument is deployed at varying depths beneath the sea surface to avoid noise from large ships and ocean waves, but no attempt is made to maintain this instrument at a close distance to the sea floor. For safety reasons, the Huntec vehicle remains at least 50 m (164 ft) above the seafloor, except in water that is shallower than 100 m (328 ft), where the Huntec will be at a depth of about 10 m (33 ft). The maximum deployment is 150 m (492 ft). The maximum SPL of the Huntec is about 25 percent of the G-I gun's maximum SPL, and mitigation zones were calculated to account for the GI-gun. These zones, therefore, are even more conservative for Huntec.

Comment 3: The CCC asked how will marine mammals be observed and avoided during low-visibility times (such as night-time and fog)? Will there only be visual monitoring or is acoustic monitoring included as well.

Response: The USGS proposes to rely on visual monitoring; there will not be any aerial surveys or acoustic monitoring. At night, biologists proposed to use light-amplification scopes to improve visibility and detection of the animals. However, in order for the USGS to be consistent to the greatest extent practicable with the CCMP, the USGS will not conduct GI-gun seismic surveys during nighttime.

Comment 4: The MMC notes that marine mammal observers aboard the seismic vessels will need to work 6 hour shifts if seismic operations continue around the clock. The MMC questions whether two observers will be able to effectively monitor and detect marine mammals approaching the designated safety zones, particularly at night and after the first few days working the alternating 6–hour shifts. The MMC recommends that NMFS consult with the applicant to better determine the rationale for using two observers as proposed.

Response: Three biological observers will be employed with two on watch at all times. According to restrictions placed on the USGS by the CCC, the USGS will be unable to use the airgun for 8 hours overnight, so all observers will benefit from a full, 8–hour sleep, and off-watch periods during the day offer additional rest.

Comment 5: The CCC asks who will be conducting the marine mammal monitoring?

Response: Employees of researchers at the Cascadia Research in Olympia, WA, will likely oversee monitoring.

Comment 6: The CCC asks why a 35–in^3 airgun is louder than a 45–in^3 airgun? Is that because it contains two chambers?

Response: The GI-gun uses 3000–psi pressure, while most airguns use 2000–psi pressure. This likely accounts for the greater source strength of the GI-gun.

Estimated Number of Potential Harassments of Marine Mammals

The zone of influence for the GI-gun is defined to be the circle whose radius is the distance from the gun where the SPL reduces to 160 dB re 1 μPa_{rms} for those marine mammals that can hear either the low frequency sound from seismic airguns or the mid-frequency Huntec system. For 25Log(R) TL, the zone of influence is estimated to be a circle with a radius of 250 m (820 ft); for 20Log(R), the zone of influence would be 1,000 m. Based solely on estimated marine mammal populations within the survey area and on the number of individuals that were observed during the 1998 USGS survey and not on the expected number of animals that may be harassed by the GI-gun and Huntec system, the USGS estimates that up to 5 killer whales, 10 minke whales, 50 northern sea lions, 100 northern fur seals, 100 northern elephant seals, 100 Dall's porpoise, 100 Risso's dolphins, 100 northern right-whale dolphins, 100 Pacific white-sided dolphins, 100 bottlenosed dolphins, 200 California sea lions, 200 Pacific harbor seals, and 6,000 common dolphins may be harassed incidental to the USGS survey. No mysticetes (except possibly minke whales) or sperm whales are expected to be in the area at the time of the survey and, therefore, would not be subject to incidental harassment, and no marine mammals will be seriously injured or killed as a result of the seismic survey. In addition, because the Huntec system will be towed near the seabottom and because the attenuation of mid-frequency sources is greater than low frequency sources, it is likely that few to no marine mammals at or near the surface will be affected by this acoustic instrument.

Mitigation of Potential Environmental Impact

To avoid potential TTS injury to marine mammals, a safety zone will be established and monitored continuously by biologists, and the USGS must shut off the airguns whenever the ship and a marine mammal converge closer than 100 m (328 ft). However, because no authorization was requested to incidentally harass mysticetes (except minke whales) or sperm whales (since they're not expected to be in the area), a safety zone of 250 m (820 ft) will need to be monitored for these species.

The USGS plans to have marine biologists aboard the ship who will have the authority to stop airgun operations when a mammal enters the safety zone.

During seismic-reflection surveying, the ship's speed will be only 4 to 5 knots, so that, when the airgun is being discharged, nearby marine mammals will have gradual warning of the vessel's approach and can move away. Finally, NMFS will coordinate with the local stranding network during the time of the survey to determine whether strandings can be related to the seismic operation.

Additionally, in accordance with the May 28, 1999, request from the USGS, airgun activities will not be conducted during nighttime. This will decrease the potential that a marine mammal might enter the safety zone undetected.

Monitoring and Reporting

Biologists, affiliated with the Cascadia Research Collective in Olympia, Washington, will monitor marine mammals at all times while the airguns are active. Three trained marine mammal observers will be aboard the seismic vessel to mitigate the potential environmental impact from airgun use and to gather data on the species, number, and reaction of marine mammals to the airgun. To ensure that no marine mammals are within the safety zone, monitoring will begin no later than 30 minutes prior to the acoustic sources being turned on. Each observer will work shifts that limit on-watch times to no more than 4 consecutive hours. Observers will use 7x50 binoculars with internal compasses and reticules to record the horizontal and vertical angle to sighted mammals. Monitoring data to be recorded during airgun operations include the observer on duty and weather conditions (such as Beaufort sea state, wind speed, cloud cover, swell height, precipitation, and visibility). For each mammal sighting, the observer will record the time, bearing and reticule readings, species, group size, and the animal's surface behavior and orientation. Observers will instruct geologists to shut off the airgun array whenever a marine mammal enters its respective safety zone.

Consultation

Under section 7 of the Endangered Species Act, NMFS has completed consultation on the issuance of an IHA. NMFS finds this action to be unlikely to adversely affect listed marine mammals because the endangered whales are expected to be in offshore waters outside the Channel Islands at the time of the year that the activity will take place and northern sea lions, which are expected to be in more northerly waters during the summer, are not known to be affected by low frequency seismic sources unless close to the source.

Conclusions

NMFS has determined that the short-term impact of conducting marine seismic-reflection data in offshore southern California may result, at worst, in a temporary modification in behavior by certain species of pinnipeds and cetaceans. While behavioral modifications may be made by certain species of marine mammals to avoid the resultant noise from the seismic airgun, this behavioral change is expected to have no more than a negligible impact on the animals.

In addition, no take by serious injury or death is anticipated, and takes will be at the lowest level practicable due to the incorporation of the mitigation measures previously mentioned. No known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA) of small numbers of certain species of marine mammals, would have only a negligible impact on these stocks, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

Accordingly, NMFS has issued an IHA to the USGS for the possible harassment of small numbers of several species of marine mammals incidental to collecting marine seismic-reflection data offshore from southern California during the period from June 3 through July 31, provided the mitigation, monitoring and reporting requirements described in the authorization are undertaken.

Dated: June 3, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–14902 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for Peacekeeper Missile System Deactivation/ Dismantlement at F.E. Warren Air Force Base, Wyoming

The United States Air Force Space Command is issuing this notice to advise the public that the Air Force intends to prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of deactivation/dismantlement of the Peacekeeper Missile System of the 90th Space Wing based at F. E. Warren Air Force Base in Cheyenne, Wyoming. The EIS will also evaluate the potential impacts of sustainment of the current system which is the No Action

Alternative. The Strategic Arms Reduction Treaty II (START II) requires deactivation of the Peacekeeper Missile System. Deactivation will only occur if the Treaty is ratified by Russia and entered into force. As modified by the Helsinki Agreement, the Treaty requires complete dismantlement by December 31, 2007. In order to meet the Treaty deadline, deactivation could start as early as October 2000.

Public scoping meetings are planned in the towns of Cheyenne, Wheatland, and Torrington, Wyoming. The purpose of these meetings is to determine the scope of issues to be addressed and to help identify significant environmental issues to be analyzed in depth. Notice of the times and locations of the meetings will be made available to the community using the local news media. The schedule for the scoping meetings is as follows:

Date	Location	Time
June 28, 1999	East High School, 2800 E. Pershing Blvd., Cheyenne, WY	6:30–9:30 p.m.
June 29, 1999	Wheatland High School, 1207 13th Street, Wheatland, WY	6:30–9:30 p.m.
June 30, 1999	Torrington High School, 23rd Ave & West C, Torrington, WY	6:30–9:30 p.m.

In addition to seeking public input on environmental issues and concerns at the scoping meetings, the Air Force is soliciting written comments regarding the EIS scope. To ensure the Air Force will have sufficient time to fully consider public inputs on issues, written comments should be mailed for receipt no later than August 2, 1999.

Please direct written comments or requests for further information concerning the Peacekeeper system deactivation/dismantlement EIS to: Mr. Jonathan D. Farthing, HQ AFCEE/ECA 3207 North Road, Brooks AFB, TX 78235–5363, (210) 536–3787.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–14847 Filed 6–10–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy. This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160).

The subsequent arrangement RTD/CA(KO)–1 concerns the return of 8,431 grams of CANFLEX Fuel Bundle of which 6,747 grams consists of 111.7 grams of the isotope U–235 (1.64 percent enrichment) and the remaining 1,684 grams consists of 33.3 grams of the isotope U-235 (1.98 percent enrichment). Included in this return is 5,153 grams of enriched sintered UO2 pellets of which 3,965 grams consists of 65 grams of the isotope U-235 (1.64 percent enrichment) and the remaining 1,188 grams consists of 23.5 grams of the isotope U-235 (1.98 percent enrichment). The material is being returned to Canada from the Republic of Korea to be irradiated for performance test in NRU reactor in Canada as part of a Joint Canada/Korea fuel development program. This will be the first of a series of returns to Canada until the total amount of material originally transferred to the Republic of Korea to be incorporated into CANFLEX fuel bundles is returned to AECL. The original retransfer was implemented September 1998 and is documented as RTD/KO(CA)–7.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than June 28, 1999.

Dated: June 7, 1999.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 99–14883 Filed 6–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Floodplain and Wetlands Involvement; Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada

AGENCY: Department of Energy.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to construct, operate and monitor, and eventually close a geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nye County, Nevada. As part of its proposal, DOE is considering shipping spent nuclear fuel and high-level radioactive waste in the State of Nevada over a rail line that would be constructed or over an existing highway route that may need upgrading to accommodate heavy-haul trucks. Portions of the rail corridor or highway route would cross perennial and ephemeral streams and their associated floodplains, as well as possible wetlands. Furthermore, portions of the transportation system in the immediate vicinity of the proposed repository would be located within the 100-year floodplains of Midway Valley Wash, Drillhole Wash, Busted Butte Wash and/or Fortymile Wash. No other aspect of repository-related operations or nuclear or nonnuclear repository facilities would be located within the 500-year or 100-year floodplains of these washes. In accordance with DOE regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR Part 1022), DOE will prepare a floodplain and wetlands assessment commensurate with proposed decisions and available information. The assessment will be included in the Environmental Impact Statement (EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada. A draft of this EIS is scheduled to be published during the summer of 1999.

DATES: The public is invited to comment on this notice on or before July 1, 1999. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments on this notice should be addressed to Ms. Wendy Dixon, EIS Project Manager, Yucca Mountain Site Characterization Office, U.S. Department of Energy, P.O. Box 30307, M/S 010, Las Vegas, Nevada 89036–0307. Comments also can be submitted via electronic mail to: eisr@notes.ymp.gov.

FOR FURTHER INFORMATION CONTACT:

Proposed Action: Ms. Wendy Dixon, EIS Project Manager, at the above address, or by calling (800)–881–7292.

Floodplain and Wetlands Environmental Review Requirements: Ms. Carol Borgstrom, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202)–586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: In accordance with the Nuclear Waste Policy Act, as amended, DOE is studying Yucca Mountain in Nye County, Nevada, to determine its suitability for the deep geologic disposal of commercial and DOE spent nuclear fuel and high-level radioactive waste. In 1989, DOE published a Notice of Floodplain/Wetlands Involvement (54 FR 6318, February 9, 1989) for site characterization at Yucca Mountain, and in 1992 published a Floodplain Statement of Findings (57 FR 48363, October 23, 1992).

DOE is now preparing an EIS (DOE–EIS–0250) to assess the potential environmental impacts from the construction, operation and monitoring, and eventual closure of the proposed geologic repository. DOE issued a Notice of Intent to prepare the EIS on August 7, 1995 (60 FR 40164). As part of its proposal, DOE is considering shipping spent nuclear fuel and high-level radioactive waste in the State of Nevada over a rail line that would be constructed or over an existing highway route that may need upgrading to accommodate heavy-haul trucks. For the rail mode, DOE is evaluating five potential corridors (Figure 1). For the heavy-haul truck mode, DOE is evaluating three potential locations for an intermodal transfer station associated with five potential highway routes (Figure 2; an intermodal transfer station is a facility at which shipping casks containing spent nuclear fuel and high-level radioactive waste would be transferred from trains to trucks, and empty shipping casks would be transferred from trucks to trains). The rail corridors would be about 400 meters (0.25 mile) wide. The Carlin Corridor would be the longest at 520 kilometers (323 miles) followed by the Caliente (513 kilometers, 319 miles), Caliente-Chalk Mountain (345 kilometers, 214 miles), Jean (181 kilometers, 112 miles), and Valley Modified (159 kilometers, 98 miles) corridors. The heavy-haul routes would utilize existing roads and rights-of-ways which typically would be less than 400 meters (0.25 miles) in width. The Caliente Route would be the longest at 533 kilometers (331 miles) followed by the Caliente-Las Vegas (377 kilometers, 234 miles), Caliente-Chalk Mountain (282 kilometers, 175 miles), Sloan/Jean (190 kilometers, 118 miles) and Apex/Dry Lake (183 kilometers, 114 miles) routes.

Portions of the transportation system in the immediate vicinity of the proposed repository are likely to be located within the 100-year floodplains of Midway Valley Wash, Drillhole Wash, Busted Butte Wash and/or Fortymile Wash (Figure 3). Fortymile Wash, a major wash that flows to the Amargosa River, drains the eastern side of Yucca Mountain. Midway Valley Wash, Drillhole Wash and Busted Butte Wash are tributaries to Fortymile Wash. Although water flow in Fortymile Wash and its tributaries is rare, the area is subject to flash flooding from thunderstorms and occasional sustained precipitation. There are no naturally occurring wetlands near the proposed repository facilities, although there are two man-made well ponds in Fortymile Wash that support riparian vegetation.

If the Proposed Action were implemented, DOE would use an existing road during construction of the repository that crosses the 100-year floodplain of Fortymile Wash (Figure 3). This road and other features of site characterization that involve floodplains have previously been examined by DOE and a Statement of Findings was issued in 1992 (57 FR 48363, October 23, 1992). It is uncertain at this time whether this existing road would require upgrading to accommodate the volume and type of construction vehicles.

In addition, transportation infrastructure would be constructed either in Midway Valley Wash, Drillhole Wash and Busted Butte Wash, or in Midway Valley Wash, Drillhole Wash and Fortymile Wash. The decision on which washes would be involved is dependent on future decisions regarding the mode of transport (rail or truck) which, in turn, would require the selection of one rail corridor or the selection of one site for an intermodal transfer station and its associated heavy-haul route. Structures that might be constructed in a floodplain could include one or more bridges to span the washes, one or more roads that could pass through the washes, or a combination of roads and culverts in the washes. No other aspect of repository-related operation of nuclear or nonnuclear facilities would be located within 500-year or 100-year floodplains.

Outside of the immediate vicinity of the proposed repository, the five rail corridors, and the three sites for an intermodal transfer station and associated five heavy-haul routes, would cross perennial and ephemeral streams, and possibly wetlands. It is likely that a combination of bridges, roads and culverts, or other engineered features, would be needed to span or otherwise cross the washes and possible wetlands, although the location of such structures is uncertain at this time.

DOE will prepare an initial floodplain and wetlands assessment commensurate with the proposed decisions and available information. This assessment will be included in the Draft EIS that is scheduled to be issued for public comment later this summer. If, after a possible recommendation by the Secretary of Energy, the President considers the site qualified for an application to the U.S. Nuclear Regulatory Commission for a construction authorization, the President will submit a recommendation of the site to Congress. If the site designation becomes effective, the Secretary of Energy will submit to the Nuclear Regulatory Commission a License Application for a construction authorization. DOE would then probably select a rail corridor or a site for an intermodal transfer station among those considered in the EIS. Following such a decision, additional field surveys, environmental and engineering analyses, and National Environmental Policy Act reviews would likely be needed regarding a specific rail alignment for the selected corridor or the site for the intermodal transfer station and its associated heavy-haul truck route. When more specific information becomes available about activities proposed to take place within floodplains and wetlands, DOE will conduct further environmental review in accordance with 10 CFR Part 1022. Information that would be considered in a subsequent assessment includes, for example, the identification of 500-year and 100-year floodplains among feasible alignments of the selected rail corridor or the site of the intermodal transfer station and its associated heavy-haul route, identification of individual wetlands, and whether the floodplains and wetlands could be avoided. If the floodplains and wetlands could not be avoided, information on specific engineering designs and associated construction activities in the floodplains and wetlands also would be needed to permit a more detailed assessment and to ensure that DOE minimizes potential harm to or within any affected floodplains or wetlands.

Issued in Las Vegas, Nevada, on the 4th day of June 1999.

Wendy Dixon,

EIS Project Manager.

BILLING CODE 6450–01–P

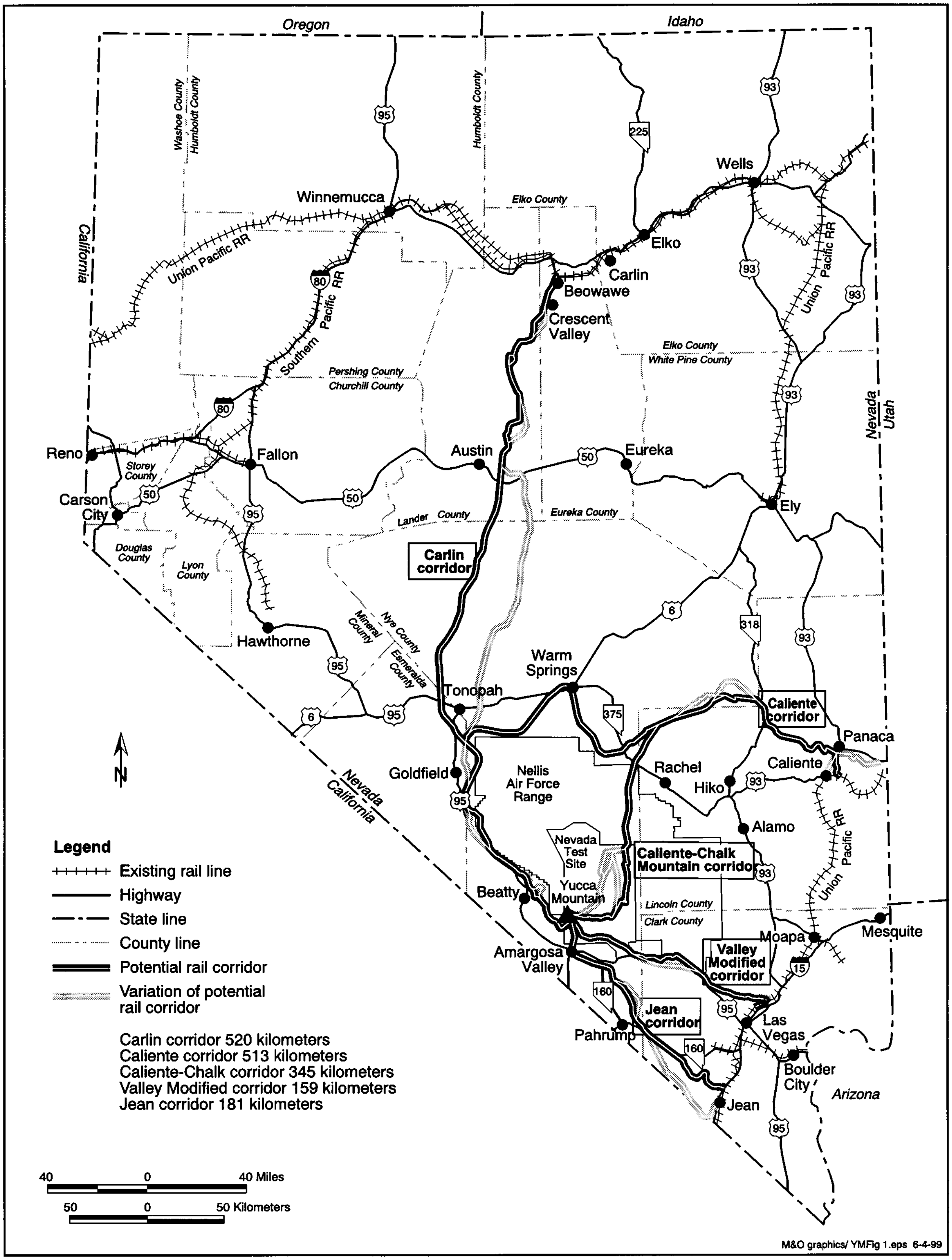

Figure 1. Potential Nevada rail corridors to Yucca Mountatin.

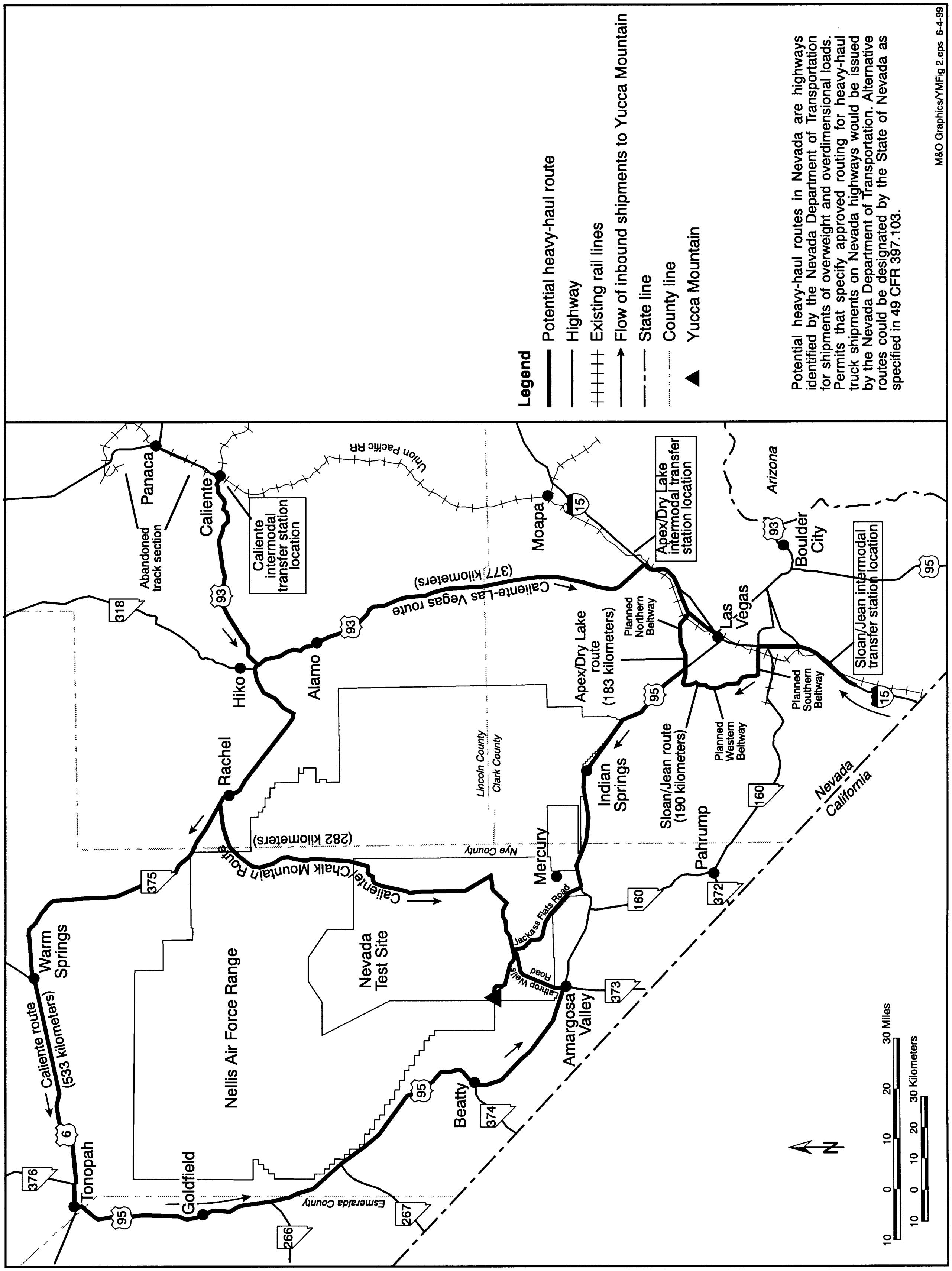

Figure 2. Potential routes in Nevada for heavy-haul trucks.

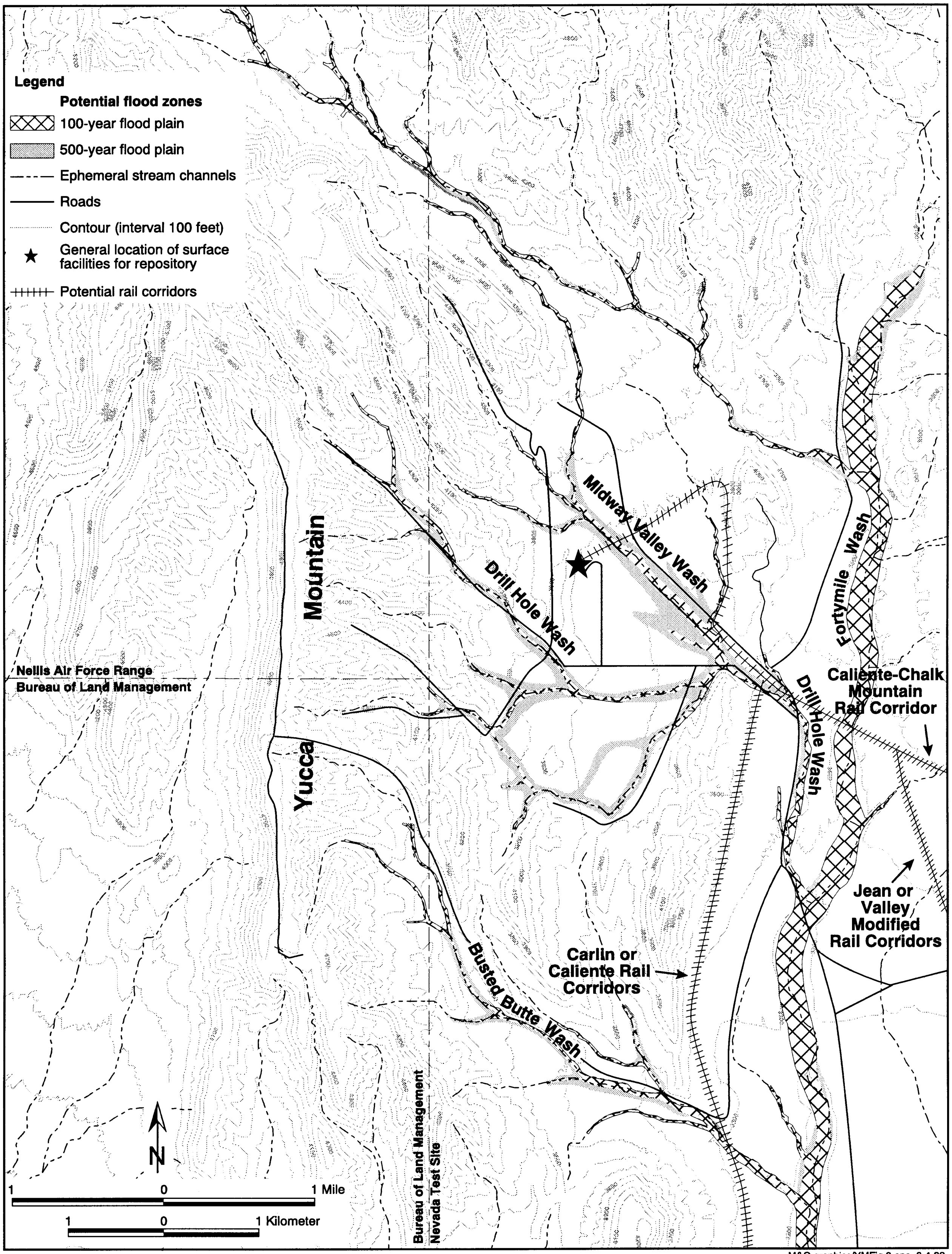

Figure 3. Yucca Mountain site topography, plains, and potential rail corridors.

[FR Doc. 99–14880 Filed 6–10–99; 8:45 am]

BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Chicago Operations Office; Solicitation for Financial Assistance Applications for Sensor and Control Technologies for Industrial Manufacturing Applications

AGENCY: Department of Energy.

ACTION: Notice of solicitation availability.

SUMMARY: The Department of Energy (DOE) announces its interest in receiving applications for federal assistance to assist U.S. manufacturing industries in research, development, and demonstration projects on advanced sensor and control technologies. Each project must: (1) meet the high priority needs identified in the eight Industries of the Future (IOF) technology roadmaps. Roadmaps have been issued for each of the following eight IOF's: agriculture, aluminum, chemical, forest products, glass, metalcasting, mining, and steel; (2) have wide applicability across the IOF industries; and (3) improve energy efficiency and productivity as well as reduce the impact of U.S. manufacturing industries on the environment through a reduction in the generation of wastes and pollutants. The financial assistance applications should clearly describe how the project objectives will be achieved.

DATES: The complete solicitation document will be available on or about June 17, 1999, on the Internet by accessing the DOE Chicago Operations Office Acquisition Group Home Page at *http://www.ch.doe.gov/business/ACQ.htm* under the heading ''Current Solicitations'', Solicitation No. DE–SC02–99CH10999. Applications (in hard copy only) will be due at the DOE Chicago Operations Office no later than 3:00 p.m. local time on August 20, 1999. Any amendments to this solicitation will be posted on the Internet. Please note that users will not be alerted when the solicitation is issued on the Internet or when amendments are posted on the Internet. Prospective applicants are therefore advised to check the above Internet address on a daily basis. The cooperative agreements are expected to be awarded on or about January 15, 2000.

ADDRESSES: Completed applications referencing Solicitation No. DE–SC02–99CH10999 must be submitted to: U.S. Department of Energy, Chicago Operations Office, Attn: Denise Clarke, Bldg. 201, Room 3D–04, 9800 South Cass Avenue, Argonne, IL 60439–4899.

SUPPLEMENTARY INFORMATION: DOE's Office of Industrial Technology (OIT) supports industry efforts to increase energy efficiency, reduce waste, and increase productivity. OIT's goal is to accelerate research, development, demonstration and commercialization of energy efficient, renewable and pollution prevention technologies benefiting industry, the environment, and U.S. energy security.

As a result of this solicitation, DOE anticipates providing a total of $1 million in FY 2000. The awards made through this solicitation will provide seed support (in the range of $100,000 or less) for innovative research and development during the first year of a phased approach. This will allow more data or information to be generated for assessment of the likelihood of success of the proposed research and development in impacting IOF vision plans. A down-selection process will occur after the completion of the proposed Phase I research and development to determine whether a project awarded under this solicitation will continue to the next stage of development and demonstration. The down-selection process will be based on an assessment of the following: the project's progress toward meeting the Phase I performance objectives; its impact on IOF industry vision plans; and the remaining technological risks. The out-year funding from DOE/OIT, which is subject to availability of funds, shall not exceed $400,000 per project per year; and the life cycle for awards resulting from this solicitation, from research through development and demonstration, is normally three years, with a potential extension of two additional years for exceptional quality of innovation and leap-frog advancement to sensor and control technologies.

Any non-profit or for-profit organization, university, or other institution of higher education, or non-federal agency or entity is eligible to apply. DOE National Laboratory participation as a prime participant is not allowed but is permissible as a subcontractor and is limited to no more than 50% of the total project costs for each budget period. A minimum non-federal cost-sharing commitment of 20% of the total approved budget for each budget period is required for each awardee. For demonstration projects, the minimum cost-sharing commitment is 50% of the total cost of the project.

FOR FURTHER INFORMATION CONTACT: Denise Clarke at (630) 252–2107, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899, by facsimile at (630) 252–5045 or by electronic mail at *denise.clarke@ch.doe.gov.*

Issued in Argonne, Illinois on June 4, 1999.

John D. Greenwood,

Acquisition and Assistance Group Manager.

[FR Doc. 99–14882 Filed 6–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response × proposed frequency of response per year × estimated number of likely respondents.)

DATES: Comments must be filed on or before July 12, 1999. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–882T, ''Generic Clearance of Questionnaire Testing, Evaluation and Research.

2. Energy Information Administration; OMB No. 1905–0186; Extension of a Currently Approved Collection; Voluntary.

3. The EIA–882T is used to conduct pretest/pilot surveys (personal visit or face-to-face interviews, telephone interviews, mail questionnaires), focus groups, and cognitive interviews. Data are used to modify questionnaires to improve the quality of data. Samples of respondents are selected to participate.

4. Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

5. 1,000 hours (4,000 respondents × 1 response per year × .25 hours per response).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., June 7, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99–14881 Filed 6–10–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–516–001, FERC–516]

Information Collection Submitted for Review and Request for Comments

June 7, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Public Law 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of January 28, 1999 (64 FR 4402) and has made this notification in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, CI–1, Attention: Michael Miller, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–516 ''Electric Rate Schedule Filings''

2. *Sponsor:* Federal Energy Regulatory Commission

3. *Control No.:* OMB No. 1902–0173.

The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There are decreases to the reporting burden as a result of the implementation of Order No. 888 and an increase in the number of tariff service agreements which have reduce the preparation time for filings. This a mandatory information collection requirements and the Commission does not consider the information to be confidential.

a. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Part 1, Sections 15, 19, 20, 205 and 206 of the Federal Power Act (FPA) (16 U.S.C. 808, 812, 813, 824d–f). A public utility must obtain Commission authorization for all rates and charges made, related contracts and service conditions, and for wholesale sales and transmission of energy in interstate commerce. The Commission is authorize to investigate the rates charges by public utilities subject to its jurisdiction. If after investigation the Commission determines that the rates, terms or conditions are ''unjust and unreasonable or unjustly discriminatory or unduly preferential,'' it is authorized to determine and prescribe the just and reasonable rates, terms or conditions. Either full or abbreviated cost data is required to support the proposed rate levels as part of the justification for the complete electric rate schedules. Submission of the information is necessary because of the complexity of the electric industry and the controversial nature of many of the elements of a utility's cost to provide service. Sufficient detail must be obtained for the Commission to make informed and equitable decisions concerning the appropriate level of rates, and to aid customers and other parties who wish to challenge the rate proposed by the utility. Failure to issue these requirements would mean the Commission is not meeting its statutory obligations. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Parts 35 and 292.

5. *Respondent Description:* The respondent universe currently comprises on average 858 companies subject to the Commission's jurisdiction.

6. *Estimated Burden:* 536,800 total burden hours, 858 respondents, 3.42 responses annually, 183 hours per response (average).

7. *Estimated Cost Burden to Respondents:* $28,359,815 (536,800 hours × $109,889 (salary + benefits) ÷ 2080 work hours per year)).

Authority: Sections 15, 19, 20, 205 and 206 of the Federal Power Act (FPA), (16 U.S.C. 808, 812, 813, 824d–f).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14814 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–329–000]

Chandeleur Pipe Line Company; Notice of Tariff Filing

June 7, 1999.

Take notice that on June 2, 1998, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets hereto in compliance with the Commission's Order No. 587–K issued April 2, 1999 in the above-referenced docket, Tariff Sheet Nos. 18, 18A, 19, 19A, 19B, 19C, 45, 65A, 69, 69A and 69B to be effective July 2, 1999 in order to implement the GISB Standards adopted under Order No. 587–K.

Chandeleur states that it is serving copies of the filing to its customers, State Commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14811 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–540–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

June 7, 1999.

Take notice that on June 1, 1999 Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP99–540–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate as a jurisdictional facility a 20-inch tap constructed and placed in service under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA) to facilitate delivery of natural gas on behalf of Acadian Gas Pipeline Company (Acadian), an intrastate pipeline company, in St. Charles Parish, Louisiana, under Koch Gateway's blanket certificate issued in Docket No. CP82–430, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Koch Gateway requests authorization to place into jurisdictional service a 20-inch tap installed under Section 311(a) of the NGPA and Section 284.3(c) of the Commission's regulations. This facility is located on Koch Gateway's pipeline designated as Index 300, in St. Charles Parish, Louisiana.

Koch Gateway states that, currently, use of this facility is limited solely to shippers utilizing transportation service under Part 284, Subpart B of the Commission's regulations. Koch Gateway further states that upon approval of this request for certification, Acadian will be able to receive gas transported to this facility pursuant to jurisdictional open-access transportation agreements as well as Part 284, Subpart B facilities will provide Acadian access to shippers utilizing Natural Gas Act transportation service and, thus, will provide Acadian with additional flexibility in obtaining gas supplies. Koch Gateway also states that Acadian estimates its peak day requirements for this facility are 200,000 Dth, and that such quantities will be transported pursuant to Koch Gateway's Firm Transportation Service and Interruptible Transportation Service Rate Schedules.

Koch Gateway states that certification of the subject facility will not have an impact on its peak day and annual deliveries because no change in service is proposed. Koch Gateway further states that it will continue operate the facility in compliance with 18 CFR, Part 157, Subpart F; that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers; and that its tariff does not prohibit the proposed change in jurisdictional status of the subject facilities or the addition of new delivery points.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14801 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–324–000]

Koch Gateway Pipeline Company; Tariff Filing

June 7, 1999.

Take notice that on June 1, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing its cash-in/cash-out report for the period April 1, 1998 through March 31, 1999.

In accordance with Section 154.209 of the Commission's Regulations, copies of this filing have been served upon Koch's customers, state commissions and other interested parties. In addition, copies of the instant filing are available during regular business hours for public inspection in Koch's offices in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 14, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us.online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14806 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–27–004]

Natural Gas Pipeline Company of America; Notice of Application To Amend Certificate

June 7, 1999.

Take notice that on May 27, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP96–27–004 an Application to Amend Certificate (Amendment) to delete the Commission's authorization for construction of certain new natural gas facilities. The existing certificate authority in this docket was issued during 1996–1998 as part of the Northern Border Project.[1] Natural's proposal is more fully set forth in the application on file with the Commission and open to public inspection. This application may be viewed at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for help).

The purpose of the Amendment is to delete the existing authority to construct and operate 4.1 miles of 36-inch pipeline looping east of Station 110 and 0.5 miles of 36-inch pipeline across the Mississippi River, which Natural no longer believes are needed. Natural has constructed and put into service the additional compression authorized for Station 110. The only construction activities concerning the looping and river crossing are preliminary site studies and the purchase and storing of steel pipe in a western Illinois storage site. Natural says that under winter conditions, this additional compression is sufficient to move an additional 110 MMcf/day of gas from Harper, Iowa to the Chicago area. Natural says that the Amendment does not raise any environmental, rate or service issues.

Any person desiring to be heard or making any protest with reference to said application should on or before June 28, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission. Any person who has previously intervened in Docket No. CP96–27–000/001/002 does not need to intervene again.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14800 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2585–002]

Northbrook Carolina Hydro, LLC; Site Visit to Idols Hydroelectric Project

June 7, 1999.

Take notice that Commission staff will hold a site visit with Northbrook Carolina Hydro, LLC, licensee for the constructed Idols Hydroelectric Project, FERC No. 2585–002. The project is located on the Yadkin River in Forsyth County, North Carolina. The site visit will be held on Wednesday, June 23, 1999, from 11:00 a.m. to approximately 2:00 p.m.

The purpose of the visit is to enable Commission staff responsible for preparing the environmental assessment of the proposed surrender of license to view the existing dam, reservoir, and nearby areas. All interested individuals, organizations, and agencies are invited to attend the site visit.

[1] See the Preliminary Determination issued on August 1, 1996 (76 FERC ¶ 16,142); Order Issuing Certificate issued on August 1, 1997 (80 FERC ¶61,147); and Order Amending Certificate issued on February 27, 1998 (82 FERC ¶ 61,207)

Participants will meet at the parking lot adjacent to the project dam. To access the project site, take Exit No. 184 (Clemmons) from I–40, located west of Winston-Salem; proceed south on Clemmons Road about 2.5 miles until the road reaches a T intersection; turn right on Ferry Road and drive about 2.0 miles, parallel to a railroad track; a few hundred yards after the road crosses this railroad track, turn right at a dirt road, which leads to the project.

If you have any questions concerning this matter, please contact Jim Haimes, EA Coordinator for the Commission, at (202) 219–2780 or J. Charles (Chuck) Ahlrichs, representative for the licensee, in Seattle, Washington at (425) 557–3680.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14804 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3071–000]

Northeast Utilities Service Company; Notice of Termination

June 7, 1999.

Take notice that on May 27, 1999, Northeast Utilities Service Company tendered for filing notification that effective May 31, 1999, Rate Schedule FERC No. NU Operating Companies 19 and supplements thereto, effective date of January 1, 1998 and filed with the Federal Energy Commission by Northeast Utilities Service Company (NUSCO), on behalf of its affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and Public Service Company of New Hampshire, is to be terminated in accordance with its terms and by mutual consent of the parties thereto.

Notice of the proposed termination has been served upon Citizens Power Sales, the sole customer served under this rate schedule.

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 June 16, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14813 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–86–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

June 7, 1999.

Take notice that on June 1, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its EFRC Gas Tariff, First Revised Volume No. 1–A: Twenty-second Revised Sheet No. 5. PG&E GT–NW requests that the above-referenced tariff sheet become effective July 1, 1999.

PG&E GT–NW asserts that the purpose of this filing is to comply with Paragraph 37 of the terms and conditions of First Revised Volume No. 1–A of its FERC Gas Tariff, ''Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages.'' These tariff changes reflect that PG&E GT–NW's fuel and line loss surcharge percentage will decrease to −0.0001% per Dth per pipeline-mile for the six-month period beginning July 1, 1999. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14812 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–325–000]

Tennessee Gas Pipeline Company; Request for Waiver and Filing of Take-or-Pay Reports

June 7, 1999.

Take notice that on June 1, 1999, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a request for waiver of Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee states that it is requesting this waiver to permit Tennessee to omit the filing of the revised tariff sheets scheduled to be filed by June 1, 1999, to be effective on July 1, 1999, because Tennessee has incurred only $25,000 of new recoverable take-or-pay costs since its last recovery filing submitted in Docket No. RP99–167.

Tennessee notes that the deferral of recovery of take-or-pay costs will not affect the accounting for additional costs and carrying charges, in accord with Article XXV, Sections 3.2 and 3.3, and the costs will be recovered through future filings pursuant to Article XXV.

Tennessee further notes that it is filing reports showing the derivation of the balances in its Demand and Volumetric Transition Cost Accounts, including carrying charge calculations, and the status of its recovery filings relative to the cap.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before

June 14, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14807 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–326–000]

Tennessee Gas Pipeline Company; Proposed Changes in FERC Gas Tariff

June 7, 1999.

Take notice that on June 1, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of July 1, 1999:

Eighth Revised Sheet No. 1
Original Sheet No. 29B
Original Sheet No. 236
Original Sheet No. 237
Original Sheet No. 238
Original Sheet No. 239
Original Sheet No. 240
Original Sheet No. 241
Tenth Revised Sheet No. 317
Ninth Revised Sheet No. 318
Sixth Revised Sheet No. 401
Third Revised Sheet No. 404
Original Sheet No. 513A
Original Sheet No. 513B
Original Sheet No. 513C
Original Sheet No. 513D
Original Sheet No. 513E
Original Sheet No. 659H
Original Sheet No. 659I
Original Sheet No. 659J
Original Sheet No. 659K
Original Sheet No. 659L
Original Sheet No. 659M
Original Sheet No. 659N
Original Sheet No. 659O
Original Sheet No. 659P
Original Sheet No. 659Q
Original Sheet No. 659R
Original Sheet No. 659S

Tennessee states that its filing is being made to implement new interruptible park and loan (PAL) services under Rate Schedule PAL. Tennessee states that PAL services will provide its customers with greater flexibility in managing their transportation needs and enable customer to more easily address excesses and shortages of gas supply on a temporary basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14808 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–328–000]

Tennessee Gas Pipeline Company; Proposed Changes In FERC Gas Tariff

June 7, 1999.

Take notice that on June 2, 1999, Tennessee Gas Pipeline Company (Tennessee), pursuant to Section 4 of the Natural Gas Act and Part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Original and revised tariff sheets pertaining to Rate Schedule NET 384. Tennessee requests that the tariff sheets be made effective July 1, 1999.

Tennessee states that the purpose of the tariff filing is to (1) revise Rate Schedule NET 284 to provide Rate Schedule NET shippers with an additional opportunity to convert to Part 284 service under Rate Schedule NET 284, (2) submit two pro forma service agreements under Rate Schedule NET 284, (3) provide for Authorized Overruns (AO) under Rate Schedule NET 284, (4) redefine the rights that NET 284 shippers have to use secondary receipt and delivery points.

In particular, Tennessee proposes to revise Rate Schedule NET 284 to establish a window period in which Rate Schedule NET shippers will have the opportunity to convert to Part 284 service under Rate Schedule NET 284. Specifically, Tennessee proposes to revise Section 1(b) of Rate Schedule NET 284 to permit NET shippers to convert to NET 284 service by providing notice of their election to Tennessee during the period July 1–December 1, 1999. Tennessee states that the conversions will be carried out under the newly modified terms of section 157.217 of the Commission's regulations.

Tennessee also proposes to include a provision for Authorized Overruns under Rate Schedule NET 284. The AO tariff language will be comparable to the AO provisions under Tennessee's other firm transportation Rate Schedules, i.e., Rate Schedules FT–A, FT–G, FT–GS. In particular, NET 284 shippers will be permitted to nominate Authorized Overruns only upon Tennessee's advance approval through the EBB. The per unit rate for Authorized Overruns will be the volumetric derivative of the maximum applicable charge under the shipper's contract and the NET 284 Rate Schedule designed on a 100 percent load factor basis. Authorized Overruns will have the same scheduling and allocation/curtailment priority as Authorized Overruns under other firm transportation services, as set forth in Article III, Section 5 and 6 of the General Terms and Conditions of Tennessee's FERC Gas Tariff. Tennessee's proposal will not result in any degradation of service to firm shippers because AO quantities have a lower priority than firm primary, secondary and tertiary service.

Tenesseee is revising the NET 284 Rate Schedule to provide that a NET 284 shipper's use of secondary receipt and delivery points will be limited to those points located in the NET 284 rate zone segment(s) in which the shipper has reserved capacity. Currently, NET 284 shippers have secondary rights to all points on [Tennessee's] system within Shipper's transportation Path. Under the General Terms and Conditions of Tennessee's FERC Gas Tariff, Transportation Path is defined as the zone of primary receipt through the zone of primary delivery. However, unlike Rate Schedule FT–A shippers, NET 284 shippers do not reserve capacity by zones; they reserve capacity by rate zone segments. Moreover, the NET 284 rate zone segments do not correspond to zone on the Tennessee system. Under the existing tariff, a NET 284 shipper which reserves capacity in a rate zone segment which includes only a portion of a zone, has secondary rights to all points in the zone, including points which are not located in the rate zone segment covered by the shipper's reservation charges. In order to remedy this situation, Tennessee proposes to revise Rate Schedule NET 284 to provide that NET 284 shippers will have secondary rights only to those points located in NET rate zone segment(s) in which they have reserved capacity. Tennessee states that the proposed tariff revision is consistent with the Commission's general policy that shippers should only be able to access secondary receipt and delivery points on portions of the system which are covered by their reservation charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14810 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–327–000]

Texas Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

June 7, 1999.

Take notice that on June 1, 1999, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 1999:

Thirty-first Revised Sheet No. 10
Fourteenth Revised Sheet No. 10A
Nineteenth Revised Sheet No. 11A
Fifteenth Revised Sheet No. 11B
Twenty-ninth Revised Sheet No. 12
Fourth Revised Sheet No. 208
Original Sheet No. 208A

Texas Gas states that the filing seeks to recover under the provisions of Order No. 528 addition take-or-pay settlement payments made by Texas Gas as a result of certain obligations to indemnify a producer against additional royalty obligations arising out of the producer's prior take-or-pay settlement with Texas Gas. Texas Gas proposes to absorb 25 percent of the costs and seeks authority to recover 75 percent or approximately $1.3 million, exclusive of interest, via a commodity surcharge of $.0020/MMBtu on all mainline throughput, with no direct bill recovery. The Order No. 528 commodity surcharge is scheduled to be in effect for a 12-month period beginning July 1, 1999.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14809 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–16–006]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

June 7, 1999.

Take notice that on May 18, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report showing that on April 27, 1999, Transco submitted refunds (total principal and interest amount of $4,389,744.64) to all affected shippers in Docket Nos. CP96–16–005, CP97–193–002, and CP97–193–003.

Transco states that on October 1, 1997, as supplemented on October 3, 1997, Transco filed tariff sheets in Docket No. CP96–16 which set forth the initial incremental reservation rates for the SunBelt firm transportation service (SunBelt filing). At the time the SunBelt filing was made Transco's rate of return had not been determined by the Commission in Docket No. RP95–197. In the SunBelt filing Transco stated that upon resolution of the rate of return issue Transco would file revised tariff sheets in Docket No. CP96–16 to effective November 1, 1997.

Transco states that on March 1, 1999, Transco filed revised tariff sheets in Docket No. CP96–16–005 (March 1 filing), to reflect in the SunBelt incremental reservation rates the rate of return approved by the Commission in its Order on rehearing in Docket RP95–197–033 on December 1, 1998 (85FERC ¶61,323) (Opinion No. 414–B). The Commission approved Transco's March 1 filing on March 29, 1999. Transco began assessing the reduced SunBelt reservation rates effective April 1, 1999.

Transco also states that on October 1, 1997, Transco filed tariff sheets which set forth the initial reservation rate surcharge for the Maiden Delivery Lateral Expansion project (Maiden Lateral filing). In the Maiden Lateral filing Transco stated that upon resolution of the rate of issue in Docket No. RP95197–000, Transco would file revised tariff sheets to reflect that resolution in the reservation rate surcharge, effective November 1, 1997.

Transco states that on March 1, 1999 revised tariff sheets were filed in Docket Nos. CP97–193–002 and CP97–193–003 to reflect the rate of return approved by the Commission in Opinion 414B. The Commission approved those tariff sheets on March 29, 1999. Transco began assessing the reduced Maiden Lateral reservation surcharge effective April 1, 1999.

Transco further states that transportation refunds have been calculated for the period November 1, 1997 through March 31, 1999 based on the difference between the amounts billed and amounts calculated utilized the revised rates.

Any person desiring to protest said filing should file protests with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14799 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–281–000]

Transwestern Pipeline Company; Granting Late Intervention

June 7, 1999.

Motions to intervene in the above-captioned proceedings were due on April 19, 1999. Pacific Gas and Electric Company and PNM Gas Services, a division of Public Service Company of New Mexico, filed motions to intervene out of time. No party filed an answer in opposition to the motion.

The petitioner appears to have a legitimate interest under the law that is not adequately represented by other parties. Granting the intervention will not cause a delay or prejudice any other party. It is in the public interest to allow the petitioner to appear in this proceeding. Accordingly, good cause exists for granting the late intervention.

Pursuant to Section 375.302 of the Commission's Regulations (18 CFR 375.202), the petitioner is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. 717–717(W). Participation of the late intervenor shall be limited to matters set out in its motion to intervene. The admission of the late intervenor shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14805 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–78–000, et al.]

Enron Capital and Trade Resources Corp., et al.; Electric Rate and Corporate Regulation Filings

June 4, 1999

Take notice that the following filings have been made with the Commission:

1. Enron Capital & Trade Resources Corp., SCC–L1, L.L.C., SCC–L2, L.L.C. and SCC–L3, L.L.C.

[Docket No. EC99–78–000]

Take notice that on June 2, 1999, Enron Capital & Trade Resources Corp., on behalf of itself and its wholly-owned subsidiaries SCC–L1, L.L.C., SCC–L2, L.L.C. and SCC–L3, L.L.C. tendered an application for approval of a corporate reorganization pursuant to Section 203 of the Federal Power Act.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Colorado Cogen Operators, LLC

[Docket No. EG99–153–000]

Take notice that on May 28, 1999, Colorado Cogen Operators, LLC, 4845 Pearl East Circle, Suite 300, Boulder, Colorado 80301 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Colorado limited liability company. The Applicant operates or intends to operate three separately owned eligible facilities, all gas-fired cogeneration facilities, that are located in close proximity to each other in the town of Brush, Colorado (the Facilities). One of the Facilities is under construction and will be 60 megawatts; one is operating as a 50-megawatt plant but is expected (subject to modification of air permits) to be upgraded to as high as 80 megawatts; and one is a 68-megawatt qualifying facility. All of the electric output of the Facilities is or will be sold at wholesale to Public Service Company of Colorado.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Colorado Energy Management LLC

[Docket No. EG99–154–000]

Take notice that on May 28, 1999, Colorado Energy Management LLC, 4845 Pearl East Circle, Suite 300, Boulder, Colorado 80301 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Colorado limited liability company. The Applicant owns a newly constructed 60-megawatt gas-fired electric generation plant consisting of two 25-megawatt gas turbines located in the town of Brush, Colorado (the Facility). The Facility is scheduled to begin commercial operation June 20, 1999. All of the electric output of the Facility will be sold at wholesale, initially to Public Service Company of Colorado.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. AA#1 Services, LLC

[Docket No. EG99–155–000]

Take notice that on May 28, 1999, AA#1 Services, LLC, 4845 Pearl East Circle, Suite 300, Boulder, Colorado 80301 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Colorado limited liability company. The Applicant intends to operate a 75-megawatt electric cogeneration power plant (the Facility) located in Rifle, Colorado, for the plant's owners, American Atlas #1, Ltd., L.L.L.P. All of the electric output of the Facility will be sold at wholesale to Tri-State Generation and Transmission Association, Inc.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Erie Boulevard Hydropower, L.P.

[Docket No. EG99–156–000]

Take notice that on May 28, 1999, Erie Boulevard Hydropower, L.P.

(Applicant), with its principal office at c/o Orion Power Holdings, Inc., 111 Market Place, Suite 520, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant will be engaged in owning and operating 72 eligible facilities located in New York State. The eligible facilities consist of approximately 660 MW of hydroelectric generation plants. The Applicant will sell electric energy exclusively at wholesale. Electric energy produced by the eligible facilities is sold exclusively at wholesale.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Minergy Neenah, L.L.C.

[Docket No. EG99–157–000]

Take notice that on June 1, 1999, Minergy Neenah, L.L.C. (Minergy Neenah) filed an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application. On June 3, 1999, Minergy Neenah filed the Affidavit of Richard O'Conor that was inadvertently omitted from the application.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Reliant Energy Indian River, LLC

[Docket No. EG99–158–000]

Take notice that on June 2, 1999, Reliant Energy Indian River, LLC (Reliant Indian River) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. § 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission).

Reliant Indian River is a Delaware limited liability company and proposes to acquire the Indian River generating facility located in Brevard County, Florida. The Indian River generating facility presently is owned by the Orlando Utilities Commission.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Colorado Power Partners

[Docket No. ER99–3077–000]

Take notice that on May 28, 1999, Colorado Power Partners (CPP), tendered for filing an application with the Federal Energy Regulatory Commission (Commission) requesting acceptance of CPP FERC Electric Rate Schedule Nos. 1 and 2; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

CPP is seeking blanket approval to sell electric energy and capacity at market-based rates from the Brush Cogeneration Facility, located in Brush, Colorado, to Public Service Company of Colorado under CPP FERC Electric Rate Schedule No. 1. CPP also requests that the Commission accept CPP FERC Electric Rate Schedule No. 2 so that CPP may make sales of energy and capacity from the Brush Cogeneration Facility to third parties at market-based rates should the opportunity arise.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Yadkin, Inc.

[Docket No. ER99–3078–000]

Take notice that on May 28, 1999, pursuant to Section 35.15(a) of the Commission's Regulations, Yadkin, Inc. (Yadkin) filed with the Federal Energy Regulatory Commission a Notice of Termination of the Interchange Service Agreement between Yadkin and Carolina Power & Light Company, effective January 30, 1959, designated as Yadkin Rate Schedule FERC No. 3.

Additionally, pursuant to Section 35.15(a) of the Commission's Regulations, Yadkin requests an effective date for this termination 60 days from the date of filing or July 28, 1999.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Pool

[Docket No. ER99–3081–000]

Take notice that on May 28, 1999, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Consolidated Edison Energy, Inc. (ConEdison). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of ConEdison's signature page does not change the NEPOOL Agreement in any manner, other than to make ConEdison a member in NEPOOL.

NEPOOL requests an effective date of June 1, 1999, for the commencement of participation in NEPOOL by ConEdison.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Pool

[Docket No. ER99–3082–000]

Take notice that on May 28, 1999, the New England Power Pool Executive Committee tendered for filing for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by ACN Power, Inc. (ACN Power). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of ACN Power's signature page would permit NEPOOL to expand its membership to include ACN Power. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make ACN Power a member in NEPOOL.

NEPOOL requests an effective date of July 1, 1999, for commencement of participation in NEPOOL by ACN Power.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Pool

[Docket No. ER99–3083–000]

Take notice that on May 28, 1999, the New England Power Pool (NEPOOL or Pool) Executive Committee filed a request for termination of membership in NEPOOL, with an effective date of June 1, 1999, of e prime, inc. Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by e prime, inc.. The New England Power Pool Agreement, as amended (the ''NEPOOL Agreement''), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of e prime, inc. with an effective date of June 1, 1999 would relieve this entity, at e prime, inc.'s request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove e prime, inc. from membership in the Pool.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Montaup Electric Company

[Docket No. ER99–3096–000]

Take notice that on May 28, 1999, Montaup Electric Company (Montaup) hereby tendered for filing information relating to its cost of transmission service pursuant to the settlement agreement in Docket Nos. ER97–4691–000 and ER98–861–000.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Colorado Energy Management LLC

[Docket No. ER99–3104–000]

Take notice that on May 28, 1999, Colorado Energy Management LLC, tendered for filing pursuant to Rules 205 and 207 an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective June 20, 1999, and accepting two power purchase agreements between it and Public Service Company of Colorado, running continuously from June 20, 1999, through April 30, 2007.

In transactions where Colorado Energy Management LLC will sell electric energy and/or capacity at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed with the purchasing party.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Riverside Canal Power Company

[Docket No. ER99–3105–000]

Take notice that on May 28, 1999, Riverside Canal Power Company tendered for filing a Power Purchase and Sale Agreement for short term transactions between Riverside Canal Power Company and Williams Energy Marketing & Trading Company to be in effect as of May 1, 1999.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Mountainview Power Company

[Docket No. ER99–3106–000]

Take notice that on May 28, 1999, Mountainview Power Company tendered for filing a Power Purchase and Sale Agreement for short term transactions between Mountainview Power Company and Williams Energy Marketing & Trading Company to be in effect as of May 1, 1999.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Electric Company

[Docket No. ER99–3108–000]

Take notice that on May 28, 1999, Commonwealth Electric Company (Commonwealth) tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and DukeSolutions, Inc. (DukeSolutions). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to DukeSolutions under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Cambridge Electric Light Company

[Docket No. ER99–3109–000]

Take notice that on May 28, 1999, Cambridge Electric Light Company (Cambridge) tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and DukeSolutions, Inc. (DukeSolutions). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to DukeSolutions under Cambridge's open access transmission tariff accepted for filing in Docket No. ER97–1337–000, subject to refund and issuance of further orders.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho County Light & Power Cooperative Association, Inc.

[Docket No. ES99–39–000]

Take notice that on June 1, 1999, Idaho County Light & Power Cooperative Association, Inc. (ICL&P), tendered for filing an application to issue securities pursuant to section 204 of the Federal Power Act (FPA), 16 U.S.C. § 824c, and Part 34 of the Regulation of the Federal Energy Regulatory Commission (Commission), 18 CFR 34. ICL&P's filing is available for public inspection at its offices in Grangeville, Idaho.

ICL&P respectfully requests that the Commission: (1) authorize long-term borrowing up to $3 million over a two year period commencing July 15, 1999, pursuant to a loan agreement and (2) exempt ICL&P from any requirement to use competitive bidding or negotiated placement in relation to the debt.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. New York State Electric & Gas Corporation

[Docket No. ER99–3107–000]

Take notice that on May 28, 1999, New York State Electric & Gas Corporation, (NYSEG) tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.15, a notice of cancellation (Cancellation) of Rate Schedule FERC No. 106 (Rate Schedule) between NYSEG and Long Island Lighting Company (LILCO).

NYSEG requests that the Cancellation be deemed effective as of May 29, 1999.

NYSEG served copies of the filing upon the New York State Public Service Commission and LILCO.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. 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. 99–14798 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Project; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No:* 67–085.

c. *Date Filed:* May 5, 1999.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Big Creek Nos. 2A and 8 and Eastwood Project.

f. *Location:* San Joaquin River, Eastern Fresno County, California. The project occupies in part, lands of the Sierra National Forest.

g. *Filed Pursuant to:* 18 CFR § 4.200.

h. *Applicant Contact:* Mr. Bryant C. Danner, Executive Vice President and General Counsel, Southern California EdisonCompany, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (626) 302–4459

i. *FERC Contact:* Any questions on this notice should be addressed to Anumzziatta Purchiaroni at (202) 219–3297, or e-mail address: annumzziatta.purchiaroni@ ferc.fed.us

j. *Deadline for filing comments and or motions:* July 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (67–085) on any comments or motions filed.

k. *Description of Amendment:* The licensee proposes to replace the existing deteriorating water conduit pipeline on Chinquapin and Camp 62 Creeks with a system where both creeks enter Ward Tunnel directly via shafts bored from both diversions. The licensee also proposes to construct a new diversion on Chinquapin Creek, decommission the old diversion, and construct two temporary access roads to facilitate the drilling of bore holes and removal of the abandoned facilities. The project boundary will not be increased to accommodate the new project works.

l. *Locations of the application:* a copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commissions' mailing should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requriements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14802 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydrolectric Project; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 1494–181.

c. *Date Filed:* April 22, 1999.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola.

f. *Location:* The Pensacola Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mary E. Von Drehle, Grand River Dam Authority P.O. Box 409, Vinita, OK 74301 (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Jon Cofrancesco at Jon.Cofrancesco@ferc.fed.us or telephone 202–219–0079.

j. *Deadline for filing comments and or motions:* July 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20416.

Please include the project number on any comments or motions filed.

k. *Description of Project:* 1494–181 Grand River Dam Authority, licensee for the Pensacola Project, requests Commission authorization to issue a permit to Terry Frost, d/b/a/ Cherokee Yacht Club (permittee), to make modifications to an existing commercial marina located on Duck Creek within the project's Grand Lake. The existing facility contains five boat docks with a total of 187 slips and a breakwater. The permittee proposes to add 12 slips to the existing boat docks, bringing the total number of slips to 199, and to add a gas dock containing 3 slips.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14803 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed May 31, 1999 Through June 04, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990183, DRAFT SUPPLEMENT, COE, NM, Rio Grande Floodway, Flood Protection Plan, San Acacia to Bosque del Apache Unit, Socorro County, NM, Due: July 26, 1999, Contact: Anthony J. Apodaca III (505) 342–3364.

EIS No. 990184, FINAL EIS, FAA, CT, Sikorsky Memorial Airport, Proposed Runway 6–24 Improvements, Construction, Stratford, CT, Due: July 12, 1999, Contact: John Silva (781) 238–7602.

EIS No. 990185, FINAL EIS, NPS, VT, Marsh-Billings-Rockefeller National Historical Park, General Management Plan, Implementation, Woodstock, VT, Due: July 12, 1999, Contact: Rolf Diamant (802) 457–3368.

EIS No. 990186, DRAFT EIS, BLM, NM, Rio Puerco Resource Management Plan Amendment, Managing Land and Resource for EL Malpais National Conservation Area and Chain of Craters Wilderness Study Area, Lies South of the City of Grants, Cibola County, NM, Due: September 24, 1999, Contact: Kent Hamilton (505) 761–8700.

EIS No. 990187, FINAL EIS, USN, GU, AK, AS, HI, Marianas Islands Military Training, Implementation, Marianas Training Plan, Guam, Commonwealth of the Northern Mariana Islands, Asia, Hawaii and Alaska, Due: July 12, 1999, Contact: Stanley Uehara (808) 471–9338.

EIS No. 990188, FINAL EIS, NAS, CA, Programmatic EIS—NASA Ames Aerodynamic Testing Program, Implementation, Analyzation of the Noise Envelope of Future Wind Tunnel Testing at the National Full-Scale Aerodynamic Complex (NFAC), NASA Ames Research Center, Moffet Field, Santa Clara County, CA, Due: July 12, 1999, Contact: Sandra Olliges (202) 358–1112.

EIS No. 990189, DRAFT EIS, AFS, CA, Herger-Feinstein Quincy Library Group Forest Recovery Act, Establishing and Conducting a Pilot Project, Lassen, Plumas and Tahoe National Forests, Shasta, Lassen, Tehama, Yuba, Plumas and Battle Counties, CA, Due: July 26, 1999, Contact: David Peters (530) 283–7821.

Amended Notices

EIS No. 990168, FINAL EIS, AFS, AK, Sea Level Harvest Timber Sale, Implementation, Tongass Coast Guard Permit, NPDES Permit and COE Section 10 and 404 Permit, Revillagigedo (Revilla) Island, AK, Due: July 12, 1999, Contact: Craig Trulock (907) 228–4125. Published FR–06–11–99—Correction to Due Date and Title.

Dated: June 8, 1999.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 99–14904 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 17, 1999 through May 21, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–BLM–G02008–NM Rating EC2, Bistil/De-Na-Zin Wilderness Oil and Gas Development, To Drill 13 Oil and Gas Wells on Two Leases, Permit to Drill and Right-of-Way Permit, San Juan County, NM.

Summary: EPA expressed environmental concerns due to potential impacts to the wilderness area. EPA requested that BLM consider selection of Alternative A as the agency preferred alternative. However, EPA would not object to the selection of the No Action Alternative, if chosen.

ERP No. D–COE–E39048–FL Rating LO, Alligator Chain of Lakes and Lake Gentry Extreme Drawdown and Habitat Enhancement Project, Implement Aquatic Habitat Enhancement, Osceola County, FL.

Summary: EPA had no objections to the proposed drawdown of the Alligator Chain and Lake Gentry in order to promote fisheries production and recreational opportunities.

ERP No. D–FAA–D51026–00 Rating EC2, Potomac Consolidated Terminal (PCT) Radar Approach Control Facility (TRACON), To consolidated four TRACON in Baltimore-Washington Metro Terminal Area, Possible Site is Vint Hill Farms, VA, DC and MD.

Summary: EPA expressed environmental concern regarding the proposed action as it relates to future air traffic actions. EPA requested clarification of this issue.

ERP No. D–FAA–F51044–OH Rating EO2, Toledo Express Airport (TOL), Proposed Noise Compatibility Plan Air Traffic Actions and Proposed Aviation Related Industrial Development, Airport Layout Plan and Funding, Lucas County, OH.

Summary: EPA expressed environmental objections due to potentially significant noise impacts. EPA expressed detailed comments regarding the generic nature of the DEIS and the lack of interagency coordination along with detailed comments on noise, wetlands and supporting data.

Final EISs

ERP No. F–BOP–D80028–WV Preston County Federal Correctional Facility, Construction, Preston County, WV.

Summary: EPA expressed environmental concerns regarding potential wetland impacts that should be avoided. Mitigation measures will be required for wetland impacts that cannot be avoided.

ERP No. F–BOP–D81030–WV Ohio and Tyler Counties Federal Correctional Facility, Construction and Operation, Three Possible Sites: Wheeling-Ohio County Airport Industrial Park, Fort Henry and Iver Flats, Ohio and Tyler Counties, WV.

Summary: EPA expressed environmental concerns due to potential wetlands impacts. Mitigation measures will be required for wetland impacts (building or road placement) that cannot be avoided. EPA concurs generally with the decisions presented in this document and continues to encourage early delineation of the wetlands to allow the facility design to preferably avoid or minimize the wetlands impacts.

ERP No. F–TVA–E39038–TN Columbia Dam Component of the Duck River Project, Implementation, Use of Lands Acquired, Possible COE Section 404 Permit, Maury County, TN.

Summary: EPA expressed environmental concerns regarding the proposed reuse of lands and the attendant pollution potential associated with development. EPA also expressed concern about the development of the Fountain Creek Reservoir for water supply from a potential wetlands inundation and development perspective.

Dated: June 8, 1999.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 99–14905 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6358–8]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency gives notice of a meeting of the Good Neighbor Environmental Board.

The Good Neighbor Environmental Board was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The Board meets three times annually. Members of the public are invited to provide oral and/or written comments to the Board. Time will be provided at the meeting to obtain input from the public.

DATES: The Board will meet on June 24 and 25, 1999. The Board will meet on June 24 from 8:30 a.m. to 4:00 p.m. and on June 25 from 8:30 a.m. to 2:30 p.m.

ADDRESSES: Marriott Hotel-University Park, Tucson, Arizona located at 880 E. 2nd Street. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Medina-Ortiz, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2695.

Dated: May 27, 1999.

Melanie Medina-Ortiz,

Designated Federal Officer, Good Neighbor Environmental Board.

[FR Doc. 99–14862 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

Science Advisory Board; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several Committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Health and Ecological Effects Subcommittee (HEES)

The Health and Ecological Effects Subcommittee (HEES) of the Advisory Council on Clean Air Compliance Analysis (Council) will review the draft Prospective Study: Report to Congress, with a focus on the health and ecological aspects of the Clean Air Act Amendments (CAAA) Section 812 Prospective Study data. The HEES will meet on Monday, June 28, 1999 from 9:30 am to 5:00 pm and Tuesday, June 29, 1999 from 9:00 am to 4:00 pm. The meeting will take place in the Science Advisory Board Conference Room M3709, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The last meeting of the HEES meeting was announced in the **Federal Register** [See 64 FR 15160, March 30, 1999]; a history of HEES Advisories can be found in that notice.

The draft charge to the HEES is as follows:

The Agency has requested that the Council—and its subsidiary HEES—review the forthcoming materials and provide advice to the Agency pursuant to the following general charge questions, consistent with the review responsibilities of the Council as defined in section 812 of the CAAA90:

(a) It has been suggested to the Agency that the WHO (1996) study provides scientific evidence of the existence of a 15 year lag between changes in PM exposure and changes in associated adverse health effects. Heretofore, however, the Agency has interpreted the WHO authors' summing of incidences at the end of the 15 exposure period of the Dockery study as a matter of mathematical convenience, not evidence of the WHO authors' belief in the existence or magnitude of a lag between changes in exposure and changes in risk of adverse health effect. What is the SAB HEES view regarding the proper interpretation and use of the WHO (1996) study? Specifically, does the HEES believe it is reasonable to assume that, based on the WHO (1996) study or other evidence, there is no reduction in risk of adverse health consequences until 15 years following a reduction in PM exposure?

(b) Are the input data used for each component of the analysis sufficiently valid and reliable for the intended analytical purpose?

(c) Are the models, and the methodologies they employ, used for each component of the analysis sufficiently valid and reliable for the intended analytical purpose?

(d) If the answers to either of the two questions above is negative, what specific alternative assumptions, data or methodologies does the Council recommend the Agency consider using for the first prospective analysis?

For Further Information: (a) *Contacting Program Office Staff and Obtaining Review Materials*—To obtain copies of the draft documents pertaining to the CAA Section 812 Prospective Study, please contact Ms. Catrice Jefferson, Office Manager, Office of Policy Analysis and Review (OPAR), (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–5580; FAX (202) 260–9766, or via e-mail at: <jefferson.catrice@epa.gov>. To discuss technical aspects of the draft document pertaining to the CAAA–90 Section 812 Prospective Study: Report to Congress, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OPAR) (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–8980; FAX (202) 260–9766, or via e-mail at: <democker.jim@epa.gov>.

(b) *Contacting SAB Staff and Obtaining Meeting Information*—To obtain copies of the meeting agendas or rosters of participants, please contact Ms. Diana L. Pozun, Management Assistant to the Council and HEES, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington, DC 20460; at Tel. (202) 260–8432; FAX (202) 260–7118; or via e-mail: <pozun.diana@epa.gov>. To discuss technical or logistical aspects of the Council and HEES subcommittee review process (Tel. (202) 260–4126; or via e-mail: <nugent.angela@epa.gov>), Designated Federal Officer to the Council and HEES, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460, FAX (202) 260–7118 or Mr. Robert Flaak, Team Leader, Committee Operations Staff (Tel. (202) 260–5133; or via e-mail: <flaak.robert@epa.gov> at the same address.

(c) *Obtaining Copies of SAB Reports*—Copies of SAB prepared final reports mentioned in this **Federal Register** Notice may be obtained immediately from the SAB Home Page (www.epa.gov/sab) or by mail/fax from the SAB's Committee Evaluation and Support Staff at Tel. (202) 260–4126, or FAX (202) 260–1889. Please provide the SAB report number when making your request. *Draft* reports in progress can be obtained from Ms. Pozun once the Committee or Subcommittee Chair has released the draft.

2. Integrated Risk Project Peer Review Subcommittee

The Integrated Risk Project Peer Review Subcommittee of the Science Advisory Board (SAB) will meet on Thursday and Friday, July 1 and 2, 1999 in room 3709 at the U.S. Environmental Protection Agency (US EPA), Waterside Mall Headquarters Building, 401 M Street, SW, Washington, DC 20460. The meeting will begin at 8:30 am and end no later than 5:30 pm each day.

Purpose of the Meeting: In 1995 EPA and the U.S. Congress asked the SAB to revisit and update the assessment of environmental risks and risk reduction strategies contained in the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection (EPA–SAB–EC–90–021). EPA also asked the SAB to: explore additional techniques and criteria for identifying environmental risks; identify risk reduction opportunities and strategies, identify uncertainties and data quality issues associated with risk rankings; provide an assessment of the costs and benefits of various risk reduction options; and propose a new framework for assessing ecosystem value.

In conducting this project, the IRP Steering Committee decided to look beyond risk comparisons; to go beyond strictly scientific considerations, and to explore the entire environmental decision-making and management process from their perspectives as scientists. In order to develop a more integrated, science-based environmental protection approach, the IRP Subcommittees considered the various technical analyses that underlie the process.

Two reports were produced. A short summary document for the general reader capturing the main points of the longer, technical, document which describe an overall framework for integrating supplemented by individual chapters on economic analysis, pollution, risk assessment, and valuation. These fall into three categories. Methodology (i.e., ecological and health effects, risk reduction options, the report card and the deliberation pieces of the valuation chapter), primer (i.e., economics), and philosophy (i.e., bulk of the valuation chapter).

The purpose for this meeting is to conduct a peer review of the reports which will be conducted by members of the SAB Executive Committee who did not participate in the IRP supported by consultants to the SAB who also did not work on the IRP project. The main focus of the Peer Review is the short report and the Steering Committee developed chapters of the long report (introduction, framework, performance evaluation, and the decision making approach) since these provide the main messages on the integration concept that we are recommending to the Agency. The individual Subcommittee reports will also be reviewed by the Peer Review Committee.

Proposed Charge Questions: The proposed charge questions are:

Charge Question 1. Does the integrated framework document as a whole provide a useful and scientifically valid concept for the Agency to develop processes and procedures for integrated environmental decision-making?

Charge Question 2. Do the chapters on ecology, health, risk reduction options, report card, and the deliberative portion of the valuation chapter describe adequate and useful methods for addressing/ranking frisks?

Charge Questions 3. Does the document provide an adequate and useful description for how this information might be linked in decision-making?

Charge Question 4. Does the economics chapter provide an adequate an useful primer for economic analysis?

Charge Question 5. Does the chapter on valuation provide and adequate and useful philosophy describing how to incorporate values into decision-making, clearly articulating that more than science is needed in the decision-making process?

Charge Question 6. Is the document clearly written, comprehensible and complete?

For Further Information Concerning the Meeting: The draft IRP reports are accessible via the SAB website (http://www.epa.gov/sab). For those without access to the web single copies of the document may be obtained by contacting Ms. Wanda Fields, Science Advisory Board (1400), US Environmental Protection Agency, 401 M Street SW., Washington DC 20460, telephone (202) 260–5510, fax (202) 260–7118; or via e-mail at: <fields.wandaepa.gov>. Member of the public desiring additional information about the meeting should contact Dr. John R. Fowle III, Designated Federal Officer, Integrated Risk Project Peer Review Subcommittee, Science Advisory Board (1400), Room 3702F, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–8325; fax at (202) 260–7118; or via e-mail at <fowle.jack@epa.gov>. A copy of the draft agenda will be available approximately two weeks prior to the meeting on the SAB website (www.epa.gov/sab) or from Ms. Wanda Fields at the address and numbers noted above.

Members of the public who wish to make a brief oral presentation to the Subcommittee must contact Dr. Fowle in writing (by email, by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, June 24, 1999 in order to be included on the Agenda. Public comments will be limited to 10 minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

3. Environmental Health Committee (EHC)

The Environmental Health Committee (EHC) of the Science Advisory Board (SAB), augmented by members of the FIFRA Scientific Advisory Panel and the EPA Children's Health Protection Advisory Committee, will meet on Tuesday and Wednesday, July 27–28, 1999 at the Sheraton Crystal Hotel, 1800 Jefferson Davis Highway, Arlington VA 22202. The hotel telephone number is 703–486–1111. the meeting will begin at 9 am and end no later than 5:30 pm.

Purpose of the Meeting: The EHC is meeting to provide advice and comment to EPA on certain revised sections of the EPA's Proposed Guidelines for Carcinogen Risk Assessment (The proposed guidelines were initially published in the **Federal Register,** Vol. 61, No. 79, April 23, 1996, pg. 17960, and were subsequently revised in December, 1998) and other issues related to childhood cancer. The Committee will examine the proposed cancer risk assessment approaches as they relate to children. Specifically, the Committee will address (a) the adequacy of the general guidance provided in various sections of the Guidelines; (b) the adequacy of the Guidelines to provide science-based assessments for use by risk managers in assessing the impact of their decisions on children; (c) the soundness of the default assumptions used in the absence of specific data; (d) the use of selected defaults as they pertain to children; (e) dose adjustment of children; (f) perinatal testing; (g) adjustments to slope factors for lifetime and partial lifetime exposure scenarios for children; and (h) exposure assessment. The Committee will also review EPA's responses to a set of nine questions concerning childhood cancer posed by the Agency's Children's Health Protection Advisory Committee to Administrator Browner by letter dated May 12, 1999. These questions range from the use of default values and the justification for departing from defaults, to latent risks and the research needed to evaluate the differential susceptibility of adults and children. The complete draft Charge for this meeting will be posted on the SAB Website (http://www.epa.gov/sab) by June 18, 1999.

At the public meeting, Agency staff and invited experts on carcinogenesis and pediatric issues will brief the Committee on revisions to the Proposed Guidelines. In concert with these presentations, EPA will present written background materials for the Subcommittee's information and consideration.

Availability of Review Materials: Copies of EPA primary background documents for the meeting may be obtained by contacting Dr. William Wood, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 564–3358; e-mail to <wood.bill@epa.gov>. Anyone desiring additional information on the substantive issues to be addressed should also contact Dr. Wood as noted above.

For Further Information: Members of the public desiring additional information about the conduct of the public meeting itself should contact Mr. Samuel Rondberg, (1400), Designated Federal Officer, Environmental Health Committee, Science Advisory Board, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (301) 812–2560; fax at (410) 286–2689; or via e-mail at <samuelr717@aol.com>. A copy of the draft agenda will be available on the SAB Website (http://www.epa.gov/sab) or upon request from Ms. Wanda Fields at (202) 260–5510, or by FAX at (202) 260–7118 or via e-mail at <fields.wanda@epa.gov> no later than June 30, 1999.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Rondberg in writing (by letter, or by e-mail—see previously stated information) no later than 12 noon Eastern Time, July 20, 1999 in order to be included on the Agenda. These oral comments will be limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc), and include at least 35 copies of an outline of the issues to be addressed, or of the presentation itself.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 7, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–14858 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–36193; FRL–6070–5]

Inert Ingredients No Longer Used in Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has removed certain chemicals from its list of pesticide product inert ingredients that are not currently used in pesticide products. Future use of these chemicals as inert ingredients in pesticide products will not be permitted unless a petitioner or registrant satisfies all data requirements as identified by the Agency, and the Agency is able to make a determination that the use of the inert ingredient will not pose unreasonable risk to human health or the environment. This notice is the result of ongoing evaluation of pesticide inert ingredients.

FOR FURTHER INFORMATION CONTACT: By mail: Vera Soltero, Minor Use, Inerts, and Emergency Response Branch (MUIERB), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone, and e-mail address: 1921 Jefferson Davis Highway, Room 707C, Arlington, VA, (703) 308–8373, e-mail: soltero.vera@epa.gov.

SUPPLEMENTARY INFORMATION:

I. How Can I Get Additional Information or Copies of Support Documents?

1. *Electronically*. You may obtain electronic copies of this document and various support documents are available from the EPA Home page at the **Federal Register**- Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr).

2. *In person*. The official record for this notice, as well as the public version, has been established under docket control number [OPP–36193], including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

II. Background

On April 22, 1987, EPA announced certain policies designed to reduce the potential for adverse effects from the use of pesticide products containing toxic inert ingredients (52 FR 13305). In developing the policy, the Agency reviewed the available data on chemicals used as inert ingredients, and concluded that some inert ingredients had potentially significant long-term health and environmental hazards associated with their use in pesticide products. The 1987 notice categorized all inert ingredients into four lists, according to toxicity, as follows: List 1 inert ingredients, described as ''inerts of toxicological concern,'' were so categorized on the basis of toxicological or adverse ecological effects which had been documented in studies subject to peer review. The criteria used for placement of inert ingredients on List 1 were discussed in detail in the November 22, 1989 **Federal Register** notice (54 FR 58314). In summary, the criteria for inclusion on List 1 included carcinogenicity, adverse reproductive effects, neurotoxicity or other chronic effects, developmental toxicity (birth defects), adverse ecological effects or the potential for bioaccumulation. List 2 inert ingredients, ''potentially toxic inerts/high priority for testing,'' are structurally similar to chemicals known to be toxic and may have data suggesting a basis for concern. List 3 inert ingredients, ''inerts of unknown toxicity,'' do not have data supporting their inclusion on Lists 1 or 2 (or 4; see below). List 4 inert ingredients, ''minimal hazard or risk inerts,'' consists of ingredients which are generally regarded as innocuous. In a subsequent **Federal Register** notice (54 FR 48314, November 22, 1989), EPA further revised List 4, creating two subcategories: (1) List 4A, ''inerts generally regarded as safe'' and (2) List 4B, ''inerts for which EPA has sufficient information to reasonably conclude that the current use pattern in pesticide products will not adversely affect public health or the environment''.

The Agency further revised List 4A in 1994 (59 FR 49400, September 28, 1994)(FRL–4872–5), and continues to evaluate the toxicity of inert ingredients. EPA's designation of inert ingredients according to list has been published as the ''List of Pesticide Product Inert Ingredients'' (May 17, 1995), and is available through the Office of Pesticide Program's Public Information and Record Integrity Branch at the address given above.

On June 24, 1998, the Agency delisted 249 inert ingredients from List 1, List 2 and List 3 (63 FR 34384)(FRL–5792–3). Many of the delisted List 1 inert ingredients were removed from pesticide products after EPA issued data call-in notices (DCIs) under section 3(c)(2)(B) of FIFRA. In response to the issuance of DCIs for List 1 inert ingredients, most registrants of products containing List 1 inert ingredients chose to cancel the registration or reformulate the product to remove the List 1 inert ingredient. According to Agency records, none of the delisted chemicals had been used in any registered pesticide product for over two years, and in most cases, had not been used as inert ingredients in registered pesticide products for over 5 years.

III. Inert Ingredients no Longer Used in Pesticide Products

The Agency has identified certain additional List 2 and List 3 inert ingredients that are no longer used in pesticide products. All of these chemicals are on the Toxics Release Inventory (TRI) published by the Agency as a source of information about toxic chemicals that are being used, manufactured, treated, transported, or released into the environment. The purpose of the TRI is to provide citizens with accurate information about potentially hazardous chemicals. Facilities meeting certain criteria are required to report releases of the approximately 600 TRI chemicals into the air, water and land, as well as reporting off-site transfers. They are also required to report on pollution prevention activities and chemical recycling.

List 2 inert ingredients which are no longer used in pesticide products are identified as follows (with chemical name and Chemical Abstracts Service (CAS) Registry Numbers:

LIST 2—INERT INGREDIENTS NO LONGER USED IN PESTICIDE PRODUCTS

Chemical Name	CAS Registry No.
Chloroethane	75–00–3
m-Cresol	108–39–4
p-Cresol	106–44–5

The chemicals *p*-cresol and *m*-cresol were included in List 2 when it was originally published as part of the Inerts Strategy in 1987. They were not delisted in June 24, 1998, but were inadvertently omitted from the updated List 2.

List 3 inert ingredients which are no longer used in pesticide products are identified as follows (with chemical name and Chemical Abstracts Service (CAS) Registry Numbers):

LIST 3—INERT INGREDIENTS NO LONGER USED IN PESTICIDE PRODUCTS

Chemical Name	CAS Registry No.
Dicyclopentadiene	77–73–6
4,4′-Isopropylidenediphenol	80–05–7
Manganese chloride	7773–01–5
Nitrocellulose	9004–70–0
Potassium bromide	7758–01–2
Safrole	94–59–7
Zinc carbonate	3486–35–9
Zinc dodecylbenzene sulfonate	12068–16–5
Zinc sulfide	1314–98–3

According to Agency records, none of the above chemicals is currently used in pesticide products. If a registrant disputes the Agency's determination concerning inert ingredients that are no longer used in pesticide products and still has an active registration for a pesticide product containing one of the chemicals identified as no longer used in pesticide products, the registrant should immediately notify the Agency as detailed in the ''ADDRESSES'' section of this notice. The registrant should include the inert ingredient name, CAS Registry No. for the inert ingredient in question and the EPA Registration Number of the pesticide product containing the inert ingredient.

IV. Future Use of Chemicals that are No Longer Permitted for Use as Inert Ingredients

Because of the toxicological and other concerns associated with List 1 and List 2 ingredients, and the fact that the EPA does not have adequate data to show that these chemicals do not result in unreasonable adverse effects on human health and the environment, the Agency does not expect to approve future applications involving the use of any of the above List 2 chemicals as ingredients. Data requirements for any such future requests will be determined by the Agency on a case-by-case basis. Use of any of the above List 3 chemicals will be considered by the Agency under the same procedures that apply to new inert ingredients specified in the April 22, 1987, Inert Ingredient Policy Statement.

V. Process for Future Removal of Inert Ingredients that are No Longer Used as Inert Ingredients

As a part of its ongoing inerts strategy, the Agency will continue to perform future reviews of List 1, List 2, and List 3 inert ingredients to identify those inert ingredients which are no longer used. The Agency will issue future **Federal Register** notices removing those chemicals from its list of inert ingredients. Any associated exemptions from the requirement of a tolerance for such chemicals when used as inert ingredients will also be revoked. The Agency will not remove any List 4A or 4B inert ingredients from its list of inert ingredients, since sufficient data have been presented to establish that the use of these chemicals as inert ingredients will not present a hazard to public health or the environment.

In an effort to identify inert ingredients which are no longer used, the Agency may contact registrants of pesticide products or manufacturers/suppliers of substances which are used as inert ingredients in pesticide formulations. This action may be necessary to verify the information currently contained in the Agency's database relative to product formulation information.

The Agency considers all alternate formulations valid for purposes of registration unless a registrant provides specific written notice to the Agency that a particular formulation will no longer be used. Therefore, the Agency encourages registrants as part of their pesticide product stewardship program to provide the Agency with written notice identifying specific formulations that are no longer used as part of the pesticide product registration and amendment process. This action will assist the Agency in better identifying those inert ingredients that are no longer used in pesticide products as well as improving the overall accuracy of the Agency's product formulation information.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 2, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–14759 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6357–9]

Voluntary Guide for Industrial Waste Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of draft guidance for public comment.

SUMMARY: The EPA, with assistance from State representatives, who serve as members of a Task Force from the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), industry, and public interest stakeholders, has developed a draft voluntary *Guide for Industrial Waste Management.* The purpose of the *Guide* is to assist facility managers, State and Tribal environmental managers, and the public in evaluating and choosing protective practices for managing non-hazardous industrial waste in new landfills, waste piles, surface impoundments, and land application units. The *Guide* recommends best management practices and key factors to take into account in siting, operating, designing, monitoring, and performing corrective action and closure and post closure care. The *Guide* is available in both paper copy and CD–ROM. The CD–ROM version of the guidance incorporates user-friendly ground-water and air models to evaluate potential risks and choose appropriate facility designs. The *Guide* is designed to complement, not supersede, state and tribal industrial non-hazardous waste management programs.

This guidance reflects four underlying principles: Adopt a multi-media approach to protect human health and the environment; Tailor management practices to risks posed by the waste and the location of the unit; Affirm State and Tribal leadership; and Foster a partnership among the public, facility managers and regulatory agencies.

DATES: Information and comments must be received on or before December 13, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–IDWA–FFFFF to: RCRA Docket

Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand delivery of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the docket number F–1999–IDWA–FFFFF. All electronic comments must be submitted as an ASCII file without the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), US EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are 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, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and some supporting material are available electronically.

The *Guide* is available on the Internet. Follow these instructions to access the information electronically.

WWW: http://www.epa.gov/industrialwaste
FTP: *ftp.epa.gov*
Login: anonymous
Password: your Internet address
Files are located in pub/epaoswer.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be developed during the development of the final *Guide*. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled during transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information and copies of the *Guide* and CD–ROM, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In Washington, D.C., metropolitan area, call 703–412–9810 or TDD 703–412–3323. A limited number of paper copies of the Guide and supporting documents (i.e., ground-water and air software technical background documents and user manuals) are available for distribution. These are available on a first-come first-serve basis.

Questions regarding any aspect of the Industrial Waste *Guide* or the CD–ROM may be left on the following voice mail number (703–605–0755.) This voice mail box will be checked frequently and answers will be provided in a timely manner.

Questions of a technical or policy nature regarding the *Guide* or CD–ROM may also be directed to the following individuals:

Paul Cassidy (703–308–7281) for questions on siting, protecting surface water, designing and installing liners systems, operating, monitoring performance, closure and post-closure care and CD–ROM;
John Sager (703–308–7256) for questions on waste characterization, protecting groundwater, corrective action and CD–ROM;
Pat Cohn (703–308–8675) for questions on building partnerships, integrating pollution prevention, and designing a land application program;
Mark Schuknecht (703–308–7494) for questions on designing a land application program only; and
Dwight Hlustick (703–308–8647) for questions on protecting air quality only.

Technical questions or information regarding the ground-water software and supporting materials may be directed to Virginia Colten-Bradley (703–308–8613).

Technical questions or information regarding the air software and supporting materials may be directed to Charlotte Bertrand (703–308–9053).

Questions for these individuals can also be e-mailed to their e-mail address:

cassidy.paul@epamail.epa.gov
sager.john@epamail.epa.gov
cohn.patricia@epamail.epa.gov
colten-bradley.virginia@epamail.epa.gov
bertrand.charlotte@epamail.epa.gov
hlustick.dwight@epamail.epa.gov
schuknecht.mark@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Customer Service

How can I influence the development of the final *Guide*? In developing the draft *Guide* and CD–ROM, we have tried to address issues that are of interest to stakeholders. Your comments will improve this *Guide* and CD–ROM. We invite you to provide different views, new approaches, new data, or other relevant information on any aspect of the draft *Guide* or draft CD–ROM. We have developed specific questions (See Section II. Request for Comments: Questions and Issues) that are included in this Supplementary Information Section. Your comments 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 data to support your views;
Tell us which parts you support, as well as those you disagree with;
Provide specific examples to illustrate your concerns;
Offer specific alternatives; and
Refer your comments to specific sections of the *Guide*, e.g., page 12 of Chapter 5, or to specific screen numbers of the CD–ROM, e.g., CA__010.

Outline

I. Background and Overview
  A. Setting the context
  B. The Scope
  C. Underlying principles
  D. Using the guidance
  E. Next steps
II. Request for comments: questions and issues.
  A. Overview
  B. Getting Started
  Chapter 1. Building Partnerships
  Chapter 3. Integrating Pollution Prevention
  Chapter 4. Considering the Site
  C. Protecting Air Quality
  Chapter 5 Protecting Air Quality
  D. Protecting Ground-Water
  Chapter 7a. Assessing Ground-Water Risks
  Chapter 7b. Designing and Installing Liners
  Chapter 7c. Designing a Land Application Program
  E. Ensuring Long Term Protection
  Chapter 9. Monitoring Performance
  Chapter 11. Performing Closure and Post Closure

I. Background and Overview

A. Setting the Context

About 7.6 billion tons of industrial waste are generated and managed on-site at manufacturing facilities each year. Of this, almost 97 percent is waste water managed in surface impoundments, with the remaining more concentrated solids being managed in landfills, waste piles, and land application units. These wastes come from the broad spectrum of

American industries and are neither municipal wastes nor hazardous wastes under federal or state laws. State and tribal governments have regulatory responsibility for ensuring proper management of these wastes in on-site units, and their programs vary considerably.

EPA and 12 state representatives selected from the membership of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) began development of this guidance in 1996 with the formation of a State/EPA Steering Committee. The goals of the Steering Committee were threefold: first, to define a baseline of protective management practices; second, to complement existing state and tribal regulatory programs; and third to produce an effective and user friendly *Guide* that all stakeholders will use. The Steering Committee is co-chaired by one EPA and one state member. At the same time, the Steering Committee had the benefit of a Focus Group of industry and public interest stakeholders, chartered under the Federal Advisory Committee Act, to provide advice throughout development of the guidance. Steering Committee and Focus Group members are listed in Appendix I at the end of this notice.

The draft *Guide* reflects the results of this productive consultative process. Focus Group members provided extensive comment and commitment of their time throughout. Their thoughtful input helped to make the draft guidance a better and more effective product, although the final decisions are those of the Steering Committee.

All material that was part of the development of this draft *Guide* is contained in the public docket and is available for viewing. This material includes previous drafts of issue papers, meeting notes, and materials submitted by the Steering Committee and the Focus Group.

B. The Scope

This guidance is useful for a broad array of industrial process wastes, especially those that are managed at the facilities where they are generated. We did not consider certain extractive wastes, such as those from mining or oil and gas production, and recommendations may not be suitable for these wastes. Furthermore, any facilities that receive municipal solid waste, as well as industrial waste, are subject to municipal landfill criteria, 40 CFR part 258, and state or tribal municipal landfill regulations. They are not addressed by this guidance.

The guidance focuses, in particular, on the design of new units. Liner design and siting concerns are clearly directed at new units. However, other management recommendations, such as for ground-water monitoring, operating practices, and closure and post-closure care, may be helpful in making management decisions for currently-operating units as well.

C. Underlying Principles

This guidance reflects four underlying principles:

Protect human health and the environment. This is the focal point. The guidance is multi-media, emphasizing surface water, ground water, and air protection, with a comprehensive framework of technologies and practices that make up a sound waste management system.

Tailor management practices to risks. There is enormous diversity in the nature of industrial wastes and the environmental settings where they are managed. The guidance provides conservative national management recommendations and user-friendly modeling tools to make location-specific adjustments. It also identifies complex analytic tools to conduct comprehensive site-specific analyses.

Affirm State and Tribal leadership. States, tribes, and some local governments have primary responsibility for adopting and implementing programs to ensure proper management of industrial waste. It is important to note that individual states or tribes may have more stringent or extensive regulatory requirements based on local or regional conditions or policy considerations. This *Guide* complements, but does not supersede regulatory programs. It can help you make decisions on meeting requirements and filling potential gaps. Facility managers and the public using this *Guide* should consult with your regulatory agency throughout the process to understand its regulations and how the agency wants you to use the *Guide.*

Foster a partnership. The public, facility managers and regulatory agencies share a common interest in preserving quality neighborhoods, protecting the environment and public health, and enhancing the economic well-being of the community. This *Guide* provides a common technical framework to facilitate discussion. Stakeholders are encouraged to stay involved and work together to achieve meaningful environmental results.

D. Using the Guidance

There are a few key steps to follow:

Understand and comply with all existing Federal, State or Tribal regulations, permits and operating agreements that apply to a waste management unit. The guidance is designed to complement existing requirements, not to take their place.

Thoroughly characterize constituents and concentrations in the waste. Waste characterization is the foundation for choosing and implementing tailored, protective management practices. To assess potential ground-water risks, the guidance provides drinking water maximum contaminant levels (MCLs), when they exist, and health-based reference levels for 191 constituents. To assess potential air risks, the guidance provides inhalation health-based reference levels for 95 volatile and semi-volatile constituents.

Take advantage of pollution prevention, recycling and treatment opportunities. Pollution prevention, recycling, and treatment can minimize reliance on waste disposal, reduce disposal costs and reduce future costs and liabilities for closure and post-closure care and corrective action. Pollution prevention and recycling also conserve raw materials.

Build a partnership between all stakeholders who have an interest in waste management decisions. Keep stakeholders informed and involved on an ongoing basis.

Tailor management practices to the wastes and the environmental setting of the unit. The *Guide* covers all the components of a sound waste management system. It recommends best management practices and the key factors to take into account in siting, operation, design, monitoring, corrective action, closure and post closure care. The guidance also directs you to a wide variety of useful tools and resources, and includes a number of these tools in appendices. In particular, the guidance recommends risk-based approaches and incorporates models to choose liner systems and waste application rates for ground-water protection and to evaluate the need to control volatile organic air emissions.

Here is an example of how the risk-based evaluation would work for choosing a liner system design. For ground water, the approach is three-tiered, relying on modeling fate and transport of constituents through subsurface soils to ground water. Successive tiers in the analysis incorporate more site-specific data to tailor protective management practices to your particular circumstances. The CD–ROM version of the guidance contains ground-water software for Tier 1 and 2 analyses.

Tier 1—National Evaluation: Once you know the concentrations of constituents in the waste leachate, the *Guide* provides generic recommendations on appropriate liner design. If leachate from wastes going into a unit contains several constituents, choose the most protective liner design indicated for any of the constituents.

Tier 2—Location Adjusted Evaluation: To obtain a recommendation that more closely reflects your site, use location-specific data for up to seven of the most sensitive waste-and site-specific variables to assess whether a particular liner design will be protective.

Tier 3—Comprehensive Site Assessment: This tier relies on a comprehensive analysis of specific waste and site characteristics to assess whether a particular liner design will be protective. The guidance identifies a number of models for this detailed analysis.

E. What Comes Next?

The draft guidance is available in a paper copy, on a CD–ROM, and through the Internet at www.epa.gov/industrialwaste. EPA and the state participants from ASTSWMO welcome your comments on all aspects of this draft including the substantive recommendations and the practicality and user friendliness of the risk-based modeling tools. Section II of this notice frames a number of questions and issues. Based on your comments, we will make revisions and release a final version of this draft *Guide.*

EPA and state representatives participating in this effort believe that the recommendations in the final *Guide* will help to improve management of industrial waste at facilities across the country. EPA and ASTSWMO will widely disseminate the final *Guide* and explain the rationale behind the recommendations to regulators, industries and the public to foster understanding and to encourage stakeholders to integrate final recommendations in future industrial non-hazardous waste planning throughout the country.

The *Guide* is designed for users with different levels of technical knowledge and experience in environmental fields. Because many of the recommendations address complex and highly technical practices and engineered systems, we urge users to seek out technical experts and resources to assist in detailed planning, design and implementation.

We recognize that facility managers, regulatory agency staff and the public all have a different role in ensuring protective waste management. Building an effective partnership between all stakeholders can facilitate sound decisions that protect human health and the environment and make common sense for individual facilities.

Facility managers: The *Guide* can help you make the decisions necessary to ensure environmentally responsible unit siting, design, and operation in partnership with State and tribal regulators and the public.

State and tribal regulators: The *Guide* provides a handy implementation reference that complements your program.

The public: The *Guide* can help you be an informed and knowledgeable partner in addressing industrial waste management issues in your community.

II. Request for Comments: Questions and Issues

A. Overview

Our objectives throughout development of this draft *Guide* have been to provide protective, substantive recommendations, informative discussion of each topic, and references and tools that help users proceed to a more in-depth study and review of each topic. We have attempted to make the guidance easy-to-use, accessible and meaningful to users with a wide range of experience and different levels of technical knowledge. However, we recognize that individual topics are addressed at varying levels of detail. We have developed a series of questions for most chapters of the *Guide.* We have also highlighted some general questions regarding the *Guide* and CD–ROM. We invite comments on all aspects of the *Guide* and CD–ROM, including the following questions.

- Are the recommendations appropriate, realistic, and protective?
- Does the *Guide* meet the needs of small businesses?
- Does the *Guide* meet the needs of the interested public?
- Does the coverage for each topic provide the right level of detail? What could be added, subtracted or handled differently to make each topic more useful?
- Is the *Guide* organized to provide quick access to the information you are seeking?
- Are there other references and sources of information that should be cited in the guidance or included on the CD–ROM?
- For the CD–ROM, does the software work well? Do the interactive portions of the CD–ROM present useful information? Is the CD–ROM organized well?
- For the ground-water and air models, do the individual models work well? Are the models easy to use and understandable? (See sections below for further discussion of issues associated with each model.)

B. Getting Started

Chapter 1. Building Partnerships: We recognize that the process of building successful partnerships between regulators, industry, and the public can be contentious.

- Would it be helpful in the final guidance to provide case studies of successful partnerships? If so, can you provide examples of partnerships that have been successful in solving problems and addressing specific waste management issues?

Chapter 3. Integrating Pollution Prevention: The *Guide* addresses pollution prevention, recycling and treatment in abbreviated fashion. Because the primary focus of the *Guide* is waste management, we chose to defer to the many excellent resources and materials devoted entirely to waste reduction, pollution prevention and treatment rather than attempt to cover them comprehensively. In addressing pollution prevention, our objectives for this guidance have been two. First, the guidance attempts to clearly identify the many linkages between making and implementing sound waste management decisions and pollution prevention, recycling and treatment options that can reduce waste management costs and long term liabilities. Second, we have tried to identify and include references that will give you a jump start to the wealth of resources that are available.

- Are there other references that will provide users with the best points of entry and assistance to address pollution prevention, waste reduction, recycling and treatment?
- Recognizing that the primary focus of the guidance is waste management, are there additional pollution prevention topics that the *Guide* should cover in more detail, such as, recycled product procurement guidelines, beneficial use or reuse of materials, or specific pollution prevention activities that overlap with waste management activities? Provide us with specific information and examples if you can on areas that you believe should be included.

Chapter 4. Considering the Site: This chapter recommends a wide variety of data sources to provide information on the geologic and hydrologic characteristics of a site.

- Can the existing information systems that integrate a wide variety of hydro-geologic information be easily used to make a site-specific determination that a planned unit will be sited in an acceptable location? If not, would it be helpful for users to be able to access one hub that could connect to a variety of data sources to evaluate a planned site?
- Alternatively, are determinations relating to wetlands, floodplains, fault areas, karst terrain, etc. so site-specific that national data bases will not provide sufficiently detailed information to help in the evaluation of an individual site?

As part of EPA's effort to address the siting of industrial waste management units, the Agency is investigating the potential to develop a tool that would allow a user to quickly get an initial determination as to whether the unit is located in or close to an undesirable location. The EPA is investigating the use of available data from the U.S. Fish and Wildlife Services regarding wetlands, the Federal Emergency Management Agency regarding floodplains, and the U.S. Geological Survey regarding karst and seismic areas and making this information part of the Agency's EnviroMapper application. The EnviroMapper application provides users with interactive Geographic Information System (GIS) functionality using EPA spatial data. EnviroMapper allows users to view spatial data at the national, state, and county levels, as well as utilize GIS functionality, such as displaying multiple spatial layers, zooming, panning, identifying features, and querying single EnviroFacts points. EPA is considering the initial development of a GIS protocol for one State that would map the location of floodplains, wetlands, and seismic and karst locations within the State using the EnviroMapper application. We are interested in receiving comments on the utility of such a protocol. The Agency is also considering the potential addition of cultural (e.g., demographics), administrative (e.g., parks), and physical (e.g., pipelines) information to this planned GIS protocol. Questions concerning the initial development of the GIS protocol can be directed to John Sager whose number was previously listed in an earlier part of today's preamble.

C. Protecting Air Quality

Chapter 5. Protecting Air Quality: The guidance recommends assessing human health risks posed by volatile and semi-volatile compounds released from waste management units and taking appropriate measures to reduce significant risks. Measures to reduce risks include implementing pollution prevention or treatment to reduce or eliminate VOC concentrations in the waste and implementing controls to reduce emissions from the unit.

1. Assessing Air Risks: The *Guide* suggests two approaches to assessing risk. The first is a limited site-specific air assessment using the Industrial Waste Air Model (IWAIR) included in the CD ROM version of the guidance. This air model assesses direct risks through inhalation of volatile and semi-volatile compounds. The second approach is a comprehensive risk assessment that relies on detailed analysis of waste-and site-specific data and the use of models designed to assess multi-pathway exposures to airborne contaminants. The guidance identifies several models for such a detailed analysis.

IWAIR contains three modeling components. The first is an emissions model that estimates emissions of specific constituents from the unit into the atmosphere. The second component of the model estimates atmospheric dispersion of constituents and ambient air concentrations at a specific receptor point. The third component combines constituent concentrations at the specified receptor point with receptor exposure factors and toxicity benchmarks to estimate risk.

Emissions: IWAIR incorporates the emissions model CHEMDAT8. Once a user enters data to characterize the unit and the waste, CHEMDAT8 calculates the emission rate. CHEMDAT8 was developed by EPA and has undergone extensive review. IWAIR allows a user to enter site-specific data for unit and waste characteristics or to rely on default data to calculate emissions.

Dispersion: The dispersion model used in IWAIR is EPA's model Industrial Source Complex Short Term Version 3 (ISCST3). ISCST3 is a complex model and running it to develop a new dispersion factor for each site and waste management unit requires extensive meteorological data and technical expertise. In order to create an easily accessible and user-friendly modeling tool to evaluate the dispersion of air emissions, ISCST3 was previously run to generate a database of dispersion factors. The dispersion factors are included in IWAIR and have been calculated for many separate scenarios designed to cover a broad range of unit characteristics. There is a dispersion factor for each combination of:

—29 meteorological stations, chosen to represent the nine general climate regions of the continental U.S.;
—4 unit types;
—14 surface area sizes for landfills, land application units and surface impoundments, and seven surface area sizes and 2 heights for waste piles;
—6 receptor distances downwind from the unit out to a maximum of 1000 meters; and
—16 directions in relation to the center point of the unit.

The default dispersion factors were derived by modeling each of these scenarios. When IWAIR is run, the maximum dispersion factor, at a distance selected by the user for a specific waste management unit size, is used for the computations.

The advantage of this approach to dispersion modeling is that IWAIR provides you with a quick, easy-to-use method to calculate dispersion. Relying directly on ISCST3 requires significant technical expertise, access to a very complex and resource-intensive model, and substantial amounts of data. On the other hand, a limitation of the IWAIR model is the fact that it does not reflect the exact conditions of a specific location.

Risk model: This component of IWAIR combines the constituent-specific emission rate with the dispersion factor to calculate a VOC's concentration in the air at a specified receptor location. IWAIR calculates adult-worker or resident exposures based on inhalation, body weight, exposure duration and frequency, and ambient concentrations of constituents at a specific receptor location. Default values for these parameters are based on EPA's Exposure Factors Handbook. IWAIR relies on standard health benchmarks (cancer slope factors for carcinogens and reference concentrations for non-carcinogens) to calculate risk or acceptable waste constituent concentrations.

IWAIR can be used two ways. Forward calculation uses known constituent concentrations in a waste to calculate risk to receptors at specified locations. Backward calculation starts with a target risk level at a specified receptor location. The model then calculates the concentration levels in a waste that can be protectively managed in a unit without exceeding a pre-selected target risk level.

The Air Model User's Manual and Background Document contain detailed discussion on all components of the model. We invite comments on all aspects of the model, the values and data sources used to characterize specific parameters, and the modeling approach, including the following questions.

- Is the modeling approach that relies on matching limited site specific information to previously calculated dispersion factors a reasonable method to estimate dispersion of constituents from a unit? Are there refinements to this approach that could improve site-specific calculations and still be incorporated into a similar user-friendly and accessible model?
- Are the assumptions built into various components of the model reflective of the range of unit characteristics and conditions encountered in real situations?

We are also obtaining peer review of IWAIR by a group of technical experts who have been commissioned to provide an independent analysis of the model and the way it is used in the guidance. The results of the peer review will be noticed in the **Federal Register**, as soon as they are available, so that interested parties may obtain copies for review.

2. Controls:

• Are there other control techniques or technologies that are effective in minimizing the release of particulates or VOCs from waste management units besides those discussed in Chapter 5 of the *Guide?* (While the Guide addresses VOC's through modeling, best management practices are identified as appropriate activities for addressing particulates from these units.)

D. Protecting Ground Water

Chapter 7. Protecting Ground Water: The guidance recommends tailoring protective liner systems to the wastes that are managed in a unit and evaluating whether land application of a waste is appropriate using a three-tiered approach to ground-water modeling and risk assessment. The type of assessment you choose depends, in part, on the complexity of a site and the characteristics of the waste. All three rely on ground-water modeling to evaluate the potential for ground-water contamination. Each successive tier incorporates more site-specific data to tailor recommendations to your circumstances.

The modeling tool for Tiers 1 and 2 is the EPA Industrial Waste Evaluation Model (IWEM) incorporated into the CD ROM version of this guidance. This is a stand-alone, simple-to-use model that does not require previous modeling experience. Tier 1 tables are also in the paper-copy version of the guidance.

Tier 1—National Evaluation: Once you know the expected leachate concentrations of constituents in a waste, generic design recommendations (e.g., liner system or whether land application is appropriate) are provided. This tier of analysis uses a summary of site conditions that exist across the country.

Tier 2—Location-Adjusted Evaluation: You can enter data for up to seven of the most sensitive waste-and site-specific variables to assess whether an alternative design will be protective.

Tier 3—Comprehensive Risk Assessment: This tier relies on a comprehensive analysis of all waste and site characteristics to assess whether an alternative design will be protective.

Chapter 7a. Assessing Risk: IWEM analyzes different liner scenarios over a 10,000 year time frame. Tier 1 and 2 risk evaluations work as follows. IWEM can evaluate 191 constituents with toxicity reference levels that are either drinking water maximum contaminant levels (MCLs) set under the Safe Drinking Water Act or health-based numbers (HBNs) derived from several sources. In addition, the model allows a user to add additional chemicals for analysis and to adjust MCLs and HBNs to reflect state-specified or other values.

First, IWEM identifies a benchmark concentration (MCL or HBN) for each constituent in a receptor well associated with a waste management unit. The goal is not to exceed the benchmark concentrations in the receptor well (defined as a monitoring well). The model starts from this benchmark concentration in the receptor well and uses the effects of dilution and attenuation and leakage rate from a unit to determine the leachate concentration threshold values for wastes that can be protectively managed in a particular unit design. In a similar fashion, the model determines leachate concentration threshold values for wastes that are being considered for land application.

Leachate concentration threshold values for constituents are based on toxicity reference levels, with two exceptions. First, the 39 hazardous waste toxicity characteristic (TC) constituents are capped at their TC levels, because concentrations above those levels would cause the waste to be regulated as a hazardous waste and thus outside the scope of this *Guide.* Second, the model caps each leachate concentration threshold value at 1000 mg/l, because we do not expect constituent concentrations in leachates exceeding 1000 mg/l to be released from industrial waste management units.

The IWEM Technical Background Document accompanying the model thoroughly explains the model, including the parameters that have the greatest effect on modeling results. The parameters that a user can input are:

• Infiltration rate from the unit;
• Surface area of the waste management unit;
• Depth to water table;
• Distance to the well;
• Thickness of the aquifer;
• Retardation rate; and
• Degradation rate.

One of the most sensitive parameters is the infiltration rate or the rate at which leachate is released from a unit and moves into subsurface soils. The infiltration rate is influenced by a number of factors, including the amount of precipitation, the level of liquid in the unit (head), and the hydraulic conductivity of the liner material. For synthetic liners, the occurrence of tears, rips or holes also influences the infiltration rate.

Units that rely only on natural soils underlying the unit, including units for direct land application of waste, generally have higher leakage rates. A single clay or synthetic liner can reduce the leakage rate to some extent. However, composite and double liners that combine two or more layers of liner material with leachate collection and leak detection (for double liners) significantly increase the effectiveness of the containment system in minimizing leakage to the subsurface during the period when the leachate collection system is actively managed.

For a landfill that no longer receives waste and for surface impoundments and waste piles where waste remains in place at closure, the cap that is placed over the unit becomes an important component of the final containment system. One key purpose of the final cap is to minimize the infiltration of precipitation into a closed unit. Precipitation generates leachate that may eventually migrate into subsurface soils and to ground water. The liner system in the short term, and the cap and the liner system together in the long term, to a large extent determine the infiltration rate from the unit. The infiltration rate that is associated with various unit designs is one of the most sensitive variables in evaluating the degree of protectiveness provided by a particular liner system.

The *Guide* recommends a comprehensive approach to design, construction, operation and long term care of a waste management unit to minimize the potential for problems affecting liner performance . This includes:

• Recommending a liner design, taking into account the characteristics of the waste managed in the unit;
• Emphasizing construction quality assurance and control;
• Emphasizing compatibility between the liner and the waste;
• Continuing operation and maintenance practices to protect liner performance;
• Ground-water monitoring, to assess liner performance, as an integral component of a protective management system;
• Closing the unit with a cap that meets or exceeds the design of the liner (infiltration through the cap equal to or less than leakage through the liner); and
• Post-closure care and monitoring to maintain the cap for the time period necessary to ensure the waste no longer poses a risk to human health.

Assumptions concerning liner performance have a significant impact on the modeling results. A brief summary of the modeling scenarios for each liner type follows (the model currently assumes that performance levels remain constant for the 10,000 year time frame of the modeling effort).

No liner: This is a waste management unit that sits in direct contact with native soil. Monte Carlo analysis of a range of infiltration rates is based on water balance and native soil type for 97 meteorological stations. In Tier 2, the model can provide a regional infiltration rate based on a user-specified location.

Single liner: This consists of three feet of compacted clay with a hydraulic conductivity of 10^{-7} cm/sec. Monte Carlo analysis of a range of infiltration rates is based on water balance for 97 meteorological stations. In Tier 2, the model can provide users with a regional infiltration rate based on a user-specified location.

Composite liner: This is an engineered system that consists of three feet of compacted clay and a synthetic liner. The system is assumed to include a leachate collection system that maintains a hydraulic head of no more than 12 inches for landfills and waste piles. The leakage rate is a single value calculated using an equation, developed by Giroud and Bonaparte, based on one 0.005 in.^{2} hole per acre. For landfills, the calculated leakage rate is 0.1 gallon/acre/day and for surface impoundments the calculated leakage rate is 0.9 gallon/acre/day. This would represent a high performing liner. The assumptions regarding the composite liner leakage rate are discussed in the IWEM Technical Background Document.

In general, we have learned much over the past 20 years about the performance of liner systems and caps, and there have been many improvements in construction, installation, and quality assurance and control procedures. However, we recognize that there is still uncertainty associated with liner performance, both in the near term as well as in the long term. While some studies indicate that engineering properties of liners may last for many (perhaps several hundred) years, there are a variety of factors that may influence longevity and performance, such as poor construction, installation or facility operation, or geologic movement below the liner that can cause holes, tears or larger failures. Some defects are likely to have little to moderate effect on the leakage rate. Other defects may have a significant effect and may even necessitate corrective action.

We have conducted some preliminary sensitivity analyses to compare infiltration rates from a variety of theoretical composite liner scenarios. Scenarios varied the size of holes and tears; the number per acre; contact between the geomembrane and the clay layer; the conductivity of the underlying clay layer, and the head of liquid on top of the geomembrane. Results of these preliminary analyses provided a range of infiltration rates ranging from well below to well above the infiltration rate of 3.3E–05 meters/year used in the Tier 1 analysis for landfills. These results indicate several key areas in which EPA, the Steering Committee, and the Focus Group could conduct additional evaluations to evaluate liner effectiveness more thoroughly:

• What empirical data are available concerning liner defects at the time of installation and over time to serve as a basis for identifying reasonable performance scenarios?

• What are reasonable methods for estimating leakage? Some estimation methods may be reasonable within specific bounds or time frames for various performance scenarios, but may not work for a wide range of performance scenarios or time frames.

• If we were to conduct a Monte Carlo analysis of leakage rates for composite liners, what is a reasonable range to include in the analysis?

• How should we account for degradation of the liner system over time? (A more thorough discussion of the sensitivity analyses is in the IWEM Technical Background Document.)

Another area of uncertainty is the fate of constituents within a unit. Over time, a number of degradation processes may be under way that reduce the hazards associated with some constituents. On the other hand, a landfill with an intact cover may be reasonably dry, reducing leachate generation, but also slowing down degradation. Other toxic constituents, such as heavy metals, can not degrade.

Covers present continuing engineering challenges over time, because they are more susceptible to factors such as freezing and thawing, wetting and drying, temperature fluctuations, root infiltration, and subsidence. Covers are, however, not subject to chemical attack from waste constituents, nor are they subject to the same stresses from waste placement as a bottom liner. Also, final covers are simpler to repair, which would help control the risk of infiltration into the landfill, assuming there is an active program to monitor or periodically replace the cover. Unless the final cover is regularly repaired or replaced, the bottom liner could outlast the cover. While covers containing a synthetic membrane are likely to prevent precipitation from entering a closed unit during the period that they are performing as designed and assuming there are no failures, uncorrected failure of a cover would allow precipitation to enter the unit. After leachate removal is discontinued, this could lead to a ''bathtub effect,'' where the unit has increasing leachate volumes and hydraulic head that could lead to increased leakage rates or overflow.

We invite comments on all aspects of the model, the values, and data sources used for specific parameters, and the modeling scenarios for liner performance, including the following questions.

• Is the cap of 1000 mg/l concentration for constituents in leachate from a non-hazardous industrial waste management unit realistic? If not, please provide data on which waste units may generate leachate that contains constituents at higher concentration levels and what those levels and constituents are likely to be.

• What performance assumptions, modeling approaches and design scenarios are reasonable to address the question of the changing effectiveness of liners and caps over time?

• Can you provide data on the occurrence of defects in liners at the time of installation and on changes in leakage rates or indicators of possible changes in liner defects that occur over time?

• The hazardous waste program deals with uncertainties associated with liner and cap performance by requiring treatment prior to disposal. How should such uncertainties be dealt with for non-hazardous industrial wastes? One possibility is to rely on quality assurance and quality control, long-term ground-water monitoring, and corrective action to address non-hazardous waste management units. Where uncertainties are too great, EPA could elect to rely on the hazardous waste program to list such wastes as hazardous and require treatment. A second approach could be to rely on treatment of certain non-hazardous wastes. What other approaches are available? Please provide any expressions of support for or concerns about any of these approaches.

• Should the composite liner scenario use a different infiltration rate, or Monte Carlo analysis to reflect a range of performance levels, rather than the single value currently used in our Tier 1 analysis? What values should be used, and what is the basis for using them? The IWEM Technical Background Document presents the range of infiltration rates used in the Tier 2 analysis and discusses the limitations of the Tier 2 modeling results if one were to use infiltration rates outside the modeled range of infiltration rates.

We are also obtaining peer review of the ground-water model by a group of technical experts who have been commissioned to provide an independent analysis of the model and the way it is used in the guidance. The results of the peer review will be noticed in the **Federal Register** as soon as they are available so that interested parties may obtain copies for review.

In Chapter 7a of the *Guide*, EPA makes reference to an alternative Tier 2 model developed by the American Petroleum Institute (API). API's Graphical Approach for Determining Site-Specific Dilution-Attenuation Factors (DAFs) was presented to the Steering Committee and the Focus Group during the development of this *Guide*. API developed this approach to simplify calculation of facility-specific DAFs. A copy of API's User Manual for this graphical approach has been included on the CD-ROM. EPA solicits comment on API's request that this model be incorporated in the Guide as an alternative Tier 2 assessment tool.

Chapter 7b. Designing and Installing Liners and Caps: Construction and installation quality assurance and quality control are critical to ensuring liner and cap performance. The guidance is intended to reflect up-to-date installation practices and techniques and the appropriate materials and techniques for installing a liner system and a final cap.

- Are there additional practices and techniques that should be reflected in the guidance?
- For those with experience installing liners and operating lined units, how do you measure liner performance and what are your experiences over time when monitoring and addressing liner performance?

Chapter 7c. Designing a Land Application Program: The *Guide* recommends an evaluation framework for a number of waste and soil parameters, in addition to the constituents in Tier 1, that are important in designing an effective land application program. The *Guide* discusses the waste and soil parameters and their relationship to the establishment of an appropriate application rate as part of an effective land application program at a unit.

- Are there models or other tools available to simplify design and evaluation of a land application program?

E. Ensuring Long Term Protection

Chapter 9. Monitoring Performance: The *Guide* urges a multi-media approach to protective waste management. While the Monitoring Performance chapter briefly addresses monitoring other environmental media such as air, soil, and surface water, the chapter is devoted primarily to ground-water monitoring.

Should the guidance expand discussion and recommendations concerning monitoring other environmental media, and if so, how?

Chapter 11. Performing Closure and Post Closure Care: As discussed above under Protecting Ground Water: Assessing Risk, proper closure and post closure care are critical elements of a program that ensures long term protection.

- Please comment on factors that should be taken into account in determining the time frame for post-closure care and in determining when it is appropriate to end post-closure care.
- What experience can you report regarding materials and construction techniques for final caps that work particularly well or that may pose problems?

The draft *Guide* represents a substantial amount of time and effort on the part of the Steering Committee and Focus Group representatives. EPA believes that the *Guide* has the potential to be widely used by States, industry, and the environmental community based on the voluntary nature of the guidance, the multi-media aspects of the *Guide*, and, in EPA's opinion, the quality of the work that will continue through the development of the final *Guide*. EPA looks forward to receiving comments on this *Guide* and working with the Steering Committee and the Focus Group as we develop a final *Guide* for industrial non-hazardous solid waste management.

Dated: May 14, 1999.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

Appendix 1—Current and Past Steering Committee Representatives

James Warner, Minnesota Pollution Control Agency
Anne Dobbs, Texas Natural Resource Conservation Commission
Cyndi Darling, Maine Department of Environmental Protection
Jon Dilliard, Montana Department of Environmental Quality
Richard Hammond, New York State Department of Environmental Conservation
Elizabeth Haven, California State Water Resource Control Board
Jim Hull, Missouri Department of Natural Resources
Jim Knudson, Washington State Department of Ecology
Marc Crooks, Washington State Department of Ecology
Chris McGuire, Florida Department of Environmental Protection
Gene Mitchell, Wisconsin Department of Natural Resources
William Pounds, Pennsylvania Department of Environmental Protection
Bijan Sharafkhani, Louisiana Department of Environmental Quality
Kerry Callahan, Association of State and Territorial Solid Waste Management Officials
Paula Clark, Maine Department of Environmental Protection
Norm Gumenik, Arizona Department of Environmental Quality
Steve Jenkins, Alabama Department of Environmental Management
Jim North, Arizona Department of Environmental Quality
Robert Dellinger, EPA
Richard Kinch, EPA
Paul Cassidy, EPA
John Sager, EPA
Pat Cohn, EPA
Dwight Hlustick, EPA
Virginia Colten-Bradley, EPA
Charlotte Bertrand, EPA
Mark Schuknecht, EPA

Current and Past Focus Group Representatives

Paul Bork, The Dow Chemical Company
Walter Carey, Nestle, USA, Inc. and New Milford Farms
Rama Chaturvedi, Bethlehem Steel Corporation
H.C. Clark, Rice University
Barbara Dodds, League of Women Voters
Chuck Feerick, Exxon Company, USA
Robert Giraud, Dupont Company
Jonathan Greenberg, Browning-Ferris Industries
John Harney, Citizens Round Table/PURE
Richard Jarman, National Food Processors Association
James Meiers, Indianapolis Power and Light Company
Andrew Miles, The Dexter Corporation
Scott Murto, General Motors and American Foundry Society
James Roewer, Edison Electric Institute
Edward Repa, Environmental Industry Association
Tim Saylor, International Paper
Amy Schaffer, American Forest and Paper Association
Ed Skernolis, WMX Technologies, Inc.
Michael Wach, Western Environmental Law Center
David Wells, University of South Alabama Medical Center
Pat Gwin, Observer from the Cherokee Nation of Oklahoma
Dorris Cellarius, Sierra Club
Brian Forrestal, Laidlaw Waste Systems
Michael Gregory, Arizona Toxics Information and Sierra Club
Gary Robbins, Exxon Company
Kevin Sall, National Paint and Coatings Association
Bruce Steiner, American Iron and Steel
Lisa Williams, Aluminum Association

[FR Doc. 99–14770 Filed 6–10–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–1105]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 7, 1999, the Commission released a public notice announcing the June 22 and June 23, 1999, meeting and agenda of the North American Numbering Council (NANC).

The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: June 7, 1999.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, June 22, 1999, from 8:30 a.m., until 5 p.m., and on Wednesday, June 23, 1999, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW, Room TW–C305, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, June 22, 1999

1. Approval of May 25–26, 1999, meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report. Update on wireline wireless integration report. Present proposed plan for oversight management of LNP implementation matters.
3. N–1 Query Issue. Presentation by Telcordia regarding contribution to modify N–1 architecture.
4. Numbering Resource Optimization (NRO) Working Group Report. Report and Recommendation on COCUS replacement model. Final report due Common Carrier Bureau by June 30, 1999.
5. NANC obligations under the Notice of Proposed Rulemaking, CC Docket 99–200, (rel. June 2, 1999). Discussion and work plan development.
6. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.

Wednesday, June 23, 1999

7. Cost Recovery Working Group Report.
8. Audits Issue Management Group. Report and recommendation on NANPA obligation to perform audits under the fixed price bid.
9. Industry Numbering Committee (INC) Report.
10. Steering Group Report.
11. Other Business.

Federal Communications Commission.

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–14925 Filed 6–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: *Thursday, June 10, 1999 at 10:00 a.m.*

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA:

Revised Advisory Opinion 1999–9: Bill Bradley for President, Inc., by Robert F. Bauer, counsel.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 99–14992 Filed 6–9–99; 11:52 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011253–005.

Title: Deppe/Lykes Reciprocal Space Charter and Coordinated Sailing Agreement.

Parties: Deppe Linie GmbH & Co. (''Deppe''), Lykes Lines Limited, LLC (''Lykes'').

Synopsis: The proposed modification deletes the Mediterranean Sea from the geographic scope, specifies in greater detail the amount of space to be chartered under the Agreement, revises the number of vessels to be operated and their maximum capacity, clarifies that no party is required to become or remain a party to any other agreement, specifies that Deppe will not charter space from other carriers in the trade without the consent of Lykes, requires that any further agreement contemplated in the Agreement cannot go into effect unless filed and effective under the Shipping Act of 1984, and clarifies the duration and termination of the Agreement.

Agreement No.: 202–011576–003.

Title: South American Independent Lines Association.

Parties: Interocean Lines, Inc., Seaboard Marine, Ltd., Trinity Shipping Line, S.A.

Synopsis: The proposed amendment would revise the Agreement's independent action (''IA'') provisions to permit an IA to become effective on four calendar days' notice, rather than four business days, and would revise the service contract provisions to conform to the provisions of the Ocean Shipping Reform Act of 1998. It also revises a party's address and deletes Seaboard Marine, Ltd. as a party to the Agreement.

By Order of the Federal Maritime Commission.

Dated: June 8, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–14914 Filed 6–10–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 appendix A.1. 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 instruments 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.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before August 10. 1999.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

1. Report title: Report of Condition for Foreign Subsidiaries of U.S. Banking Organizations and Financial Information for Foreign Subsidiaries of U.S. Banking Organizations.

1Agency form number: FR 2314a, b and c

OMB control number: 7100-0073

Frequency: Quarterly and annually.

Reporters: Foreign subsidiaries of U.S. banks, bank holding companies, and Edge and agreement corporations.

Annual reporting hours: 6,825 burden hours.

Estimated average hours per response: 1.5 to 10.5

Number of respondents: 1,362

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625, and 1844(c)) data are exempt from disclosure pursuant to Sections (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (8)).

Abstract: The FR 2314 is the only source of comprehensive and systematic data on the assets, liabilities, and earnings of the foreign bank and nonbank subsidiaries of U.S. banking organizations and is used to monitor the growth, profitability, and activities of these foreign companies. The FR 2314a collects information on assets and liabilities and includes several memoranda items on contingent liabilities and twelve supporting schedules. The supporting schedules provide detail on cash and balances due from depository institutions, securities, loans and lease financing receivables, other assets, claims on related organizations, deposits, other liabilities, liabilities to related organizations, changes in capital and reserve accounts, income and expenses, assets held in trading accounts, and past due and nonaccrual loans and leases. The FR 2314b collects somewhat less information on assets and liabilities, off-balance-sheet items, income and expenses, and securities. The FR 2314c is a brief one-page report that collects information on total assets, equity capital, net income, and off-balance-sheet items.

Proposal to approve under OMB delegated authority the extension for three years, with revisions, of the following reports:

1. Report title: Domestic Finance Company Report of Assets and Liabilities.

Agency form number: FR 2248

OMB control number: 7100-0005

Frequency: Monthly.

Reporters: Domestic finance companies.

Annual reporting hours: 800 burden hours.

Estimated average hours per response: 40 minutes.

Number of respondents: 100

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225(a)). Individual respondents data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2248 collects balance sheet data on major categories of consumer and business credit receivables and on major short-term liabilities. For quarter-end months (March, June, September, and December), the report collects information on other assets and liabilities outstanding as well as information on capital accounts in order to provide a full balance sheet. The Federal Reserve proposes to reduce the authorized size of the FR 2248 reporting panel from 120 finance companies to 100 finance companies.

2. Report title: Financial Statements for a Bank Holding Company Subsidiary Engaged in Bank-Ineligible Securities Underwriting and Dealing.

Agency form number: FR Y-20

OMB control number: 7100-0248

Frequency: Quarterly.

Reporters: Bank holding companies.

Annual reporting hours: 2,568 burden hours.

Estimated average hours per response: 12.35 hours.

Number of respondents: 52

Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. 1844(b) and (c)]. Individual respondents data are confidential under section (b)(4) of the Freedom of Information Act [5 U.S.C. 552(b)(4)].

Abstract: The FR Y-20 report is filed by bank holding companies that have received the Board's approval by Order to engage in limited underwriting and dealing in securities, including all types of debt and equity securities that a bank may not underwrite or deal in directly. The FR Y-20 report contains a balance sheet (Schedule SUD), a supporting schedule of securities owned, including money market obligations (Schedule SUD-A), a statement of income (Schedule SUD-I), and a statement of changes in stockholders' equity (Schedule SUD-SE). Several of these schedules also include various memoranda items, such as intercompany liabilities, off-balance sheet items, and year-to-date income and expenses.

Current Actions: The Federal Reserve proposes several limited changes to the FR Y-20. The first is amending the cover page of the report to include a structure indicator box to denote if the report is prepared on a consolidated or unconsolidated basis of accounting. The Federal Reserve further proposes two changes to the report's balance sheet: 1) the inclusion of a line item for Loans and leases held for trading (line item 11), and 2) the inclusion of a contra-asset line item, Allowance for losses from loans and leases held for trading (line item 11.a). The Federal Reserve also proposes two changes to the statement of income: 1) adding a structure indicator box on the first page to denote whether a consolidated, unconsolidated or parent-only statement of income is being submitted and 2) amending expense line item 16 to include exchange fees. The proposed changes to the FR Y-20 instructions also include organizational reporting structure guidance, revisions due to changes in Board Orders and Board Legal Division opinions, changes in accounting standards, and guidance promulgated by the Financial Accounting Standards Board and the American Institute of Certified Public Accounts. The instructions also include other clarifications and minor editorial changes.

Discontinuation of the following report:

1. Report title: Report of Broker Carrying Margin Accounts.

Agency form number: FR 2240

OMB control number: 7100-0001

Effective Date: Wednesday, June 30, 1999.

Frequency: Annual.

Reporters: Member firms of the New York or American Stock Exchange that carry customer margin accounts as of the end of June.

Annual reporting hours: 246 burden hours.

Estimated average hours per response: 2.7 hours.

Number of respondents: 91.

Small businesses are affected.

General description of report: The Board's Legal Division previously has determined that this report is authorized by law (15 U.S.C. 78q(g)). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2240 collects certain balance sheet information from securities brokers and dealers carrying margin accounts in order to regulate margin credit.

Current Actions: The Division of Research and Statistics proposes to discontinue the FR 2240. The report has become unnecessary because the vast majority of reporters already submits margin credit data to the New York Stock Exchange, which makes the data available on an aggregate basis to the Board of Governors and the general public.

Board of Governors of the Federal Reserve System, June 7, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–14826 Filed 6–10–99; 8:45a.m.]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section--Mary M. 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 report:

1. Report title: Disclosure Requirements in Connection with Regulation CC to Implement the Expedited Funds Availability Act

Agency form number: unnum Reg CC

OMB Control number: 7100-0235

Frequency: Event-generated

Reporters: State Member Banks

Annual reporting hours: 174,384 hours.

Estimated average hours per response: Notice of exceptions, Case by case hold notice, or Notice to potential customers upon request: 3 minutes; Notice posted where customers make deposits: 15 minutes; Notice of changes in policy: 20 hours; and Annual notice of new ATMs: 5 hours.

Number of respondents: 989 state member banks

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 4008). Because the Federal Reserve System does not collect any information, no issue of confidentiality exists. If during a compliance examination a violation of the Expedited Funds Availability Act is noted, then the information regarding such violation may be kept confidential (5 U.S.C. 552(b)(8)).

Abstract: The third party disclosure requirements are intended to alert consumers about their financial institutions' check-hold policies and to help prevent unintentional (and costly) overdrafts. Most disclosures resulting from a policy change must be made thirty days before actions is taken, or within thirty days if the action makes funds available more quickly. Model forms, clauses, and notices are appended to the regulations to provide guidance.

The Board's Regulation CC applies to all depository institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the Regulation CC paperwork burden on their respective constituencies.

Board of Governors of the Federal Reserve System, June 7, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–14827 Filed 6–10–99; 8:45a.m.]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, June 16, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14971 Filed 6–9–99; 10:08 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

Grants for Short-Term Policy Research on Welfare Outcomes (ASPE), Notice Inviting Applications for New Award for Fiscal Year 1999

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Announcement of the availability of funds and request for applications for short-term policy research.

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces the availability of funds and invites applications for short-term policy research. We anticipate that between 4 and 7 entities will receive funding. We do not anticipate any new data collection under this grant but rather secondary analysis of existing data.

CLOSING DATE: The closing date for submitting applications under this announcement is July 26, 1999.

MAILING ADDRESS: Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Telephone: (202) 690–8794. Requests for forms and administrative questions will be accepted and responded to up to 10 working days prior to closing date of receipt of applications.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page: *http://aspe.os.dhhs.gov* (see section on available grants and contracts). Application submissions may not be faxed or submitted electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to the Grants Officer at the address or phone number listed above. Technical questions should be directed to Audrey Mirsky-Ashby, DHHS, ASPE, Telephone, 202–401–6640 or e-mail, amirsky@osaspe.dhhs.gov. Written technical questions may also be faxed to 202–690-6562 or may be addressed to Ms. Audrey Mirsky-Ashby at the following address. Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW, Room 404E, Hubert H. Humphrey Building, Washington, DC 20201. Please call Ms. Audrey Mirsky-Ashby to confirm receipt.

Part I. Supplementary Information

Legislative Authority

This grant is authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Pub. L. 105–277, Department of Health and Human Services Health and Human Services Appropriations Act, 1999.

Eligible Applicants

Pursuant to section 1110 of the Social Security Act, any public and private nonprofit organizations including universities and other institutions of higher education may apply. Applications may also be submitted by private for-profit organizations. However, no grant funds may be paid as profit, i.e., any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.705).

Available Funds

Approximately $550,000 is available from ASPE, in funds appropriated for fiscal year 1999. ASPE anticipates providing between 4 and 7 awards with award amounts ranging from $75,000 to $150,000. No awards greater than $150,000 will be made. If additional funding becomes available in fiscal years 1999 or 2000, additional projects may be funded. No federal funds received as a result of this announcement can be used to purchase computer equipment.

Background

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) brought about fundamental changes in our nation's income support program for needy families with children. Welfare reform was expected to alter individuals' behavior in regard to work, marriage, fertility and program participation. As part of PRWORA, the

Aid to Families with Dependent Children Program was replaced by the Temporary Assistance to Needy Families (TANF) block grant program to states. Under TANF, states were given considerable flexibility to design and implement their support programs for needy families with children. In addition to this increased flexibility, TANF ended the individual entitlement to cash assistance, imposed a 60 month life time limit on the receipt of assistance and conditioned assistance on participation in work related activities.

Between January 1993 and December 1998, the number of people receiving federally funded assistance under Title IV-A of the Social Security Act fell from 14.1 million to just under 8 million recipients, a reduction of 44 percent. This decline has occurred partly in response to the strong economy, the Administration's grants of Federal waivers to 43 States, and the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

In response to the demand from the public and policymakers there is a broad array of research being conducted regarding the outcomes of welfare reform. While we are learning a lot about the employment and earnings of those who leave welfare, we know little about outcomes in other domains, such as child well-being or family structure, and we know very little about low-income families who do not come on to the welfare rolls. We also know little about subgroups with specific employment barriers.

There is solid and consistent evidence from a variety of sources that welfare reform has increased the average employment and earnings of welfare recipients. Experimental studies of State waiver demonstrations and other work programs that are very similar to TANF programs show consistently positive impacts on employment and earnings. Recent results from specific State programs show employment increases in the range of about 7 to 29 percent, and earnings increases of about 16 to 27 percent. For example, in the evaluation of the Minnesota Family Investment Program (MFIP), earnings for single-parent long-term recipients in urban counties increased by $1,041(26.9 percent), and the percent ever employed increased by 17.0 percentage points (28.8 percent) over 18 months.

Analyses of data from the Census Bureau's annual Current Population Survey (CPS) indicate a clear pattern of increased employment. The March employment rate of previous-year AFDC adult recipients increased from 19 to 25 percent between 1992 and 1996, and jumped to almost 32 percent in 1997. Also, the March employment rate of single mothers whose previous-year income was under 200 percent of poverty rose from 44 percent in 1992 to 54 percent in 1997, with average annual increases in 1996 and 1997 twice as large as in the previous 3 years.

The evidence about impacts on family income, on food security and hunger, on health insurance status, on child outcomes, and on other family experiences, are much less clear at this point. The best reading of the available evidence suggests that because the baseline levels of employment and earnings for welfare recipients are so low, even with substantial increases most families exiting welfare continue to be poor. Further, while some families are benefitting dramatically from the new incentives, requirements and opportunities, others are being left behind. However, preliminary evidence from states does not support the hypotheses that large numbers of people are becoming homeless or that more children are being moved into foster care as a result of welfare reform policies.

A recent analysis of the effects of welfare reform on Medicaid coverage, published by Families USA, found using data from the U.S. Census Bureau's Current Population Survey and from the Health Care Financing Administration, found that over two-thirds of a million low-income people—approximately 675,000—lost Medicaid coverage and became uninsured as of 1997 due to welfare reform. The majority (62 percent) of those who became uninsured due to welfare reform were children. Results from waiver demonstrations and studies of recipients who left welfare (''leaver'' studies) for the most part indicate that average family income has been unchanged with some families increasing their income but others experiencing declines. For example, 2-year impacts on clients assessed as ''job-ready'' from Indiana's waiver demonstration showed earnings up 17.0 percent ($1,374) and quarters of employment up 12.8 percent, but total combined income from earnings and benefits was unchanged.

There is some early evidence that the most disadvantaged families may be losing income. CPS data indicate that real average family income for the bottom quintile of female-headed families with children declined between 1995 and 1997, after increasing from 1993 to 1995.

Part II. Purpose and Responsibilities

Purpose

The purpose of these grants is to support policy relevant research to complement ongoing research and evaluations on the outcomes of welfare reform, and to broaden our understanding of the outcomes of welfare reform. These grants are meant to supplement other leavers grants that ASPE has previously funded (see the web site at http://aspe.os.dhhs.gov/hsp/isp/98grants.htm for a description of these grants).

These grants are to support short-term research and data analysis efforts that are designed to be completed within twelve months. ASPE hopes to support efforts to analyze a variety of information about individuals (adults and children) and their families, including their economic and non-economic well-being and their participation in government programs. We hope to gain some understanding of the broader issues of the labor market and individual behaviors such as the differential effects of the business cycle on subgroups of the eligible population. The identification of important subgroups such as rural residents, individuals with significant barriers to success (e.g., mental illness, domestic violence, substance abuse, illiteracy, people with disabilities) and analyses of outcomes for these groups is also encouraged. Analyses that focus on differential outcomes by race/ethnicity are also encouraged. In addition, while average effects or outcomes are important it is also important in the context of welfare reform to look at the distribution of the outcomes, to identify and understand the winners and losers, and to understand the reasons why some individuals are winners and others are losers. Thus researchers are encouraged to look beyond averages.

Our intent is to sponsor analytic work and not to fund the provision of services. While research may be conducted in service settings, proposals of this nature will be carefully scrutinized to assure that these funds are not used for non-research purposes, no matter how worthwhile.

ASPE is interested in exploring research associated with three welfare related populations: (1) Those who are eligible for welfare but do not enroll either due to diversion programs or simply to failure to apply or enroll; (2) program participants and (3) program leavers. ASPE is interested in analyses that would inform the following issues and questions. While the list represents some of the many topics that are important to ASPE researchers and policymakers, the suggested questions are in no way meant to be exhaustive.

Participation Decisions/Entry and Exit

How do program participation decisions and the outcomes for those who do not enroll in the TANF assistance program either because they are diverted from the program or choose not to apply or enroll differ vis-a-vis those who do enroll? How does this relate to decisions to participate in related support programs such as Food Stamps and Medicaid?

What are the effects of welfare reform on program entry and exit and on the composition of the caseload? For example, does welfare reform effect on the number of mothers on the rolls with young children? What role, if any, do other supports including public and private transfers (e.g., child support payments); work supports (e.g., Medicaid, child care, transportation); and social and community supports play in the decision to participate in or leave TANF? What role do these supports play in achieving success outside the TANF assistance program for those who do not enter TANF and/or those who leave the assistance program?

Business Cycle Effects

What are the business cycle effects, as experienced on the regional level, on entry and exit from TANF and how are different groups (e.g., those experiencing barriers to success) impacted?

Impacts on Well-Being

What are the differential impacts of participation or non-participation on individual and family well-being? How is welfare reform affecting the experiences of program participants and their outcomes including economic and non-economic well-being? How are the children of low income and welfare families faring under welfare reform on measures such as school achievement, behavioral problems, and health status? What facilitates positive outcomes or success? What effect has the increased focus on work and responsibility had on the children of low income and welfare families?

Self-Sufficiency Timeline

How quickly can we expect welfare recipients to become self-sufficient? Can welfare recipients accumulate sufficient skills to move forward in the labor market and increase their earnings to a level to meet basic needs and beyond? Are there groups that will be left behind? What strategies would enable those hard-to-serve recipients to move successfully into the labor market?

Individuals Who Leave the Rolls With No Earnings

Many of those who leave the welfare rolls are leaving for work but many also leave for non-work reasons. Little is known about this group—where do they turn for support—family, friends, other support systems? How effective and/or stable are these supports? How are they and their children faring?

Grantee Responsibilities

1. No later than ninety (90) days after the date of award, the Grantee shall submit an outline of progress to date. This progress report should note any changes to the work plan. The grantee shall provide concise, quarterly progress reports with format and content to be provided by the Federal Project Office.

2. After completing the analysis, the Grantee shall prepare a final report describing the results of the study, including the procedures and methodology used to conduct the analysis, the research questions answered, the knowledge and information gained from the project, and any barriers encountered in completing the project. A draft of this report shall be delivered to the Federal Project Officer no later than thirty (30) days before the completion of the project. After receiving comments on the draft report from the Federal Project Officer, the Grantee shall deliver at least three (3) copies of a final report to the Grants Officer before the completion of the project. One of these copies must be unbound, suitable for photocopying.

ASPE Responsibilities

1. ASPE shall provide consultation in the planning and operation of grant activities.

2. ASPE shall assist in information exchange and the dissemination of reports to appropriate Federal, State, and local entities.

Part III. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, the forms necessary for submission, and the evaluation criteria under which the applications will be reviewed. Potential grant applicants should read this section carefully in conjunction with the information provided above. The application must contain the required Federal forms, title page, table of contents, and sections listed below. All pages of the narrative should be numbered.

The application should include the following elements:

1. *Abstract:* A one page summary of the proposed project.

2. *Goals and objective of the project:* An overview that describes the need for the proposed project; indicates the background and policy significance of the issue area(s) to be researched; outlines the specific quantitative and qualitative questions to be investigated; and clearly describes how the proposed project will advance scientific knowledge and policy development. If the proposal builds on any current project, the application should describe how funding under this announcement will enhance, not substitute for, current efforts.

3. *Methodology and Design:* Provide a description and justification of how the proposed research project will be implemented, including methodologies, chosen approach, definition of study populations, data sources, key variables and research plan and analytic plans. In addition, provide evidence of access to database(s) proposed to be studied.

To the extent that the analysis uses data on individuals from multiple, separate sources, such as administrative databases from several State agencies, the proposal should discuss measures taken to maintain confidentiality, as well as demonstrate that the Grantee has obtained authorized access to those data sources. The preferred form of proof is a signed agreement with each of the relevant agencies/departments. Though not preferable, letters of support from the appropriate agencies are acceptable, provided that the letter clearly states that the proposing agency has the authorization to access and link all necessary data. Grant applicants must assure that the collected data will only be used for management and research purposes, and that all identifying information will be kept completely confidential.

4. *Experience, capacity, qualifications, and use of staff:* Briefly describe the grant applicant's organizational capabilities and experience in conducting pertinent research projects. Identify key staff who are expected to carry out the research project and provide a curriculum vitae or resume for each person. Provide a brief discussion of how key staff will contribute to the success of the project.

5. *Work plan:* A work plan should be included which lists the start and end dates of the project, a time line which indicates the sequence of tasks necessary for the completion of the project, and the responsibilities of each of the key staff. The plan should identify the time commitments of key

staff members in both absolute and percentage terms, including other projects and teaching or managerial responsibilities. The work plan should include a discussion of any plans for dissemination of the results of the study, e.g., articles in journals and presentations at conferences.

6. *Budget:* Grant applicants must submit a request for federal funds using Standard Form 424A and include a detailed breakdown of all Federal line items. A narrative explanation of the budget should be included that states clearly how the funds associated with this announcement will be used and describes the extent to which funds will be used for purposes that would not otherwise be incorporated within the project. The applicant should budget for one trip to Washington, DC to discuss results of the research. Cost sharing-matching is a mandatory requirement under this award. Applicants must demonstrate the amount and details of the cost sharing-matching arrangement. If the proposal entails funding from any additional sources, the applicant should also document the level of funding and describe how these funds will be expended.

Review Process and Funding Information

Applications will initially be screened for compliance with the timeliness and completeness requirements. Three (3) copies of each application are required. One of these copies must be in an unbound format, suitable for copying. If only one of the copies is the original (i.e., carries the original signature and is accompanied by a cover letter) it should not be this copy. Applicants are encouraged to send an additional two (2) copies to ease processing, but the application will not be penalized if these extra copies are not included. The grant applicant's Standard Form 424 must be signed a representative of the applicant who is authorized to act with full authority on behalf of the applicant.

A Federal review panel will review and score all applications submitted by the deadline date that meet the screening criteria (all information and documents as required by this announcement.) The panel will use the evaluation criteria listed below to score each application. The panel results will be the primary element used by the ASPE when making funding decisions. The Department reserves the option to discuss applications with other Federal or State staff, specialists, experts and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

As a result of this competition between 4 and 7 grants averaging between $75,000 and $150,000 each are expected to be made from funds appropriated for fiscal year 1999. Additional awards may be made depending on the policy relevance of proposals received and the available funding, including funds that may become available in fiscal years 1999 or 2000.

Reports

As noted in the Grantee Responsibilities, one substantive report is required under the grant: a final report containing all results and analysis (draft version due no later than thirty (30) days before the end of the project and final version due at the conclusion of the project).

In addition, Grantees shall provide concise quarterly progress reports. The specific format and content for these reports will be provided by the Federal Project Officer.

State Single Point of Contact (E.O. No. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Deadline for Submission of Applications

The closing date for submission of applications under this announcement is July 26, 1999. Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays, during the working hours of 9 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building, located at 200 Independence Avenue, SW in Washington, DC. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as having met the deadline if it is either received at, or hand-delivered to, the mailing address on or before July 26, 1999, or postmarked before midnight three days prior to July 26, 1999, and received in time to be considered during the competitive review process.

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from the U.S. Postal Service or from a commercial carrier (such as UPS, Federal Express, etc.) as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. If proof cannot be provided, the application will not be considered for funding. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to: (1) Natural disasters, such as floods, hurricanes, or earthquakes; (2) a widespread disruption of the mail; or, (3) if DHHS determines a deadline extension to be in the best interest of the Federal government. The Department will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Forms

Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 405F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 690–8794. Requests for forms and questions (administrative and technical) will be accepted and responded to up to ten (10) working days prior to closing date of receipt of applications.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page: *http://aspe.hhs.gov* (see section on available grants and contracts). You may fax your request to the attention of the Grants Officer at (202) 690–6518. Completed grant applications may not be faxed or submitted electronically.

The printed Federal Register notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

Also see section entitled ''Components of a Complete Application.'' All of these documents must accompany the application package.

Length of Application

In no case shall an application for the ASPE grant (excluding the resumes, appendices and other appropriate attachments) be longer than twenty-five double-spaced pages. Only relevant attachments should be included, for example, resumes of key personnel. Videotapes, brochures, and other promotional materials will be discarded and not reviewed. Project narratives should be formatted with 1 inch margins, double spaced lines, 12 point type, with consecutively numbered pages.

Selection Process and Evaluation Criteria

Selection of successful applicants will be based on the technical and financial criteria described in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The review panel will prepare a summary of all applicant scores, strengths and weaknesses, and recommendations and submit it to the ASPE for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, grant applicants should take care to ensure that all criteria are fully addressed in the applications. Grant applications will be reviewed as follows:

1. *Goals, Objectives, and Potential Usefulness of the Analyses* (25 points). The potential usefulness of the objectives and how the anticipated results of the proposed project will advance policy knowledge and development of welfare reform policies. If the proposed project builds on previous work, the application should explain how. If the project uses pre-TANF data, the application should explain both the value of this data and its limitations data in the post-TANF world. Applications will be judged on the quality and policy relevance of the proposed research questions, study populations, and analyses (including subgroup analyses).

2. *Quality and Soundness of Methodology and Design* (30 points). The appropriateness, soundness, and cost-effectiveness of the methodology, including the research design, selection of existing data sets, data gathering procedures, statistical techniques, and analytical and modeling strategies. Richness of policy-relevant data and demonstrated ability to secure data will be an important scoring factor in this criterion.

3. *Qualifications of Personnel and Organizational Capability.* (25 points). The qualifications of the project personnel for conducting the proposed research as evidenced by professional training and experience, and the capacity of the organization to provide the infrastructure and support necessary for the project. Reviewers will evaluate the principal investigator and staff on research experience and demonstrated research skills.

Reviewers may consider references for work completed on prior research projects. Principal investigator and staff time commitments also will be a factor in the evaluation. Reviewers will rate the applicant's pledge and ability to work in collaboration with other scholars or organizations in search of similar goals. Reviewers also will evaluate the applicant's demonstrated capacity to work with a range of government agencies.

4. *Ability of the Work Plan and Budget to Successfully Achieve the Project's Objectives.* (20 points). Reviewers will examine if the work plan and budget are reasonable and sufficient to ensure timely implementation and completion of the study and whether the application demonstrates an adequate level of understanding by the applicant of the practical problems of conducting such a project. Adherence to the work plan is necessary in order to produce results in the time frame desired; demonstration of an applicant's ability to meet the schedule will therefore be an important part of this criterion. Evidence of past history in meeting deadlines will be considered. Reviewers will also examine the use of any additional funding and the role that funds provided under this announcement will play in the overall project.

Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

3. *The Assistant Secretary's Discretion.* Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards and the distribution of awards among the priority areas are contingent on the needs of the Department at any point in time and the quality of the applications that are received.

The Catalog of Federal Domestic Assistance number is 93–239.

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);

2. Budget Information—Non-construction Programs (Standard Form 424A);

3. Assurances—Non-construction Programs (Standard From 424B);

4. Table of Contents;

5. Budget Justification for Section B Budget Categories;

6. Proof of Non-profit Status, if appropriate;

7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;

8. Project Narrative Statement, organized in five sections, addressing the following topics (limited to thirty (25) single-spaced pages):

(a) Abstract,

(b) Goals, Objectives and Usefulness of the Project,

(c) Methodology and design,

(d) Background of the Personnel and Organizational Capabilities and

(e) Work plan (timetable);

9. Any appendices or attachments;

10. Certification Regarding Drug-Free Workplace;

11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;

12. Certification and, if necessary, Disclosure Regarding Lobbying;

13. Supplement to Section II—Key Personnel;

14. Application for Federal Assistance Checklist.

Dated: June 3, 1999.

Ann Segal,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–14795 Filed 6–10–99; 8:45 am]

BILLING CODE 4151–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC).

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will address (1) Research involving human embryonic stem cells and (2) the comprehensive system of human subjects protections. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on June 28, 1999 from 11:30 am to 12 noon.

Dates/Times	Location
June 28, 1999, 8:30 am–5:00 pm.	The Washington Ballroom, Hotel Washington, 515 15th Street, NW, Washington, DC.
June 29, 1999, 8:30 am–5:00 pm.	Same Location as Above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: June 4, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–14923 Filed 6–10–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–21]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. An Evaluation of the Pediatrician's Role in Facilitating Early Parent-Child Communication About Sexuality and HIV Risk—New—National Center for HIV, STD, and TB Prevention (NCHSTP). The Centers for Disease Control and Prevention is proposing a study to evaluate whether pediatricians providing medical care to children between the ages of 6 and 12 years old currently facilitate early communication between parents and children about sexuality and STD/HIV prevention. The purpose of this project is to develop and conduct a survey which will focus on the delivery of sexual and STD/HIV education to parents for the purpose of facilitating parent-child dialogue about sexuality and sexual risk. The survey will assess which services are currently offered by physicians (e.g., discussions, pamphlets, videos, referrals to educational programs); when and to whom physicians offer services; the barriers that prevent physicians from offering services; and the types of services pediatricians believe are feasible to offer. Results of this survey will be used to develop effective programs to help pediatricians facilitate communication between parents and children about sexuality and STD/HIV prevention. Increasing parent-adolescent communication about sexuality and STD/HIV is important because many adolescents are having unprotected sex at an early age, and although parent-adolescent communication has been found to be associated with lower sexual risk behavior among adolescents many parents are not talking to their adolescents. Thus, strategies are needed to inform parents about the benefits of communication as a way to enhance their child's sexual health. Consistent with recommendation from the American Medical Association and the American Academy of Pediatrics, physicians can play an important role in educating parents about ways to promote their child's sexual health. The total cost to respondents is estimated at $22,500 based on an hourly rate of $75.00 per hour for pediatricians.

Respondents	Number of respondents	Number of responses/respondents	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Pediatricians	900	1	0.33	297

Dated: June 4, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–14832 Filed 6–10–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1719]

Angus Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Angus Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4-(Diiodomethylsulfonyl) toluene as a slimicide in the manufacture of food-contact paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4668) has been filed by Angus Chemical Co., c/o Phillip A. Johns, 10900 Silent Wood Pl., North Potomac, MD 20878–4829. The petition proposes to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of 4-(Diiodomethylsulfonyl) toluene as a slimicide in the manufacture of food-contact paper and paperboard.

The agency has determined under 21 CFR 25.32(q) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: May 24, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–14839 Filed 6–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1174]

Dietary Supplements; Center for Food Safety and Applied Nutrition Strategy; Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of May 13, 1999 (64 FR 25889). The document announced a public meeting to solicit comments that will assist the Center for Food Safety and Applied Nutrition to develop an overall strategy for achieving effective regulation of dietary supplements under the Dietary Supplement Health and Education Act. The document published with an incorrect date for the submission of written comments. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Naomi Kulakow, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–8682, FAX 202–260–8957, e-mail ''nkulakow@bangate.fda.gov''.

In FR Doc. 99–12039, appearing on page 25889 in the **Federal Register** of Thursday, May 13, 1999, the following corrections are made:

1. On page 25889, in the third column, under the ''Dates'' caption, ''May 28, 1999.'' is corrected to read ''August 20, 1999.''

2. On page 25890, in the third column, under the ''Comments'' section, in the second line, ''May 28, 1999,'' is corrected to read ''August 20, 1999,''.

Dated: June 7, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14840 Filed 6–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–98–4001]

Memorandum of Understanding Between the Food and Drug Administration and States of Iowa

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the FDA and the State of Iowa Department of Public Health. The purpose of the MOU is to establish policies, procedures, and responsibilities for the billing and collection of mammography facility inspection fees under the Mammography Quality Standards Act.

DATES: The agreement became effective July 14, 1998.

FOR FURTHER INFORMATION CONTACT: Lireka P. Joseph, Center for Devices and Radiological Health (HFZ–200), Food and Drug Administration, 2094 Gaither Rd., Gaithersburg, MD 20850, 301–443–2845.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20. 108(c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: June 4, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

BILLING CODE 4160–01–F

1a

July 8, 1998

MEMORANDUM OF UNDERSTANDING

BETWEEN

STATE OF IOWA
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF RADIOLOGICAL HEALTH

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF HEALTH AND INDUSTRY PROGRAMS

RE: BILLING AND COLLECTION OF MAMMOGRAPHY QUALITY STANDARDS ACT (MQSA) MAMMOGRAPHY FACILITY INSPECTION FEES IN STATES PARTICIPATING IN THE U.S. FOOD AND DRUG ADMINISTRATION'S MQSA STATES AS CERTIFIERS DEMONSTRATION PROJECT

Control No. 225-98-4001

1b

Number assigned: 225-98-4001

MEMORANDUM OF UNDERSTANDING

BETWEEN

STATE OF IOWA
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF RADIOLOGICAL HEALTH

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF HEALTH AND INDUSTRY PROGRAMS

I. PURPOSE:

This Memorandum of Understanding (MOU) establishes policies, procedures, and responsibilities for the billing and collection of Mammography Quality Standards Act (MQSA) mammography facility inspection fees while the State of Iowa is participating in the Food and Drug Administration's (FDA) MQSA States as Certifiers Demonstration Project. The Demonstration Project is for one year, but may be renewable for a second year by mutual agreement.

II. BACKGROUND:

This MOU has been developed because of the need to bill and collect annual mammography facility inspection fees according to provisions contained in the MQSA while the State of Iowa is participating in the demonstration project. The State of Iowa voluntarily applied and agreed to participate in this demonstration project.

Each agency recognizes that this MOU documents a working relationship. It does not infer any contractual obligations nor assumption of liability by one agency for any action of the other agency.

It is understood that each agency continues to exercise its respective jurisdictional authority, and that the cooperation extended to the other agency does not transfer any jurisdictional authorities.

The MQSA constrains the disposition of inspectional fees collected under section (r). Subparagraph (r)(1)(B)(i) provides that fees collected from facilities to cover the costs of inspections "shall be deposited as an offsetting collection of the appropriations for the Department of Health and Human Services (DHHS) as provided in appropriations Acts and shall remain available without fiscal limitation." This language requires the inspectional entity, whether the FDA, a

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Page 2 Memorandum of Understanding

State under contract, or a certifying State, to deposit funds collected from facilities for inspections into a DHHS account. All inspection funds collected under this MOU will be deposited into the DHHS account initially, then apportioned between FDA and the State according to the inspection costs of each.

III. SUBSTANCE OF AGREEMENT:

1. The State of Iowa will provide the FDA, within five business days, the results of all annual MQSA inspections and MQSA follow-up inspections conducted by the State during the demonstration project. Based on this information, the FDA will mail a bill to the inspected mammography facilities to cover the costs of the annual inspections. The bill will set forth the type of inspection conducted (annual or follow-up), the fee to be paid, and the date payment is due (30 days after billing date). Inspection fees will be billed to and collected from the party that operates the facility. If the facility is owned or controlled by an entity other than the operator, it is up to the owner and the operator to establish, through contract or otherwise, how the costs of facility inspections will be paid.

   If full payment is not received by the due date, a second bill will be sent. At that time, interest will begin to accrue at the prevailing rate set by the Department of the Treasury (currently, the prevailing rate is 14.00 percent), a 6.00 percent late payment penalty will be assessed in accordance with 45 CFR 30.13, and a $20 administrative fee will be assessed for each 30-day period that a balance remains due. If payment is not received within 30 days of a third and final bill, FDA may initiate action to collect unpaid balances (with interest and penalties), including the use of collection agencies and reporting of delinquencies to commercial credit reporting agencies.

2. The fees for annual MQSA mammography facility inspections have been determined by the fees set by the State of Iowa. The total fee billed to the facility for each annual MQSA inspection during the demonstration project will be the State fee of $850 for the first unit and $300 for each additional unit plus $509; thus, the total fee will be $1359 plus $300 for each additional unit. The FDA will retain the $509 from each annual MQSA inspection fee for mammography facility inspection-related services provided to the State of Iowa. The types of services that will be provided by the FDA are as follows:

   - Billing facilities for fees due for annual inspections.
   - Collecting facility payments.
   - Training and certification of inspectors.
   - Development of instrument calibration procedures and calibration of instruments used in the inspections.
   - Supplying, repairing, and replacing inspection equipment.
   - Design, programming, and maintenance of inspection data systems.

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- Administrative support attributable to facility inspections.

3. The FDA will pay the State of Iowa $850 for the first unit and $300 for each additional unit for each annual MQSA inspection fee collected from non-governmental entity mammography facilities for inspections conducted by the State during the demonstration project. The State of Iowa will be paid monthly beginning approximately 60 days after receipt of the first inspection record file from Iowa. This monthly payment amount will be based upon the actual amount collected from mammography facilities from the previous month as opposed to the number of inspections conducted during that period. That is, the State of Iowa will receive $850 for the first unit and $300 for each additional unit for each annual MQSA inspection fee which is collected in full by the FDA during each month the State is participating in the demonstration project. Payment will be made electronically. The data contained in the attached Automated Clearinghouse (ACH) information sheet will be utilized by the FDA to pay the State of Iowa for annual MQSA inspections and MQSA follow-up inspections conducted during the demonstration project.

4. Under the MQSA, all certified mammography facilities except governmental entities are subject to the payment of inspection fees. During the period of time the State of Iowa is participating in the demonstration project, the FDA will not pay the State of Iowa, under this MOU, for annual MQSA inspections of mammography facilities which are government entities. FDA will reimburse the State of Iowa for annual MQSA inspections of facilities which are governmental entities through a modification of the MQSA inspection contract between the FDA and the State of Iowa entered into on February 1, 1998. The contract will be extended to cover one year from the effective date of the demonstration project. Should the State cease participating in, or be terminated from, the demonstration project, an MQSA inspection contract may be re-negotiated.

IV. DEFINITION:

1. Governmental Entity

A "governmental entity" is a mammography facility subject to the MQSA inspection that meets all of the following criteria:

The entire salary of all on-site personnel of the mammography facility is directly paid by a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, the building, office, or other space occupied by the mammography facility is owned by, rented by, or leased to a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, 1e

the facility's mammography equipment is owned by, rented by, or leased to a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, and a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof has the ultimate authority to make day-to-day decisions concerning the management and operation of the mammography facility.

or

A facility qualifies as a government entity if at least 50% of the mammography screening examinations provided during the preceding 12 months were funded under the Breast and Cervical Cancer Mortality Prevention Act of 1990, 42 U.S.C. 300k et seq.

V. **AUTHORITY**

The FDA is vested with authority under section 354(r) of the Public Health Services Act (the PHS Act) (42 U.S.C. 262 *et seq.*) to assess and collect fees from mammography facilities to cover the costs of annual inspections required by the MQSA. Under 354(q) of the PHS Act, FDA may approve a state to perform some of the agency's certification functions. The MQSA amended Title III of the PHS Act by adding a new section 354 (42 U.S.C. 263b) to require uniform national quality standards for mammography facilities.

The State of Iowa is authorized by State statute, Iowa Code Chapter 136.15

VI. **NAME AND ADDRESSES OF PARTICIPATING AGENCIES:**

A. FDA:

Office of Health and Industry Programs
1350 Piccard Drive
Rockville, MD 20850

B. State of Iowa:

Department of Public Health
Bureau of Radiological Health
Lucas State Office Building
321 E. 12th Street
Des Moines, IA 50319-0075

1f

Page 5 Memorandum of Understanding

VII. LIAISON OFFICERS:

A. For FDA:

Lireka P. Joseph, Dr. P.H.
Director
Office of Health and Industry Programs
Center for Devices and Radiological Health
Food and Drug Administration

B. For State of Iowa:

Donald A. Flater
Chief
Bureau of Radiological Health
Iowa Department of Public Health

VIII. PERIOD OF AGREEMENT:

After acceptance by both parties, this MOU will be become effective on or after July 1, 1998 and continue until the completion of the demonstration project or upon termination in writing by either party with a 30-day prior notice (such notice shall be sent to the addresses listed in Section V). This MOU may be modified by mutual written consent at any time. The effective date will be specified in the letter formally approving the State of Iowa as a participant in the demonstration project.

IX. CONCURRENCE:

FDA:

Lireka Joseph 7/9/98
(Signature and date)
Lireka P. Joseph, Dr.P.H.
Director
Office of Health and Industry Programs
Center for Devices and Radiological Health
Food and Drug Administration

State of Iowa:

Donald A. Flater 7/14/98
(Signature and date)
Donald A. Flater
Chief
Bureau of Radiological Health
Iowa Department of Public Health

Christopher G. Atchison
(Signature and date) 7/14/98
Christopher G. Atchison
Director
Iowa Department of Public Health

[FR Doc. 99–14796 Filed 6–10–99; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) of the National Institutes of Health (NIH) Announces the Opportunity for Clinical Trial Agreements (CTA) in Conjunction with a Major Multicenter Clinical Trial Aimed at Developing Practical, Safe and Effective Means of Preventing the Progression of Liver Disease in Patients With Chronic Hepatitis C Virus (HCV) Infection

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) seeks capability statements from parties interested in entering into a potential Clinical Trial Agreement (CTA) to provide agent for treating subjects in the Hepatitis C Clinical Trial (HCCT). Collaborator applicants developing capability statements must also include plans for packaging, labeling, and distributing agent and placebo. The primary criterion for selecting a potential Collaborator is the scientific merit of proposals for use of preventing the progression of liver disease in patients with chronic hepatitis C virus infection.

The control of the HCCT shall reside entirely with the Institute and the scientific participants of the trial. In the event that any adverse effects are encountered which, for legal or ethical reasons, may require communication with the FDA, the relevant collaborating institutions will be notified. Neither the conduct of the trial nor the results should be represented as a NIDDK endorsement of the drug under study.

DATES: Only written Capability Statements received by the NIDDK on or before August 1, 1999 will be considered during the initial design phase. Potential Collaborators may be invited to meet with the Selection Committee at the Collaborator's expense to provide additional information. The Institute may issue an additional notice of opportunity during the design of the trial if circumstances change or if the trial design alters substantially.

FOR ADDITIONAL INFORMATION AND QUESTIONS: Capability statements should be submitted to Dr. Michael W. Edwards, Office of Technology Development, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, BSA Building, Suite 350 MSC 2690, 9190 Rockville Pike, Bethesda, MD 20814–3800; Tel: 301/496–7778, Fax: 301/402–0535; Email:mels@nih.gov.

SUPPLEMENTARY INFORMATION: The HCCT will be conducted as collaborative contracts among nine (9) Clinical Centers (CCs) a central data coordinating (DCC) with biostatistical expertise and with input from a hepatologist, and a central virological testing laboratory (VL). The HCCT will be designed to evaluate whether continuous long-term antiviral therapy can slow the progression of liver disease, preventing cirrhosis or preventing worsening of cirrhosis, decompensation, development of hepatocellular carcinoma (HCC) and death from liver disease. The Trial will also evaluate the natural history of hepatitis C and the factors that predict or correlate with disease progression. The major focus will be to evaluate whether antiviral therapy, despite not leading to eradication of HCV, can suppress hepatocellular injury, necrosis and fibrosis.

HCCT is expected to recruit approximately 800 patients with chronic hepatitis C who have failed to respond to therapy with alpha interferon (with or without ribavirin) and who have significant fibrosis on liver biopsy. The carefully designed cohort of patients will be enrolled in a study of the efficacy and safety of a continuous long-term antiviral therapy (for as long as four years)

Capability Statements

The design concept described above is not final. The final design will be developed over the course of the first year of the trial by the HCCT Steering Committee (which will include the Principal Investigators of the Clinical Centers, the Data Coordinating Center, the Virology Laboratory and the NIDDK Project Officer). It is possible that the final design for HCCT may include more than one agent.

A Selection Committee will utilize the information provided in the ''Collaborator Capability Statements'' received in response to this announcement to help in its deliberations. The Selection Committee will interact with the Steering Committee to develop the most appropriate design, based on a thorough understanding of the efficacy and side effects associated with all agents proposed.

It is the intention of the NIDDK that qualified Collaborators have the opportunity to provide information to the Selection Committee through their capability statements. The Capability Statement should not exceed 8 pages and should address the following selection criteria:

(1) The statement should provide specific details regarding the safety and efficacy of the proposed agent for long-term use in hepatitis C patients.

(2) The statement should include a detailed plan demonstrating the ability of the Collaborator to provide sufficient quantities of the agent in a timely manner for the duration of the study.

(3) The statement should outline plans for packaging, labeling, and distributing the agent along with placebo. The statement should describe the commitment of other resources such as scientific research, personnel, services, facilities, or equipment that would be used to support conduct of the trial.

(4) The statement must address willingness to promptly publish research results and ability to be bound by PHS policies.

Dated: June 4, 1999.

L. Earl Laurence,

Deputy Director, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 99–14824 Filed 6–10–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–16]

Proposed Information Collection: Comment Request; Application for Fee Personnel Designation—VA, Fee or Roster Designation—HUD–92563

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: Coments due date: August 10, 1999.

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, Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Home Mortgage

Insurance Division, Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C. 20410, telephone (202) 708–2700, (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1994 (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 of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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: Application for Fee Personnel Designation—VA, Fee or Roster Designation—HUD–92563.

OMB Control Number, if applicable: 2502–0122.

Description of the need for the information and proposed use: This Notice requests reinstatement with change of a previously approved OMB information collection authorization. HUD's collection of this information is needed to make determinations of eligibility and qualifications of applicants for fee work. Qualified applicants are hen placed on panels or rosters for assignment of fee work. This process ensures that only qualified personnel are placed on appraisal and inspection panels.

Agency from number, if applicable: HUD–92563.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 10,000 frequency of responses is 1, the total annual responses are 10,000 and the estimated annual burden hours requested is 50,000.

Status of the proposed information collection: Reinstatement with change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 1, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–14920 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–15]

Proposed Information Collection: Comment Request; Personal Financial and Credit Statement HUD–92417

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: August 10, 1999.

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, Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sylvia Miller, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

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).

The 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 of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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: Personal Financial and Credit Statement.

OMB Control Number, if applicable: 2502–0001.

Descrption of the need for the information and proposed use: This form is used by HUD to determine the capability, reputation, experience and ability of the project sponsor to develop a successful project and have the resources to complete it. This form (HUD–92417) is part of the basic application form for mortgage insurance.

Agency form numbers, if applicable: HUD–92417.

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 estimate number of respondents is 8,000, frequency of responses is once, and the total annual responses are 8,000, and the estimated annual burden hours requested are 64,000.

Status of the proposed information collection: Reinstatement without change of a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 1, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–14921 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4447–N–1]

Proposed Information Collection: Comment Request; Commitment To Guarantee Mortgage-Backed Securities

AGENCY: Office of the President of Government. National Mortgage Association (Ginnie Mae), 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:* August 10, 1999.

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: Sonya Suarez, Office of Policy, Planning and Risk Management, Department of Housing and Urban Development, 451—7th Street, SW., Room 6226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2772 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The department will submit 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).

The 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 of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated 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: Commitment to Guarantee Mortgage-Backed Securities.

OMB Control Number, if applicable: 2503–0001.

Description of the need for the information and proposed use: This form is used by Mortgage-Backed Securities issuers to apply for Ginnie Mae commitment authority to guarantee mortgage-backed securities.

Agency form numbers, if applicable: HUD Form 11704.

Members of affected public: For-profit businesses (mortgage companies, thrifts, savings & loans, etc.).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

	Respondents	Frequency of response	Hours of response*
Form 11704	625	4	624

*.25 hrs × 625 issuers = 156 hrs.
*156 hrs × 4 requests per yr. = 624 hrs annually.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 2, 1999.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 99–14922 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–27]

Submission for OMB Review: American Housing Survey (AHS)—1999 National Sample

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development seeks updated locating and states information on participants in the American Housing Survey (AHS)—1999 National Sample. 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: July 12, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) 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, and extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 3, 1999.

David S. Cristy,

Director, Information Technology, Capital Planning Staff.

Submission of Proposed Information Collection to OMB

Title of Proposal: American Housing Survey (AHS)—1999 National Sample.

Office: Policy Development and Research.

OMB Approval Number: 2528–0017.

Description of the Need for the Information and Its Proposed Use: The 1999 AHS–N is a longitudinal study that provides a periodic measure on the quality, availability, and cost of housing for the nation. The study also provides information on demographic and other characteristics of the occupants. Federal and local agencies use AHS data to evaluate housing issue.

Form Number: AHS–26, AHS–27, and AHS–28.

Respondents: Individuals or households.

Frequency of Submission: Biennially.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	55,480		1		0.61		33,845

Total Estimated Burden Hours: 33,845.

Status: Revision.

Contact: Ronald J. Sepanik, HUD, (202) 708–1060 ext. 5887; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 3, 1999.

[FR Doc. 99–14918 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–28]

Submission for OMB Review: Survey of Market Absorption of New Apartment Buildings

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development seeks updated locating and states information on participants in the Survey of Market Absorption of New Apartment Buildings. 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: July 12, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) The office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 3, 1999.

David S. Cristy,

Director, Information Technology, Capital Planning Staff.

Submission of Proposed Information Collection to OMB

Title of Proposal: Survey of Market Absorption of News Apartment Buildings.

Office: Policy Development and Research.

OMB Approval Number: 2528–0013.

Description of the Need for the Information and Its Proposed Use: The Department of Housing and Urban Development conducts this survey in order to determine if the supply of renal housing is keeping pace with current and future needs. Additional information such as asking rent (or price for condominium units) and number of bedrooms is also collected.

Form Number: H–31 and SOMA–1.

Respondents: Business or other for-profit.

Frequency of Submission: Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Information Collection	12,000		1		.3		3,600

Total Estimated Burden Hours: 3,600.

Status: Extension without changes.

Contact: Ronald J. Sepanik, HUD, (202) 708–1060 ext. 5887; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 3, 1999.

[FR Doc. 99–14919 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–23]

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.

EFFECTIVE DATE: June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 4, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–14755 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability; Draft 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 the of Department of the Interior (DOI), as a natural resource trustee, announces the release for public review of the Draft Restoration Plan (RP) for the Hi View Terrace Superfund Site. The Draft RP describes the DOI's proposal to restore natural resources injured as a result of remedial actions undertaken to address the release of hazardous substances from the Hi View Terrace Superfund Site.

DATES: Written comments must be submitted on or before July 15, 1999.

ADDRESSES: Request for copies of the Draft RP may be made to: Ms. Kathryn Jahn, U.S. Fish and Wildlife Service, New York Field Office. 3817 Luker Road, Cortland, New York 13045.

Written comments or materials regarding the Draft RP should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Kathryn Jahn, Environmental Contaminants Branch, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045.

Interested parties may also call (607) 753–9334 or send e-mail to kathryn__jahn@fws.gov for further information.

SUPPLEMENTARY INFORMATION: The Hi View Terrace Superfund Site (Site) consists of lots at 100, 110, and 116, Hi View Terrace in West Seneca, New York, portions of which were filled with cyanide-contaminated material. A removal action was subsequently undertaken in 1988 and 1989. A total of 5,600 tons of soil and debris were removed, and the area backfilled with clean material. About 0.5 acre of wetland at the Site was lost due to the remedial work, reducing the quantity and quality of wetlands available for wildlife. As compensation for this loss we reached settlement of $25,000 with the Responsible Party.

The Draft RP is being released in accordance with the Natural Resource Damage Assessment Regulations found at Title 43 of the Code of Federal Regulation Part 11. The Draft RP describes several habitat restoration and protection alternatives identified by the DOI, and evaluates each of the possible alternatives based on all relevant considerations. The DOI's Preferred Alternative entails the use of $25,000 by the Town of West Seneca to purchase a 17-acre parcel of land along Cazenovia Creek to create the Cazenovia Creek Nature Preserve. Details regarding the proposed project are contained in the Draft Restoration Plan.

The Final Revised Procedures for the Service for implementing the National Environmental Protection Act, published in the **Federal Register** on January 16, 1997, provide 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 Restoration Plan qualifies for a categorical exclusion under NEPA.

Interested members of the public are invited to review and comment on the Draft RP. Copies of the Draft RP are available from the U.S. Fish and Wildlife Service's New York Field Office at 3817 Luker Road. Cortland, New York 13045. Additionally the Draft RP is available for review at the Town Clerk's Office at the West Seneca Town Hall, 1250 Union Road, West Seneca, New York 14224. All comments received on the Draft RP will be considered and a response provided either through revision of this Draft Plan and incorporation into the Final Restoration Plan or by letter to the commentor.

Author: The primary author of this notice is Ms. Kathryn Jahn, New York Field Office, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, NY 13045.

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: June 3, 1999.

Paul R. Nickerson,

Acting Assistant Regional Director, Ecological Services.

[FR Doc. 99–14897 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–010–1430–01; MTM 84895, MTM 88157]

Notice of Intent To Plan Affecting Two Tracts of Public Land in Yellowstone County, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to plan affecting two tracts of public land in Yellowstone County, Montana.

SUMMARY: An environmental assessment will be prepared for amendment of the Billings Resource Management Plan to provide guidance on the management of the Four Dances Natural Area and the Sundance Lodge Recreation Area. The Billings Resource Management Plan (RMP) was completed in 1984. There is no land use planning guidance for the Sundance Lodge Recreation Area acquired in 1997 or the Four Dances Natural Area which was acquired in 1999. The environmental assessment will meet the requirements of the Federal Land Policy and Management Act of 1976. The document will guide future management decisions for the two acquired properties.

DATES: Any issues, concerns, or alternatives should be submitted to the BLM at the below address on or before August 1, 1999.

FOR FURTHER INFORMATION CONTACT: David C. Jaynes, Assistant Field Manager, BLM, 810 East Main Street, Billings, Montana 59105 or call 406–238–1540.

SUPPLEMENTARY INFORMATION: The Sundance Lodge Recreation Area (MTM 84895), formerly the Altman Ranch, was acquired in 1997 and contains approximately 379.9 surface and mineral acres of bottom land along the Clarks Fork of the Yellowstone River, located two miles southeast of Laurel, Montana.

The Four Dances Natural Area (MTM 88157), formerly the Larsen property, or Sacrifice Cliff, was acquired in 1999 and contains approximately 765 surface and mineral acres of land along the Yellowstone River. The open space values of this land are protected by a conservation easement that is held by the Montana Land Reliance and any use, land management, or development on this property will be done in conformance with this easement. Approximately 10 percent of the property is riparian land along the Yellowstone River with the remainder uplands on a plateau approximately 250 feet above the river overlooking Billings, Montana. The overall objective for the plan is to manage these areas for recreation while protecting scenic, cultural, and wildlife values.

The public is requested to assist the BLM in the identification of issues. Examples of potential issues are: what types of recreational activities will be allowed, what types of facilities will be constructed, and what types of land treatments would be allowed. Meetings for the proposed RMP amendment are not yet scheduled. When meetings are scheduled the public will be notified through local news releases.

Dated: June 4, 1999.

Sandra S. Brooks,

Field Manager.

[FR Doc. 99–14816 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00: GP9–0201]

Notice of Meeting of Standards for Rangeland Health and Livestock Grazing Guidelines Subgroup of the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Meeting of the Standards for Rangeland Health and Livestock Grazing Guidelines Subgroup of the Eastern Washington Resource Advisory Council; Spokane, Washington, July 13, 1999.

SUMMARY: A meeting of the Standards for Rangeland Health and Livestock Grazing Guidelines Subgroup of Eastern Washington Resource Advisory Council will be held on July 13, 1999. The meeting will convene at 8:30 a.m. at the Spokane District Office of The Bureau of Land Management, 1103 N. Fancher, Spokane, Washington; 99212–1275. The meeting will adjourn no later than 5:00 p.m.. The meeting will consist of a field demonstration of techniques to assess achievement of rangeland health standards along Crab Creek in Lincoln County, Washington. Those wishing to join the tour at Tokio, Washington may do so at 9:30 a.m. Public comments will be heard from 12:00 p.m. until 12:30 p.m. If necessary to accommodate all wishing to make public comments, a time limit may be placed upon each speaker.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington 99212–1275; or call 509–536–1200.

Dated: June 4, 1999.

Joseph K. Buesing,

District Manager.

[FR Doc. 99–14695 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Scoping for the Merced Wild and Scenic River Management Plan, Yosemite National Park; Mariposa and Madera Counties, California

SUMMARY: Pursuant to provisions of the National Environmental Policy Act (Pub. L. 91–190) and the Wild and Scenic Rivers Act (Pub. L. 90–542), the National Park Service is initiating public scoping for a conservation planning and environmental impact analysis process for a Merced River Management Plan for river segments in Yosemite National Park. This will culminate with a river management plan that comprehensively encompasses protection and enhancement of the values for which Merced River was designated as a Wild and Scenic River. The plan will address resource protection, potential development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of the 1968 Wild and Scenic Rivers Act. The purpose of this scoping phase is to elicit early public comments regarding issues and concerns, a suitable range of alternatives and appropriate mitigation measures, and the nature and extent of potential environmental impacts which should be addressed.

Background

In 1987 Congress designated 122 miles of the Merced River as Wild and Scenic, including 81 miles within Yosemite National Park. Subsequently the Bureau of Land Mangement and U.S. Forest Service jointly completed a comprehensive river management plan for Merced River segments outside of Yosemite National Park. The National Park Service is now initiating planning for the remaining segments. The two segments subject to this effort are the Merced River (the main stem, originating near Mt. Lyell and meandering through Yosemite Valley and flowing out of the park near El Portal) and the South Fork (originating near Triple Divide Peak and flowing out of the park near Wawona). In accord with the 1968 Wild and Scenic Rivers Act, the river segments within Yosemite

National Park have been classified, boundaries delineated, and outstandingly remarkable values identified.

Scoping and Public Meetings

Involvement of interested individuals and organizations will be a key element of the current conservation planning and environmental analysis process, and concurrently Tribal, federal, state, and local governments will be consulted. At this time it has not been determined whether an Environmental Assessment or an Environmental Impact Statement may be appropriate. However, all written responses and comments received during the forthcoming public meetings will aid in the preparation of either document. Suggestions regarding issues to be addressed and information relevant to determining scope of the current planning and analysis process are being sought, through July 14, 1999. Four public scoping meetings will be held from 6pm to 8pm, as noted below; additional information will be released via regional and local news media, and updates are also available by phone at (209) 372–0584.

June 22, San Francisco (Upper Fort Mason, Building 201, Golden Gate National Recreation Area, near the intersection of Bay and Franklin Streets);

June 23, Modesto (Mallard Inn, 1720 Sisk Road);

June 24, Mariposa (Best Western Yosemite Way Station, 4999 Highway 140);

June 28, Yosemite Valley (Visitor Center, East Auditorium).

Decision Process

Scope of issues identified to date include: cultural and natural resource protection, development standards for any facilities, land management, user capacities, appropriate types of recreation, and protection of visual resources. All scoping feedback received will be incorporated into the information base guiding the preparation of a comprehensive plan for future management of the river. Written comments should be addressed to the Superintendent, Yosemite National Park, PO Box 577, Yosemite National Park, California 95389, and must be postmarked not later than July 14, 1999 (or if sent via e-mail, transmitted by that date to ''Yose__Merced__River@nps.gov'').

Notice of future developments, including availability of the draft **environmental** document and plan, will be accomplished via regional news media, direct mailings, and **Federal Register** if warranted. The official responsible for final decision regarding the forthcoming plan is the Regional Director, Pacific West Region, National Park Service; the official responsible for subsequent implementation would be the Superintendent, Yosemite National Park.

Dated: June 4, 1999.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 99–14823 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Anvik Village, AK in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Anvik Village, AK in the possession of the American Museum of Natural History, New York, NY.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of Anvik Village.

In 1903, human remains representing a minimum of seven individuals were excavated by Rev. John W. Chapman from AK, Yukon-Koyukuk Borough, Anvik Village, and donated to the Museum. No known individuals were identified. The 45 associated funerary objects include 11 pottery dishes; a baleen comb; a tobacco box; three wooden boxes; three metal knives; two knife handles; four implements; two handles; a graver's tool; six bone tubes; two bone needles; an ivory point; a scraper; two bear tooth pendants; a flint chip; and four metal bracelets.

These individuals have been identified as Native American based on burial practices and types of associated funerary objects. Geographic location is consistent with the post-contact territory of the Ingalik (an Athabascan group). The Ingalik have occupied Anvik Village since 1887 and for an undetermined period prior to that date. Some, perhaps all, of the graves date to the post-contact period. Burial practices are consistent with interior Athabascan and Ingalik funerary practices. Associated funerary objects are consistent with Ingalik culture. Museum catalog information describes the remains as Athabascan.

Based on the above mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of seven individuals of Native American ancestry. Officials of the American Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 45 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and Anvik Village.

This notice has been sent to officials of Anvik Village, Ingalik Inc., and Doyon, Ltd. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Martha Graham, Registrar for Cultural Resources, Department of Anthropology, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192; telephone: (212) 769-5846 before July 12, 1999. Repatriation of the human remains and associated funerary objects to Anvik Village may begin after that date if no additional claimants come forward.

Dated: June 1, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist,

Manager, Archeology and Ethnography Program.

[FR Doc. 99–14828 Filed 6–10–99; 8:45 am]

BILLING CODE BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the American Museum of Natural History, New York, NY which meets the definition of ''sacred object'' under Section 2 of the Act.

The cultural item is a Natoas bundle used in the Blackfeet Sun Dance. The bundle is comprised of a woman's headdress, a badger skin bag, a digging stick, a case for the items, a shawl for covering the bundle, four bags for the headdress parts, four bundle skins and wrappings, a paint outfit bag, nine paint bags, five sets of paints, a bag with skin scraps, seven rattles, a Nez Perce bag, a rawhide piece, three smudge sticks, a tripod for supporting the bundle, and a strap for the main bundle. This particular Natoas bundle is sometimes referred to as Many White Horses' Natoas bundle.

In 1906, the Museum purchased the bundle (AMNH Accession 1906-5), through intermediaries, from Mary Wolf Chief, the widow of Many White Horses. Mary Wolf Chief was co-keeper of the bundle who had the authority to sell the bundle, and voluntarily sold it to the Museum because she said that it had brought her bad luck.

Mr. Clayton Arrowtop traces his ancestry directly and without interruption to Many White Horses and Mary Wolf Chief, his great grandparents. During consultation, Mr. Arrowtop and Blackfeet elders identified the bundle as a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religion by its present-day adherents. Representatives of the Blackfeet Nation and Blackfeet elders have confirmed that Mr. Arrowtop is the appropriate custodian of the bundle.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(3), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the American Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (b)(1), Mr. Clayton Arrowtop can trace his ancestry directly and without interruption by means of the traditional kinship system of the Blackfeet Nation to Many White Horses and Mary Wolf Chief. Finally, officials of the Museum have determined that the Museum has right of possession, but that the Museum will waive that right in this case.

This notice has been sent to officials of the Blackfeet Nation. Any other lineal descendant, or representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Martha Graham, Registrar for Cultural Resources, Department of Anthropology, American Museum of Natural History, Central Park West at 79th Street, telephone: (212) 769-5846 before July 12, 1999. Repatriation of this object to Mr. Clayton Arrowtop may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the contents of or determinations within this notice.

Dated: May 27, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–14831 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Oregon in the Possession of the Hastings Museum of Natural and Cultural History, Hastings, NE

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Hastings Museum of Natural and Cultural History (formerly the Hastings Museum), Hastings NE which meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

The ten cultural items consist of eight black faceted glass beads and two white pony beads.

At an unknown date, museum records indicate nine black beads were excavated from a burial site in the state of Oregon by an unknown individual. In 1939, these beads were received by the Hastings Museum as part of an exchange with the John Bear Estate and catalogued as accession number 18429. During the inventory of 1989, eight black beads and two white beads were found associated with this accession number. It is unclear where the white beads came from or where the ninth black bead may be. The museum believes the white beads are associated with the remaining black beads.

Based on the material and types of beads present, these cultural items date to the post–1850 historic period. Consultation information provided by the Confederated Tribes of the Grand Ronde Community of Oregon shows that the aboriginal territory of the tribes include a large portion of western Oregon. Based on this information, officials of the Hastings Museum of Natural and Cultural History have determined that the geographical location of this grave was likely to have been within the aboriginal and historic territory of the Confederated Tribes of the Grand Ronde Community of Oregon.

Officials of the Hastings Museum of Natural and Cultural History have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these ten cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Hastings Museum of Natural and Cultural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Confederated Tribes of the Grand Ronde Community of Oregon.

This notice has been sent to officials of the Confederated Tribes of the Grand Ronde Community of Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Teresa Kreutzer, Curator, Hastings Museum of Natural and Cultural History, P.O. Box 1286, Hastings, NE 68902; telephone: (402) 461-2399, fax: (402) 461-2379 before July 12, 1999. Repatriation of these objects to the Confederated Tribes of the Grand Ronde Community of Oregon may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: May 24, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist,Manager, Archeology and Ethnography Program.

[FR Doc. 99–14830 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Hawai'i in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania Museum professional staff in consultation with representatives of Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs.

In 1893, human remains representing two individuals were removed from ''a lava cave on the island of Hawai'i' by Dr. J.M. Whitney. At an unknown date, Dr. C.N. Pierce donated these remains to the Academy of Natural Sciences of Philadelphia, PA. In 1966, these remains were placed on loan to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1998, one of these individuals was officially transferred to the collections of the University of Pennsylvania Museum. In 1999, the second individual was officially transferred to the collections of the University of Pennsylvania Museum. No known individuals were identified. No associated funerary objects were present.

Based on original accession information, these individuals have been identified as Native Hawaiian. Geographical and historical evidence provided during consultation by Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs indicates cultural affiliation between these human remains and present day Native Hawaiians.

Based on the above mentioned information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Pennsylvania Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs.

This notice has been sent to officials of Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104-6324; telephone: (215) 898-4051, fax (215) 898-0657, before July 12, 1999. Repatriation of the human remains to Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: June 1, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–14829 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–364 (Review)]

Aspirin From Turkey

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on aspirin from Turkey.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on aspirin from Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background.—On June 3, 1999, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 10012, March 1, 1999) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on July 1, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found responses submitted by Rhodia, Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

the Secretary on what determination the Commission should reach in the review. Comments are due on or before July 7, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by July 7, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14912 Filed 6–10–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–367 through 370 (Review)]

Color Picture Tubes From Canada, Japan, Korea, and Singapore

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) to determine whether revocation of the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at *http://www.usitc.gov/rules.htm.*

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. § 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to color picture tubes from Japan, the Commission found that both domestic and respondent interested party group responses to its notice of institution [1] were adequate and voted to conduct full reviews.

With regard to color picture tubes from Canada, Korea, and Singapore, the Commission found that the domestic interested party group response was adequate and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.[2]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[1] The notice of institution for all of the subject reviews was published in the **Federal Register** on Mar. 1, 1999 (64 FR 10014).

[2] Commissioner Crawford dissenting.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14913 Filed 6–10–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Certain Fresh Cut Flowers From Chile, Ecuador, Mexico, And Peru [1]

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty orders on standard carnations from Chile and pompom chrysanthemums from Peru and antidumping duty orders on standard carnations from Chile, fresh cut flowers from Ecuador, and fresh cut flowers from Mexico.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) to determine whether revocation of the countervailing duty orders on standard carnations from Chile and pompom chrysanthemums from Peru and the antidumping duty orders on standard carnations from Chile, fresh cut flowers from Ecuador, and fresh cut flowers from Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules

[1] The investigation numbers are as follows: Chile is 701–TA–276 (Review) and 731–TA–328 (Review), Ecuador is 731–TA–331 (Review), Mexico is 731–TA–333 (Review), and Peru is 303–TA–18 (Review).

of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. § 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to standard carnations from Chile and fresh cut flowers from Ecuador, the Commission found that the domestic interested party group responses to its notice of institution [2] were inadequate and the respondent interested party group responses were adequate.[3] The Commission also found that other circumstances warranted conducting full reviews.[4]

With regard to fresh cut flowers from Mexico and pompom chrysanthemums from Peru, the Commission found that both the domestic interested party group responses and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.[5]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14910 Filed 6–10–99; 8:45 am]

BILLING CODE 7020–02–P

[2] The notice of institution for all of the subject reviews was published in the **Federal Register** on Feb. 1, 1999 (64 FR 4898).

[3] Chairman Bragg and Commissioner Crawford dissenting with respect to the adequacy of the respondent interested party group response for standard carnations from Chile.

[4] Commissioner Crawford dissenting.

[5] Commissioner Crawford dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–286 (Review) and 731–TA–365 (Review)]

Industrial Phosphoric Acid From Israel and Belgium

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty order on industrial phosphoric acid from Israel and the antidumping duty order on industrial phosphoric acid from Belgium.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) to determine whether revocation of the countervailing duty order on industrial phosphoric acid from Israel and the antidumping duty order on industrial phosphoric acid from Belgium would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both domestic and respondent interested party group responses to its notice of institution (64 FR 10017, March 1, 1999) were adequate and voted to conduct full reviews. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14911 Filed 6–10–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–339 (Review) and 731–TA–340–A through 340–I (Review)]

Solid Urea From Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan [1]

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on solid urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

[1] The investigation numbers are as follows: Romania is 731–TA–339 (Review) and Armenia, Belarus, Estonia, Lithuania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan are, respectively, 731–TA–340–A through 340–I (Review).

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on solid urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On June 3, 1999, the Commission determined that the domestic interested party group responses to its notice of institution (64 FR 10020, March 1, 1999) of the subject five-year reviews were adequate and that the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[2] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.[3]

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on August 2, 1999, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[4] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before August 5, 1999, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by August 5, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the reviews period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14909 Filed 6–10–99; 8:45 am]

BILLING CODE 7020–02–P

[2] Commissioner Hillman dissenting. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[3] Commissioner Hillman dissenting.

[4] The Commission has found responses submitted by Agrium US, Inc.; CF Industries, Inc.; Coastal Chem, Inc.; Mississippi Chemical Corp.; PCS Nitrogen, Inc.; Terra Industries, Inc.; the Ad Hoc Committee of Domestic Nitrogen Producers; and the Government of Romania to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act 42 U.S.C. 9601, et seq.

Notice is hereby given that on May 27, 1999, a proposed Consent Decree in *United States of America et al.* v. *Braselman Corporation, et al.*, Civil Action No. 96–0862 (consolidated with No. 96–0872) was lodged in the United States District Court for the Eastern District of Louisiana. The United States and the State of Louisiana filed these actions under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended (''CERCLA'') for reimbursement of response costs incurred and to be incurred by the United States for response actions related to the release or threatened release of hazardous substances at the Bayou Bonfouca Superfund Site (''Site'') in the City of Slidell, Louisiana.

Under the proposed Consent Decree, the Alabama Great Southern Railroad Company (''Alabama Great Southern'') has agreed to pay the U.S. EPA Hazardous Substance Superfund $11,700,000 in reimbursement of past and potential future response costs at the Site. The United States entered into a prior Consent Decree with Kerr-McGee Chemical Corporation and Kerr-McGee Corporation in which the those defendants agreed to pay $20,000,000 to resolve their liability at the Site. The United States also entered into a previous Consent Decree with Fleming American Investment Trust, Ltd. under which that defendant paid $3,600,000 to resolve its responsibility at the Site. The United States incurred approximately $125,000,000 in cleaning up the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America et al.* v. *Braselman Corporation et al.*, DOJ Ref. No. 90–11–2–803A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Hal Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana 70130; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas Texas 75202; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.25 (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. 99–14894 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Judgments Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given a proposed Consent Decree in *United States* v. *Ray McCune et al.,* Civ. Action No. 2:97CV 0860B was lodged in the United States District Court for the District of Utah on May 11, 1999.

The proposed decree settles the United States' Complaint against Ray R. McCune under sections 104, 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9604, 9607, and 9613(g)(2), for reimbursement of costs incurred by the United States in response to the release or threat of release of hazardous substances from the Reclaim Barrel Company Site located at 8487 South Redwood Road, West Jordan, Salt Lake County, Utah (''the Site''). The proposed decree provides for recovery of $10,000.00 in response costs based on Mr. McCune's limited financial ability to fully reimburse the United States for response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ray McCune et al.,* Civ. Action No. 2:97CV 0860B, DOJ # 90–11–2–1270.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Utah, 350 South Main Street, Salt Lake City, Utah 84107; at the Region VIII Office of the U.S. Environmental Protection Agency, 999 18th Street, Suite 500, North Tower, Denver, CO 90202; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. Copies of the Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting copies, please enclose a check in the amount of $4.75 for the Ray McCune Consent Decree (25 cents per page reproduction costs (payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–14893 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7 notice is hereby given that on May 26, 1999, a proposed Consent Decree in *United States* v. *Quanex Corporation,* Civil Action No. H–99–1633, was lodged with the United States District Court for the Southern District of Texas.

In this action the United States sought civil penalties and injunctive relief for violations of National Pollutant Discharge Elimination System (NPDES) permits and pollution prevention regulations at a facility located in Rosenberg, Fort Bend County, Texas. The Consent Decree resolves allegations that Quanex Corporation, the facility owner until December 3, 1997, and Vision Metals, Inc., the facility owner after December 3, 1997, failed to comply with NPDES permits by violating effluent limits, failing to monitor, failing to report, failing to properly operate and maintain the facility, and failing to comply with the Spill Prevention Control and Countermeasure Plan regulatory requirements. The Consent Decree also resolves allegations that Quanex failed to comply with two Administrative Orders. Quanex is required to pay a civil penalty of $466,421. Vision Metals, Inc. is required to pay a civil penalty of $58,907 and perform injunctive relief to ensure compliance with its NPDES permit and the pollution prevention regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *U.S.* v. *Quanex Corporation,* D.J. Ref. 90–5–1–1–4495.

The Consent Decree may be examined at the Office of the Untied States Attorney, 910 Travis, Suite 1500, Houston, Texas 77208, at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $15.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–14892 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Capstar Broadcasting Corporation and Triathlon Broadcasting Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Capstar Broadcasting Corporation and Triathlon Broadcasting Company,* Civil Action No. 99–CV00993. On April 21, 1999, the United States filed a Complaint alleging that the proposed acquisition by Capstar Broadcasting Corporation (''Capstar'') of the radio assets of Triathlon Broadcasting Company (''Triathlon'') in Wichita, Kansas, would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Compliant, requires Capstar to divest five radio stations in Wichita pursuant to the Final Judgment. Copies of the Complaint, proposed Final Judgment and Competitive Impact

Statement are available for inspection at the Department of Justice in Washington, DC in Room 215, 325 Seventh Street, NW, and at the Office of the Clerk of the United States District Court for the District of the District of Columbia.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Craig W. Conrath, Chief Merger Task Force, Antitrust Division, Department of Justice, 1401 H St. NW., Suite 4000, Washington, DC 20530 (telephone: (202) 307–0001).

Constance K. Robinson,

Director of Operations & Merger Enforcement.

United States of America, United States Department of Justice, Antitrust Division, 4000 City Center Building, Washington, DC 20530, Plaintiff, v. Capstar Broadcasting Corporation, 600 Congress Ave. Suite 1400, Austin, TX 78701 and Triathlon Broadcasting Company, 750 B Symphony Towers, Suite 1920, San Diego, CA 92101, Defendants.

[Civil Action No. 990993]

Stipulation

It is stipulated by and between the undersigned parties by their respective attorneys, as follows:

1. This Court has jurisdiction over the subject matter of this action and the parties have agreed to waive all objections to personal jurisdiction and venue in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: April 20, 1999.

For Plaintiff United States of America.

Karl D. Knutsen,

United States Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W., Washington, D.C. 20530, (202) 514–0976.

For Defendant Capstar Broadcasting Corporation.

Neil W. Imus,

Vinson & Elkins L.L.P., 1455 Pennsylvania Ave., N.W., Washington, D.C. 20006, (202) 639–6675.

For Defendant Triathlon Broadcasting Company.

David J. Laing,

Baker & McKenzie, 815 Connecticut Ave., NW., Washington, DC 20006, (202) 452–7023.

United States of America, Plaintiff, v. Capstar Broadcasting Corporation, and Triathlon Broadcasting Company, Defendants.

[Civil Action No. 99 0993]

Final Judgment

Whereas, plaintiff, the United States of America, filed its complaint in this action on April 21, 1999, and plaintiff and defendants Capstar and Triathlon by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, these Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain assets to assure that competition is not substantially lessened;

And Whereas, plaintiff requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the complaint;

And Whereas, Defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that Defendants will not later raise claims of hardship, contractual bar, or difficulty as grounds for asking the Court to delay or modify the divestiture described below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows.

I. Jurisdiction

This Court has jurisdiction over each of the Defendants and over the subject matter of this action, and Defendants have agreed to waive any objection to personal jurisdiction or venue. The Complaint states a claim upon which relief may be granted against the Defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Capstar'' means defendant Capstar Broadcasting Corporation, a Delaware corporation with its headquarters in Austin, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees, including but not limited to Hicks, Muse, Tate, & Furst Incorporated (''Hicks-Muse''), a Delaware corporation with its headquarters in Dallas, Texas.

B. ''Triathlon'' means defendant Triathlon Broadcasting Company, a Delaware corporation with its headquarters in San Diego, California, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. ''Defendants'' means Capstar and Triathlon.

D. ''Antitrust Division'' means the Antitrust Division of the United States Department of Justice.

E. ''Radio Assets'' means all of the assets, tangible or intangible, used in the operation of the radio stations KEYN–

FM, KWSJ–FM, KNSS–AM, KFH–AM, and KQAM–AM, that sell advertising time in Wichita, Kansas, including all real property (owned or leased) used in the operation of these stations, all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of these stations; all licenses, permits, authorizations, and applications therefor issued by the Federal Communications Commission (''FCC'') and other government agencies related to these stations; all contracts, agreements, leases and commitments of Defendants relating to their operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to these stations; and all logs and other records maintained by the operator or owner in connection with its business, except that in the case of KNSS–AM, the divestiture may include only those assets necessary to continue the transmitting, programming, and selling of that station in its present form.

F. ''Acquirer'' means the entity to whom defendant Capstar divests the Radio Assets.

G. ''Wichita'' means the Wichita, Kansas Metropolitan Survey Area, which includes Sedgwick, Harvey and Butler Counties, Kansas.

III. Applicability

A. The provisions of this Final Judgment apply to the Defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise, specifically including any trustee or trustees appointed by defendant pursuant to an FCC Trust Agreement (as defined in Section V(A)) applicable to the Radio Assets.

B. Defendant Capstar shall require, as a condition of the sale or other disposition of any of the Radio Assets, that the Acquirer or Acquirers agree to be bound by the provisions of this Final Judgment.

IV. Divestiture of Radio Assets

A. Capstar is hereby ordered and directed in accordance with the terms of this Final Judgment to divest the Radio Assets to (i) an Acquirer acceptable to the Antitrust Division at its sole discretion or (ii) the Trustee identified pursuant to § V at the same time it acquires Triathlon. Unless plaintiff otherwise consents in writing, the divestiture pursuant to the section IV of this Final Judgment, or by the Trustee appointed pursuant to Section V, shall include all the Radio Assets and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Radio Assets can and will be used by an Acquirer as a viable and ongoing radio business. The divestiture, whether pursuant to section IV or section V of this Final Judgment, shall be made (1) to an Acquirer that, in the sole judgment of plaintiff, has the capability and the intent of completing effectively, and has the managerial, operational, and financial capability to compete effective as a radio operator in the Wichita area; and (2) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiff, interfere with the ability of the Acquirer to compete effectively.

B. Defendant Capstar agrees to use its best efforts to divest the Radio Assets, and to obtain all regulatory approvals necessary for such divestiture, as expeditiously as possible.

C. In accomplishing the divestiture ordered by the Final Judgment, defendant Capstar promptly shall make known, by usual and customary means, the availability of the Radio Assets. Defendant Capstar shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide each person with a copy of this Final Judgment. Defendant Capstar shall make known to any person making an inquiry regarding a possible purchase of the Radio Assets described in Section II that the Radio Assets are being offered for sale. Capstar shall also offer to furnish all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Radio Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney-work product privilege. Defendant Capstar shall make available such information to plaintiff at the same time that such information is made available to any other person.

D. In accomplishing the divestiture ordered by this Section IV, defendant Capstar shall permit prospective purchasers of the Radio Assets to have access to personnel and to make such inspection of assets, and any and all financial, operational, and or other documents and information, as is customary in a due diligence process.

E. Defendant Capstar shall not interfere with any efforts by any Acquirer to employ the general manager or any other employee of the Radio Assets.

V. Appointment of Trustee

A. In the event that Capstar has not divested the Radio Assets in the time period specified in § IV above, Henry M. Rivera shall, subject to the prior approval of the FCC, become Trustee (the ''Trustee'') to effect the operation and sale of the Radio Assets pursuant to an FCC Trust Agreement submitted by Capstar to the FCC, as amended, and attached to this proposed Final Judgment as Exhibit A (the ''FCC Trust Agreement''). In the event of Mr. Rivera's resignation, incapacity to act, death, or insolvency, the Court shall appoint, on application of plaintiff and subject to such prior approvals as may be required, a Trustee selected by plaintiff, to effect the divestiture of the assets.

B. After the Trustee's appointment has become effective, only the Trustee shall have the right to sell the Radio Assets. The Trustee shall have the power and authority to accomplish the sale pursuant to the conditions of the FCC Trust Agreement.

C. The Trustee shall serve at the cost and expense of defendant Capstar, on such terms and conditions contained in the FCC Trust Agreement or as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the Trustee and all costs and expenses so incurred pursuant to the attached FCC Trust Agreement.

D. Defendants shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture of the Radio Assets, and shall use their best efforts to assist the Trustee in accomplishing the required divestiture, including its best efforts to effectuate all necessary regulatory approvals. Subject to a customary confidentiality agreement, the Trustee shall have full and complete access to the personnel, books, records and facilities related to the Radio Assets, and, at the Trustee's request, Defendants shall develop such financial or other information as may be necessary for the divestiture of the Radio Assets. The Trustee shall permit prospective purchasers of the Radio Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final Judgment.

E. After his appointment becomes effective, the Trustee shall file reports pursuant to this Final Judgment and the FCC Trust Agreement with defendant Capstar, the plaintiff, and the Court, setting forth the Trustee's efforts to accomplish divestiture of the Radio

Assets as contemplated under this Final Judgment; provided, however, that to the extent that such reports contain information that the Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Radio Assets, and shall describe in detail each contact with any such person during that period. The Trustee shall maintain full records of all efforts made to divest the Radio Assets.

F. Within four (4) months after the date of entry of this proposed Final Judgment, if the Trustee has not accomplished the divestiture required by Section V of this Final Judgment, the Trustee shall promptly file with the Court a report setting forth: (1) the Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Trustee's recommendations; provided, however, that to the extent such reports contain information that the Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Trustee at the same time shall furnish such reports to the plaintiff and to defendant Capstar, which shall have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it deems appropriate to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the Trustee's appointment after all applicable government approvals are obtained.

G. Upon divestiture of the radio assets, the FCC Trust will be deemed terminated and the Trustee discharged.

VI. Notice

Capstar shall provide advance notification of the Antitrust Division when it directly or indirectly acquires any assets of or any interest (including any financial, security, loan, equity or management interest) in any broadcast radio station that sells advertising time in Wichita, Kansas, or enters into any joint sales agreement or any cooperative selling arrangement with any other operator of radio stations serving listeners in Wichita, Kansas. This obligation to provide notice is met under this section when a transaction is subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act").

Notification under this section shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only about the sales of radio advertising time in Wichita. Notification shall be provided at least thirty (30) days prior to the acquisition of any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Defendant Capstar shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed, and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

VII. Preservation of Assets/Hold Separate

Until the divestiture of the Radio Assets required by Sections IV or V of the Final Judgment has been accomplished:

A. Defendants shall take all steps necessary to operate the Radio Assets as separate, independent, ongoing, economically viable and active competitors to the other stations in Wichita, Kansas, and shall take all steps necessary to ensure that, except as necessary to comply with Section IV and paragraphs B and C of this Section of the Final Judgment, the management of said stations, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendant Capstar in the case of Triathlon stations and defendant Triathlon in the case of Capstar stations.

B. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by the Radio Assets, and shall maintain at 1997, 1998, or previously approved levels for 1999, whichever are higher, promotional advertising, sales, marketing and merchandising support for such radio stations.

C. Defendants shall take all steps necessary to ensure that the assets used in the operation of the Radio Assets are fully maintained. The sales and marketing employees of the Radio Assets shall not be transferred or reassigned to any other station, except for transfer bids initiated by employees pursuant to each defendant's regular, established job posting policies, provided that Defendants give plaintiff and Acquirer ten (10) days' notice of such transfer.

D. Defendant Capstar shall not, except as part of a divestiture approved by plaintiff, sell any Radio Assets.

E. Defendants shall take no action that would jeopardize the sale of the Radio Assets.

F. Defendant Capstar shall appoint a person or persons to oversee the assets to be held separate who will be responsible for Defendant's compliance with Section VI of this Final Judgment.

VIII. Financing

Defendant Capstar is ordered and directed not to finance all or any part of any purchase by an Acquirer made pursuant to Sections IV or V or this Final Judgment.

IX. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment or determining whether the Final Judgment should be modified or terminated and subject to any legally recognized privilege, from time to time:

A. duly authorized representatives of the plaintiff, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendants made to their principal offices, shall be permitted:

(1) Access during office hours of the Defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the Defendants and without restraint or interference from any of them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to the Defendants' principal offices, the Defendants shall submit written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Section IX or X of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the Defendants to the plaintiff, the Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of civil Procedure, and the Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by the plaintiff to the Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the Defendants are not a party.

X. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, defendant Capstar shall deliver to plaintiff an affidavit as to the fact and manner of defendant's compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address and telephone number of each person who, at any time after the period covered by the last such report, was contacted by defendant, or its representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the Radio Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendant Capstar has taken to solicit a buyer for the Radio Assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment, defendant Capstar shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendant Capstar has taken and all steps defendant Triathlon has implemented on an on-going basis to preserve the Radio Assets describing any changes to the efforts and actions outlined in its earlier affidavit(s) filed pursuant to this section within fifteen (15) calendar days after such change is implemented.

C. Defendant Capstar shall preserve all records of all efforts to preserve the Radio Assets and to divest the Radio Assets.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: ______________________________

____
United States District Judge

ATTACHMENT A

Wichita Stations Trust Agreement

THIS TRUST AGREEMENT (the ''*Trust Agreement*'') is entered into as of April 30, 1999, and shall be effective April 30, 1999, by and between Capstar Broadcasting Corporation, a Delaware corporation (''*Beneficiary*''), and Henry M. Rivera (the ''*Trustee*'').

Recitals

A. Beneficiary, through subsidiaries, holds various licenses, permits and authorizations issued by the Federal Communications Commission (the ''FCC'') with respect to the radio station in the Wichita, Kansas radio market (the ''*Wichita Market*'') listed on *Annex A* hereto (the ''*Capstar Wichita Station*'').

B. Pursuant to the Agreement and Plan of Merger dated as of July 23, 1998 (the ''*Purchase Agreement*''), among Capstar Radio Broadcasting Partners, Inc., TBC Radio Acquisition Corp., a wholly-owned subsidiary of Capstar Radio Broadcasting Partners, Inc. (''*Merger Sub*''), and Triathlon Broadcasting Company, a Delaware corporation (''*Triathlon*''), Merger Sub will be merged (the ''*Merger*'') with and into Triathlon, with Triathlon being the surviving corporation and an indirect wholly-owned subsidiary of Beneficiary. Triathlon, through its subsidiaries, holds various licenses, permits, and authorizations issued by the FCC with respect to certain radio stations in the Wichita Market listed on *Annex B* hereto (the ''*Triathlon Wichita Stations*''). The Merger will result in the attribution to Beneficiary of the Triathlon Wichita Stations. Accordingly, each reference in this Trust Agreement to Beneficiary shall be deemed, following the consummation of the merger, to include Triathlon, and the Capstar Wichita Station and the Triathlon Wichita Stations shall be referred to collectively as the ''*Stations*.''

C. The Communications Act of 1934, as amended, and the rules, regulations, and policies of the FCC (collectively, the ''*Communications Act*'') do not permit Beneficiary to own and operate all of the Stations. Beneficiary desires to enter into this Trust Agreement to facilitate consummation of the Merger by assuring that such consummation will not result in the attribution to Beneficiary of radio stations with overlapping signal contours in the Wichita Market in contravention of the Communications Act.

D. Interim acquisition by the Trustee of the Station Assets (as hereinafter defined) for the purpose of holding and operating the same for productive business use and selling the Station Assets to a government-approved buyer or buyers pursuant to the Final Judgment in *United States* v. *Capstar Broadcasting Corporation and Triathlon Broadcasting Company*, C.A. No. _________ (D.D.C. Apr. ____, 1999) as proposed, entered or modified (the ''Final Judgment'') (proposed Final Judgment attached hereto), provided that the Trustee continues to operate the Stations until such a sale can be consummated, would provide an appropriate mechanism to facilitate consummation of the Merger while complying with the laws and regulations relating to transactions of this type, and accordingly the Trustee and Beneficiary desire to associate together for the joint conduct of the business of holding and operating such Station Assets.

Now, Therefore, in consideration of the recitals and of the respective agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

Agreements

1. *Creation and Purpose of The Wichita Stations Trust.* Subject to the terms and conditions hereof, a trust in respect of the Stations is hereby created and established, to be known as the ''Wichita Stations Trust,'' and the Trustee hereby accepts the trust created hereby and agrees to serve as trustee hereunder. The trust created hereby shall be irrevocable until such time as the Trustee sells the Station Assets to a government-approved buyer or buyers.

2. *Assets to be Conveyed; Assumption of Obligations.*

(a) From time to time on or before consummation of the Merger, Beneficiary shall convey, transfer, assign, and deliver to Trustee, and Trustee shall acquire and assume from Beneficiary, all of Beneficiary's right, title, interest, and obligations in and to all of the assets, properties, contracts, leases, and agreements that are used, held for use, useful or necessary in the conduct of the business and operation of each Station as of the date of this Trust Agreement, including the following assets:

(i) All of Beneficiary's right, title and interest in and to the licenses, permits and other authorizations issued by any governmental authority and used, held for use, useful or necessary in the conduct of the business and operation of any Station, including the call letters of each Station and any applications for such licenses, permits and authorizations;

(ii) All of Beneficiary's right, title and interest in and all to all real property, including leasehold interests and easements, used, held for use, useful or necessary in the conduct of the business and operation of any Station;

(iii) All equipment, office furniture and fixtures, office materials and supplies, inventory, spare parts, motor vehicles and other tangible personal property of every kind and description, owned, leased or held by Beneficiary and used, held for use, useful or necessary in the conduct of the business and operation of the Stations;

(iv) All cash in each Station's operating bank accounts;

(v) All accounts receivable arising out of the operation of each Station;

(vi) All of Beneficiary's rights under and interest in all contracts relating to the conduct of the business of any Station (the ''*Assumed Contracts*''), and any contract for the sale of the Stations as contemplated by Section 3;

(vii) All programs and programming materials of whatever form or nature owned by Beneficiary and used or held for use on or by any Station;

(viii) All of Beneficiary's rights, title and interest in and to the trademarks, trade names, service marks, franchises, copyrights, including registrations and applications for registration of any of them and good will related thereto, jingles, logos, slogans, licenses, permits and privileges owned or held by Beneficiary and used, held for use, useful or necessary in the conduct of the business and operation of any Station;

(ix) All files, records, books of account, computer programs and software and logs relating to the operation of any Station, including payable records, receivable records, invoices, statements, traffic material, programming information and studies, technical information and engineering data, news and advertising studies and consultants' reports, ratings reports, marketing and demographic data, sales correspondence, lists of advertisers, promotional materials, credit and sales reports, budgets, financial reports and projections, sales, operating and business plans, filings with the FCC and original executed copies of all written contracts to be assigned hereunder.

(x) All of Beneficiary's rights under manufacturers' and vendors' warranties relating to items included in the Station Assets and all similar rights against third parties relating to items included in the Station Assets to the extent contractually assignable; and

(xi) All intangible assets of Beneficiary relating to any Station or the business and operation of any Station not specifically described above, including goodwill, and all other assets used or held for use in connection with any Station.

The assets to be transferred to the Trustee hereunder are hereinafter collectively referred to as the ''*Station Assets*.'' Notwithstanding this Section 2(a), beneficiary and Trustee acknowledge that the Station Assets shall include only those assets that Beneficiary would have sold to a third party in an arms-length transaction involving the Stations consistent with the Final Judgment. The Trustee shall retain and hold the Station Assets only in accordance with the terms and conditions set forth in this Trust Agreement.

(b) The Trustee shall assume and be solely responsible for the payment, performance and discharge of all of Beneficiary's liabilities, obligations, and duties under or in respect of the Assumed Contracts that relate to and accrue in the period after transfer of the Station Assets. Except as specifically provided in this Trust Agreement, the Trustee shall not be liable for and shall not assume any liabilities, obligations, or duties of Beneficiary (whether known or unknown, matured or unmatured, or fixed or contingent).

(c) Prior to the date hereof, Beneficiary shall have obtained policies of insurance, or procured the amendment of or riders to existing policies of insurance, to provide insurance coverage related to the Station Assets under the umbrella policies currently held by Beneficiary. All such policies shall name the Trustee as the insured or an additional insured and shall not be canceled or amended without thirty (30) days prior written notice to the Trustee. The Trustee is hereby authorized to make payment of all premiums, and all deductibles and excesses, related to such policies of insurance in the same manner as any other expense in the ordinary course of business of the Stations.

3. *Management and Other Actions by Trustee.*

(A) The Wichita Stations Trust is authorized to carry on business. During the term of this Trust Agreement, the right to manage and direct the management of the business of the Stations shall be solely vested in the Trustee, subject to the following:

(i) The Trustee shall have the obligation to consummate the sale of the Station Assets within four (4) months from the date of the entry of the Final Judgment, pursuant to the conditions contained herein and at a price that renders to Beneficiary the maximum cash present value for the Station Assets. The Trustee has read that certain Stipulation and Order and the proposed Final Judgment attached thereto which Beneficiary executed on April ____, 1999, in the Civil Action styled ''United States v. ____________,'' which Final Judgment shall apply to the Trustee under Section III(A) thereof effective this date, consistent with the obligations assumed by Beneficiary under the Stipulation and Order (attached hereto). Without limiting the generality of the foregoing, the Trustee shall have the power and authority to hire at the cost and expense of Beneficiary any investment bankers, attorneys or other agents reasonably necessary, in the judgment of the Trustee, to assist in the sale of the Station Assets, and such professionals or agents shall be solely accountable to the Trustee. The Trustee shall have the power and authority to accomplish the sale of the Station Assets at the earliest possible time to any purchaser approved by the Department of Justice (''DOJ'') who the DOJ determines has the intent and managerial, operational and financial capability to compete effectively as a radio station operator in the Wichita Market. Beneficiary shall not take any action to jeopardize the Trustee's sale of the Station Assets, but shall use its best efforts to assist the Trustee in accomplishing the required sale, including its best efforts to effect all regulatory approvals. The Trustee and Beneficiary shall permit prospective purchasers of the Stations to have access to personnel and to make such inspection of physical facilities and any and all financial, operational and other documents and information as may be relevant to the sale of the Station Assets. To facilitate the sale of the Station Assets, the Trustee may request in writing from Beneficiary such representations and warranties, consents, information, covenants and indemnities (which may be directly provided by Beneficiary to a buyer, as negotiated and determined by the Trustee, so long as notice and copies of any such communications are given by Beneficiary to the Trustee) regarding such sale, and such request shall not be unreasonably denied.

(ii) In fulfilling its obligations to effectuate the sale of the Station Assets, the Trustee shall take all actions necessary or appropriate to effectuate the transfer of title to the Station Assets held by the Trustee pursuant to this Trust Agreement to (and assumption of the liabilities, obligations and commitments of the Station Assets by) an unaffiliated third party. In this regard, the Trustee shall enter into appropriate agreements and submit and fully prosecute appropriate applications to the FCC requesting approval to assign the Station Assets. The Trustee also shall seek and obtain the prior approval of the DOJ for the sale of the Station Assets. Beneficiary shall have the right to request the Trustee to sell the Station Assets to an unaffiliated third party it a binding contract (an ''Existing Sale Agreement'') has been entered into, but not consummated, prior to the effective date of this Trust Agreement. If the DOJ concurs with such sale, the Trustee shall take all necessary and appropriate actions to effectuate the sale as provided herein and therein, including without limitation by accepting the assignment of the Existing Sale Agreement.

(iii) The Trustee shall file monthly reports with Beneficiary and the DOJ setting forth the Trustee's efforts to sell the Station Assets as contemplated by this Trust Agreement. Such reports shall be designated confidential and shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Station Assets, and shall describe in detail each contact with any such person during that period. The Trustee shall maintain full records of all efforts undertaken to sell the Station Assets. If the Trustee has failed to consummate the sale of the Station Assets within four (4) months from the date of the entry of the Final Judgment, the Trustee shall promptly produce a report stamped confidential to Beneficiary, the DOJ and the Court setting forth (1) the Trustee's efforts to sell the Station Assets; (2) the reasons, in the Trustee's judgment, why the required sale has not been consummated; and (3) the Trustee's recommendations.

(iv) Within five (5) business days following execution of a binding agreement for the sale of the Station Assets, including all contemplated ancillary agreements (*e.g.*, financing agreements), to effect, in whole or in part, the sale of the Station Assets, the Trustee shall notify Beneficiary and the DOJ of the proposed sale. The notice (as provided for herein) shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Station Assets, together with the full details of same. Within fifteen (15) calendar days of receipt by the DOJ, the DOJ may request from Beneficiary, the proposed purchaser, any other third party, or the Trustee, additional information concerning the proposed sale, the proposed purchaser and any other potential purchaser. Beneficiary and the Trustee shall furnish the requested information within fifteen (15) calendar days of receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the DOJ has been provided the additional information, whichever is later, the DOJ shall provide written notice to Beneficiary and the Trustee, stating whether or not it objects to the proposed sale. If the DOJ fails to object within the period specified, or if the DOJ provides written notice that it does not object, then the DOJ will be deemed to have approved the sale pursuant to the trust agreement. Beneficiary may only object to the sale where the Trustee has acted with malfeasance.

(v) The Trustee shall have absolute and complete control over the operations of the Station Assets pending their sale. The Trustee shall operate the Stations as separate, independent, ongoing, economically viable and active competitors to Beneficiary, and the Trustee shall ensure that the management of the Stations is kept separate and apart from, and not influenced by, Beneficiary. The Trustee shall use all reasonable efforts to maintain and increase sales of advertising time, and to maintain promotional advertising, sales, marketing and merchandising support for the Stations at 1998 levels or greater.

(vi) The Trustee shall conduct the operations of the Stations in accordance with its duties as a licensee of the FCC. In addition, the Trustee shall, within fifteen (15) days of the end of each calendar month, provide to Beneficiary's Chief Financial Officer such monthly financial reports consisting of unaudited balance sheets of the Stations and related statements of operations and cash flows for the month and three-month period then ended as shall be necessary for Beneficiary to meet its financial reporting requirements to its accountants, lenders, the Securities and Exchange Commission and any other governmental authorities of competent jurisdiction. In no case shall such information be provided to Beneficiary's employees who are involved in the management or operation of Beneficiary's radio stations in the Wichita Market.

(vii) Any employee hired by the Trustee who is not employed at the Stations as of the effective date of this Trust Agreement shall not be a 1% or greater shareholder, director, officer, or employee of Beneficiary or its affiliates, and may not have any business and familial relationship (as defined in the FCC Policy Statement in MM Docket No. 85–218, FCC 86–67 (March 17, 1986)) with Beneficiary or with any 1% or greater shareholder, director, officer, or employee of Beneficiary or its affiliates.

(b) The trustee shall cause any employee hired by him pursuant to Section 3(a)(vii) and any person previously employed by Beneficiary whom the Trustee elects to retain, to execute and deliver to the Trustee an agreement, in form and substance acceptable to the Trustee, pursuant to which such employee agrees to comply with the rules, regulations and policies of the FCC, including without limitation all rules, regulations and policies governing communications among such employee and Beneficiary or its officers, directors, employees, and affiliates, regarding the Stations and their management and operations.

(c) Effective as of the effective date of this Trust Agreement, the Trustee will hire on behalf of the Wichita Stations Trust those current employees of the Stations on the same terms and conditions as such employees were employed by Beneficiary, provided that the Trustee is not required to provide such employees with any medical, pension, insurance or other employee benefit plans, programs or arrangements. To the extent that Beneficiary provides such employees of the Wichita Stations Trust with group medical, group insurance and/or pension plan benefits on or after the date of this Trust Agreement through plans maintained by Beneficiary for its employees, the Trustee shall within such reasonable time as deemed necessary or appropriate by Beneficiary provide to Beneficiary or its designee such reports, data or other information as Beneficiary or its designee shall Beneficiary for purposes of administering such plans or satisfying any reporting or other requirements as may be required by law or any governmental agency. In no event shall the Trustee or the Wichita Stations Trust be responsible for any liabilities or obligations relating to or arising under any of Beneficiary's employee benefit plans, programs or arrangements, whether such liabilities or obligations arise, or relate to a period, prior or subsequent to the effective date of this Trust Agreement, except for liabilities or obligations caused by Trustee's own gross negligence or willful misconduct. All liabilities or obligations that relate to or arise under any of Beneficiary's employee benefit plans, programs or arrangements, except for liabilities or obligations caused by Trustee's own gross negligence or willful misconduct, shall remain the sole and complete responsibility of Beneficiary and shall be subject to the indemnification provided in Section 4(c) of this Trust Agreement.

(d) To the extent that the Trustee determines in his discretion that management and operation of the Stations consistent with past practice or that payment of the charges and other expenses set forth in Section 4(c) requires funds in excess of the ordinary cash flow of the Stations (as diminished by any prior remittances of cash accumulations from operations in excess of the actual and projected expenses as determined by the Trustee in his sole discretion (''*Excess Cash Flow*''), Beneficiary agrees to provide a line of credit to Trustee in the amount of $250,000. Beneficiary shall not communicate directly or indirectly with the Trustee about, or participate with the Trustee in making, any decision to draw on the line of credit or as to when or how the funds will be used. The Trustee may draw on the line of credit by making a written draft on Beneficiary for a specific amount of funds. Beneficiary shall, within ten days of receipt of such draft, provide such funds to Trustee in the amount requested, up to the limit of the line of credit. The outstanding principal balance under the line of credit shall bear interest at a rate equal to the rate in effect under Beneficiary's credit facility at the time the Trustee draws on such line of credit. The principal amount of any drawings on the line of credit, together with accrued and unpaid interest thereon, shall be paid from (i) Excess Cash Flow and (ii) if any balance is outstanding upon completion of any sale of the Station Assets pursuant to Section 3, then prior to any distribution contemplated by Section 5(b), from the proceeds of any such sale. All amounts paid under this Section 3(d) shall be applied first to all interest then accrued and unpaid hereunder, and the balance, if any, to principal.

(e) To the extent that the Stations' operations generate Excess Cash Flow, such Excess Cash Flow shall first be applied to repay amounts due to Beneficiary under the line of credit provided for in Section 3(d), and thereafter shall be remitted to Beneficiary from time to time as the trustee shall determine.

(f) No person other than the Trustee or managers designated by the Trustee shall have any authority with respect to the management of the Stations or Station Assets for so long as this Trust Agreement is in effect. The Trustee shall have no beneficial interest in the Station Assets.

(g) Except as expressly provided in this Trust Agreement, the Trustee shall not: (1) incur any debt or guaranty obligation in favor of any other person; (2) engage in any business other than as necessary in Trustee's reasonable opinion to meet his fiduciary duties with respect to the operation of the Stations as a broadcast license serving the Wichita Market; (3) sell or otherwise transfer, assign or encumber the Station Assets, or (4) enter into any agreement to do so, or enter into any merger, consolidation, or similar transaction or engage in any reclassification or similar transaction.

(h) The Trustee shall have full authority and power over the operation and management of the Stations, shall conduct the operations of the Stations in the ordinary course of business consistent with past operations of the Stations, and, to the extent possible, shall maintain the status quo of such operations as currently conducted with a view to maximizing the value to be received by Beneficiary consistent with the Trustee's duties as a licensee of the FCC and as a fiduciary of Beneficiary. Without limiting the generality of the foregoing, during the term of this Trust Agreement, except as contemplated by this Trust Agreement, the Trustee shall not:

(i) Fail to use all commercially reasonable efforts to preserve intact Beneficiary's present business organization of the Stations and preserve each Station's relationships with customers, suppliers and other having business dealings with it;

(ii) Fail to use commercially reasonable efforts to maintain the Station Assets in their current condition, except for ordinary wear and tear;

(iii) Fail to use all commercially reasonable efforts to maintain the present format of the Stations;

(iv) Except for amendments of employment agreements in the ordinary course of business and consistent with past operations of the Stations, materially amend any material contract or default in any material respect (or take or omit to take any action that, with or without the giving of notice or passage of time, would constitute a material default) under any material contract or, except in the ordinary course of business and consistent with past operations of the Stations, enter into any new material contract;

(v) Sell (Whether by merger, consolidation, or the sale of an equity interest or assets), lease, or dispose of any Station Assets except pursuant to an agreement to sell the Station Assets, which is permitted under this Trust Agreement, or in the ordinary course of business and consistent with past practice or, even if in the ordinary course of business and consistent with past practices (other than sales of surplus or obsolete equipment), whether in one or more transactions, in no event involving a Station Asset or Station Assets having an aggregate fair market value in excess of $75,000'

(vi) (A) Mortgage, (B) pledge, or (C) subject to any material lien, pledge, claim, security interest, restriction, mortgage, tenancy and other possessory interest, conditional sale or other title retention agreement, assessment, easement, right of way, covenant, restriction, right of first refusal, defect in title, encroachment or other burden, option or encumbrance of any kind, any Station Assets;

(vii) Enter into, or enter into negotiations or discussions with any person other than a purchaser under an agreement to sell the Station Assets, which is permitted under this Trust Agreement, with respect to, any local marketing agreement, time brokerage agreement, join sales agreement, or any other similar agreement;

(viii) Fail to use commercially reasonable efforts to maintain the ability of each Station to operate at a maximum power and full coverage at all times; or

(ix) Agree to or make any commitment, orally or in writing any actions prohibited the this Trust Agreement or the Final judgment.

Notwithstand this Section 3(h), Beneficiary acknowledges that the business organization and operator of the Station Assets of station KNSS(AM)—as they exist on the date of this Trust Agreement will change as the station is incorporated in the operation and business organization of the Triathlon Wichita Stations.

(i) The Trustee shall have any and all such further powers and shall take such further actions (including, but not limited to, taking legal action) as may be necessary to fulfill the Trustee's obligations under this Trust Agreement.

(j) If as of the date hereof any of the Stations are not subject to a binding Existing Sale Agreement for a Sale (or Sales) (as defined below) of the Station Assets, or if any Existing Sale Agreement terminates or expires during the term of this Agreement, the Trustee shall promptly take such actions and execute such documents in order to effect a disposition of the Station Assets which renders to Beneficiary the maximum cash present value for the Station Assets. The Trustee may negotiate the terms and conditions of a binding agreement for the sale of the Station Assets (a ''Sale Agreement'') in his sole and absolute discretion. Trustee shall submit and fully prosecute appropriate applications to such governmental authorities as such Sale Agreement requires, requesting approval to assign such Station Assets, and, upon satisfaction of all closing conditions under such agreements (unless waived, in whole or in part, by the Trustee), transfer title to the Station Assets to the third party (or parties).

4. *Concerning the Trustee.*

(a) The Trustee shall be entitled to receive as a trustee fee (the ''*Wichita Trustee Fee*'') for his services hereunder a fee of $2,500 per month for each Station that is in the Wichita Stations Trust (which amount shall be prorated for each Station for partial months based on a 30-day month), *provided, however,* that the Wichita Trustee Fee plus any Capstar II Trustee Fee to which the Trustee may be entitled under the Capstar Trust II Agreement entered into as of April 30, 1999, by and between the Beneficiary and the Trustee (the ''*Capstar Trust II Agreement*'') shall not exceed a total of $15,000 per month. The fee (the ''*Engagement Fee*'') received by the Trustee pursuant to the Engagement and Assignment Agreement entered into as of February 3, 1999, by and between the Beneficiary and the Trustee (the ''*Engagement and Assignment Agreement*'') shall be credited toward any amounts otherwise due as a Wichita Trustee Fee and a Capstar II Trustee Fee. In the event that the Wichita Trustee Fees and the Capstar II Trustee Fees paid to the Trustee, in the aggregate, do not exceed the Engagement Fee, nothing in this Agreement shall restrict the Trustee's entitlement to the entire Engagement Fee. The Trustee agrees that in return for the Wichita Trustee Fees, he will devote such time to the Wichita Stations Trust as is necessary, appropriate, or advisable in the proper exercise of his fiduciary duties hereunder. Payment of Trustee's monthly compensation shall be made by Beneficiary within 20 days after the end of each calendar month during the term of this Trust Agreement.

(b) The Trustee is expressly authorized to incur and pay from the Station Assets held in trust all reasonable expenses, disbursements, and advances incurred or made by the Trustee in the performance of his duties hereunder (including reasonable fees, expenses and disbursements of his counsel), which the Trustee in good faith deems necessary, proper, or advisable in the performance of his duties under this Trust Agreement; provided, however, that the Trustee may pay legal fees attributable to legal services that he personally performs for the Wichita Stations Trust in his capacity as an attorney if, and only if, at any time during the calendar month in which such services are performed the combined number of stations in the Wichita Stations Trust and the Capstar Trust II is five or fewer.

(c) The Trustee shall not be liable, except for his own gross negligence or willful misconduct and, except with respect to claims based upon such gross negligence or willful misconduct that are successfully asserted against the Trustee, Beneficiary shall indemnify and hold harmless the Trustee (and any successor trustee) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with (i) the Trustee's performance of his duties under this Trust Agreement and/or any Sale Agreement, (ii) Beneficiary's failure to perform its obligations under the Trust Agreement, (iii) any liability arising out of or related to the Station Assets that accrued or arose prior to the date of transfer to the Trustee, including without limitation with respect to the Assumed Contracts, (iv) losses arising out of or related to the Station Assets, and the operation thereof on a going concern basis, that are not recovered from the proceeds of a Sale, or otherwise under the Trust Agreement, (v) fines and penalties levied by the FCC or any other governmental authority, and costs related thereto, which may be caused or incurred by the transactions contemplated by the Trust Agreement, any Sale or any other action, error or omission of any person other than the Trustee, (vi) taxes that may be levied upon or payable by the Trustee, in his personal capacity, arising out of or related to the Trust and (vii) the Trustee's obligation, if any, under the employment laws, including without limitation the Employee Retirement Security Act of 1974, as amended. Payments to the Trustee pursuant to this Section 4(c) shall be made within 20 days of Trustee's submission to Beneficiary of an invoice or bill therefor, plus appropriate supporting documentation. The obligations of Beneficiary to the Trustee under this Section 4(c) shall survive the resignation, incapacity to act, death or insolvency of the Trustee and the termination of this Trust Agreement.

(d) The Trustee shall be entitled to rely in good faith upon any order, judgment, certification, demand, notice, instrument or other writing delivered to him hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity or the service thereof. The Trustee may act in reliance upon any instrument or signature believed by him in good faith to be genuine and may assume that any person purporting to give receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so. The Trustee may act pursuant to the advice of counsel with respect to any matter relating to this Trust Agreement and shall not be liable for any action taken or omitted in good faith in accordance with such advice. The Trustee's counsel and advisors shall be independent of, and have no relationship with, Beneficiary.

(e) Subject to Section 4(c), the rights and duties of the Trustee hereunder shall terminate upon the Trustee's incapacity to act, death or insolvency, and no interest in the Sale Agreement or the Station Assets directly or indirectly held by the Trustee nor any of the rights and duties of a deceased or insolvent Trustee may be transferred by will, devise, succession or in any manner except as provided in this Trust Agreement. The heirs, administrators, executors or other representatives of an incapacitated, deceased or insolvent Trustee shall, however, have the right and duty to convey the Sale Agreement and the Station Assets held by the Trustee to one or more successor trustees designated by Beneficiary pursuant to Section 4(g).

(f) The Trustee (and any successor trustee) may resign by giving not less than 60 days prior written notice of resignation to Beneficiary, provided that a successor trustee has been appointed, such appointment has received all necessary approval from the FCC, and any order granting such approval has become a final order with respect to which no action, request for stay, petition for hearing or reconsideration, or appeal has expired. Beneficiary shall cooperate fully in the prompt appointment of a successor trustee and shall not unreasonably interfere with or delay the effectiveness of such resignation.

(g) In the event of such resignation, incapacity to act, death or insolvency of the Trustee, the Court shall appoint, on application of the DOJ, a Trustee selected by the DOJ, subject to such prior approval of the FCC as may be required, to effect the divestiture of the Station Assets. Any successor trustee shall succeed to all of the rights and obligations of the Trustee replaced hereunder and shall be deemed the Trustee for purposes of this Trust Agreement, upon execution of such successor trustee of a counterpart of this Trust Agreement.

(h) The Trustee and any successor trustee designated pursuant to Sections 4(f) and (g) shall not be 1% or greater stockholder, officer, employee, director, or affiliate of Beneficiary, and may not have any business or familial relationship (as defined in the FCC Policy Statement in MM Docket No. 85–218, FCC 86–67 (March 17, 1986)) with any officer, employee, director, or 1% of greater stockholder or affiliate of Beneficiary. Neither the Trustee nor any successor trustee will serve as an officer, employee, or director of Beneficiary, its affiliates, or its successor companies.

(i) The Trustee agrees to resign as Trustee if requested to do so by the DOJ in order for Defendants (as defined in the Final Judgment) to meet their obligations under the Final Judgment. Such resignations will not be effective until a successor trustee has been appointed pursuant to the provisions of the Trust Agreement.

5. *Termination: Distribution of Station Assets or Proceeds from Sale of Station Assets.*

(a) Subject to such FCC and DOJ approval as may be required, and following the receipt of such approval, this Trust Agreement and the Wichita Stations Trust created hereby shall terminate if such termination would not cause Beneficiary to be in violation of the Communications Act or the Final Judgment.

(b) Upon the termination of this Trust Agreement under Section 5(a) or pursuant to a Sale (or Sales) of all or substantially all of the Station Assets to an unaffiliated third party (or parties) pursuant to Section 3, the Trustee shall receive the money, securities, rights or property which are distributed or are distributable in respect of the Station Assets, and, after paying (or reserving for payment thereof) any reasonable expenses or liabilities incurred pursuant to this Trust Agreement, shall promptly distribute or cause the distribution of such money, securities, rights or property to Beneficiary or its designee.

6. *Communications.*

(a) The Trustee may communicate with and provide reports to Beneficiary concerning the implementation of the Wichita Station Trust, but not concerning the management and operations of the Stations except as provided in Section 3(a)(vi).

(b) The Trustee may engage in the communications contemplated by Section 3 hereof to facilitate a Sale (or Sales) of the Station Assets to an unaffiliated third party (or parties).

(c) During the term of this Trust Agreement, neither Beneficiary nor any of its officers, directors, employees, stockholders, or affiliates shall communicate with the Trustee regarding the operation or management of the Stations; provided, however, that Beneficiary may communicate with the Trustee as provided in Section 3, and concerning the mechanics of implementing any Sale of the Station Assets to an unaffiliated third party.

(d) Any communications permitted by Section 6(a), (b), or (c) shall be evidenced in writing, and shall be retained the Trustee for inspection upon request by the FCC.

(e) All notices, requests, consents, waivers, and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (a) if transmitted by facsimile, upon acknowledgement of receipt thereof in writing by facsimile or otherwise, (b) if personally delivered, upon delivery or refusal of delivery, or (c) if mailed by registered or certified United States mail, return receipt requested, postage prepaid, upon delivery or refusal of delivery. All notices, consents, waivers, or other communications required or permitted to be given hereunder shall be addressed to the respective party to whom such notice, consent, waiver, or other communication relates at the following addresses:

If to Beneficiary: Capstar Broadcasting Corporation, 600 Congress Avenue, Suite 1400, Austin, Texas 78701, Attention: William S. Banowsky, Jr., Facsimile: (512) 340–7890.

With copies to:

Vinson & Elkins L.L.P., 3700 Trammell Crow Center, 2001 Ross Avenue, Dallas, Texas 75201, Attention: Michael D. Wortley, Rodney L. Moore, Facsimile: (214) 999–7732.

Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006, Attention: Nathaniel F. Emmons, Facsimile: (202) 719–7049

If to the Trustee: Henry M. Rivera, Shook Hardy & Bacon L.L.P., Hamilton Square, Suite 800, 600 14th Street, NW, Washington, D.C. 20005–2004, Facsimile: (202) 783–4211.

Any party by written notice to the other parties pursuant to this Section 6(e) may change the address or the persons to whom notices or copies thereof shall be directed.

7. *Miscellaneous.*

(a) This Trust Agreement (which term shall be deemed to include the annexes, exhibits, and schedules hereto and the other certificates, documents, and instruments delivered hereunder), constitutes the entire agreement between the parties hereto and supersedes all prior agreements, commitments, or understandings with respect to the subject matter hereof. This Trust Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by each of the parties hereto. Substantial changes in this Trust Agreement may be made only as approved by the FCC and the DOJ, pursuant to and consistent with the Final Judgment. A copy of any substantial change shall be filed by the Trustee with the FCC and the DOJ within ten days following the execution thereof, with copies to the appropriate divisions and bureaus of the FCC and the DOJ.

(b) This Trust Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns, and nothing in this Trust Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Trust Agreement. Subject to Section 4(g), this Trust Agreement shall not be assignable by any of the parties hereto.

(c) If any term or other provision of this Trust Agreement is invalid, illegal, or incapable of being enforced by any rule of applicable law, or public policy, all other conditions and provisions of this Trust

Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated herein are not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Trust Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated herein are consummated as originally contemplated to the fullest extent possible.

(d) The headings of the sections of this Trust Agreement are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Trust Agreement. Unless otherwise stated, references in this Trust Agreement to Sections, subsections, Annexes, Exhibits, Schedules, and other subdivisions refer to the corresponding Sections, subsections, Annexes, Exhibits, Schedules, and other subdivisions of this Trust Agreement. The words ''this Trust Agreement,'' ''herein,'' ''hereby,'' ''hereunder,'' ''hereof,'' and words of similar import, refer to this Trust Agreement as a whole and not to any particular subdivision unless expressly so limited. The word ''or'' is not exclusive, and the word ''including'' (in its various forms) means ''including without limitation.'' Pronouns in the masculine, feminine, or neuter genders shall be construed to state and include any other gender.

(e) This Trust Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

(f) This Trust Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument, and shall become effective when one or more counterparts have been signed and delivered by each of the parties hereto, it being understood that all parties need not sign the same counterpart.

8. *Relationship to Final Judgment.*

The Trustee hereby agrees to be bound by the applicable provisions of the Final Judgment, and to the extent that any provision contained in this Trust Agreement is inconsistent with the Final Judgment, the provisions of the Final Judgment shall govern.

[Remainder of page intentionally left blank]

In witness whereof, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed on their behalf as of the date first written above.

Beneficiary: Capstar Broadcasting Corporation

By: ______________________________

William S. Banowsky, Jr.,
Executive Vice President

Trustee: Wichita Stations Trust

By: ______________________________

Henry M. Rivera
Trustee

Annex A

KNSS(AM), Wichita, Kansas

Annex B

KFH(AM), Wichita, Kansas
KQAM(AM), Wichita, Kansas
KEYN(FM), Wichita, Kansas
KWSJ(FM), Haysville, Kansas

United States of America, Plaintiff, v. Capstar Broadcasting Corporation, and Triathlon Broadcasting, Company, Defendants.

[Civil Action No. 99–CV–00993]

(Judge Oberdorfer)

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiff filed a civil antitrust Complaint on April 21, 1999, alleging that Capstar Broadcasting Corporation's (''Capstar'') proposed acquisition of Triathlon Broadcasting Company (''Triathlon'') would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that Capstar and Triathlon both own and operate radio stations throughout the United States, and that they each own and operate radio stations in the Wichita, Kansas, metropolitan area. Specifically, the complaint alleges that Capstar owns KKRD–FM, KRZZ–FM, and KNSS–AM in Wichita and that Capstar controls approximately 20 percent of the Wichita radio advertising market. The complaint also alleges that Triathlon owns KZSN–FM, KRBB–FM, KEYN–FM, KWSY–FM, KFH–AM, and KQAM–FM in Wichita and controls approximately 33 percent of the radio advertising revenues in the Wichita radio advertising market. The proposed acquisition would give Capstar a significant share of the radio advertising market in Wichita and control over stations that are close substitutes for each other based upon their specific audience characteristics. According to industry estminates, the proposed acquisition would give Capstar control of over 45 percent of the radio advertising revenue—even after Capstar divests the two lowest ranked FM radio stations pursuant to Federal Communications Commission (''FCC'') regulations. As a result, the combination would substantially lessen competition in the sale of radio advertising time in the Wichita metropolitan area.

The prayer for relief seeks: (a) adjudication that Capstar's proposed acquisition of Triathlon described in the Complaint would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action, and (d) such other relief as is proper.

Before this suit was filed, the United States reached a proposed settlement with Capstar and Triathlon which is memorialized in the Stipulation and proposed Final Judgment which have been filed with the Court. Under the terms of the proposed Final Judgment, Capstar must divest five stations—KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM—to another radio operator approved by plaintiff at the time it acquires Triathlon. If Capstar does not divest these stations to an approved buyer at the time it acquires Triathlon, Capstar must place the stations in an FCC Trust. The FCC Trust Agreement was filed with the Court as an attachment to the proposed Final Judgment. Unless the Antitrust Division of the United States Department of Justice (the ''Antitrust Division'') grants an extension, the Trustee must divest the stations to a buyer approved by the Antitrust Division at its sole discretion within four (4) months of the date of entry of the Final Judgment.

The proposed Final Judgment also requires both Capstar and Triathlon to ensure, to the extent they are able under the proposed Final Judgment, that these stations will be operated independently as viable ongoing businesses while Capstar and Triathlon continue to operate them. If the stations are transferred to the Trustee, the Trustee has agreed that he will operate the stations independently as viable ongoing businesses. Further, the proposed Final Judgment requires Capstar to give plaintiff prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of broadcast radio advertising time in Wichita.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations thereof.

II. The Alleged Violation

A. The Defendants

Capstar is a Delaware corporation with its headquarters in Austin, Texas.

Capstar owns approximately 309 radio stations in 76 U.S. markets. In 1997, Capstar had total revenue of approximately $350 million, approximately $4.9 million of which was derived from its Wichita stations.

Triathlon is a Delaware corporation headquartered in San Diego, California. Triathlon currently owns 31 radio stations in six U.S. markets. In 1997, Triathlon had total revenue of approximately $33.6 million, approximately $8 million of which was derived from its Wichita stations.

B. Description of the Events Giving Rise to the Alleged Violation

On July 23, 1998, Capstar and Triathlon entered into an Agreement and Plan of Merger (''Agreement''). Under the terms of the Agreement, Triathlon agreed to transfer its licensee companies, including Triathlon Broadcasting of Wichita Licensee, Inc., to Capstar. Also under the terms of the Agreement, Triathlon agreed to sell Triathlon Broadcasting Company to Capstar.

Capstar and Triathlon compete for the business of local and national companies seeking to advertise in the Wichita radio market. The proposed acquisition of Triathlon by Capstar, and the threatened loss of competition that would be caused thereby, precipitated the government suit.

C. Anticompetitive Consequences of the Proposed Acquisition

1. The Sale of Radio Advertising Time in Wichita

The Complaint alleges that the provision of advertising time on radio stations serving the Wichita, Kansas Metropolitan Survey Area (''MSA'') constitutes a line of commerce and a section of the country, or a relevant market, for antitrust purposes. The Wichita MSA is the geographical unit for which Arbitron furnishes radio stations, advertising agencies, and advertisers with data to aid in evaluating radio audience size and composition. Advertisers use this data in making decisions about which radio station or combination of radio stations can deliver their target audiences in the most efficient and cost-effective way. The Wichita MSA includes Butler, Harvey, and Sedgwick Counties. Radio stations earn their revenues from the sale of advertising time to local and national advertisers. Many local and national advertisers purchase radio advertising time in Wichita because they find such advertising preferable to advertising in other media for their specific needs. For such advertisers, radio time (a) may be less expensive and more cost-efficient than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services); (b) may reach certain target audiences that cannot be reached as effectively through other media; or (c) may render certain services or offer promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these and other reasons, many local and national advertisers in Wichita who purchase radio advertising time view radio either as a necessary advertising medium for them or as a necessary advertising complement to other media.

Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time in Wichita, the existence of such advertisers would not prevent radio stations from raising their prices a small but significant amount. At a minimum, stations could raise prices profitably to those advertisers who view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations, which negotiate prices individually with advertisers, can identify those advertisers with strong radio preferences. Consequently, radio stations can charge different advertisers different rates. Because of this ability to price discriminate among different customers, radio stations may charge higher rates to advertisers that view radio as particularly effective for their needs, while maintaining lower rates for other advertisers.

2. Harm to Competition

The Complaint alleges that Capstar's proposed acquisition of Triathlon would lessen competition substantially in the provision of radio advertising time in the Wichita MSA. The proposed transaction would create further market concentration in an already concentrated market. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI''), explained in Appendix A of the Complaint, a combination of Capstar and Triathlon would substantially increase the concentration in the Wichita radio advertising markets. The HHI currently is 3040. If Capstar divests only the two least significant FM stations, Capstar's share of the Wichita radio market, based on advertising revenue, would increase from approximately 20 percent to approximately 45 percent. The approximate post-merger HHI would be 3680, representing an increase of about 640 points. This substantial increase in concentration is likely to give Capstar unilateral power to raise advertising rates and reduce the level of service provided to advertisers in Wichita.

Today, several Capstar and Triathlon stations in Wichita compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Wichita, they are close substitutes for each other based on their specific audience characteristics. The proposed merger would eliminate this competition.

During individual price negotiations between advertisers and radio stations, advertisers provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations thus have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs.

During individualized rate negotiations, advertisers that desire to reach certain listeners can help ensure competitive rates by ''playing off'' Capstar stations against Triathlon stations. Capstar's acquisition of Triathlon will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using Capstar stations. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition, the acquisition would give Capstar the ability to raise prices and reduce the quality of its service to some advertisers on its stations in Wichita.

b. Advertisers could not turn to other Wichita radio stations to prevent Capstar from imposing an anticompetitive price increase.

If Capstar raised prices or lowered services to those advertisers who buy advertising time on Capstar and Triathlon stations in Wichita because of their strength in delivering access to certain audiences, non-Capstar radio stations in Wichita would not be induced to change their formats to attract those audiences in sufficiently large numbers to defeat a price increase. Successful radio stations are unlikely to undertake a format change solely in response to small but significantly increases in price being charged to advertisers by a multi-station firm such as Capstar because they would likely lose a substantial portion of their existing audiences. Even if less successful stations did change format, they would still be unlikely to attract enough listeners to provide suitable alternatives to the merged entity. In addition, new entry into the Wichita radio advertising market would not be timely, likely or sufficient to deter the exercise of market power. For all these reasons, plaintiff concludes that the proposed transaction would lessen competition substantially in the sale of radio advertising time on radio stations serving the Wichita MSA in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in Wichita. It requires Capstar to divest five stations: KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM. The relief will reduce the share in advertising revenues Capstar would have achieved in the transaction from 45 percent to less than 40 percent. The divestitures will preserve choices for advertisers and will ensure that radio advertising prices do not increase and services do not decline as a result of the transaction.

Capstar must divest the KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM assets to either another buyer or a Trustee at the time it acquires Triathlon. The divestitures must be to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Except in the case of KNSS–AM, the divestitures shall include all the assets of the stations being divested. The divestitures shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will be used as viable, ongoing commercial radio businesses. If defendants fail to divest these stations within the time periods specified in the Final Judgment, a Trustee agreed upon by plaintiff and Defendants and identified in the Final Judgment will be entrusted to effect the divestitures. If the Trustee is appointed, the proposed Final Judgment provides that Capstar will pay all costs and expenses of the Trustee and any professionals and agents retained by the Trustee. After appointment, the Trustee will file monthly reports with the plaintiff, Capstar and the Court, setting forth the Trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the Trustee has not accomplished the divestitures within four (4) months after the date of the Order's entry, the Trustee shall promptly file with the Court a report setting forth (1) the Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Trustee's judgment, why the required divestitures have not been accomplished and (3) the Trustee's recommendations. At the same time the Trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment requires that prior to the consummation of the transaction, defendants will maintain the independence of their respective radio stations in Wichita until the closing of the merger and the transfer of KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM to either a buyer approved by the plaintiff or to the Trustee.

The proposed Final Judgment also prohibits Capstar from entering into certain agreements with other Wichita radio stations without providing at least thirty (30) days' notice to the plaintiff. Specifically, Capstar must notify the plaintiff before acquiring any interest in another Wichita radio station. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''). Moreover, Capstar may not agree to sell radio advertising time for any other Wichita radio station, or to have another radio station that also sells radio advertising time in Wichita sell its radio advertising time, without providing plaintiff with notice. In particular, the provision requires Capstar to notify the plaintiff before it enters into any Joint Sales Agreements (''JSAs'') in Wichita. Under a JSA, one station sells another station's advertising time. Despite their clear competitive significance, JSAs may not all be reportable to the Department under the HSR Act. Thus, this provision in the proposed Final Judgment ensures that the plaintiff will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Wichita radio advertising market.

The relief in the proposed Final Judgment is intended to remedy the likely anitcompetitive effects of Capstar's proposed transaction with Triathlon in Wichita. Nothing in this Final Judgment is intended to limit the plaintiffs ability to investigate or to bring actions, where appropriate, challenging other past or future activities of defendants in Wichita, or any other markets.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provision of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Any such written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trail on the merits of its Complaint against defendants. The plaintiff is satisfied, however, that the divestiture of KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM, and KQAM–AM, and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Wichita radio advertising markets. Thus, the proposed Final Judgment would achieve the relief the plaintiff would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trail.

15 U.S.C. 16(e).

As the United States Court of Appeals for the District of Columbia Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the plaintiff's Complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc*, 858 F.2d 456, 462 (9th Cir. 1988) (*citing United States v. Bechtel Corp.* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. 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.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment therefore should not be reviewed under a standard of whether it is certain to eliminate very anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'' [3]

This is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: May 12, 1999.

Respectfully submitted,

Karl D. Knutsen,

Attorney, Merger Task Force.

U.S. Department of Justice

Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, (202) 514–0976.

Certificate of Service

I, Karl D. Knutsen, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the foregoing Competitive Impact Statement were served this 12th day of May, 1999, by United States mail, to the following:

David J. Laing, Baker & McKenzie, 815 Connecticut Ave. N.W., Washington, D.C. 20006, *Counsel for Triathlon Broadcasting Company.*

Neil W. Imus, Vinson & Elkins, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20006, *Counsel for Capstar Broadcasting Corporation*

Karl D. Knutsen.

[FR Doc. 99–14896 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Imetal, DBK Minerals, Inc., English China Clays, plc, and English China Clays, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16(b) through (h), that a Complaint, Hold Separate Stipulation and Order, and a proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States* v. *Imetal, DBK Minerals, Inc., English China Clays, plc, and English China Clays, Inc.*, Civil No. 99–1018 on April 26, 1999. A Competitive Impact Statement was filed on May 24, 1999. The Complaint alleged that the proposed acquisition of English China Clays (''ECC'') by Imetal would violate Section 7 of the Clayton Act, 15 U.S.C. Section 18, in the markets for water-washed and calcined kaolin and fused silica in the United States and in the

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[1] 119 Cong. Rec. 24598 (1973). *See United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[2] *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS,* 858 F.2d at 463; *United States v. National Broad. Co.* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette,* 406 F. Supp. at 716. *See also Microsoft* 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[3] *United States v. American Tel. and Tel Co,* 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland v. United States,* 460 U.S. 1001 (1983) (*quoting Gillette Co.*, 406 F. Supp. at 716 (citations omitted)); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

market for paper-grade ground calcium carbonate (''GCC'') in the Southeastern United States. The Southeastern U.S. was defined as the thirteen states of North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, Arkansas, Missouri, Texas, and Virginia. The proposed Final Judgment, filed at the same time as the Complaint, requires Imetal, among other things, to: (1) divest production facilities and associated reserves for water-washed and calcined kaolin; (2) sell its interest in Alabama Carbonates, L.P., a joint venture that makes paper-grade GCC, as well as substantial GCC reserves; and (3) sell the fused silica operations of ECC.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies to be implemented by Imetal. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and response thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Constance K. Robinson,

Director of Operations.

United States District Court, District of Columbia

[Civil No: 99–1018]

United States of America, Plaintiff, v. Imetal, DBK Minerals, Inc., English China Clays, PLC and English China Clays, Inc., Defendants.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Imetal'' means defendant Imetal, a French corporation with its headquarters in Paris, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. ''ECC'' means defendant English China Clays, plc, a United Kingdom corporation with its headquarters in Reading, England, and its subsidiary, defendant English China Clays, Inc., A Delaware corporation with its headquarters in Roswell, Georgia, and their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. ''DBK'' means DBK Minerals, Inc., a Delaware subsidiary of Imetal, with its headquarters in Dry Branch, Georgia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

D. ''DBK Plant'' means the kaolin plant of DBK located in Dry Branch, Georgia.

E. ''Kaolin Assets'' means the Sandersville #1 plant of ECC and Kaolin Reserves inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sanderville #1 Plant, including research and development activities, and real property containing the Sandersville #1 Plant and the Kaolin Reserves; all rights, titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site and off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of Sandersville #1 Plant and the Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sandersville #1 Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how trade secrets, specifications for materials, and quality assurance and control procedures utilized by ECC at the Sandersville #1 Plant.

F. ''DBK Plant Assets'' means the DBK Plant inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin, including calcined kaolin, from the DBK Plant, including research and development activities, and real property containing the DBK Plant, Kaoline Reserves and Calcined Kaolin Reserves; all rights, titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal in connection with the operation of the DBK Plant;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the DBK Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Imetal or DBK at the DBK Plant.

G. ''GCC'' means ground calcium carbonate.

H. ''GCC Assets'' means DBK's interests in Alabama Carbonates, L.P. (''Alabama Carbonates''), a limited partnership between Carbonate Corporation, a subsidiary of Omya, Inc., and Georgia Marble Stone Corporation (''Georgia Marble''), a subsidiary of DBK, located in Sylacauga, Alabama, which manufactures GCC products in slurry form for use in paper production.

I. ''GCC Reserves'' means economically recoverable calcium carbonate stone reserves located in the Sylacauga, Alabama area of a minimum pureness quality suitable for slurry products produced and sold to the paper industry.

J. ''GCC Reserve Assets'' means GCC Reserves in quantities sufficient to ensure that Alabama Carbonates will have available to it 500,000 tons per year of crushed, washed and reduced to size stone suitable to use as feedstock for a period of thirty (30) years. Determination of the amount of GCC Reserves needed to meet this standard shall take into account the amount of any GCC Reserves that any principal or affiliate of Alabama Carbonates (other than the defendants) owns, leases or has an option on, and are available to Alabama Carbonates. In the event that Alabama Carbonates, the purchaser of the GCC Assets, or Georgia Marble's joint venturer in Alabama Carbonates and the seller cannot agree on the amount of GCC Reserves that must be divested to meet the standard set forth above or the fair market value of such reserves, such issue may be submitted to binding arbitration in accordance with Section IX of the Final Judgment in this case.

K. ''Fused Silica Assets'' means the fused silica plant of Minco, Inc. acquired from Minco Acquisition Corp. in 1998, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused silica; including research and development activities; all rights, titles, and interest, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreement, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Imetal in connection with the operation of the fused silica plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused silica, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused silica.

L. ''Fused Magnesia Assets'' means the fused magnesia plant acquired from Minco Acquisition Corp. in 1998, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia; including research and development activities, all rights, titles, and interests, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Minco in connection with the operation of the fused magnesia plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused magnesia.

M. ''Kaolin Reserves'' means kaolin clay suitable for producing kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Kaolin Assets or, if divested pursuant to the Final Judgment in this case, the DBK Plant Assets, at full capacity for a period of twenty (20) years.

N. ''Calcined Kaolin Reserves'' means kaolin clay suitable for producing calcined kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Calcined Assets or, if divested pursuant to the Final Judgment in this case, the calcining assets of the DBK Plant Assets, at full capacity for a period of twenty (20) years.

O. ''Calcining Assets'' means a plant or plants with two (2) calciners suitable for producing calcined kaolin sold to the paper industry, other than the calcining facilities in Sandersvillle, Georgia, with a combined capacity of approximately 85,000 to 100,000 tons of calcined kaolin per year, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin, including research and development activities; real property containing Calcining Assets and Calcined Kaolin Reserves; all rights, titles and interests including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of the Calcining Assets and the Calcined Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin from the Calcining Assets and the Calcined Kaolin Reserves, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, quality assurance and control procedures utilized by Imetal or ECC at the Calcining Assets.

P. ''Sandersville #1 Plant'' means the water-washed kaolin plant of ECC with a capacity of 850,000 tons annually located in Sandersville, Georgia.

Q. ''ECC Kaolin Business'' means the entire United States water-washed and calcined kaolin business acquired by Imetal from ECC, including the operation of ECC's Sandersville #1 Plant, Sandersville #2 Plant and the Wrens Plant.

R. ''Hold Separate Assets'' means the ECC Kaolin Business, the Fused Silica Assets and the Fused Magnesia Assets collectively.

II. Objectives

The Final Judgment filed in this case is meant to ensure Imetal's prompt divestiture of the Kaolin Assets, Calcining Assets, GCC Assets, GCC Reserve Assets, and Fused Silica Assets for the purposes of creating viable competitors in the development, production and sale of each of these products and to remedy the effects that the United States alleges would otherwise result from Imetal's proposed acquisition of ECC. This Hold Separate Stipulation and Order ensures the timely and complete transfer of these assets and maintains the separation of the ECC and Imetal water-washed kaolin, calcined kaolin, GCC for papermaking, fused silica and fused magnesia businesses as independent, viable competitors until the required divestitures are complete.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

D. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

E. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

V. Hold Separate Provisions

A. Imetal shall preserve, maintain, and operate the Hold Separate Assets as independent competitive businesses, with management, research, development, production, sales and operations of such assets held entirely separate, distinct and apart from those of Imetal. Imetal shall not coordinate its production, marketing or sale of any products with that of any of Judgment. Imetal may, subject to the use of firewalls acceptable to the United States, plan the post-divestiture integration of its DBK and ECC kaolin busineses.

D. Imetal shall provide and maintain sufficient working capital to maintain the Hold Separate Assets as viable, ongoing businesses, consistent with current business plans.

E. Imetal shall provide and maintain sufficient lines and sources of credit to maintain the Hold Separate Assets as viable, ongoing businesses.

F. Imetal shall maintain, on behalf of the Hold Separate Assets, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of each of the businesses on a monthly and quarterly basis.

G. Imetal shall use all reasonable efforts to maintain and increase the sales of each of the Hold Separate Assets to be divested, such as maintaining at 1998 or previously approved levels for 1999, whichever are higher, internal research and development funding, sales, marketing, and support for the Hold Separate Assets.

H. Imetal shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to the Final Judgment.

I. Imetal shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of repair equal to their state of repair as of the date of this Order, ordinary wear and tear excepted.

J. Except in the ordinary course of business or as is otherwise consistent with this Order, defendants shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who, on the date of entry of this Order, works for any of the Hold Separate Assets. Defendants shall not solicit to hire any individual who, on the date of entry of this Order, was an employee of any of the assets to be divested under the Final Judgment.

K. Within ten (10) days of the filing of this Hold Separate Stipulation and Order, defendants shall appoint one or more persons who shall have complete managerial responsibility for the Hold Separate Assets, subject to the provisions of this Order and the Final Judgment, until such time as this Order is terminated. In the event that such manager(s) is unable to perform his or her duties, Imetal shall appoint from the current management of the Hold Separate Assets, subject to the plaintiff's approval, a replacement within ten (10) working days. Should Imetal fail to initially appoint a manager acceptable to the United States, or fail to appoint any replacement required within ten (10) working days, the United States shall appoint the manager.

L. Imetal shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divesture pursuant to the Final Judgment to a suitable purchaser.

M. This Order shall remain in effect as to the ECC Kaolin Business until the divesture of the Kaolin or DBK Plant Assets required by the Final Judgment is complete, or until further Order of the Court. This Order shall remain in effect as to the Fused Silica Assets and Fused Magnesia Assets until the divestiture of the Fused Silica Assets required by the Final Judgment is complete, or until further Order of the Court.

Dated: April 26, 1999.

For Plaintiff United States of America

Patricia G. Chick,

Esquire, D.C. Bar #266403, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20005, (202) 307–0946.

For Defendants Imetal and DBK Minerals, Inc.:

George M. Chester, Jr.,

Esquire, D.C. Bar #238196, James R. Atwood, Esquire, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20044–7566, (202) 662–6000.

For Defendant English China Clays, Plc and English China Clays, Inc.

William R. Norfolk,

Esquire, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004–2498, (212) 558–4000.

It is ordered by the Court, this ______ day of April, 1999.

United States District Judge.

[Civil No.: 99–1018]

United States of America, Plaintiff, v. Imetal, DBK Minerals, Inc., English China Clays, Plc, and English China Clays, Inc., Defendants.

Final Judgment

Whereas, plaintiff, the United States of America, and defendants Imetal (''Imetal''), DBK Minerals, Inc. (''DBK''), English China Clays, plc and English China Clays, Inc. (together ''ECC''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein; and having consented that this Final Judgment shall settle all claims made by plaintiff in its Complaint filed April 26, 1999;

And whereas, defendants have agreed to bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is, in the event of the acquisition of ECC by Imetal, the prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the water-washed kaolin, calcined kaolin, ground calcium carbonate (''GCC''), and fused silica businesses specified in the Complaint;

And whereas, defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

A. ''Imetal'' means defendant Imetal, a French corporation with its headquarters in Paris, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. ''ECC'' means defendant English China Clays, plc, a United Kingdom corporation with its headquarters in Reading, England, and its subsidiary, defendant English China Clays, Inc., a Delaware corporation with its headquarters in Roswell, Georgia, and their successors and assigns, and their subsidiaries, divisions, groups, affiliates partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. ''DBK'' means DBK Minerals, Inc., a Delaware subsidiary of Imetal, with its headquarters in Dry Branch, Georgia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

D. ''DBK Plant'' means the kaolin plant of DBK located in Dry Branch, Georgia.

E. ''Kaolin Assets'' means the Sandersville #1 plant of ECC and the Kaolin Reserves inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sandersville #1 Plant, including research and development activities, and real property containing the Sandersville #1 Plant and the Kaolin Reserves; all rights, titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site and off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of the Sandersville #1 Plant and the Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sandersville #1 Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by ECC at the Sandersville #1 Plant.

F. ''DBK Plant Assets'' means the DBK Plant inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin, including calcined kaolin, from the DBK Plant, including research and development activities, and real property containing the DBK Plant, Kaolin Reserves and Calcined Kaolin Reserves; all rights titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal in connection with the operation of the DBK Plant;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the DBK Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Imetal or DBK at the DBK Plant.

G. ''GCC'' means ground calcium carbonate.

H. ''GCC Assets'' means DBK's interests in Alabama Carbonates, L.P. (''Alabama Carbonates''), a limited partnership between Carbonate Corporation, a subsidiary of Omya, Inc., and Georgia Marble Stone Corporation (''Georgia Marble''), a subsidiary of DBK, located in Sylacauga, Alabama, which manufactures GCC products in slurry form for use in paper production.

I. '' GCC Reserve'' means economically recoverable calcium carbonate stone reserves located in the Sylacauga, Alabama area of a minimum pureness quality suitable for slurry products produced and sold to the paper industry.

J. ''GCC Reserve Assets'' means GCC Reserves in quantities sufficient to ensure that Alabama Carbonates will have available to it 500,000 tons per year of crushed, washed and reduced to size stone suitable to use as feedstock for a period of thirty (30) years. Determination of the amount of GCC Reserves needed to meet this standard shall take into account the amount of any GCC Reserves that any principal or affiliate of Alabama Carbonates (other than the defendants) owns, leases or has an option on, and are available to Alabama Carbonates. In the event that Alabama Carbonates, the purchaser of the GCC Assets, or Georgia Marble's joint venturer in Alabama Carbonates and the seller cannot agree on the amount of GCC Reserves that must be divested to meet the standard set forth above or the fair market value of such reserves, such issue may be submitted to binding arbitration in accordance with Section IX of this Final Judgment.

K. ''Fused Silica Assets'' means the fused silica plant of Minco, Inc. acquired from Minco Acquisition Corp. In 1998, inclusive of:

(1) All tangible assets in connection with the business of making, having made, using, packaging, distributing, or selling fused silica, including research and development activities; all rights, titles, and interest, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Minco in connection with the operation of the fused silica plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused silica, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused silica.

L. ''Fused Magnesia Assets'' means the fused magnesia plant acquired from Minco Acquisition Corp. in 1998, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia, including research and development activities; all rights, titles, and interests, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Minco in connection with the operation of the fused magnesia plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused magnesia.

M. ''Kaolin Reserves'' means kaolin clay suitable for producing kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Kaolin Assets or, if divested pursuant to this Final Judgment, the DBK Plant Assets, at full capacity for a period of twenty (20) years.

N. ''Calcined Kaolin Reserves'' means kaolin clay suitable for producing calcined kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Calcined Assets or, if divested pursuant to this Final Judgment, the calcining assets of the DBK Plant Assets, at full capacity for a period of twenty (20) years.

O. ''Calcining Assets'' means a plant or plants with two (2) calciners suitable for producing calcined kaolin sold to the paper industry, other than the calcining facilities in Sandersville, Georgia, with a combined capacity of approximately 85,000 to 100,000 tons of calcined kaolin per year, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin, including research and development activities; real property containing Calcining Assets and Calcined Kaolin Reserves; all rights, titles and interests including all fee and leasehold rights, all manufacturing, person property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of the Calcining Assets and the Calcined Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin from the Calcining Assets and the Calcined Kaolin Reserves, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Imetal or ECC at the Calcining Assets.

P. ''Sandersville #1 Plant'' means the water-washed kaolin plant of ECC with a capacity of 850,000 tons annually located in Sandersville, Georgia.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale of all or substantially all of its assets or of lesser business units that include its water-washed kaolin, calcined kaolin, GCC, or fused silica businesses or assets, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the Hold Separate Stipulation and Order in this case, or within five (5) days after notice of entry of the Final Judgment, whichever is later, to sell the Kaolin Assets or at their option the DBK Plant Assets, the Calcining Assets, the GCC Assets and the Fused Silica Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States in its sole discretion and to sell the GCC Reserve Assets to the purchaser of the GCC Assets, to Georgia Marble's joint venturer in Alabama Carbonates, or to Alabama Carbonates.

B. Defendants are also ordered to enter into, at the option of Alabama Carbonates, a short-term contract to supply Alabama Carbonates with crushed, washed and reduced to size calcium carbonate stone suitable to use as feedstock for slurry products produced and sold to the paper industry in quantities and quality and at terms and conditions substantially similar to those of the existing supply and services agreements between Georgia Marble and Alabama Carbonates and which is acceptable to the United States in its sole discretion. Such contract shall have a term of either three (3) years from the divestiture of the GCC Assets and GCC Reserve Assets or two (2) years from the conclusion of any arbitration permitted by Section IX of this Final Judgment, whichever is longer, and shall be terminable by Alabama Carbonates on six months' notice. The United States, in its sole discretion, may extend the term of the short-term contract for periods of time not to exceed one year in total.

C. Defendants shall use their best efforts to accomplish said divestitures as expeditiously as possible. The United States, in its sole discretion, may extend the time period for any divestitures for an additional period of time not to exceed sixty (60) calendar days.

D. In accomplishing the divestitures ordered by this Final Judgment, defendants shall make known promptly, by usual and customary means, the availability of the Kaolin Assets or at their option the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding these assets customarily provided in a due diligence process, except such information as is subject to attorney-client privilege or attorney work-product privilege. Defendants shall make such information available to the United States at the same time that such information is made available to any other person. In the event that defendants enter into an agreement to negotiate exclusively with a prospective purchaser for the divestiture of any asset to be divested, defendants' obligations to furnish information to other prospective purchasers may be suspended during such period of exclusive negotiations, provided however, that nay such suspension of this obligation shall not affect the time period within which defendants must sell the asset.

E. As customarily provided as part of a due diligence process, defendants shall permit prospective purchasers of the assets to have access to personnel and to make inspection of such assets; access to any and all zoning, building, and other permit documents and information; and access to any and all financial, operational, or other documents and information.

F. Defendants shall not interfere with any negotiations by any purchaser or purchasers to employ any DBK or ECC employee who works at, or whose principal responsibility concerns, any aspect of the Kaolin Assets (or, if appropriate, the DBK Plant Assets), the Calcining Assets, the GCC Assets, the GCC Reserve Assets or the Fused Silica Assets.

G. Defendants shall not take any action, direct or indirect, that would impede in any way the operation of any business connected with the assets to be divested, or take any action, direct or indirect, that would impede the divestiture of any asset.

H. Defendants shall warrant to any and all purchasers of the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets and the Fused Silica Assets that each existing asset will be operational on the date of sale.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, whether by defendants or by trustee appointed pursuant to Section VI of this Final Judgment, shall include the entire Kaolin Assets (or, of appropriate, the DBK Plant Assets), Calcining Assets, GCC Assets, GCC Reserve Assets and Fused Silica Assets, or such other assets as may be substituted or additionally included by the Trustee under Section VI of the Final Judgment. Such divestitures shall be accomplished by selling or otherwise conveying the assets to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser as viable ongoing businesses, engaged in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses. The divestitures, whether pursuant to Section IV or Section VI of this Final Judgment, shall be made to a purchaser or purchasers who, as demonstrated to the United States' sole satisfaction: (1) has the capability and intent of competing effectively in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses; and (3) is not hindered by the terms of any agreement between the purchaser and defendants which gives defendants the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere with the ability of the purchaser to compete.

J. Defendants shall warrant to the purchaser of the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, the Fused Silica Assets and the Fused Magnesia Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that with respect to the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, the Fused Silica Assets and the Fused Magnesia Assets, defendants will not undertake, directly or indirectly, following the divestiture of any such asset, any challenges to the environmental, zoning, or other permits pertaining to the operation of the assets.

K. In the event that there is a divestiture by either the defendants or the trustee of the DBK Plant Assets, including at least two calciners with capacity of approximately 85,000 to 100,000 tons of calcined kaolin per year, such divestiture shall satisfy the requirements of this Final Judgment to divest the Kaolin Assets and the Calcining Assets.

V. Notice of Proposed Divestitures

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Section IV or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and shall list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt of the United States of a divestiture notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from the defendants, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section VI may not be consummated. Upon objection by defendants under the provision in Section VI(B), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VI. Appointment of Trustee

A. In the event that defendants have not divested any of the Kaolin Assets or DBK Plant Assets, Calcining Assets, GCC Assets, the GCC Reserve Assets, or Fused Silica Assets within the time period specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestiture of each such asset. The trustee shall have the right, in its sole discretion, to sell either the DBK Plant Assets or the Kaolin Assets. The trustee shall have the right, in its sole discretion, to additionally include in the sale of the Fused Silica Assets the Fused Magnesia Assets. The trustee shall also have the right, in its sole discretion, and upon notice to the defendants and approval of the United States, to require the divestiture of additional related assets reasonably necessary to divest the Kaolin Assets, the Calcining Assets, and the Fused Silica Assets as viable stand-alone businesses including, but not limited to, sales and marketing facilities and organizations, research and development facilities and organizations. In any such event, all of the obligations of the defendants under the Final Judgment shall apply to the added assets as well.

B. After the appointment of a trustee become effective, only the trustee shall have the right to divest any assets. The trustee shall have the power and authority to accomplish any and all divestitures of assets at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of the defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a divestiture by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section V of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each asset sold by the trustee, and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture, and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of each of the businesses to be divested, and defendants shall develop such financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit prospective purchasers of each of the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, or the Fused Silica Assets, or other assets being sold by the trustee, to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the assets to be divested.

F. If the trustee has not accomplished such divestitures within six(6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment for a period of time requested by the United States.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed pursuant to Section IV or VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for any and all of the Kaolin Assets or DBK Plant Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, or the Fused Silica Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, defendants shall deliver to plaintiff an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate each of the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets as an active competitor, maintain the management, staffing, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, defendants shall preserve all records of all efforts made to preserve the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets and to effect the ordered divestitures.

VIII. Firewall

A. During the period of any supply contract for dry processed calcium carbonate between Imetal and Alabama Carbonates, Imetal shall construct and maintain in place a firewall that prevents any information about the purchaser's requirements, purchases, or future requirements for dry processed calcium carbonate from flowing to any other Imetal employee involved in the production, sale or marketing of GCC for paper by Imetal or the former ECC. To implement this provision, Imetal is required to identify those employees of Imetal or of the former ECC who are involved in the production, sale or marketing of GCC for paper, and all such identified employees shall be prohibited from receiving any information about Alabama Carbonates' requirements, purchases, or future requirements for dry processed calcium carbonate. All other employees of Imetal or the former ECC who receive any such information shall be prohibited for passing on such information to the identified employees.

B. Imetal shall, within ten (10) business days of the entry of the Hold Separate Stipulation and Order, submit to the Department of Justice a document setting forth in detail its procedure to effect compliance with this provision. The Department of Justice shall have the sole discretion to approve Imetal's compliance plan and shall notify Imetal within three (3) business days whether it approves or rejects Imetal's compliance plan. In the event that Imetal's compliance plan is rejected, the reasons for the rejection shall be provided to Imetal and Imetal shall be given the opportunity to submit, within two (2) business days of receiving the notice of rejection; a revised compliance plan. If the parties cannot agree on a compliance plan within an additional three (3) business days, a plan will be devised by the Department of Justice and implemented by Imetal.

IX. Arbitration

A. In the event that Alabama Carbonates, the purchaser of the GCC Assets, or Georgia Marble's joint venturer in Alabama Carbonates and the seller of the GCC Reserve Assets cannot agree on the amount of GCC Reserves that need to be divested or the fair market value of such reserves, any of those persons may elect to settle the issue through binding arbitration. The seller shall enter into a reasonable arbitration agreement, acceptable to the United States in its sole discretion, to govern such arbitration. The agreement shall provide that:

(1) Any controversy to be settled by arbitration shall be submitted to the American Arbitration Association;

(2) The arbitrator appointed shall be one acceptable to the United States in its sole discretion;

(3) The United States shall provide its assistance to the arbitrator and may submit evidence;

(4) Rules and procedures shall be adopted to ensure that the controversy shall be completed within four months from the appointment of the arbitrator and any ward made pursuant to any arbitration shall be final and binding on the parties to the arbitration.

B. When any such controversy is submitted to arbitration, defendants shall promptly notify the United States in writing and shall promptly serve a copy of the final award on the United States.

C. If any such controversy is submitted to arbitration, the period of time provided by Section IV(A) of this Final Judgment for the defendants to accomplish the divestiture required shall be tolled during the period of the arbitration. Following the conclusion of such arbitration, the United States shall, if necessary, extend the period of time provided in Section IV(A), to provide the defendants up to sixty (60) days in which to complete the divestiture.

X. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of the Kaoline Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, the Fused Silica Assets, or the Fused Magnesia Assets.

XI. Financing

Defendants are ordered and directed not to finance all or any part of any acquisition made pursuant to Sections IV or VI of this Final Judgment.

XII. Compliance inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may

(2) Subject to the reasonable convenience of defendants and without

restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VI or VII of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated ______, 1999.

____

United States District Judge.

[Civil No: 99 1018]

Judge Gladys Kessler

Filed: April 26, 1999.

United States of America Plaintiff, v. Imetal, DBK Minerals, Inc., English China Clays, plc, and English China Clays, Inc., Defendants.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On April 26, 1999, the United States file a civil antitrust Complaint alleging that the proposed acquisition of English China Clays, plc (''ECC'') by IMETAL (''Imetal'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, with respect to four relevant products. The Complaint alleges that Imetal and ECC are two of five U.S. producers of water-washed kaolin; two of four U.S. producers of calcined kaolin for use in paper-making; the only two producers in the Southeastern United States of ground clacium carbonate (''GCC'') in slurry form for the paper industry (''paper-grade GCC''); and the two leading U.S. producers of fused silica. The request for relief seeks: (1) a judgement that the proposed merger would violate Section 7 of the Clayton Act; (2) inductive relief preventing consummation of the proposed acquisition; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

When the Complaint was filed, the United States also filed a proposed Final Judgment and a Hold Separate Stipulation and Order that would settle the lawsuit. The proposed settlement permits Imetal to acquire ECC, but requires divestitures that will preserve competition in the four relevant product markets alleged in the Complaint. The proposed Final Judgment orders defendants to divest production facilities and associated assets, as defined in the proposed Final Judgment, for water-washed kaolin, calcined kaolin, and fused silica, to divest Imetal's interest in Alabama Carbonates, L.P., a joint venture that make paper-grade GCC, and to divest substantial GCC reserves. Defendants must accomplish these divestures within one hundred and eighty (180) calendar days after the filing of the proposed Final Judgment in this matter, or five (5) days after notice of the entry of the proposed Final Judgment by the Court, whichever is later, to purchaser acceptable to the Antitrust Division of the United States Department of Justice (''DOJ''). If the defendants do not do so within the time frame in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell those assets. If the trustee is unable to do so in that time, the Court could enter such orders as it shall deem appropriate to carry out the purpose of the trust which may, if necessary, include extending the trust and the trustees' appointment by a period requested by the United States.

In addition, under the terms of the Hold Separate Stipulation and Order, defendants must hold specified assets to be divested separate and apart from their other businesses until the required divestitures have been accomplished. Defendants must, until the required divestitures are accomplished, preserve and maintain the specified assets to be divested as saleable and economically viable ongoing concerns.

The plaintiff and defendants have stipulated that the proposed Final judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Event Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Imetal is a French corporation with headquarters in Paris, France. It produces building materials, industrial metals, and industrial minerals worldwide. In the United States, Imetal produces kaolin through its DBK Minerals, Inc. subsidiary (''DBK'') at a plant in Dry Branch, Georgia and at a plant in Jeffersonville, Georgia; dry-processed GCC through The Georgia Marble Company (''Georgia Marble''), a subsidiary of DBK, at a number of locations throughout the United States, including its plant in Sylacauga, Alabama; paper-grade GCC through a joint venture, Alabama Carbonates, L.P., in Sylacauga, Alabama, in which Georgia marble has a 50 percent ownership interest; and fused silica, through its G–E Minerals, Inc. subsidiary at a plant in Greenville, Tennessee. In 1997, Imetal reported total sales in excess of 10 billion French francs.

ECC is a United Kingdom Corporation with headquarters in Reading, England. It produces industrial minerals, pigments and chemicals worldwide. In the United States, ECC produces kaolin through its English China Clays, Inc. subsidiary at two plants in Sandersville, Georgia and at a plant in Wrens, Georgia; and paper-grade GCC at a plant in Sylacauga, Alabama and at plants in Maryland and Wisconsin. In addition, in 1998, ECC purchased Minco Acquisition Corporation, a company that produces fused silica and fused magnesia at plants in Midway, Tennessee. In 1997, ECC reported total sales of about 850 million pounds Sterling.

On January 11, 1999, Imetal announced a cash tender offer for all of the shares of ECC. This transaction, which would increase concentration in the already highly concentrated markets for water-washed kaolin clay, calcined kaolin clay and fused silica in the United States, and would increase concentration in the already highly concentrated market for paper-grade GCC in the Southeastern United States, precipitated the government's suit.[1]

B. The Markets

Water-Washed Kaolin

Kaolin is a clay consisting of a crystalline hydrated aluminum silicate, ususlly found as the mineral kaolinite. The clay is mined in open pit quarries, and processed using crushing and grinding equipment. Water-washed kaolin is treated with water and flotation, which removes impurities and separates the kaolin by particle size. It is sold in a number of different grades, differentiated generally by particle size and brightness.

The vast majority of water-washed kaolin is used in paper-making, both as a pigment in coating formulations and as a filler in the body of paper. In coating formulations, kaolin is typically used in conjunction with other pigments, such as GCC. The kaolin has unique properties, however, and the other pigments are typically used as a complement, rather than a replacement, for water-washed kaolin. Kaolin is used as a filler primarily in paper that is made using an acid process, where calcium carbonate fillers cannot generally be used.

Thus, for many paper companies, no good substitute exists for water-washed kaolin. A small but significant increase in the price of water-washed kaolin would not cause a significant number of paper customers currently purchasing water-washed kaolin to substitute other products.

Much of the world's highest quality kaolin deposits are found in a relatively small area in Georgia. All of the U.S. producers of water-washed kaolin are located in Georgia, and sell products from their plants in Georgia throughout the United States.

Calcined Kaolin

Calcined kaolin is water-washed kaolin that has been further processed by calcining or baking at a temperature of about 1000 degrees Centigrade under controlled conditions. The high temperature alters the structure of the water-washed kaolin, resulting in a whiter and brighter kaolin that has a higher refractive index. Because of its higher brightness, calcined kaolin is used in paper-making applications that require greater opacity than that provided by water-washed kaolin. Calcined kaolin costs more than twice as much as regular water-washed kaolin.

For many paper customers, no good substitute exists for calcined kaolin. A a small but significant increase in the price of calcined kaolin would not cause a significant number of paper customers currently purchasing calcined kaolin to substitute other products.

All of the U.S. producers of calcined kaolin for paper-making are located in Georgia, and sell their products from plants in Georgia to paper companies throughout the United States.

GCC for Paper Coating Applications

Natural calcium carbonate is typically found in the ground in marble or limestone deposits. The stone is quarried and then processed through a series of screening and dry grinding steps into particles of various sizes, ranging down to about two (2) microns. The dry-processed GCC can also be further ground using a wet-grinding process into particle sizes as small as one (1) micron or less. GCC varies in color depending on the reserves from which it is quarried. The purest GCC comes from calcitic marble deposits. These high bright deposits are scarce, and some of the finest high bright deposits are located in the Sylacauga, Alabama area.

Paper-making requires the brightest white GCC. The vast majority of GCC sold for paper-making is wet-processed and sold in slurry form. Most of the GCC consumed in paper-making, but most PCC used in paper-making is used as filler. GCC is preferred over PCC in coating applications because of its runnability, higher printability and gloss.

A small but significant increase in the price of GCC would not cause a significant number of paper customers currently purchasing GCC for coating applications to substitute other products.

Paper-grade GCC, unlike water-washed and calcined kaolin, is produced in a number of locations throughout the United States. Because of high transportation costs, sales of GCC tend to be regional rather than nationwide.

Fused Silica

Fused silica is formed by melting pure non-crystalline silicon dioxide at high temperatures. This process creates a material with a low coefficient of thermal expansion which improves resistance to extreme heat, corrosion, abrasion, and electrical non-conductivity. Fused silica is used in sophisticated applications such as investment castings and epoxy molding compounds used in the electronics industry, as well as in refractory applications.

There are no economical substitutes for fused silica. A small but significant increase in the price of fused silica would not cause a significant number of current fused silica customers to substitute other products. Domestic producers of fused silica generally have a single plant, and sell their products throughout the United States.

C. Harm to Competition as a Result of the Proposed Transaction

Water-washed Kaolin

Imetal and ECC compete with each other in the development, production and sale of water-washed kaolin in the United States—a market which is now highly concentrated and would become substantially more concentrated as a result of the proposed acquisition. There are only five U.S. producers of water-washed kaolin. ECC is the largest, and Imetal is the third largest. The proposed transaction would reduce the number of firms making water-washed kaolin to four and create a single firm with well over 50% of domestic production capacity. The acquisition would consolidate the industry into two large players—the combined Imetal/ECC and Engelhard Corp.—and two relatively small players—Thiele Kaolin Company and J.M. Huber. It would eliminate the direct competition between Imetal and ECC that has benefited consumers, and likely lead to higher prices through increased opportunities for coordination

[1] On April 27, 1999, Imetal consummated its cash tender offer, subject to the terms of the proposed settlement filed in this case.

and from the elimination of a significant competitor in an oligopolistic market.

Moreover, new entry into the development, production and sale of water-washed kaolin is unlikely to occur and unlikely to be timely or sufficient to defeat a post-acquisition price increase. Building a water-washed kaolin plant could cost $100 million or more and take a minimum of two years. In addition, entry into the production of water-washed kaolin would require the location, testing and acquisition of substantial kaolin reserves to justify the investment in the plant.

Calcined Kaolin

The market for calcined kaolin for paper-making is even more concentrated than is the market for water-washed kaolin. There are only four producers, and ECC and Imetal are the second and third largest, respectively. (Engelhard is the industry leader and Thiele is the smallest participant.) The proposed transaction would reduce the number of firms making calcined kaolin for paper-making to only three, eliminating the direct competition between Imetal and ECC that has benefited consumers. The acquisition would likely lead to higher prices for calcined kaolin for paper-making.

New entry is unlikely to occur and would not be timely or sufficient to defeat a post-acquisition price increase. To be an effective competitor, any new entrant would require at least two calciners with substantial capacity (estimated at 85,000 to 100,000 tons annually) in order to be able to supply large paper customers' requirements and to be considered a credible source. Construction of a single calciner (with the necessary attendant infrastructure) could cost a minimum of $30 million and require at least two years, sometimes much longer, for permitting and construction. In addition, any entrant not already in the water-washed kaolin business would also face the barriers to entry into that business.

GCC for Paper Coating

There are only four firms that make paper-grade GCC in the United States: Omya, Inc., ECC, Alabama Carbonates, and Columbia River Carbonates (in Washington State). Only two of these firms are located in the Southeastern United States. One is ECC and the other is Alabama Carbonates, which is a joint venture owned 50% by Omya and 50% by Imetal's Georgia Marble. Both are in Sylacauga, Alabama.

Imetal and ECC compete in the sale of paper-grade GCC in the Southeastern United States. ECC has substantial high bright reserves of GCC in the Sylacauga area, which it quarries and processes at its Sylacauga plant. The plant does both dry processing and wet processing, and sells wet-processed GCC in slurry form for use in paper-making. Georgia Marble has many hundreds of years of GCC reserves in the Sylacauga area, which it quarries and dry processes at its Sylacauga plant, across the street from the ECC plant. Georgia Marble does not have a wet processing plant, but it has a 50% interest in the Alabama Carbonates joint venture, which has a wet processing plant right next to the Georgia Marble facility.

Alabama Carbonates was formed as a joint venture between Georgia Marble and Omya in 1990 for the purpose of selling paper-grate GCC in thirteen states in the southeastern U.S. Under the terms of the joint venture, both Omya and Georgia Marble agreed to sell paper-grade GCC in the designated are only through the joint venture.[2] Georgia Marble supplies the raw material which it quarries, crushes, washes, and dry processes into feedstock suitable for the wet processing plant at an agreed-upon price. Omya operates the wet-processing plant, sells the paper-grade GCC and collects a fee for these services.

Transport costs for GCC are high. As a result, GCC sales, unlike sales of water-washed and calcined kaolin, tend to be regional. ECC and Alabama Carbonates are the only companies that compete directly with each other for sales of paper-grade GCC in the Southeastern United States.

The proposed transaction would likely result in unilateral price increases to customers in the Southeastern United States. Entry is unlikely to occur, and would not be timely or sufficient to defeat a post-acquisition increase in the price of paper-grade GCC. The only other producer of paper-grade GCC is Omya, which would have no incentive to ship into the Southeast for the purpose of defeating its own price increase and, in any event, is barred from doing so by the terms of its joint venture agreement.[3] A *de novo* entrant would have to acquire substantial high bright reserves in the Southeast, establish a quarry and build a processing plant. While the quarry and plant would require considerable expenditures of money and take substantial time, the most significant barrier is obtaining appropriate reserves. Paper-grade GCC requires high bright reserves, which are a scarce resource and are generally believed to be largely unavailable in the Southeast because they are owned primarily by Georgia Marble and ECC.

Fused Silica

Imetal and ECC are the two leading producers of fused silica in the United States. They account for more than 80% of domestic fused silica production, and more than 95% of the fused silica sold in the United States for investment castings. The two companies compete significantly with each other, and are each other's only meaningful competition in sales of fused silica for investment castings. The only other producer, Pemco, accounts for a tiny percentage of sales.

Imetal and ECC face competition from other domestic producers and from imports in sales of fused silica for refractories. Overall, however, according to the defendants' documents, the two firms account for almost two-thirds of the total fused silica sales.

The proposed transaction would eliminate the direct competition between Imetal and ECC that has benefited consumers, and would create a single firm with a virtual monopoly in the sales of fused silica for investment castings and an overwhelming share of total domestic sales of fused silica. This concentration would likely result in unilateral price increases to consumers of fused silica.

Aluchem, Inc., an industrial minerals company, has announced plans to build a new plant in Alabama that will be capable of making fused silica. This planned entry by Aluchem, Inc. is not likely to be sufficient to deter an anticompetitive price increase, however. New entry is very difficult, time consuming and costly, and sufficient new entry is unlikely to occur and would not be timely or sufficient to defeat a post-acquisition fused silica price increase.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires substantial divestitures with respect to each of the products that is the subject of the Complaint. These divestitures are designed to ensure that the competition that would be eliminated by the proposed acquisition will be preserved and maintained. Under the terms of the proposed Final Judgment, defendants must accomplish these divestitures within one hundred and eighty (180) calendar days after the filing of that proposed Final Judgment, or five (5) days after notice of the entry of the proposed Final Judgment by the Court, whichever is later, to a purchaser

[2] There is a limited exception in the joint venture agreement for certain pre-existing customers of the venturers.

[3] Columbia River Carbonates, the fourth producer of paper-grade GCC, is another joint venture in which Omya is a participant.

acceptable to United States. If defendants fail to divest the assets within this period, a trustee, selected by the United States, will be appointed by the Court to sell the assets. Section VI of the proposed Final Judgment, which provides for the appointment of a trustee, contains a ''Crown Jewel'' provision that empowers the trustee to sell additional assets if necessary to effect certain of the divestitures.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if any divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

Kaolin

With respect to water-washed and calcined kaolin, Section IV of the proposed Final Judgment requires defendants to divest the Sandersville No. 1 water-washed kaolin plant of ECC, with an annual capacity of 850,000 tons, and to divest two calciners, with a minimum annual capacity of 85,000–100,000 tons. Alternatively, defendants may at their option sell the DBK plant in Dry Branch, Georgia. This plant includes both a water-washed kaolin plant with capacity of slightly over one million tons, and a calcined kaolin plant.

In all cases, the plant divestiture requires divestiture of all tangible and intangible assets used in connection with those plants, and divestiture of sufficient kaolin reserves to operate the plant at full capacity for 20 years.

Currently, DBK has two plants: the DBK plant, and a 300,000 ton capacity plant in Jeffersonville, Georgia, which it acquired in 1997 when it purchased Nord Kaolin Co. The Jeffersonville plant is largely idled, except for the calcined at that location. The proposed transaction thus would give the combined company about 1 million tons more water-washed kaolin capacity than ECC had before the tender offer. Divestiture of the DBK plant would eliminate any increase in concentration in water-washed kaolin resulting from the acquisition. The Sandersville No. 1 plant is only slightly smaller than the DBK plant. In plaintiff's view, it is sufficiently close to DBK's stand-alone capacity that a purchaser of that plant could be an effective replacement for DBK in the market.

With respect to calcined kaolin, ECC currently has 4 calciners, with a total capacity of about 200,000 tons, making calcined kaolin for paper-making. DBK currently has 3 calciners, with a total capacity of about 105,000 tons, devoted to this product. Even after the required divestiture, the proposed transaction would result in some increased concentration in capacity for calcined kaolin for paper-making. From what plaintiff learned during the course of its investigation, however, the required divestiture should be sufficient for the purchaser to be a viable, effective new entrant into that market. Accordingly, plaintiff concluded that this divestiture is likely to substantially mitigate any anticompetitive effects of the proposed transaction with respect to calcined kaolin for paper-making.

GCC for Paper-Coating

With respect to paper-grade GCC, Section IV of the proposed Final Judgment requires defendants to divest Georgia Marble's interest in the Alabama Carbonates limited partnership.[4] Pending divestiture of Georgia Marble's interest in Alabama Carbonates, the Hold Separate Stipulation and Order requires Imetal to resign its seats on the Alabama Carbonates Management Committee and to assign to its joint venturer its right to name committee members.

Section IV of the proposed Final Judgment also requires defendants to divest sufficient GCC reserves for Alabama Carbonates to operate at its maximum stated contractual capacity of 500,000 tons for 30 years. These reserves must be economically recoverable, located in the Sylacauga, Alabama area, and of minimum pureness quality suitable for paper-grade GCC. Defendants must divest these reserves to the purchaser of Georgia Marble's interest, to Omya, or to Alabama Carbonates.

The divestiture of reserves is designed to ensure that Alabama Carbonates will be able to operate independently of Georgia Marble. Currently, Alabama Carbonates relies on Georgia Marble for its raw material and for all dry processing of its feedstock. Such dependence on the company that, after the proposed transaction, will be its only competitor, raises obvious competitive problems. In order to operate independently the limited partnership must have its own reserves and its own processing facilities. The plaintiff concluded as a result of its investigation that 30 years' reserves was the minimum that the limited partnership would need to consider making the required investments in processing facilities.

The proposed Final Judgment permits defendants, in calculating the quantity of reserves required to be divested, to take into account any economically recoverable reserves Omya already owns, uses or has an option on in the Sylacauga area that are of suitable quality and are available to Alabama Carbonates. The proposed Final Judgment further provides that, if Alabama Carbonates, Omya, or the purchaser of Georgia Marble's interest in Alabama Carbonates cannot agree with the defendants (or with the trustee if the trustee is the seller) on the amount of GCC Reserves to be divested to provide 500,000 tons of feedstock for 30 years, or cannot agree on the fair market value of those reserves, they may submit those issues to binding arbitration. Section IX of the proposed Final Judgment sets forth the procedures to be followed in the event of such arbitration.

This provision for arbitration is designed to address two somewhat different concerns. First, defendants maintain that Omya already has extensive high bright GCC reserve holdings in the Sylacauga area and that Alabama Carbonates therefore does not need substantial additional reserves in order to be a viable independent competitor. As a result of its investigation, the United States disagreed and was unwilling to agree to a proposed settlement without a sufficient divestiture of GCC reserves to enable the joint venture to be a viable independent competitor. The arbitration provision permitted the parties to reach a settlement agreement that satisfies the United States' competitive concerns, while at the same time providing defendants with a mechanism for assuring themselves that they are protected against an unnecessary sale of their reserves.

Second, given the contractual provisions of the Alabama Carbonates limited partnership agreement, there is a high likelihood that defendants will have no choice but to sell the GCC reserves to Omya. In such a situation, where there is a single buyer, the market forces that operate in a typical negotiation on price are absent. Defendants sought the option of

[4] Under the provisions of the proposed Final Judgment, defendants must divest this interest to a purchaser or purchasers acceptable to the United States. Under the terms of the limited partnership agreement, however, Georgia Marble's joint venturer, Omya, has a contractual right to prior notice of any sale of the interest and a right to match any offer for that interest.

arbitration to provide them a modicum of protection in their negotiations. There is precedent for this in other Antitrust Division consent decrees that have ordered divestiture to a particular buyer.

In addition to the divestiture provisions outlined above, Section IV of the proposed Final Judgment requires defendants, at the option of Alabama Carbonates, to supply the joint venture with feedstock for a period up to three years. This provision is designed to provide Alabama Carbonates with a reasonable transition period to make the investment required for it to be self-sufficient in the long term. The proposed Final Judgment further requires defendants to erect a firewall (Section VIII) during the term of any such supply contract, to ensure that no one at the combined Imetal/ECC with responsibility for paper-grade GCC receives any competitively sensitive information about Alabama Carbonates' requirements or purchases.

Fused Silica

Section IV of the proposed Final Judgment requires defendants to divest the fused silica plant of ECC, together with all tangible and intangible assets used in connection with the plant. This divestiture would eliminate any anticompetitive effects of the proposed transaction with respect to fused silica.

ECC acquired this fused silica plant within the last year when it acquired Minco. Minco also operates a fused magnesia plant, at the same location, that defendants wish to retain. The two plants are separate businesses and there is no overlap between ECC and Imetal with respect to fused magnesia, so retention of the fused magnesia businesses should not pose a problem under Section 7 of the Clayton Act. It may be, however, that the two plants together are more readily saleable than is the fused silica plant alone. For this reason, Section VI of the proposed Final Judgment provides that if the fused silica plant goes to a trustee for sale, the trustee may also sell the fused magnesia plant (together with all tangible and intangible assets used in connection with that plant).

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. 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: J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, with respect to kaolin, simply requiring divestiture of the DBK plant. Diverstitute of the DBK plant has two advantages over divestiture of the Sandersville No. 1 water-washed kaolin plant: (1) it would essentially put the purchaser in the same position as Imetal before the tender offer; and (2) unlike Sandersville No. 1, the DBK plant has been operated as a stand-alone business and has a clear track record as such.

The United States ultimately adopted the framework of the proposed Final Judgment, however, because it concluded that a divestiture of the Sandersville No. 1 plant could, under the proper circumstances, effectively redress the likely anticompetitive effects of the proposed transaction. During the course of the investigation, defendant ECC entered into pre-settlement negotiations and signed a preliminary Letter of Intent with Thiele Kaolin Company for the sale of the Sandersville No. 1 plant. A purchase by Thiele would cause higher concentration than would result if the Sandersville No. 1 plant were sold to a firm outside the kaolin industry. However, both defendants and Thiele argued that the additional capacity would permit Thiele to better compete for large paper customers against the two industry leaders. While the United States did not "pre-approve" a sale to Thiele—the parties did not have a definitive agreement, and their Letter of Intent did not address at all some issues that would be important to plaintiff's evaluation of any proposed sale—plaintiff concluded that a divestiture of the type contemplated in the Letter of Intent could satisfy the United States' competitive concerns with respect to water-washed kaolin. Plaintiff therefore concluded that defendants should be permitted to try to divest the Sandersville No. 1 plant if they so chose.

The United States also considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Imetal and ECC. The United States is satisfied that the divestitures required by the proposed Final Judgment will facilitate continued viable competition in the four relevant product markets alleged in the Complaint and will effectively prevent the anticompetitive effects that the Complaint alleges would result from the proposed acquisition.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other

considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). The courts have recognized that the term '''public interest' take[s] meaning from the purposes of the regulatory legislation.'' *NAACP* v. *Federal Power Comm'n,* 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve ''free and unfettered competition as the rule of trade,'' *Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1, 4 (1958), the focus of the ''public interest'' inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied,* 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.,* 1985–2 Trade Cas. ¶66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[5] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Betchtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert denied*, 454 U.S. 1083 (1981). *See also Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). 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.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[6]

A proposed consent decree in an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.,* 402 U.S. 673, 681 (1971).

The proposed Final Judgment therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a proposed final judgment requires a standard more flexible and less strict that the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).''[7]

VIII. Determinative Documents

The only determinative document, within the meaning of the APPA, that was considered by the United States in formulating the proposed Final Judgment is the preliminary Letter of Intent between defendant ECC and Thiele Kaolin Company, a copy of which is attached as Exhibit A.

Respectfully submitted.

Dated: May 24, 1999.

For Plaintiff United States of America:

Patricia G. Chick,

D.C. Bar #266403, Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, DC 20530, Telephone: (202) 307–0946, Facsimile: (202) 514–9033.

Exhibit A

Exhibit A cannot be published in the **Federal Register.** A copy can be obtained from the Documents Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Room 215, Washington, D.C. 20530, (202) 514–2481.

[FR Doc. 99–14470 Filed 6–10–99; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98 CV 7168 (FB)(MDG)]

United States, State of New York, Commonwealth of Pennsylvania and State of Florida v. Waste Management, Inc., Ocho Investment Corp., Eastern Environmental Services, Inc.; Response to Public Comments on Antitrust Consent Decree

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that on May 21, 1999, the United States filed its responses to public comments on the proposed Final Judgment in *United States* v. *Waste Management, Inc. and Eastern Environmental Services, Inc.,* Civil No. 98 CV 7168 (FB)(MDG) (E.D.N.Y., filed Dec. 31, 1998), with the United States District Court in Brooklyn, New York.

On November 17, 1998, the United States, New York, Pennsylvania and Florida filed a Complaint, which alleged that Waste Management's proposed acquisition of Eastern Environmental

[5] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F.Supp. 713, 715 (D.Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[6] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1979); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d at 565.

[7] *United States* v. *American Tel. and Tel Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Mayland* v. *United States,* 460 U.S. 1001 (1983), Quoting *United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in waste collection and/or disposal in nine markets around the country, including the New York, NY (disposal of commercial and residential municipal solid waste); Pittsburgh and Bethlehem/Allentown, PA (disposal of municipal solid waste); Carlisle/Chambersburg, PA area (collection of commercial waste and disposal of municipal solid waste); and Miami/Ft. Lauderdale, and suburban Tampa, FL (collection of commercial waste). The proposed Final Judgment, filed on December 31, 1998, requires Waste Management and Eastern to divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Amended Complaint.

Public comment was invited within the statutory 60-day comment period. The public comments and the United States's responses thereto are hereby published in the **Federal Register** and have been filed with the Court. Copies of the Amended Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, Competitive Impact Statement, and the United States's Certificate of Compliance wit Provisions of the Antitrust Procedures and Penalties Act (to which the public comments and the United States's responses are attached) are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW, Washington, D.C. 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations and Merger Enforcement, Antitrust Division.

United States's Certificate of Compliance With Provisions of the Antitrust Procedures and Penalties Act

The United States of America hereby certified that it has complied with the provisions of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), and states;

1. The Complaint in this case was filed on November 17, 1998, and an Amended Complaint was filed on December 1, 1998. The proposed Final Judgment (''Judgment'') and the Hold Separate Stipulation and Order (''Hold Separate Order'') were filed on December 31, 1998. The government's Competitive Impact Statement was filed on February 2, 1999.

2. Pursuant to 15 U.S.C. 16(b), the Judgment, Hold Separate Order, and Competitive Impact Statement were published in the **Federal Register** on February 26, 1999 (64 Fed. Reg. 9527). A copy of the notice is attached as Exhibit 1.

3. Pursuant to 15 U.S.C. 16(d), the United States furnished copies of the Amended Complaint, Hold Separate Order, proposed Final Judgment and Competitive Impact Statement to anyone requesting them.

4. Pursuant to 15 U.S.C. 16(c), a summary of the terms of the proposed Judgment and the Competitive Impact Statement were published in The New York Times, a newspaper of general circulation in New York, NY, and in the The Washington Post, a newspaper of general circulation in the District of Columbia. Copies of the certificates of publication from The New York Times and The Washington Post appear in Exhibit 2.

5. On January 11, 1999, the defendants—Waste Management, Inc., Eastern Environmental Services, Inc., and Ocho Acquisition Corporation—filed with the Court a joint statement describing their communications with employees of the United States Department of Justice concerning the proposed Final Judgment, as required by 15 U.S.C. 16(g).

6. During the 60-day comment period after publication of notice in the **Federal Register**, The New York Times and The Washington Post, the United States received five written comments on the proposed settlement. These comments were from: (a) the Pulaski County, Kentucky Solid Waste Management District; (b) the Environmental Committee of the Pocono Mountains Chamber of Commerce in Stroudsburg, Pennsylvania; (c) the Schuylkill County, Pennsylvania Office of Solid Waste and Resource Management; (d) the Monroe County, Pennsylvania Municipal Waste Management Authority; (e) Recycle Worlds Consulting Corporation of Madison, Wisconsin.

7. The United States evaluated and responded to each of the comments it received. The comments did not convince the United States that it should withdraw its consent to the proposed settlement. The complete text of the comments and the responses appear in Exhibits 3–7; they are summarized below.

A. The Pulaski County, KY Comment

The Pulaski County Solid Waste Management District complained that a combination of Waste Management and Eastern would substantially eliminate competition in the collection and disposal of the county's residential waste. In our response, we point out that Pulaski County has entered into a long-term contract for collection and disposal of its waste, which does not expire until sometime in the year 2002. Under these circumstances, we note, it is highly unlikely that the merger had eliminated any existing competition between the defendants in waste collection or disposal services. In our views, it is simply to early to predict whether the merger would eliminate any significant potential competition that may occur after the contract expires in 2002.

B. The Monroe County, PA Comments

The Monroe County Municipal Solid Waste Authority and the Pocono Mountains Chamber of Commerce, both based in Stoudsburg, PA, asserted that the governments should have sought and obtained divestiture relief that would eliminate the anticompetitive effects of the defendants' merger in Monroe County, Pennsylvania. In that market, these commentators point out, a combination of Waste Management and Eastern would control eighty percent of more of the collection and disposal of the county's municipal waste. In its response, the United States pointed out that the proposed Final Judgment requires the defendant to divest the Waste Management commercial hauling routes in the Scranton/Wilkes-Barre, PA area, which is about 30 miles from the major population center of Monroe Country, and that the earlier Final Judgment in *United States* v. *USA Waste Services, Inc. and Waste Management, Inc.*, No. 1:98 CV 1616 (N.D. Ohio, filed July 17, 1998), requires Waste Management to divest commercial waste hauling routes in the Allentown, PA area, which is only about 20 miles south of Monroe County. These divestiutes, once approved by the courts, would install in each of these areas one or more new competitors whose operations would be sufficiently close to provide a serious competitive check on the combination's ability to raise prices after consummating their merger.

C. The Schuylkill County Comment

The Schuylkill County Office of Solid Waste and Resource Management (''OSWRM''), based in Pottsville, PA, similarly complained that the governments should have sought and obtained divestiture relief that would eliminate the anticompetitive effects of the merger in Schuylkill County, PA. OSWRM alleged that the merger would leave Waste Management as the dominant commercial waste hauler in Schuylkill County.

In our response, we pointed out that the United States did not seek relief with respect to commercial hauling in Schuylkill County because the amount of commerce was relatively small (Eastern's operations had less than $1 million in annual revenue), and Schuylkill County, like Monroe County, is reasonable close to two areas in which divestitures mandated by the pending final Judgment and the consent decree in USA Waste case would establish independent competitors fully capable of disciplining an exercise of market power by Waste Management after it merges with Eastern.

D. The Recycle Worlds Consulting Corp. Comment

RecycleWorlds, a private waste industry consultant, expressed concern that the Final Judgment would not halt the wave of mega-mergers currently sweeping through the nation's waste industry. In this rapidly consolidating industry, some markets, RecycleWorlds explained, may become dominated by a handful of large integrated waste collection and disposal firms, and more prone to collusive price increases by the few remaining competitors. To prevent Waste Management from squeezing waste collection competitors by increasing the prices at landfills sites at which they dispose their waste, RecycleWorlds would require Waste Management to divest its waste collection operations or its waste disposal operations in any market in which it competes with Eastern. Failing that, RecycleWorlds urged the government not to approve any asset divestiture under the Judgment to any of the handful of major integrated waste firms, such as Republic, Allied or BFI. These firms may be more inclined to cooperate with Waste Management in raising prices in some markets in order to avoid potential price wars with Waste Management elsewhere.

In its response, the United States noted that it does not believe that requiring Waste Management to divest all collection or disposal operations in any overlap market would be more procompetitive than the divestitures ordered by the pending Judgment. Indeed, pursuing Recycle World's alternative may result in Waste Management obtaining vast market power in waste collection or in waste disposal services since, in effect, if Waste Management agrees to divest one line of business it can obtain an overwhelming market share in the other line. As to Recycle World's second point, the United States will not approve any proposed divestiture under the Judgment that may substantially lessen competition in any market. To that end, the Antitrust Division recently rejected Waste Management's proposal to divest these assets under the decree to Allied Waste Services, Inc. Allied, the nation's third largest waste industry firm, had agreed to acquire Browning-Ferris Industries, Inc., the industry's second firm. The pervasive competitive overlaps between the Allied/BFI operations and the disposal and collection operations ordered divested under the Judgment convinced the United States that the proposed divestiture would not advance competition in any market.

8. Pursuant to 15 U.S.C. 16(b)–(h), the United States has arranged to publish in the **Federal Register** by May 29, 1999, a copy of the comments and the United States's responses.

9. With these steps having been taken, the parties have fulfilled their obligations under the APPA. Pursuant to the Hold Separate Order that the Court entered on December 31, 1998, the Court may now enter the proposed Judgment, if it determines that the entry of the Judgment is in the public interest. For the reasons set forth in the Competitive Impact Statement, and in its responses to the public comments, the United States strongly believes that the Judgment is in the public interest and that the Court therefore promptly should enter it.

Dated: May 20, 1999.

Respectfully submitted,

Anthony E. Harris, Esquire (AH 5876)

U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

Exhibit 1

Exhibit 1 was unable to be published in the **Federal Register**. A copy can be obtained from the Documents Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Room 215, Washington, DC 20530, or call (202) 514–2481. It is can also be obtained from the **Federal Register**, Volume 64 No. 38, Page 9527–9541 dated Friday, February 26, 1999.

Exhibit 2

Exhibit 2 Advertising Order forms was unable to be published in the **Federal Register**. A copy can be obtained from the Document Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Room 215, Washington, DC or (202) 514–2481.

Exhibit 3

March 26, 1999.

J. Robert Kramer II,

Chief, Litigation II, Anti-Trust Division, United States Department of Justice, 1401 H Street N.W., Suite 3000, Washington, DC 20530

Re: *United States of America, State of New York, Commonwealth of Pennsylvania, and State of Florida vs. Waste Management, Inc., Ocho Acquisition Corp., and Eastern Environmental Services, Inc.*

United States District Court/Eastern District of New York Case Number: 98–7168

Dear Mr. Kramer: This letter will advise of my representation of the Pulaski County (KY) Solid Waste Management District. The District Board has approved a Resolution opposing the acquisition of Eastern Environmental Services, Inc., by Waste Management, Inc. The Resolution is enclosed, and is submitted to you pursuant to the public comment period, and should be included as comment on the acquisition and above-referenced litigation and proposed final judgment therein.

If you need any additional information relative to this matter, please do not hesitate to contact me at one of the above-listed telephone numbers or address. Thank you for your assistance in this regard.

Very truly yours,

Jeffrey Scott Lawless,

Travis, Pruitt & Lawless.

Enclosure: Resolution

cc:

Board Members

Solid Waste Coordinator

Resolution of the Board of the Pulaski County Solid Waste Management District

Whereas the Pulaski County Solid Waste Management District is a Solid Waste Management District established pursuant to the provisions of Chapter 109 of the Kentucky Revised Statutes, and as such is given the authority to operate and contract for services relative to the operation of solid waste management facilities, and said district is further given the authority under the Pulaski County Solid Waste Management Ordinance, to make, amend, revoke, and enforce reasonable rules and regulations, governing the storage, collection, transportation, processing, and disposal of solid waste, and shall prepare, update, implement, and maintain the Solid Waste Management Plan for the Pulaski County geographical area, said County being a political subdivision of the Commonwealth of Kentucky, with an estimated population of 56,000, and;

Whereas, as of or about 1996, there were within Pulaski County, Kentucky, two independent, locally owned entities engaged in the collection and transportation of solid waste, said entities being ''B & M Sanitation Service, Inc.'' and ''G & W Disposal, Inc.'' and since that time, said entities have been acquired, either by merger or stock acquisition, by Waste Management Inc., and;

Whereas, as of 1999, there were five (5) landfills operating in the Commonwealth of Kentucky, within a one-hundred (100) mile radius of Pulaski County, which engage in the processing or disposal of solid waste, being more particularly identified (with the respective owners of each) as follows:

(1) Lilly, Kentucky (Waste Management, Inc.)
(2) Williamsburg, Kentucky (Waste Management, Inc.)
(3) Irvine, Kentucky (Waste Management, Inc.)
(4) Pulaski Landfill (Eastern Environmental Services, Inc.)
(5) Stanford, Kentucky (Republic)

and;

Whereas, the District is a party to an agreement with G & W Disposal, Inc., (now Waste Management, Inc.) for the provision of solid waste collection services to citizens and residents of Pulaski County, Kentucky, and the District is further a party to an Agreement with Pulaski Grading, Inc. (a subsidiary of Eastern Environmental Services, Inc.), for the provision of solid waste disposal services to and for the benefit of the citizens and residents of Pulaski county, Kentucky, and that said agreements expire by their terms during calendar year 2002, and;

Whereas, the United States Department of Justice and others have initiated an action in the United States District Court for the Eastern District of New York, styled *United States of America, State of New York, Commonwealth of Pennsylvania, and State of Florida* v. *Waste Management, Inc., Ocho Acquisition Corp., and Eastern Environmental Services, Inc.*, 98–7168, contesting the acquisition (hereinafter the ''Acquisition'') of Eastern Environmental Services, Inc. (hereinafter ''Eastern''), and Waste Management, Inc., (hereinafter ''Waste Management'') and according to the pleadings of record therein, the Acquisition ''would substantially reduce competition in disposal of municipal solid waste in'' five highly concentrated markets, ''and that it would substantially lessen competition in commercial waste collection services in four highly concentrated'' markets, and further, it is alleged that ''the loss of competition would likely result in consumers paying higher prices and receiving fewer or lesser quality services for the collection and disposal of waste'', and;

Whereas on December 31, 1998, the Plaintiffs in the aforementioned litigation filed a Proposed Settlement that would permit Waste Management to complete its acquisition of Eastern, but would require said Defendants to divest certain waste collection and disposal assets in such a way as to preserve competition in the market areas identified in the pleadings; and,

Whereas, pursuant to the Competitive Impact Statement filed of record in the aforementioned action:

> Significant new entry into [affected waste collection and disposal] markets would be difficult, time consuming, and unlikely to occur soon. Many customers of commercial waste collection firms have entered into ''Evergreen'' contracts, tieing them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, i.e. selectively (and temporarily) charge unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor for competing for such accounts, which, if won, may be very unprofitable to serve. The existence of long-term contracts are price discrimination substantially increases any would-be new entrant's costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

and, the District does hereby adopt said statement as its own finding, as a correct and accurate statement of the nature of waste collection activity as its exists in Pulaski County, Kentucky, as the District has in the past entered into such extended contracts for the provision of collection and disposal services (specifically, the most recent contracts being of a ten year duration), and;

Whereas the District does hereby make a finding that the acquisition by Waste Management of aforementioned Pulaski County-area solid waste collectors, and the proposed acquisition by Waste Management of Eastern, significantly reduces the competitive options of the District and its citizens, for the collection and disposal of residential and commercial waste, and would likely result in an increase (or a refusal to negotiate further reductions) in the fees and charges for collection and disposal of the residential and commercial waste of the District and its citizens, and;

Whereas, as was noted in the Competitive Impact Statement, and the District does hereby find:

> Entry into the disposal of municipal solid waste is difficult. Government permitting laws and regulations make obtaining a permit to construct or expand a disposal site an expensive and time-consuming task. Significant new entry into these markets is unlikely to occur in any reasonable period of time, and is not likely to prevent exercise of market power after the [Acquisition].

and

> [In the Pulaski County geographic area] Waste Management's acquisition of Eastern would remove a significant competitor in disposal of municipal solid waste. With the elimination of Eastern, [Waste Management] will no longer compete as aggressively since it will not have to worry about losing business to Eastern. The resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents likely ensure that customers will pay substantially higher prices for disposal of municipal solid waste, collection of [residential or] commercial waste, or both, following the [Acquisition], and;

Whereas, the District desires to eliminate the anti-competitive effects of the Acquisition in collection and disposal of municipal solid waste from Pulaski County, Kentucky.

Now, therefore, be it hereby resolved, by the Board of the Pulaski County Solid Waste Management District, as follows:

(A) That the Pulaski County Solid Waste Management District opposes and objects to the Acquisition of Eastern Environmental Service, Inc., by Waste Management, Inc.

(B) The the Pulaski County Solid Waste Management District respectfully requests that the United States Department of Justice, Anti-Trust Division, modify the proposed Final Judgment as follows:

1. That Eastern Environmental Services, Inc., be required to sell, on or before a reasonable date certain, its interest in the Pulaski Landfill, (located at Dixie Ben Road, Pulaski County, Kentucky, being License Number 100–00008, issued by the Natural Resources and Environmental Protection Cabinet, Division on Waste Management), to the Pulaski County Solid Waste Management District, Pulaski County, Kentucky, or any other purchaser acceptable to both the United States, the Commonwealth of Kentucky, and the Pulaski County Solid Waste Management District.

Or alternatively:

2. That Waste Management, Inc. or Eastern Environmental Services, Inc., be required to open and obtain a continuous operating permit issued by the Kentucky Department of Natural Resources for the operation of a landfill to be located in Pulaski County, Kentucky, and that said landfill be thereupon leased to the District for a term of years, subject to the approval of the Commonwealth of Kentucky, and the District.

Or alternatively:

3. That Waste Management be required to develop, construct, and implement an alternative solid waste management or disposal facility, whereby the efficiency of extracting ''recovered material'' is increased, waste requiring disposal is reduced, solid waste is managed in an environmentally

protected manner, and solid waste is converted to beneficial by-products or materials; and that such facility be operated jointly with, or solely by, the Pulaski County Solid Waste Management District, for a period not to exceed twenty years.

(C) That this Resolution be communicated to the United States Department of Justice, Anti-Trust Division, to the attention of the following: J. Robert Kramer, II, Chief, Litigation II, Anti-Trust Division, United States Department of Justice, 1401 H Street N.W., Suite 3000, Washington, DC 20503.

and that said comments be evaluated by the United States Department of Justice, so that the concerns of the residents and citizens of Pulaski County, Kentucky may be addressed and included in such manners as the United States Department of justice Antitrust Division may, under the circumstances, consider appropriate.[1]

Adopted this the 18th day of March, 1999.

Pulaski County Solid Waste Management District

Charles T. Estes,
Board Chairman.

Attest: Donna Turner,
Secretary.

Jeffrey Scott Lawless, Attorney,
Travis, Pruitt & Lawless, P.O. Drawer 30, Somerset, KY 42502–0030.

Jeffrey Scott Lawless, Esquire,
Travis, Pruitt & Lawless, 207 East Mt. Vernon Street, Post Office Drawer 30, Somerset, KY 42502–0030

Re: Comment on Proposed Final Judgment in United States, State of New York, et al, v. Waste Management, Inc., Eastern Environmental Services, Inc., No. 98 CV 7168 (JB) (E.D.N.Y., December 31, 1998)

Dear Mr. Lawless: This letter responds to your letter of March 26, 1999 commenting on the Final Judgment in this case on behalf of your client, the Pulaski County, Kentucky Solid Waste Management District. The Amended Compliant in this case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of municipal solid waste in 12 markets in New York, Pennsylvania, and Florida. The proposed consent decree, now pending in federal district court in Brooklyn, New York, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the markets alleged in the Complaint.[1] This relief, if approval by the Court, would establish one or more new competitors in each of the markets for which relief was sought, replacing the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In your letter, you express concern that neither the complaint nor the proposed Judgment address the competitive effects of the merger in the collection and disposal of residential waste in Pulaski County, Kentucky. A combination of Waste Management and Eastern Environmetal would control four of the five landfills within a 100 mile radius radius of Pulaski County.

The United States did not allege that a combination of Waste Management and Eastern Environmental would raise serious competitive problems in the collection and disposal of Pulaski County because the county has long-term agreements with Waste Management and with Eastern Environmental, which provide that the residential waste will be collected by Waste Management and that disposal of that waste will be handled by Eastern Environmental. These agreements, which do not expire until at 2002, effectively preclude competition between Waste Management and Eastern for the county's collection and disposal of waste. In addition, in this case, we believe that it would be difficult to predict what the competitive landscape will look like in 2002 when Pulaski County is once again in the market for a firm to collect and to dispose of its resident's waste. For that reason, we were not prepared to allege, or attempt to prove, that the proposed merger would be anticompetitive in Pulaski County, KY.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,
Chief, Litigation II Section.

Exhibit 4

J. Robert Cramer, II
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street NW, Suite 3000, Washington, DC 20530

cc: Pennsylvania Attorney General Fisher

Dear J. Robert Cramer, II: The Pocono Mountains Chamber of Commerce Environmental Committee would like to offer its comments on the issue referenced above.

Our Committee serves the Chamber of Commerce's Executive Committee and Board of Directors, reviewing environmental issues and advising on appropriate Executive Committee and Board actions. The Environmental Committee also comments directly, where appropriate, on environmental issues impacting Monroe County. The Environmental Committee feels the referenced merger does not serve the best interests of Monroe County citizens.

The results of the merger is that one parent company will control collection and disposal of a disproportionate amount of the county's municipal waste. The county's other haulers are independent operators. These haulers will be unable to compete for commercial waste collection and municipal collection contracts. And, since none of these smaller companies owns a disposal facility, Waste Management will control their tipping fees. Recent history has shown that the independents are charged higher tipping fees than Waste Management charges its own haulers.

Since the merger a number of commercial businesses have contacted the Environmental Committee, reporting that their commercial collection rates have nearly tripled. While our committee understands that Waste Management has submitted a divestiture plan intended to alleviate concerns of this nature, this plan has done nothing to relieve the onerous effect the merger has had on Monroe County.

Our informed opinion is that approval of the merger will adversely effect the interest of Monroe County's citizens and businesses.

Thank you for the opportunity to file these comments. Please contact us if we can answer any other questions.

Respectfully,

Michael Beckenbach,
Chairman, Pocono Mountains Chamber of Commerce Environmental Committee.

Mr. Michael Beckenbach,
Chairman, Environment Committee, Pocono Mountains Chamber of Commerce, c/o Gallagher & Gallagher, Stroudsburg Division, 701 Main Street, Stroudsburg, PA 18360

Re: Comment on Proposed Final Judgment in United States, State of New York, et al. v. Waste Management, Inc., Eastern Environmental Services, Inc., No. 98 CV 7168 (JB) (E.D.N.Y., December 31, 1998)

Dear Mr. Beckenbach: This letter responds to your letter of April 10, 1999 commenting on the Final Judgment in the above case. The Amended Complaint in the case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of waste in a number of markets throughout the Northeast and in Florida. In northeastern Pennsylvania, the Amended Complaint alleged, the merger would substantially reduce competition in the collection of commercial waste in the Scranton/Wilkes-Barre market. The proposed Final Judgment now pending in federal district court in Brooklyn, New York would settle the case with respect to the Scranton market by, inter alia, requiring Waste Management to divest its front-end loader commercial waste

[1] Although some acquisitions, like some snakes, are beneficial, the Kentucky Court of Appeals once noted that ''may snakes are poisonous, and only the zoologist, herpetologist, or experienced woodsman is able to distinguish those which are not'' *Lawson* v. *Commonwealth,* 164 S.W.2d 972 (1942). The District would therefore defer to the good judgment of the ''experienced woodsmen'' of the Department of Justice's Anti-Trust Division.

[1] The markets alleged in the Amended Complaint, and for which divestiture relief was obtained in the Final Judgment, include the disposal of municipal solid waste in the Pittsburgh, Carlisle-Chambersburg, and Bethlehem, PA areas, and in New York City, NY (commercial and residential); and collection of commercial waste in the Carlisle-Chambersburg, Bethlehem, and Scranton, PA; suburban Tampa (Hillsborough Co.) and Miami/Ft. Lauderdale, FL (Dade and Broward counties) areas.

collection routes that service Luzerne and Lackawanna counties, which comprise much of the greater metropolitan Scranton/Wilkes-Barre, PA area. This divestiture, if approved by the Court, would establish an independent competitor in the market for which relief was sought, and replace the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In your letter, you express concern that neither the complaint in this case nor the proposed consent decree address the competitive effects of the merger in Monroe County, PA, in which a combination of Waste Management and Eastern would dominate municipal and commercial waste collection services, controlling over eighty percent of all waste collected. The combined firm has already substantially increased its prices for collection of municipal waste. We believe that the proposed Judgment, and the pending decree in the earlier USA Waste/Waste Management case,[1] address this competitive issue.

Monroe County is a thinly populated area that abuts and lies directly southeast of the Scranton/Wilkes-Barre area. Its business and population center—Stroudsburg—is about 30 miles from the Scranton/Wilkes-Barre area and about 25 miles north of the city of Allentown and Northampton and Lehigh counties in Pennsylvania.

The divestitures of commercial waste collection routes ordered by this Judgment and the decree in the USA Waste case would establish independent commercial waste haulers in the Scranton/Wilkes-Barre and Allentown areas. Given the proximity of these markets to Monroe County, the rivalry offered by the new competitors should be sufficient to discipline any post-merger exercise of market power by the combined Waste Management and Eastern in the collection of commercial waste. These new competitors may also be capable of vigorous competition in the collection of the county's residential waste, a market not addressed in our complaint or the consent decree.

In addition, the next two largest waste haulers in Monroe County following Waste Management's acquisition of Eastern would be Hopkins and Muscaro, each of which is about the same size as Eastern in Monroe County. Thus, after the merger, there may be as many as four other competitors in the market—Hopkins, Muscaro, and the two decree firms—capable of competing as vigorously as Eastern prior to its acquisition by Waste Management.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

[1] *United States* v. *USA Waste Services, Inc., Waste Management, Inc., et al.*, No. 1:98 CV 1616 (N.D. Ohio, filed July 17, 1998). The consent decree in the USA Waste case ordered Waste Management to divest its commercial waste collection routes that service the City of Allentown, and Lehigh and Northampton counties. Those routes were sold to Republic Services, Inc., which installed a large independent competitor in the commercial waste collection market in the Allentown, PA area.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Exhibit 5

J. Robert Kramer, II,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530

Re: *United States, et al.* v. *Waste Management, Ocho Acquisition Corp. and, Eastern Environmental Services, Inc.* Civil No. 98 CV 7168 (FB)

Dear Mr. Kramer: On behalf of the residents of Schuylkill County, please consider the contents of this letter as public comment in response to a proposed final judgment in the above referenced matter which was advertised in the **Federal Register** on February 26, 1999 pursuant to the provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The County of Schuylkill is a political subdivision established by Pennsylvania law and is authorized by Act 101, the Municipal Waste Planning, Recycling and Waste Reduction Act of 1988, to provide for disposal capacity for municipal waste generated within its boundaries. For the past nine years, this has been accomplished by providing individuals, municipalities and the commercial sector reasonable and cost effective municipal waste collection and disposal alternatives through capacity assurance and operation contracts with permitted waste processing and disposal facilities. The County also licenses haulers of municipal waste, which allows the County to properly track the disposition of its waste. The ability of the County to provide this valuable service has been substantially impaired by the recent merger of Waste Management, Inc. and Eastern Environmental Services, Inc. The County believes that the proposed settlement does not meet the requirements of the Clayton Antitrust Act and is not in the public interest for reasons listed below.

1. Schuylkill County is located in East Central Pennsylvania and is in fact adjacent to market areas named in the complaint as being adversely affected from a competitive standpoint by the merger. A regional map is enclosed with this letter identifying the municipal waste hauling, processing and disposal operations that serve Schuylkill County. The County has identified that the result of the merger would be that one company would control the collection and disposal of approximately 66% of the County's municipal waste stream. This figure is backed-up by two sources of information: (1) PA Dept. Of Environmental Protection's Waste Destination Reports and (2) the County's hauler licensing database which indicates the merged companies would own 95% of the commercial front-end load container capacity; 44% of the rear-load capacity; and 60% of the roll-off container capacity.

2. Remaining haulers within the county are small, independent companies that are unable to compete in two important and specific areas, commercial waste collection and municipal contracting. The independent haulers do not have the necessary equipment to conduct commercial collection effectively. Also, the small companies cannot compete effectively for large municipal contracts. Typically, the only hauling companies that bid on municipal contracts in Schuylkill County are Waste Management, Pine Grove Hauling Co. (Eastern) and J.P. Mascaro. Mascaro usually is the high bidder due to the long distance to their nearest disposal facility. The result of the merger has been, and will be, a substantial reduction in competition in those specific areas.

3. Since the merger, it is well documented that Waste Management has raised its rates significantly for the collection of commercial and residential waste.

4. The proposed settlement agreement has already been implemented with the requirement that the companies divest certain relevant assets. However, these divestitures have no effect on the competitive disadvantages created by the merger in this area.

5. The County encourages municipal governments to join together to bid waste collection contracts to more cost effectively manage their municipal waste streams. However, with no competitive bidders, those efforts will fail.

Consequently, the County feels that the proposed judgement provides no relief in the area from the anti-competitive effects of the merger of Waste Management and Eastern Environmental, and the public interests will not be served by the approval of the proposed consent decree.

The County appreciates this opportunity to file written comments. Please contact me if you have any questions or require additional information.

Sincerely,

Wayne Bowen,

County Environmental Coordinator.

Enclosures.

cc:
Board of County Commissioners
U.S. Senator Specter
U.S. Senator Santorum
U.S. Rep. Holden
Senator Rhoades
Rep. Argall
Rep. Allen
Rep. Lucyk
William McDonnell, PADEP NE Regional Office
Jim Snyder, PADEP Central Office
Bob Shafer
Michael O'Rourke, Esq.
Mark Scarbinsky
Mary Kay Bernosky, Esq.

The Major MSW Hauling Operations and Processing/Disposal Facilities Serving Schuylkill County Map of April 1999 was not able to be published in the **Federal Register**. A copy can be obtained from the Documents Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Room 215, Washington, DC 20530 or (202) 514–2481.

Major MSW Hauling Operations and Processing/Disposal Facilities Servicing Schuylkill County, April 1999

Hauling Operations

In-County

- Waste Management

1. Pottsville (consolidated with Deitrick Coal Twp.)
2. Frackville (consolidated with Deitrick Coal Twp.)

- Eastern Environmental

3. Pine Grove Hauling, Port Clinton (consolidated with Deitrick Coal Twp.)
4. Pine Grove Hauling, Schuylkill Haven (formerly Minchoff) (consolidated with Deitrick Coal Twp.)

- Other major or potential major competitors None

Out-of-County

- Waste Management

5. Deitrick Sanitation, Coal Twp., Northumberland Co.
6. Waste Management, Allentown, Lehigh County
7. Waste Management, Scranton, Lackawanna County
8. Grand Central Sanitation, Pen Argyl, Northampton County

- Eastern Environmental

9. Altamere, Mt Carmel, Northumberland Co. (consolidated with Deitrick Coal Twp.)
10. Pine Grove Hauling, Lansford, Carbon County (formerly Knepper Sanitation) (consolidated with Deitrick Coal Twp.)

- Other Major or Potential Major Competitors

11. BFI, Leesport, Berks Co.
12. Mascaro, Nantocke, Luzerne Co., Reading, Berks Co., Lehigh Co.
13. Republic, Allentown, Lehigh Co. (acquired routes from Waste Management Allentown per Justice Department)
14. Slusser, Hazleton, Luzerne Co.
15. Carbon Service, Lehighton, Carbon Co.

Disposal/Transfer Facilities

In-County

- Waste Management

16. BSC transfer station, Pottsville (currently not accepting waste)

- Eastern Environmental

17. Coldren Transfer Station, Port Clinton (Pine Grove Hauling)
18. Pine Grove Landfill

- Other Major or Potential Major Competitors

19. Tamaqua Transfer Station
20. NSLA Transfer Station
21. CES Landfill, Foster Twp.

Out-of-County

- Waste Management

22. Deitrick Transfer Station Coal Twp., Northumberland Co.
23. Transfer Station, New Smithville, Lehigh Co.
24. Grand Central Landfill, Pen Argyl, Northampton Co.
25. Dauphin Meadows Landfill, Dauphin Co.
26. Modern Landfill, York Co.
27. Pottstown Landfill, Montgomery Co.
28. G.R.O.W.S. Landfill, Bucks Co.
29. Tullytown Landfill, Bucks Co.

- Eastern Environmental

30. Bethlehem Landfill, Northampton, Co.
31. Alliance Landfill, Lackawanna Co.

- Other Major or Potential Major Competitors

32. Mascaro Transfer Facility, Lehigh Co.
33. Keystone Landfill, Lackawanna Co.
34. Chrin Landfill, Northampton Co.
35. Pioneer Crossing Landfill (Mascaro), Berks Co.
36. Conestoga Landfill (BFI), Berks Co.

Impact of Waste Management/Eastern Merger

Number of hauling operations controlled by merger—10 (67%)
Controlled by others—5 (33%)
Number of disposal facilities controlled by merger—9 (64%)
Controlled by others—5 (36%)
Number of transfer facilities controlled by merger—4 (57%)
Controlled by others—3 (43%)
Total controlled by merger—23 (64%)
Controlled by others—13 (36%)

Mr. Wayne Bowen,
Environmental Coordinator, Office of Solid Waste and Resource Management, Schuykill County Courthouse, 401 North Second Street, Pottsville, Pennsylvania 17901–2528

Re: Comment on Proposed Final Judgment in *United States, State of New York, et al.* v. *Waste Management, Inc., Eastern Environmental Services,* Inc., No. 98 CV 7168 (JB) (E.D.N.Y., December 31, 1998)

Dear Mr. Bowen: This letter responds to your letter of April 26, 1999 commenting on the Final Judgment in the above case. The Amended Complaint in the case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of waste in a number of markets throughout the Northeast and in Florida. In south central Pennsylvania, the Amended Complaint alleged, the merger would substantially reduce competition in the collection of commercial waste in the Scranton/Wilkes-Barre market. The proposed Final Judgment now pending in federal district court in Brooklyn, New York would settle the case with respect to the Scranton/Wilkes-Barre market by, inter alia, requiring Waste Management to divest its front-end loader commercial waste collection routes that service Luzerne and Lackawanna counties, which comprise much of the greater metropolitan Scranton/Wilkes-Barre PA area. This divestiture, if approved by the Court, would establish an independent competitor in the market for which relief was sought, and replace the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In your letter, you express concern that neither the Complaint in this case nor the proposed Judgment address the competitive effects of the merger in Schuylkill County, PA, in which a combination of Waste Management and Eastern Environmental would dominate municipal and commercial waste collection services, controlling over eighty percent of all waste collected. The combined firm has already substantially increased its prices for collection of municipal waste. We believe that the proposed Judgment, and the pending decree in the earlier USA Waste/Waste Management case,[1] may address the competitive issues you have raised.

Schuylkill County is a thinly populated area that abuts and lies directly southwest of the Scranton/Wilkes-Barre area. Though the county's business and population center, Pottsville, is about 40 miles from the Scranton/Wilkes-Barre area, it is only about 25 miles west of the city of Allentown and Northampton and Lehigh counties in Pennsylvania.

As you point out, the Final Judgment does not require Waste Management to divest any of the commercial route operations that it acquired from Eastern in Schuylkill County. The Division did not seek divestiture relief with respect to that market for several reasons. First, the total amount of commercial waste collection business that Waste Management assumed through acquiring Eastern was small, less than $1 million in annual revenues. Second, Schuylkill County abuts several counties in which the Judgment required Waste Management to divest route operations. The divestitures of commercial waste collection routes mandated by this Judgement and the decree in the USA Waste case, once implemented, would establish relatively large independent commercial waste haulers in both the Scranton/Wilkes-Barre and Allentown areas. Given the proximity of these markets to Schuylkill County, rivalry offered by the new competitors may be sufficient to discipline any exercise of market power in commercial waste collection by the combined Waste Management and Eastern. Also, the new commercial waste hauling competitors established by these judgments may be capable of offering vigorous competition in the collection of the country's residential waste, a market not addressed in our complaint or the consent decree.[2]

Finally, I should point out that the Judgment and the decree in the USA Waste case mandate that Waste Management divest two large landfills, Modern and Bethlehem, that you indicate also service the Schuylkill County market. The divestitures of these landfills will introduce additional competition in the disposal of waste from the Schuylkill County area.

Thank you for bringing your concerns to our attention; we hope this information will

[1] *United States* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* No. 1:98 CV 1616 (N.D. Ohio, filed July 17, 1998). The consent decree in the USA Waste case ordered Waste Management to divest its commercial waste collection routes that service the City of Allentown, and Lehigh and Northampton counties. Those routes were divested to Republic Services, Inc., which installed a very large independent competitor into the commercial waste collection market in the Allentown, PA area.

[2] In general, barriers to entry into the collection of residential waste are not as formidable as those that impede entry into the collection of commercial waste. For this reason, the Division did not challenge the combination's effect on the market for collecting the county's residential waste. Of course, entry into collection of residential waste could be very difficult in those situations in which the area's disposal facilities are controlled by a waste collection rival. That is not the case here.

help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Exhibit 6

April 22, 1999.

J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530

Re: United States, et al. v. Waste Management, Inc., Ocho Acquisition Corp. and Eastern Environmental Services, Inc. Civil No. 98 CV 7168 (FB)

Dear Mr. Kramer: Please consider the contents of this letter as public comment in response to an invitation for public comment on proposed Final Judgment in the above referenced matter which was advertised in the Federal Register on February 26, 1998 pursuant to the provision of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The Monroe County Municipal Waste Management Authority is a political subdivision established by Pennsylvania law under the Municipal Authorities Act, of 1945. The Authority by agreement with the County, and as authorized by ACT 101 is responsible for implementing the County's Municipal Waste Management Plan. The Authority operates a waste management system highlighted by the licensing of all municipal waste haulers within the County, and providing individuals, municipalities, and companies reasonable and cost effective municipal waste collection and disposal alternatives through contracts with disposal and transfer facilities. The ability of the Authority to provide this service has been substantially impacted by the recent merger of Waste Management Inc. and Eastern Environmental Services, Inc. The Authority believes that the proposed settlement does not meet the requirements of the Clayton Antitrust Act, and is not in the public interest for the following reasons.

Monroe County is located in northeastern Pennsylvania near, and in fact adjacent to market areas named in the complaint as being adversely affected from a competitive standpoint by the merger. A regional map is enclosed with these comments identifying the location in Monroe County. In earlier comments, a copy of which is enclosed, the Authority identified that the net result of the merger would be that one company would control the collection of approximately 72% of the County's municipal waste stream, and the disposal of approximately 82% of the municipal waste generated within the county.

Remaining haulers within the County are small, independent companies which are unable to compete in two important and specific areas, commercial waste collection and municipal contracting. Furthermore, none of these small independent haulers own disposal facilities, and are required to dispose of the waste at facilities owned by Waste Management which controls disposal fees, often charging independent haulers a higher tipping fee for disposal than is charged to its own hauling company.

The independent haulers do not have the necessary equipment to conduct commercial collection effectively, or to transport municipal waste loads long distance to obtain competitive tipping rates. Also, the small companies cannot compete effectively for large municipal contracts. In addition to Waste Management and Eastern, only one company has responded to municipal requests for competitive bidding. The result of the merger has been, and will be, a substantial reduction in competition in those specific areas.

Since the above merger, it is well documented that Waste Management has nearly tripled rates for the commercial collection of municipal waste. Copies of relevant information in this regard is enclosed. The Authority has been inundated with telephone calls and written communications complaining of the new pricing structures.

The Authority has been urging municipal governments to join together to bid waste collection contracts to more effectively mandate the municipal waste stream. However, with no competitive bidders, those efforts will fail.

The proposed settlement agreement has already been implemented with the requirement that the companies divest certain relevant assets. However, these divestitures have had no effect on the competitive disadvantages created by the merger in this area.

Consequently, we feel that the proposed judgment provides no relief in this area from the anti-competitive effects of the merger of Waste Management and Eastern Environmental, and the public interest will not be served by the approval of the consent degree in this case.

We appreciated the opportunity to file written comments. Kindly contact the undersigned if we can provide further information, or answer any questions.

Sincerely,

Dean D.W. DeLong,

Executive Director.

Enclosures to Exhibit 6 letter from Dean D.W. DeLong, Executive Director of Municipal Waste Management Authority of Stroudsburg, PA was unable to be published in the **Federal Register.** A copy be obtained form the Document Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Room 215, Washington, D.C. 20530 or (202) 514–2481.

Mr. Dean D.W. DeLong,

Executive Director, Monroe County Municipal Waste Management Authority, 912 Main Street, Suite 203, Stroudsburg, PA 18360

Re: Comment on Proposed Final Judgment in United States, State of New York, et al. v. Waste Management, Inc., Eastern Environmental Services, Inc., No. 98 CV 7168 (JB) (E.D.N.Y., December 31, 1998)

Dear Mr. DeLong: This letter responds to your letter of April 22, 1999 commenting on the Final Judgment in the above case. The Amended Complaint in the case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of waste in a number of markets throughout the Northeast and in Florida. In northeastern Pennsylvania, the Amended Complaint alleged, the merger would substantially reduce competition in the collection of commercial waste in the Scranton/Wilkes-Barre market. The proposed Final Judgment now pending in federal district court in Brooklyn, New York would settle the case with respect to the Scranton market by, *inter alia*, requiring Waste Management to divest its front-end loader commercial waste collection routes that service Luzerne and Lackawanna counties, which comprise much of the greater metropolitan Scranton/Wilkes-Barre, PA area. This divestiture, if approved by the Court, would establish an independent competitor in the market for which relief was sought, and replace the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In your letter, you express concern that neither the Complaint in this case nor the proposed Judgment address the competitive effects of the merger in Monroe County, PA, in which a combination of Waste Management and Eastern Environmental would dominate municipal and commercial waste collection services, controlling over eighty percent of all waste collected. The combined firm has already substantially increased its prices for collection of municipal waste. We believe that the proposed Judgment, and the pending decree in the earlier USA Waste/Waste Management case,[1] address the competitive issues you have raised.

Monroe county is a thinly populated area that abuts and lies directly southeast of the Scranton/Wilkes-Barre area. Its business and population center—Stroudsburg—is about 30 miles form the Scranton/Wilkes-Barre area and about 25 miles north of the city of Allentown and Northampton and Lehigh counties in Pennsylvania.

The divestitures of commercial waste collection routes mandated by this Judgment and the decree in the USA Waste case, once implemented, would establish a relatively large independent commercial waste hauler in both the Scranton/Wilkes-Barre and Allentown areas. Given the proximity of these markets to Monroe County, the rivalry offered by the new competitors should be sufficient to discipline any exercise of market power by the combined Waste Management and Eastern Environmental in the collection of commercial waste. The new competitors established by these antitrust judgments may also be capable of vigorous competition in

[1] *United States* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* No. 1:98 CV 1616 (N.D. Ohio, filed July 17,1998). The consent decree in the USA Waste case ordered Waste Management to divest its commercial waste collection routes that service the City of Allentown, and Lehigh and Northampton counties. Those routes were divested to Republic Services, Inc., which installed a large independent competitor in the commercial waste collection market in the Allentown, PA area.

the collection of the county's residential waste, a market not addressed in our complaint or the consent decree.[2]

In addition, the next two largest waste haulers in Monroe County following Waste Management's acquisition of Eastern would be Hopkins and Muscaro, each of which is about the same size as Eastern in Monroe County. Thus, after the merger, there may be as many as four other competitors in the market—Hopkins, Muscaro, and the two decree firms—capable of competing as vigorously as Eastern prior to its acquisition by Waste Management.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Exhibit 7

Exhibit 7 letter with attachments from Peter Anderson of Recycle Worlds Consulting of Madison, WI dated April 27, 1999 was unable to be published in the **Federal Register**. A copy can be obtained from the Document Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Room 215, Washington, DC 20530 or (202) 514–2481.

May 20, 1999.

Mr. Peter Anderson,

President, RecycleWorlds Consulting Corp., 4513 Vernon Blvd., Suite 15, Madison, Wisconsin 53705–4964

Re: Comment on Proposed Final Judgment in United States, *State of New York, et al.* v. *Waste Management, Inc., Eastern Environmental Services, Inc.,* No. 98 CV 7168(JB) (E.D.N.Y., December 31, 1998)

Dear Mr. Anderson: This letter responds to your April 27, 1999 comment on the proposal Final Judgment in the above case. The Amended Complaint charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of municipal solid waste in 12 markets in New York, Pennsylvania, and Florida. The proposed consent decree, now pending in Federal district court in Brooklyn, New York, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the markets alleged in the Complaint.[1] This relief, if approved by the Court, would establish one or more new competitors in each of the markets for which relief was sought, replacing the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In a transaction approved by the United States and the State of New York, Waste Management divested to Republic Services, Inc. the rights to Eastern's proposal to dispose of New York City's residential waste in early January 1999, See Judgment section IV(B), On April 20, 1999, the United States, however, rejected Waste Management's proposal to sell the other waste collection and disposal assets under this decree to Allied Waste Industries, Inc. (''Allied''). Such a sale, we concluded, would raise serious competitive concerns in waste collection or disposal, or both, in virtually all of the markets for which the Judgment has ordered relief.[2] Of course, if Waste Management has not divested these assets to an acceptable purchaser within five days after entry of the Judgment, the United States will promptly seek, and the Court will likely appoint, a trustee to complete the sale. See Judgment sections V(A) and (B) and Hold Separate Stipulation and Order, section IV(F).

In your comment, you assert that the diversitures ordered by this Judgment do not go far enough to eliminate the competitive problems in the Nation's waste industry. To be sure, the decree in this case and in other recent Government antitrust cases (e.g., *United States* v. *USA Waste, Inc., Waste Management, Inc.,* No. 1:98 1616 (N.D. Ohio, filed July 21, 1998)) have not prevented the wave of consolidations, currently sweeping through this industry. Indeed, several recent mega mergers have significantly reduced the number of major competitors, and that has perhaps made several waste markets and more susceptible to collusive post-merger price increases. To cure these competitive problems, you propose a fairly ''dramatic remedy,'' *i.e.,* require that Waste Management divest all of its waste disposal or collection operations in markets where there are substantial competitive overlaps between its operations and those of Eastern. If this not not done, then you propose that we ensure that the assets divested under the Judgment are not sold to a large integrated national waste firm, but to a municipal agency or a small stand-along independent—entities that, in your view, may have a greater incentive to vigorously compete against defendants' operations.

We do not believe that requiring Waste Management to divest all of its waste collection or disposal operations in any market in which its operations overlap with Eastern's would produce a more procompetitive result than the relief currently in the Judgment. Indeed, pursuing your proposal would permit Waste Management to acquire the lion's share of any number of waste collection or disposal markets, since, in effect, you propose that if Waste Management agrees to abandon one line of business, it would be free to monopolize the other.

We do, however, agree with your conclusion that Waste Management's divestiture of the decree assets to a firm such as Allied/BFI is undesirable because it would significantly reduce competition and enhance opportunities for cooperative post-merger price increases. We have so informed Waste Management, and we are prepared to have management and sale to these crucial waste assets transferred to a trustee, if Waste Management does not promptly divest these operations to a purchases acceptable to the United States.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Certificate of Service

I certify that on May 20, 1999, I caused a copy of the foregoing United States's Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act to be served on the parties in this case by mailing the pleading first-class, postage prepaid, to

[2] In general, barriers to entry into the collection of residential waste are not as formidable as those that impede entry into the collection of commercial waste. For this reason, the Division did not challenge the combination's effect on the market for collecting the county's residential waste. Of course, as you point out, entry into collection of residential waste could be very difficult in those situations in which the area's disposal facilities are controlled by a waste collection rival. That is not the case here. In Monroe County, there is at least one other major independent landfill (owned by DeNaples) that accepts significant amounts of the county's waste. Moreover, the closest landfill owned by Eastern Environmental apparently accepted less than 200 tons of waste annually from Monroe County, and hence did not compete directly against the Waste Management landfill.

[1] The markets alleged in the Amended Compliant, and for which divestiture relief was obtained in the Final Judgment, include the disposal of municipal solid waste in the Pittsburgh, Carlisle-Chambersburg, and Bethlehem, PA areas, and in New York City, NY (commercial and residential); and collection of commercial waste in the Carlisle-Chambersburg, Bethlehem, and Scranton, PA; suburban Tampa (Hillsborough Co.) and Miami/FT. Lauderdale, FL (Dade and Broward counties) areas.

[2] In early March 1999, Allied announced that it had agreed to acquire Browning-Ferris Industries, Inc., for $7.5 billion. Allied is the Nation's fourth largest waste collection and disposal firm; BFI is the Nation's second largest waste firm. That combination would, by itself, raise serious competition concerns in a number of waste disposal and collection markets throughout the country. Selling the assets under the decree to a combination of Allied/BFI would result in a significant reduction in actual and potential competition in waste disposal services thought the Northeast—a regional market including major cities along the Eastern seaboard, such as New York, Boston, Philadelphia, Baltimore and Washington—as well as a reduction in localized competition for waste disposal services in the Pittsburgh, PA area, and for commercial waste collection services in the Miami/Ft. Lauderdale, FL area, and potentially in the Carlisle-Chambersburg, PA area.

a duly-authorized legal representative of each of the parties, as follows:

Jonathan L. Greenblatt, Esquire,

Steven C. Sunshine, Esquire,

Michael Strub, Jr., Esquire,

Shearman & Sterling, 801 Pennsylvania Avenue, NW, Washington, D.C. 20004–2604.

James R. Weiss, Esquire,

Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Washington, DC 20006–8425.

Counsel for Defendants Waste Management, Inc. and Ocho Acquisition Corp.

Neal R. Stoll, Esquire,

Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, NY 10022–3897.

Counsel for Defendant Eastern Environmental Services, Inc.

Richard E. Grimm,

Kay Taylor,

Assistant Attorneys General, Antitrust Bureau, Office of the Attorney General, State of New York, 120 Broadway, Suite 26–01, New York, NY 10271.

Counsel for Plaintiff State of New York

James A. Donahue, III,

Chief Deputy Attorney General,

Benjamin L. Cox,

Deputy Attorney General, 14th Floor, Strawberry Square, Harrisburg, PA 17120.

Counsel for Plaintiff Commonwealth of Pennsylvania

Lizabeth A. Leeds,

Douglas L. Kilby,

Assistant Attorneys General, Antitrust Section, PL–01, The Capitol, Tallahassee, FL 32399–1050

Counsel for Plaintiff State of Florida

Anthony E. Harris, Esq. AH 5876,

U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

[FR Doc. 99–14469 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Forms for Agricultural Recruitment System

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)(44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed reinstatement, without change, collection of the Agricultural and Food Processing Clearance Order, Form ETA–790, Agricultural and Food Processing Clearance Memorandum, Form ETA–795, Migrant Worker Itinerary, Form ETA–785, and Job Service Manifest Record, Form ETA–785A.

A copy of the proposed information collection request can be obtained by contacting the employee or office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 10, 1999.

ADDRESSES: Rogelio Valdez, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4470, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5257, extension 167 (this is not a toll-free number) and, Internet address: rvaldez@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Migrant and Seasonal Farm worker regulations at 20 CFR 653.500 established procedures for agricultural clearance to all local offices to use the interstate clearance forms as prescribed by ETA. Local and State Employment offices use the Agricultural and Food Processing Clearance Order to extend job orders beyond their jurisdictions. Applicant holding local offices use the Agricultural Clearance Memorandum to give notice of action on a clearance order, request additional information, report results, and to accept or reject the extended job order. State agencies use the Migrant Worker Itinerary to transmit employment and supportive service information to labor-demand areas, and to assist migrant workers in obtaining employment. The Job Service Manifest Record shows names, addresses, and characteristics of all people named on the Migrant Worker Itinerary.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Action

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of a reinstatement, without change, to an existing collection of information previously approved and assigned OMB Control No. 1205–0134.

There is no change in burden.

Type of Review: Reinstatement, without change.

Agency: Employnment and Training Administration, Labor.

Titles: Agricultural and Food Processing Clearance Order, Agricultural and Food Clearance Memorandum, Migrant Worker Itinerary, and Job Service Manifest Record. OMB Number: 1205–0134.

Affected Public: Individuals and households, employers, and State Governments.

Total Respondents 52.

Frequency: On occasion.

Estimated Total Burden Hours: 6,500.

Form	Volume per year	Hours per response	Hours per year
ETA–790	2.000	1.0	2,000

Form	Volume per year	Hours per response	Hours per year
ETA–795	3,000	.5	1,500
ETA–785	3,500	.5	1,750
ETA–785A	2,500	.5	1,250

Total Burden Cost: None.

Comments submitted in response to this will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 7, 1999.

John R. Beverly III,

Director, Employment Service.

[FR Doc. 99–14849 Filed 6–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension of two information collections: (1) Labor Organization and Auxiliary Reports and (2) Request of examination and/or treatment (LS–1). A copy of the proposed information collection requests (ICR) and/or the reporting forms can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 13, 1999. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–3201, Washington, DC 20210, (202) 693–0339 (this is not a toll-free number). Fax number: (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Office Labor-Management Standards administers the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). The LMRDA provides for the disclosure of information on the financial transactions and administrative practices of labor organizations, and under certain circumstances, reporting by labor organization officers and employees, employers, labor relations consultants, and surety companies. The reporting provisions implement a basic tenet of the LMRDA, the guarantee of democratic procedures and safeguards within labor organizations that are designed to protect the basic rights of union members

II. Current Actions

The Department of Labor is seeking extension of the approval of the collection of information to be used by union members to help self-govern their unions, by the general public, and as research material for both outside researchers and within the Department of Labor. The information is also used to assist DOL and other government agencies in detecting improper practices on the part of labor organizations, their officers and/or representatives, and is used by Congress in oversight and legislative functions.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1215–0188.

Agency Numbers: LM–1, LM–2, LM–3, LM–4, LM–10, LM–15, LM–15A, LM–16, LM–20, LM–21, S–1.

Affected Public: Not-for-profit institutions; individuals or households; business or other for-profit.

Total Respondents: 33,652.

Frequency: (As indicated in the burden hours summary chart)

Total Burden Hours (Reporting and Recordkeeping) Summary:

Cite/reference	Total respondents	Frequency	Total responses	Average Time per response	Burden (in hours)
Form LM–1	358	Annually	358	55 minutes	328
Form LM–2	6,005	Annually	6,005	15.25 hours	91,576
Form LM–3	14,234	Annually	14,234	6.75 hours	96,080
Form LM–4	9,285	Annually	9,285	.86 hours	7,975
Form LM–10	211	Annually	211	35 minutes	123
Form LM–15	389	As Necessary	389	1.83 hours	712
Form LM–15A	81	Semi-Annually	81	22 minutes	30
Form LM–16	82	As Necessary	82	21 minutes	29
Form LM–20	254	As Necessary	254	22 minutes	93
Form LM–21	64	Annually	64	35 minutes	37
Form LM–30	64	Annually	64	35 minutes	37

Cite/reference	Total respondents	Frequency	Total responses	Average Time per response	Burden (in hours)
Form S–1	89	Annually	89	35 minutes	52
Simplified Annual Report Format.	2,536	Annually	2,536	12 minutes	507
Totals	33,652		33,652		197,589

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $0.

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing or building a vessel. In addition, several acts extend coverage to certain other employees. Under section 7 of the Longshore Act, the employer/insurance carrier is responsible for furnishing medical care for the injured employee for such period of time as the injury or recovery period may require. Form LS–1 serves two purposes: it authorizes the medical care and provides a vehicle for the treating physician to report the findings, treatment given and anticipated physical condition of the employee.

II. Current Actions

The Department of Labor seeks extension of approval to collect information on Form LS–1 to verify that proper medical treatment as been authorized and to determine the severity of a claimant's injuries and thus his/her entitlement to compensation benefits which they are responsible by law to provide if a claimant is medically unable to work as a result of a work-related injury. If the information were not collected, verification of authorized medical care and entitlement to compensation benefits would not be possible.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request for Examination and/or Treatment.

OMB Number: 1215–0066.

Agency Number: LS–1.

Affected Public: Individuals or households.

Total Respondents: 16,500.

Frequency: On Occasion.

Total Responses: 115,500.

Total Burden Hours: (reporting): 124,740.

Total Burden Costs (capital/start-up): $0.

Total Burden Costs (operation/maintenance): $41,580.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 7, 1999.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 99–14848 Filed 6–10–99; 8:45 am]

BILLING CODE 4510–27–P

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 he Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with 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 he 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, mut 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 an 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, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA990002 (Mar. 12, 1999)
MA990006 (Mar. 12, 1999)
MA990007 (Mar. 12, 1999)
MA990009 (Mar. 12, 1999)
MA990017 (Mar. 12, 1999)
MA990018 (Mar. 12, 1999)
MA990019 (Mar. 12, 1999)

Volume II

Pennsylvania
PA990001 (Mar. 12, 1999)
PA990002 (Mar. 12, 1999)
PA990004 (Mar. 12, 1999)
PA990008 (Mar. 12, 1999)
PA990018 (Mar. 12, 1999)
PA990019 (Mar. 12, 1999)
PA990021 (Mar. 12, 1999)
PA990063 (Mar. 12, 1999)

Volume III

None.

Volume IV

None.

Volume V

Missouri
MO990001 (Mar. 12, 1999)
MO990002 (Mar. 12, 1999)
MO990003 (Mar. 12, 1999)
MO990005 (Mar. 12, 1999)
MO990006 (Mar. 12, 1999)
MO990007 (Mar. 12, 1999)
MO990008 (Mar. 12, 1999)
MO990009 (Mar. 12, 1999)
MO990010 (Mar. 12, 1999)
MO990012 (Mar. 12, 1999)
MO990013 (Mar. 12, 1999)
MO990014 (Mar. 12, 1999)
MO990015 (Mar. 12, 1999)
MO990016 (Mar. 12, 1999)
MO990020 (Mar. 12, 1999)
MO990041 (Mar. 12, 1999)
MO990042 (Mar. 12, 1999)
MO990043 (Mar. 12, 1999)
MO990046 (Mar. 12, 1999)
MO990047 (Mar. 12, 1999)
MO990048 (Mar. 12, 1999)
MO990049 (Mar. 12, 1999)
MO990050 (Mar. 12, 1999)
MO990051 (Mar. 12, 1999)
MO990052 (Mar. 12, 1999)
MO990053 (Mar. 12, 1999)
MO990056 (Mar. 12, 1999)
MO990057 (Mar. 12, 1999)
MO990058 (Mar. 12, 1999)
MO990060 (Mar. 12, 1999)
MO990062 (Mar. 12, 1999)
MO990064 (Mar. 12, 1999)
MO990065 (Mar. 12, 1999)
MO990066 (Mar. 12, 1999)
MO990067 (Mar. 12, 1999)
MO990068 (Mar. 12, 1999)
MO990069 (Mar. 12, 1999)
MO990070 (Mar. 12, 1999)
MO990071 (Mar. 12, 1999)
MO990072 (Mar. 12, 1999)
Nebraska
NE990001 (Mar. 12, 1999)
NE990002 (Mar. 12, 1999)
NE990003 (Mar. 12, 1999)
NE990005 (Mar. 12, 1999)
NE990007 (Mar. 12, 1999)
NE990009 (Mar. 12, 1999)
NE990010 (Mar. 12, 1999)
NE990011 (Mar. 12, 1999)
NE990019 (Mar. 12, 1999)
NE990025 (Mar. 12, 1999)
NE990038 (Mar. 12, 1999)
NE990044 (Mar. 12, 1999)
NE990057 (Mar. 12, 1999)
New Mexico
NM990001 (Mar. 12, 1999)
NM990005 (Mar. 12, 1999)
Texas
TX990018 (Mar. 12, 1999)

Volume VI

None.

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 (NTS) 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, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 3rd day of June 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–14545 Filed 6–10–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Monday, July 12 and Tuesday, July 13, 1999, at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–2508, Washington, DC 20210 from 9:00 am to 4:30 pm.

Written comments are welcome and may be submitted by addressing them to: Ms. Polin Cohanne, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1315, Washington, DC 20210.

The primary items on the agenda are:

- Adoption of Minutes of the Previous Meeting
- Discussion on VETS' Response to the Report of the Congressional Commission on Servicemembers and Veterans Transition Assistance
- Update on Pending Legislation
- Update on the Implementation of the Workforce Investment Act
- Briefing on VETS' Strategic Plan

The meeting will be open to the public. Other matters may be discussed.

Persons with disabilities needing special accommodations should contact Ms. Polin Cohanne at telephone number 202–693–4741 no latter than June 25, 1999.

Signed at Washington, D.C. this June 8, 1999.

Espiridion (Al) Borrego,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 99–14850 Filed 6–10–99; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–075]

National Environmental Policy Act; Ames Research Center; Aerodynamics Testing Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the final environmental impact statement (FEIS) for the NASA Ames Aerodynamics Testing Program.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA has prepared and issued a FEIS for the proposed NASA Ames Aerodynamics Testing Program (ATP). The FEIS addresses environmental issues associated with proposed wind tunnel testing of high performance aircraft powered by engines with supersonic jet exhaust and powered-lift systems in the National Full-Scale Aerodynamics Complex (NFAC) at NASA Ames Research Center (ARC), Santa Clara County, California. The ATP proposes to define the envelope of future wind tunnel testing in the NFAC and change the operational parameters for testing in two facilities at ARC: the 40- by 80-foot Wind Tunnel and the 80- by 120-Foot Wind Tunnel. This program would increase maximum noise levels but would not increase the number of wind tunnel operation hours.

NASA's preferred alternative, Alternative 2, would allow 600 hours annually of full-scale wind tunnel testing of advanced aircraft technologies, but would limit the higher noise aerodynamic testing to daytime hours (*i.e.*, between 7:00 a.m. and 7:00 p.m.).

NASA has developed and issued a Mitigation Implementation Plan for the Agency's preferred alternative.

DATES: NASA will take no final action on the proposed ATP before July 12, 1999 or 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the ATP FEIS, whichever is later.

ADDRESSES: The FEIS and Mitigation Implementation Plan can be reviewed at the following locations:

(a) Mountain View Public Library, Reference Section, 585 Franklin Street, Mountain View, CA (650–903–6887).

(b) Sunnyvale Public Library, Reference Section, 665 West Olive Avenue, Sunnyvale, CA (408–730–7300).

(c) NASA Headquarters, Library, Room lJ20, 300 E Street SW, Washington, DC 20546 (202–358–0167).

(d) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(e) NASA, Spaceport USA, Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler beforehand at 407–867–2497, so that arrangements can be made.

In addition, the FEIS and Mitigation Implementation Plan can be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(a) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–4191).

(b) NASA, Dryden Flight Research Center, Edwards AFB, (661–258–2662).

(c) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(d) NASA, Goddard Space Flight Center, Greenbelt, MD 20771(301–286–0730).

(e) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(f) NASA, Langley Research Center, Hampton, VA 23665 (757–864–2497).

(g) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–5549).

(h) NASA, Stennis Space Center, MS 39529 (228–688–2164).

Limited copies of the FEIS and Mitigation Implementation Plan are available, on a first request basis, by contacting Sandra Olliges at the address, telephone number, or electronic mail address provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Olliges, NASA, Ames Research Center, M.S. 218–1/Building 218, Moffett Field, CA 94035–1000; telephone 650–604–3355; electronic mail (solliges@mail.arc.nasa.gov).

SUPPLEMENTARY INFORMATION: Better performance and decreased operational costs are necessary and critical components of future generations of high-performance military and civil aircraft development programs. High-performance aircraft share common requirements for testing with propulsion systems of very high thrust and increased jet exhaust velocities, which will tend to produce noise levels greater than present airplanes. These include new vertical take-off and landing fighter jets, as well as future generation supersonic civil transports.

The key to the successful development of these future generation aircraft is testing of the actual propulsion systems installed in full-scale models. The NFAC at ARC is the only test facility in the world that has this capability. Conducting such tests would provide a key capability for helping ensure the long-term dominance of U.S. aircraft in both the military environment and commercial marketplace.

The X–32/X–35 Joint Strike Fighter (JSF) testing project could be one of the first projects implemented under the ATP. The X–32/X–35 test aircraft and associated proposed testing project established the operational boundaries of high-noise testing in the NFAC wind tunnel facilities for the ATP. Testing at ARC for the High Speed Civil Transport program, which is developing new technology for supersonic civilian airliners that are economically viable and more environmentally friendly, is another program that could fall under the envelope of the ATP.

The JSF program is investigating the technical feasibility of fielding an affordable, military viable, multi-service aircraft in the 2010 time frame. This program currently has a dual experimental aircraft designation of X–32 and X–35. The JSF concept currently has three variations: (1) A Short Takeoff Vertical Landing attack aircraft for the U.S. Marine Corps and the U.K. Royal Navy; (2) a U.S. Air Force Conventional Takeoff and Landing multi-role fighter aircraft; and (3) an aircraft carrier capable fighter/attack aircraft for the U.S. Navy. The X–32/X–35 JSF program provides a unique opportunity to potentially develop a truly common and affordable aircraft for expeditionary naval forces and fixed-base land use.

It is important to note that the specific tests discussed in the FEIS may be representative of future test requirements not specifically identified to date. Therefore, this ATP FEIS will serve as a baseline document for the environmental evaluation of subsequent testing at Ames Research Center. The FEIS addresses common elements of such testing in a single document and provides detailed information on each aspect of the ATP to the extent that such data are available.

Programmatic and test specific alternatives for this proposed testing that were considered include, but are not necessarily limited to: (1) Alternative daily time periods for typical testing activities; (2) modification of the testing procedures to reduce noise levels; (3) tests at a location other than Ames Research Center; and (4) elimination of the proposed ATP—''no action.'' As a result of preliminary analysis, the FEIS considers four alternatives in detail, including the ''no action'' alternative. The three action alternatives considered in detail would create the same maximum noise levels but differ primarily in the number of testing hours permitted annually and the daily time periods for different testing noise levels.

The FEIS considers the potential environmental impacts associated with the proposed ATP. Particular emphasis is placed on potentially incurred noise impacts and air emissions associated with the testing.

The FEIS is a program-level Environmental Impact Statement and thus, analyzes the environmental impacts of implementing a proposed new operational protocol for aerodynamics testing at ARC in the NFAC wind tunnel complex. The ATP would be made up of smaller, specific, limited duration and scope projects, such as the X–32/X–35 JSF testing project. If the ATP were adopted, any future testing project would be required to comply with the parameters of the ATP. NASA would be required to determine whether each proposed aerodynamics testing project is consistent with the ATP. If such a proposed aerodynamics testing project does not comply the ATP, assuming that ATP were adopted, additional environmental analysis and NEPA documentation would be prepared, as appropriate, before any final decision is made.

Comments on the Draft Environmental Impact Statement (DEIS) were solicited from Federal, State, and local agencies, organizations, and the general public through: (a) notices published in the **Federal Register**—NASA notice on June 28, 1995, (60 FR 33438) and U.S. Environmental Protection Agency notice on June 30, 1995, (60 FR 34246), (b) notices in the San Jose Mercury News and the La Oferta Review, (c) direct mailing of a fact sheet to persons within the proposed noise contours, and (d) a series of public participation meetings. A total of 13 written and 32 oral comments (arising during public meetings on the DEIS), primarily related to noise, were provided on the DEIS. These comments have been addressed in the FEIS.

Jeffrey E. Sutton,

Associate Administrator for Management Systems.

[FR Doc. 99–14875 Filed 6–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–076]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Aervoe-Pacific Company, of Gardnerville, Nevada, has applied for a partially exclusive license to practice the invention described and claimed in United States Patent No. 5,772,912, entitled ''Environmentally Friendly Anti-Icing Fluid,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: June 2, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–14876 Filed 6–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–078]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that AVIR, L.L.C. of Charlottesville, VA, 22906, has applied for a partially exclusive license, limited to the field of use defined as ''remote sensing of chemical weapons agents and drug manufacturing,'' to practice the inventions described and claimed in: U.S. Patent No. 5,128,797 entitled ''NON-MECHANICAL OPTICAL PATH SWITCHING AND ITS APPLICATION TO DUAL BEAM SPETROSCOPY INCLUDING GAS FILTER CORRELATION RADIOMETER;'' NASA Case No. LAR–15361–1–CU entitled ''MULTI-GAS SENSOR;'' and NASA Case No. LAR–15818–1–CU entitled ''OPTICAL PATH SWITCHING BASED DIFFERENTIAL ABSORPTION RADIOMETRY FOR SUBSTANCE DETECTION;'' all of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center.

DATES: Responses to this notice must be received by August 10, 1999.

FOR FURTHER INFORMATON CONTACT: Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center, Mail Code 212, Hampton, VA, 23681–2199; telephone 757–864–3230.

Dated: June 1, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–14878 Filed 6–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–077]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Midwest Industrial Supply, Inc., of Canton, Ohio, has applied for a partially exclusive license to practice the invention described and claimed in United States Patent No. 5,772,912, entitled ''Environmentally Friendly Anti-Icing Fluid,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: June 2, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–14877 Filed 6–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–079]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that SPX Corporation, of Muskegon, MI 49443, has applied for a partially exclusive license, limited to the field of use defined as ''motor vehicle exhaust emission monitoring,'' to practice the inventions described and claimed in: U.S. Patent No. 5,128,797 entitled ''NON-MECHANICAL OPTICAL PATH SWITCHING AND ITS APPLICATION TO DUAL BEAM SPETROSCOPY INCLUDING GAS FILTER CORRELATION RADIOMETER;'' NASA Case No. LAR–15361–1–CU entitled ''MULTI-GAS SENSOR;'' and NASA Case No. LAR–15818–1–CU entitled ''OPTICAL PATH SWITCHING BASED DIFFERENTIAL ABSORPTION RADIOMETRY FOR SUBSTANCE DETECTION;'' all of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the NASA Langley Research Center.

DATES: Responses to this notice must be received by August 10, 1999.

FOR FURTHER INFORMATON CONTACT: Kurt G. Hammerle, Patent Attorney, NASA Langley Research Center, Mail Code 212, Hampton, VA, 23681–0001; telephone 757–864–2470; facsimile 757–864–9190.

Dated: June 1, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–14879 Filed 6–10–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company; Callaway Plant; Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (Commission) has issued Amendment No. 133 to Facility Operating License No. NPF–30 issued to Union Electric Company (the licensee) for operation of the Callaway Plant, Unit 1 located in Callaway County, Missouri.

The amendment is effective as of the date of issuance and shall be implemented by April 30, 2000. The implementation of the amendment includes the two license conditions which are being added to Appendix C of the license as part of the amendment.

The amendment replaces, in its entirety, the current Technical Specifications (TS) with a set of improved TS based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995, including all approved changes to the standard TS; the Commission's Final Policy Statement, ''NRC Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132); and 10 CFR 50.36, ''Technical Specifications,'' as amended July 19, 1995 (60 FR 36953). In addition, the amendment adds two license conditions to Appendix C of the operating license that require (1) the relocation of current TS requirements into licensee-controlled documents, and (2) the first performance of new and revised surveillance requirements for the improved TS to be related to the implementation date for the improved TS. The implementation of the amendment and the license conditions will be completed by April 30, 2000, as stated in the amendment.

The application for the amendment, as supplemented, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 27, 1999 (64 FR 22658). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and has determined not to prepare an environmental impact statement related to the action to convert the current TS to the improved TS. Based on the Environmental Assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment beyond that described in the Final Environmental Statement (FES) related to the operation of Callaway Plant, Unit 1 in NUREG–0813 dated January 1982. The Environmental Assessment was published in the **Federal Register** on May 26, 1999 (64 FR 28535).

For CN 9–01–LG in CTS 3/4.4 (and associated CN 3–13–M in CTS 6.0), the licensee has proposed to relocate the pressure/temperature (P/T) limits and cold overpressure mitigation system (COMS) limits from the CTS to the pressure temperature limits report (PTLR) and proposed to reference WCAP–14040–NP–A, Revision 1, ''Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Curves,'' as the methodology for calculating the P/T and COMS limits. The staff approved the use of this WCAP report in its generic SE dated October 16, 1995. The licensee, however, has stated that it will operate Callaway, Unit 1 for the near future with the existing approved P/T and COMS limits in the CTS. Therefore, the limits addressed in the PTLR are the limits that the staff has previously reviewed and approved in Amendment 124 dated April 2, 1998. The amendment approved P/T limit curves that are valid for 20 effective full power years. The licensee will use the methodology in WCAP–14040–NP–A to calculate the future P/T and COMS limits before the time when the current values given in the amendment become invalid. The staff will review the licensee's future plant-specific application of the PTLR methodology to allow the licensee's future use of the PTLR methodology to calculate new P/T and COMS limits without prior staff approval. In the associated CN 3–13–M in CTS 6.0, the licensee proposed to add a reference to Amendment 124 to the PTLR in ITS 5.6.6. The amendment approved the limits that are listed in the PTLR and addressed the methodology used by licensee to calculate the limits. The staff believes that the staff's approval of the P/T and COMS limits in Amendment 124 was not an approval for the licensee to make future changes to these limits using the methodology described in the amendment. Listing Amendment 124 in ITS 5.6.6 may imply this is true and the staff is not ready at this time to approve Amendment 124 for that purpose. The review of Amendment 124, or any other licensee submittal, for the purpose of allowing the licensee to make future changes to the P/T and COMS limits in ITS 5.6.6 without prior staff approval will the subject of a future letter.

For further details with respect to the amendment see (1) the application for amendment dated May 15, 1997, as supplemented by letters in 1998 dated June 26, August 4, August 27, September 24, October 21 (2 letters), November 23, November 25, December 11, and December 22, and in 1999 dated February 5, March 9, April 7, April 21, April 30, May 4, May 27, and May 28, and (2) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room located at the Elmer Ellis Library, University of Missouri, Columbia, Missouri, 65201.

Dated at Rockville, Maryland, this 28th day of May 1999.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Senior Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–14841 Filed 6–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Laboratory Testing of Nuclear-Grade Activated Charcoal; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 99–02 to all holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel. It concerns the laboratory testing of nuclear-grade activated charcoal that is used in the safety-related air-cleaning units of engineered safety feature ventilation systems of nuclear power plants to reduce the potential onsite and offsite consequences of a radiological accident by adsorbing iodine. The purpose of the generic letter is to request licensees of operating nuclear power reactors to amend their facility technical specifications to reference either the American Society for Testing and Materials (ASTM) standard ASTM D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' or an alternate test protocol that has been demonstrated to give comparable results. Licensees may also propose another course of action, which would be subject to NRC review and approval. The objective is to assure licensee compliance with the licensing bases of their respective facilities, as they relate to the onsite and offsite dose consequences of General Design Criterion 19 of Appendix A to 10 CFR part 50 and the guideline values of subpart A of 10 CFR part 100, respectively.

The generic letter also requests that licensees submit information. The requested information will enable the NRC staff to determine to which testing standard licensees are currently testing the nuclear-grade activated charcoal of their engineered safety features ventilation systems.

DATES: The generic letter was issued on June 3, 1999.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: John P. Segala, at (301) 415–1858.

SUPPLEMENTARY INFORMATION: This generic letter is available in the NRC Public Document Room under accession number 9906030055. This generic letter is discussed in Commission information paper SECY–99–132 which is also available in the NRC Public Document Room.

Dated at Rockville, Maryland, this 3rd day of June 1999.

For The Nuclear Regulatory Commission.

Scott F. Newberry,

Deputy Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–14842 Filed 6–10–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23861; 812–11410]

Emerging Markets Growth Fund, Inc., et al.; Notice of Application

June 7, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(3)(A) and (D) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: The order would permit applicant, Emerging Markets Growth Fund, Inc. (the ''Fund''), to invest in an affiliated investment vehicle, Capital International Global Emerging Markets Private Equity Fund, L.P. (the ''Partnership'').

APPLICANTS: The Fund, the Partnership, Capital International Investments, LLC (the ''General Partner''), Capital International, Inc. (the ''Manager''), Capital Group International, Inc. (''CGII''), and CGPE LLC (''CGPE'').

FILING DATES: The application was filed on November 17, 1998. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Capital International, Inc., 11100 Santa Monica Boulevard, Los Angeles, CA 90025.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Attorney, at (202) 942–0572 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 is available for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund, a Maryland corporation, currently is a closed-end management investment company registered under the Act. The Fund's shares are

registered under the Securities Act of 1933. The Fund's investment objective is to seek long-term capital growth by investing in equity securities of issuers in developing countries. The Fund may invest up to 10% of its assets in developing country securities that are not readily marketable. The Fund currently invests in nine private equity funds that invest in various regions globally and that are sponsored and advised by entities unaffiliated with the Manager.[1]

2. The Fund offers new shares for sale on a limited basis to investors that meet certain suitability criteria prescribed by the Fund. Pursuant to an SEC exemptive order, on or about July 1, 1999, the Fund intends to convert from a closed-end fund to a registered open-end interval fund with monthly redemptions.[2] In anticipation of the conversion, as of January 1, 1999, all new investors in the Fund must be ''qualified purchasers,'' within the meaning of section 2(a)(51) of the Act and the rules and interpretive positions under the Act.

3. The Partnership is organized as a limited partnership under the laws of Delaware. The Partnership relies on the exception from the definition of investment company in section 3(c)(7) of the Act. The investment objective of the Partnership is to seek long-term capital appreciation through privately negotiated equity and equity-related investments in emerging market companies (''Equity Investments''). The General Partner of the Partnership is a Delaware limited liability company wholly-owned by CGII, CGPE, and the Manager. CGII is a wholly-owned subsidiary of The Capital Group Companies, Inc. (''Capital Group''). CGPE is wholly-owned by the Manager and officers and employees of companies controlled by the Capital Group (collectively, the ''Associates''). The General Partner has made a U.S. $35.06 million capital commitment to the Partnership.

4. The Fund proposes to invest up to U.S. $95 million (less than 1% of the Fund's total assets as of March 1, 1999, and less than 10% of the Partnership's interests) in the Partnership. Applicants state that investing through the Partnership in Equity Investments would enable the Fund to achieve greater diversification by participating in many more investments than would be the case if the Fund invested directly in Equity Investments. In addition, applicants state that, given the Fund's current fee and expense structure, and the resource-intensive nature of the investment process for Equity Investments, it is not cost-effective for the Fund to invest directly in Equity Investments on a diversified basis. The Fund's board of directors (the ''Board''), including a majority of the directors who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Directors''), has authorized the proposed investment by the Fund in the Partnership. Of the Fund's fourteen member Board, ten are Independent Directors. Of the ten Independent Directors, none is or will be a direct investor in CGPE. and nine are neither directors nor officers of any investor in the Partnership.

5. The Partnership has an advisory board comprised exclusively of representatives of current limited partners (together with future limited partners, ''Limited Partners'') that have a capital commitment of at least $40 million to the Partnership and other Limited Partners that are selected by the General Partner (''Advisory Committee''). A representative of the Fund, who is an Independent Director of the Fund and is not otherwise affiliated with the Partnership or any of the Limited Partners, will become a member of the Advisory Committee if the requested relief is granted. The Advisory Committee is responsible for, among other things: (a) providing advice and counsel to the Partnership and the General Partner in connection with potential conflicts of interest and other matters relating to the Partnership as may be requested by the General Partner or as provided in the partnership agreement, as modified by side letters (''Partnership Agreement''); and (b) approving certain valuation determinations of the Partnership's assets or interests.

6. The Manager, a wholly-owned subsidiary of CGII, serves as investment adviser to the Fund and the Partnership and is registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Manager will waive its management fee, including administrative fees, with respect to the Fund's net assets represented by the investment in the Partnership. Specifically, the Fund's aggregate net assets will be adjusted downward by the amount invested in the Partnership prior to determining the Manager's fee.

7. The Manager is responsible for all direct and indirect expenses incurred by the Manager in connection with identifying investments for the Partnership and all direct and indirect routine administrative expenses of the Partnership incurred in connection with managing the Partnership following the first closing, which occurred on July 10, 1998. For its services, the Manager receives an advisory fee throughout the term of the Partnership. In addition, the Manager, as a member of the General Partner, will be entitled to receive certain fees which may be characterized as a ''performance fee.'' The Partnership is responsible for all expenses except routine administrative expenses incurred in connection with the operation of the Partnership.

8. Each Limited Partner must execute a subscription agreement (''Subscription Agreement'') to invest in the Partnership. The term of the Partnership is ten years from the final closing, which occurred on January 19, 1999, but the General Partner may extend the term for one one-year period at its discretion and for an additional one-year period with the approval of a majority in interest of the Limited partners. Limited Partners generally may not withdraw from the Partnership nor transfer any of their interests, rights, or obligations under the Partnership, except with the express written consent of the General Partner.[3]

9. All Limited Partners that enter into the Partnership Agreement after the first closing date will make a capital contribution to the Partnership on the date of their admission so that the percentage of their capital commitment that is contributed to the Partnership is equal to the percentage of the other Limited Partners' and General Partner's (together, the ''Partners'') capital commitments (a ''Catch-up Contribution''). Any Limited Partner, other than the Fund, that is admitted to the Partnership after the fifteenth business day following the first closing date will be required to pay to all previously admitted Partners (in accordance with their respective percentage interests) an additional amount equal to a 1% monthly rate on the Catch-up Contribution from the date capital contributions were made by the previously admitted Partners to the date of its admission (the ''Additional Amount''). The Additional Amount which

[1] None of the Fund's current commitments to any single private equity fund exceeds 1% of the Fund's net assets.

[2] Investment Company Act Release Nos. 23433 (Sept. 11, 1998) (notice) and 23481 (Oct. 7, 1998) (order).

[3] Notwithstanding the foregoing, for regulatory compliance reasons, Limited Partners that are subject to fiduciary obligations under the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), may withdraw from the Partnership in the event it becomes reasonably likely that the assets of the Partnership are deemed to be ''plan assets'' under ERISA rules and regulations. If Limited Partners subject to ERISA withdraw in the aggregate over 50% of the capital commitments of all Limited Partners subject to ERISA, any Limited Partner may elect to withdraw from the Partnership in accordance with the terms and procedures set forth in the Partnership Agreement.

the Fund will be required to pay on its admission will be an additional amount on its Catch-up Contribution at a rate equal to the then prime rate plus 2% per year (or a *pro rata* portion thereof) from the date capital contributions were made by the previously admitted Partners to the date of the Fund's admission. In addition, all new Limited Partners (including the Fund) will be required to pay to the Manager their share of current management fees as well as management fees from the first closing date. With respect to management fees allocable to the period prior to its admission, each new Limited Partner will pay an additional amount on the allocable amount of management fees at the rate of the then prime rate plus 2% per year (or a *pro rata* portion thereof) from the date the management fees were made by the previously admitted Partners to the date of its admission. Any such retroactive management fee allocated to the Fund will be credited against the management fees it pays to the Manager.

10. Applicants request relief to permit: (a) the Fund to invest as a Limited Partner up to U.S. $95 million (less than 1% of the Fund's total assets and less than 10% of the Partnership's interests) in the Partnership; (b) the General Partner to invest as a general partner in the Partnership; (c) the Chase Manhattan Bank, as trustee for the Second Plaza Group Trust (together with any successor trustee or trust, ''Plaza Trust''), any investor in the Fund who in the future may become an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund by virtue of the investor's ownership of 5% or more of the Fund's outstanding securities (''Future Affiliates'') and any affiliated person of a Future Affiliate (also, ''Future Affiliates''), to invest as a Limited Partner in the Partnership under the terms and conditions of the Partnership Agreement and the Subscription Agreement; (d) the Manager, as investment adviser to the Fund and the Partnership, to effect the transactions described above in (a); (e) the Manager, CGII, and CGPE to exercise ownership rights in the General Partner and to invest in the Partnership indirectly through their ownership of the General Partner; (f) the Manager and the Associates to invest and exercise ownership rights in CGPE; (g) each of applicants, Plaza Trust, General Motors Investment Management Corporation (''Plaza Advisers''), current and future Limited Partners, and the Future Affiliates to exercise its rights and obligations under the Partnership Agreement and Subscription Agreement; and (h) any officer, director, or employee of the Fund or of any affiliated person of the Fund to participate as a member of the Advisory Committee of the Partnership and to exercise their rights and fulfill their obligations with respect to the Advisory Committee in accordance with the terms and conditions of the Partnership Agreement.

11. Applicants also request relief to allow the Limited Partners, the Chase Manhattan Bank, as trustee for General Motors Employees Global Group Pension Trust (together with any successor trustee or trust, the ''Pension Trust''), and any affiliated person of Plaza Trust or Pension Trust, including Plaza Advisers (''Trust Affiliates''), not to be considered affiliated persons, or affiliated persons of affiliated persons, of the Fund, either because: (a) the Limited Partners (including Plaza Trust) are ''partners'' or ''copartners'' of the Fund in the Partnership; or (b) they own (or are deemed to own) 5% or more of the Partnership's outstanding voting securities.[4]

Applicants' Legal Analysis

A. Section 2(a)(3)

1. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) any person holding 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are held by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person; (d) any officer, director, partner, copartner, or employee of the other person; and (e) any investment adviser to an investment company or member of an advisory board to an investment company (collectively, the ''first-tier affiliates'').

2. The Manager, as the investment adviser to the Fund and the Partnership and as the manager of the General Partner, is a first-tier affiliate of each. The General Partner would be a first-tier affiliate of the Fund. The Manager, CGII, and CGPE are members of the General Partner. Applicants state that the General Partner may be controlled by each, and the Partnership is likely controlled by the General Partner, perhaps making the Manager, CGII, and CGPE first-tier affiliates of the Partnership and, hence, affiliated persons of first-tier affiliates (''second-tier affiliates'') of the Fund.

3. Applicants state that each Limited Partner who owns 5% or more of the interests in the Partnership, to the extent that the interests are deemed voting securities, may be a first-tier affiliate of the Partnership. Further, applicants state that because the Fund also will own more than 5% of the interests in the Partnership if the requested relief is granted, it also may be a first-tier affiliate of the Partnership. Therefore, each other Limited Partner could be a second-tier affiliate of the Fund. In addition, each Limited Partner would, absent exemptive relief, be a first-tier affiliate of every other Partner in the Partnership, including the Fund, making the affiliated persons of each Limited Partner second-tier affiliates of the Fund.

4. Applicants state that Pension Trust is an owner with the power to vote 5% or more of the outstanding voting securities of the Fund and, together with Pension Trust's investment adviser, Plaza Advisers, may be a first-tier affiliate of the Fund. Applicants also state that Plaza Trust owns more than 5% of the outstanding Limited Partner interests in the Partnership, and, thus, may be a first-tier affiliate of the Partnership. Applicants further state that Plaza Trust and Pension Trust may be under common control and, therefore, Plaza Trust and certain other persons that make up the Trust Affiliates may be second-tier affiliates of the Fund. In addition, applicants state that some Associates may be directors, officers, or employees of the Manager or the Fund, arguably making them second-tier affiliates of the Fund.

B. Exemption From Sections 2(a)(3)(A) and (D)

1. The Fund requests an exemption under section 6(c) from sections 2(a)(3)(A) and (D) so that Limited Partners in the Partnership who are not otherwise first- or second-tier affiliates of the Fund would not, solely by reason of their status as Limited Partners or 5% holders of the Partnership's interests, be deemed to be first- or second-tier affiliates of the Fund. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. Applicants state that the requested

[4] Plaza Trust and Pension Trust are group trusts formed under and for the benefit of certain employee benefit plans of General Motors Corporation and its affiliates. Plaza Advisers serves as the investment adviser for both the Plaza Trust and Pension Trust and, in that capacity, has discretionary authority over their respective interests in the Partnership and the Fund. As of March 31, 1999, Pension Trust also owned approximately 7.4% of the Fund's outstanding securities.

relief meets the standards of section 6(c) and would relieve certain Limited Partners and their affiliated persons (and the Fund) of the burden of monitoring for compliance with the Act in connection with their independent and legitimate business and investment activities.

C. Section 17(a)

1. Section 17(a) of the Act makes it unlawful or any first- or second-tier affiliate of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. As noted above, applicants state that because the Partnership may be deemed to be a first- or second-tier affiliate of the Fund, section 17(a) may prohibit the Partnership from selling a limited partnership interest in the Partnership to the Fund. In addition, applicants state that because Plaza Trust, the Limited Partners, and the Future Affiliates may be deemed to be first- or second-tier affiliates of the Fund, section 17(a) may prohibit Plaza Trust, the Limited Partners, and the Future Affiliates from acting in accordance with the terms of the Partnership Agreement and the Subscription Agreement.

2. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants request relief under sections 6(c) and 17(b) to permit the Fund to participate in the Partnership, and to permit Plaza Trust, the Limited Partners, and the Future Affiliates to act in accordance with the terms of the Partnership Agreement and the Subscription Agreement.

3. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that each Limited Partner will participate in the Partnership in proportion to each Limited Partner's commitment, and each Limited Partner will share *pro rata* in the costs, risks, and any profits earned in proportion to its investment, except as noted above. In addition, applicants state that the proposed investment by the Fund in the Partnership is consistent with the Fund's investment objective and policies as recited in the Fund's registration statement. Further, applicants state that the proposed investment is consistent with the general purposes of the Act.

4. Applicants state that investing in the Partnership will enable the Fund to further diversify its portfolio and to obtain exposure to Equity Investments while reducing investment transaction costs. Applicants submit that investing in the Partnership will provide the Fund with access to investment opportunities that do not exist with respect to the public markets in which the Fund principally invests. Applicants state that Equity Investments are typically direct investments in closely-held enterprises that have either limited or no securities publicly outstanding and about which there exists little or no publicly available information. Accordingly, the process of investing in Equity Investments requires detailed on-site investigation of the enterprise and complex negotiations regarding the terms of the potential investment.

5. As noted above, all Limited Partners other than the Fund that are admitted after the fifteenth business day following the first closing date will be required to pay an Additional Amount equal to a 1% monthly rate on their Catch-up Contribution. This monthly rate calculated over a one-year period would equal an annual rate of approximately 12%. The Fund will be required to pay an Additional Amount on its Catch-up Contribution at a rate equal to the then-prime rate, plus 2% per year.[5] Accordingly, if the prime rate were to exceed 10% prior to the time the Fund is admitted into the Partnership, the Fund would pay an Additional Amount calculated at a higher rate than that rate used to calculate the Additional Accounts for the other Limited Partners. Notwithstanding that the Fund may have to pay a higher Additional Amount than that applicable to other Limited Partners, applicants believe that the consideration to be paid by the Fund is reasonable and fair and does not involve overreaching. In exchange for the ability to gain admission to the Partnership after the final closing date (which occurred on January 19, 1999), to which all other Limited Partners are subject, applicants believe that it is reasonable and fair for the Fund to bear the risk of fluctuations in the prime rate between the final closing date and the date the Fund is admitted into the Partnership.

[5] Applicants state that as of June 1, 1999, the prime rate was 7.75%

D. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any first- or second-tier affiliate of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates. As noted above, the Partnership, the General Partner, the Limited Partners, Plaza Trust, Pension Trust, the Trust Affiliates, the Future Affiliates, the Manager, CGII, CGPE, the Associates, and Capital Group may be first- or second-tier affiliates of the Fund. Accordingly, an investment in the Partnership by the Fund may represent a joint arrangement among these entities for the purposes of section 17(d).

2. Rule 17d–1 under the Act permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment company is on a basis different from or less advantageous than that of the other participants.

3. Applicants believe that the proposed investment by the Fund in the Partnership satisfies the standards of rule 17d–1. Applicants state that the Fund will participate in the Partnership on terms that are comparable to the terms applicable to the other Limited Partners. Furthermore, both the profits to be earned and the risks to be incurred will be allocated among each of the Limited Partners *pro rata*, in direct proportion to each Limited Partner's investment. With regard to the payment by the Fund of an Additional Amount that could be at a rate higher than that for other Limited Partners, applicants state that the fund would receive a corresponding benefit not offered to other Limited Partners, namely the ability to participate in the Partnership after the final closing date.

Applicants' Conditions

Applicants agree that any other of the SEC granting the requested relief will be subject to the following conditions:

1. The Manager will waive its management fee (which includes administrative fees) payable by the Fund with respect to the Fund's net assets committed to the Partnership by the Fund's proposed investment in the Partnership. To effectuate this waiver, Fund assets represented by the Partnership interests purchased by the

Fund under the proposed investment will be excluded from the net assets of the Fund in the calculation of the management fee. As this waiver relates to the Manager's fee schedule, any Fund assets invested in the Partnership will be excluded from the Fund's assets before any fee calculation is made; thus, the Fund's aggregate net assets will be adjusted by the amount invested in the Partnership prior to determining the fee based on the Manager's fee schedule (the amount waived pursuant to this procedure is the ''Reduction Amount'' for purposes of condition no. 4, below). In addition, the Manager will credit against any future management fees payable to it in conjunction with the management of Fund assets other than those represented by the Partnership interests under the proposed investment, any amount of retroactive management fees, including any other amounts directly related to the retroactive management fees, payable to it from the first closing date that the Fund is admitted to the Partnership. The credit shall be applied to the management fee paid by the Fund for management of its assets after exclusion of the Fund's assets represented by its Partnership interests.

2. Any fees payable by the Fund to the Manager so excluded in connection with the proposed investment, as described in the application, will be excluded for all time, and will not be subject to recoupment by the Manager or by any other investment adviser at any other time.

3. The Fund's proposed investment in the Partnership will be no more than U.S. $95 million.

4. If the Manager waives any portion of its fees or bears any portion of its expenses in respect of the Fund (an ''Expense Waiver''), the adjusted fees for the Fund (gross fees minus Expense Waiver) will be calculated without reference to the Reduction Amount. If the Reduction Amount exceeds adjusted fees, the Manager will reimburse the Fund in an amount equal to such excess.

5. The Fund's proposed investment in the Partnership will not be subject to a sales load, redemption fee, distribution fee analogous to those adopted in accordance with rule 12b–1 by an investment company registered under the Act, or service fee (analogous to that defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.).

6. The Fund's proposed investment in the Partnership will be in accordance with the Fund's investment restrictions and will be consistent with its policies as recited in its registration statement.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14874 Filed 6–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23860; 812–10756]

WEBS Index Fund, Inc., et al.; Notice of Application

June 7, 1999.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit an open-end management investment company, whose portfolios will consist of the component securities of certain indices, to issue shares of limited redeemability; permit secondary market transactions in the shares of the portfolios at negotiated prices on the American Stock Exchange LLC (the ''AMEX''); permit affiliated persons of the portfolios to deposit securities into, and receive securities from, the portfolios in connection with the purchase and redemption of aggregations of the portfolios' shares; and permit certain portfolios to pay redemption proceeds more than seven days after the tender of shares of the portfolios for redemption.

APPLICANTS: WEBS Index Fund, Inc. (the ''Fund''), Barclays Global Fund Advisors (the ''Adviser''), and Funds Distributor, Inc. (the ''Distributor'').

FILING DATES: The application was filed on August 14, 1997. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 2, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, WEBS Index Fund, Inc., 400 Bellevue Parkway, Wilmington, Delaware 19809, Attn: Gary M. Gardner, Esq., Asst. Secretary.

FOR FURTHER INFORMATION CONTACT: Timothy Kane, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund is an open-end management investment company incorporated in the State of Maryland and registered under the Act. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser to the Fund. The Distributor, a broker registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and a member of the National Association of Securities Dealers, Inc., serves as the principal underwriter of the Fund's shares on an agency basis.

2. Currently, the Fund has 17 series operating and now proposes to establish 11 new series (each such new series, a ''WEBS Index Series''). Each WEBS Index Series will invest in a portfolio of equity securities (''Portfolio Securities'') generally consisting of component securities of a specified securities index compiled by Morgan Stanley Capital International Inc. (collectively, the ''MSCI Indices'').[1] The eleven proposed WEBS Index Series are the Brazil WEBS Index Series, the Greece WEBS Index Series, the Indonesia (Free) WEBS Index Series,[2] the South Korea WEBS Index

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[1] Each of the MSCI Indices is calculated by Morgan Stanley Capital International Inc. (''MSCI''). The trade price of the WEBS of each WEBS Index Series, as traded on the AMEX, will be disseminated over the facilities of the Consolidated Tape Association.

[2] MSCI calculates two indices in some countries in order to address the issue of restrictions on foreign ownership in such countries. The additional indices are called ''Free'' indices, and they include

Series, the Portugal WEBS Index Series, the Taiwan WEBS Index Series, the Thailand (Free) WEBS Index Series, the Turkey WEBS Index Series, the South Africa WEBS Index Series, the United States WEBS Index Series, and the EMU WEBS Index Series.

3. The investment objective of each WEBS Index Series will be to provide investment results that correspond generally to the price and yield performance of publicly traded securities in the markets that are represented by the particular MSCI Index. Each WEBS Index Series will be passively managed by the Adviser with the assistance of, among other things, computer analytics designed to help the Adviser select securities that will provide the returns of the relevant MSCI Index. A WEBS Index series generally will not hold all of the issues that comprise the subject MSCI Index. Instead, each WEBS Index Series will attempt to hold a representative sample of the securities in the subject index, which will be selected by the Adviser using quantitative analytical models in a technique known as ''portfolio sampling.''[3] Using portfolio sampling, a WEBS Index Series will normally not replicate exactly the particular index. The Adviser expects that, over time, the ''expected tracking error'' of a WEBS Index Series relative to the performance of its corresponding index will be less than 5 percent.[4]

4. Shares of a WEBS Index Series (''WEBS'') will be sold in aggregations of 50,000 to 500,000 shares (''Creation Units'') depending on the WEBS Index Series. The price of a Creation Unit will be approximately $450,000 to $10,000,000 (based on the range of values of the Portfolio Securities of each WEBS Index Series as of April 30, 1999).

5. Creation Units may be purchased only by or through a Depository Trust Company (''DTC'') participant that has entered into an authorized participant agreement with the fund and the Distributor (''Authorized Participant''). WEBS generally will be issued in exchange for an in-kind deposit of securities and cash. The Fund also may sell WEBS on a ''cash only'' basis or permit a cash purchase option. An investor wishing to make an in-kind purchase of a Creation Unit from a WEBS Index Series will have to transfer to the Fund a ''Portfolio Deposit'' consisting of: (i) a portfolio of securities that has been selected by the Adviser to correspond to the returns on the relevant MSCI Index (''Deposit Securities''),[5] (ii) a cash payment equal per Creation Unit to the dividends accrued on the Portfolio Securities of the WEBS Index Series since the last dividend payment on the Portfolio Securities, net of expenses and liabilities (the ''Dividend Equivalent Payment''), and (iii) a cash payment or credit to equalize any differences between (a) the sum of the market value per Creation Unit of the Deposit Securities and the Dividend Equivalent Payment and (b) the net asset value (''NAV'') per Creation Unit of the WEBS Index Series (the ''Balancing Amount'' and, together with the Dividend Equivalent Payment, the ''Cash Component'').[6] Cash purchases of Creation Units will be made in the same manner as in-kind purchases except that an investor must pay the cash equivalent of the Deposit Securities. An investor purchasing a Creation Unit from a WEBS Index Series will be charged a purchase fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from the WEBS Index Series incurring costs in connection with the purchase of the Creation Units.[7] Each WEBS Index Series will disclose in its prospectus the Transaction Fees charged by the WEBS Index Series for both in-kind and cash purchases of Creation Units.

6. Orders to purchase Creation Units will be placed with the Distributor who will be responsible for transmitting the orders to the Fund. The Distributor will issue confirmations of acceptance, issue delivery instructions to the WEBS Index Series to implement the delivery of Creation Units, and maintain records of the orders and the confirmations. The Distributors also will be responsible for delivering prospectuses to purchasers of Creation Units.

7. Persons purchasing Creation Unit-size aggregations of WEBS from a WEBS Index Series may hold the WEBS or sell some or all of them in the secondary market. WEBS will be listed on the AMEX and traded in the secondary market in the same manner as other equity securities. One or more AMEX specialists will be assigned to make a market in WEBS. The price of WEBS traded on the AMEX will be based on a current bid/offer market, and each WEBS is expected to have a market value of less than $50 (based on the value of the Portfolio Securities of each WEBS Index Series as of April 30, 1999). Transactions involving the sale of WEBS in the secondary market will be subject to customary brokerage commissions and charges. Applicants expect that the price at which WEBS trade will be disciplined by arbitrage opportunities by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that WEBS will not trade at a material discount or premium in relation to their NAV.

8. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX specialist, in providing for a fair and orderly secondary market, for WEBS, also may purchase WEBS for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of WEBS will include both institutional and retail investors.[8]

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only companies and share classes which foreigners may purchase.

[3] Under this technique, each stock in a benchmark index will be considered for inclusion in the portfolio of a WEBS Index Series based on its contribution to certain capitalization, industry, and fundamental investment characteristics. Subject to the need to comply with the diversification and other requirements of the Internal Revenue Code and other restrictions on portfolio management, the Adviser will seek to construct the portfolio of each WEBS Index Series so that, in the aggregate, its capitalization, industry, and fundamental investment characteristics perform like those of the subject MSCI Index. Certain WEBS Index Series may invest in securities that are not in its benchmark index to a limited extent.

[4] The tracking error will generally be greater for WEBS Index Series that have corresponding indices with fewer component stocks.

[5] The identity and number of shares of the Deposit Securities required for each WEBS Index Series will change as rebalancing adjustments and corporate events are reflected from time to time by the Adviser. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the securities constituting an MSCI Index. The Fund may permit or require the substitution of an amount of cash for any Deposit Security that is unavailable in sufficient quantity or for other reasons.

[6] On each business day, the Adviser will make available through the Distributor, immediately prior to the opening of trading on the AMEX, the list of the names and the required number of shares of each Deposit Security for each WEBS Index Series that permits in-kind purchases of Creation Units. The Portfolio Deposit will be applicable to purchases of Creation Units until a change in the Portfolio Deposit composition is next announced. In addition, the Fund will make available on each business day the Dividend Equivalent Payment effective through and including the previous business day, per outstanding WEBS of each WEBS Index Series, and the AMEX will make available throughout the trading day, the sum of the Dividend Equivalent Payment effective through and including the close of the previous trading session in the relevant securities market, plus the current value of the Deposit Securities as in effect on such day reflected in U.S. dollars at the prevailing exchange rate.

[7] To offset the Fund's brokerage and other transaction costs associated with using cash to purchase the requisite Deposit Securities, the investor will be required to pay a fixed purchase fee plus an additional variable charge expressed as a percentage of the Portfolio Deposit's NAV.

[8] WEBS will be registered in book-entry form only. DTC or its nominee will be the registered

Continued

9. WEBS will not be individually redeemable. WEBS will only be redeemable in Creation Unit-size aggregations through each WEBS Index Series. To redeem an investor will have to accumulate enough WEBS to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive a portfolio of securities generally consisting of the Deposit Securities in effect on the date the redemption request is received, together with a ''Cash Redemption Payment'' consisting of an amount identical to the amount of the Cash Component and equal to a proportional amount of the Dividend Equivalent Payment, plus or minus the Balancing Amount. An investor may receive the cash equivalent of a Portfolio Security (i) if neither the investor nor the Authorized Participant acting in its behalf may take delivery of the Portfolio Security in the applicable jurisdiction, (ii) if it is not possible to make deliveries of the Portfolio Security in the jurisdiction, or (iii) in certain other circumstances.[9] A redeeming investor will pay a Transaction Fee to offset the fund's transaction costs, whether the redemption proceeds are in-kind or cash. An additional variable charge, expressed as a percentage of the redemption proceeds, will be made for cash redemptions.

10. Because each WEBS Index Series generally will redeem Creation Units in-kind, a WEBS Index Series will not have to maintain large cash reserves for redemptions. Even when a WEBS Index Series will require or allow cash redemptions, the WEBS Index Series will liquidate Portfolio Securities or utilize temporary bank borrowings in order to obtain the necessary cash. This will allow the assets of each WEBS Index Series to be committed as fully as possible to tracking its MSCI Index. Accordingly, applicants state that each WEBS Index Series will be able to track its MSCI Index more closely than certain other investment products that must allocate a greater portion of their assets to reserves for cash redemptions.

11. Applicants state that no WEBS Index Series will be marketed or otherwise held out as a ''mutual fund.'' All marketing materials will refer to a WEBS Index Series as an ''investment company'' without reference to an ''open-end fund'' or ''mutual fund.''

owner of all outstanding WEBS. Records reflecting the beneficial owners of WEBS will be maintained by DTC or its participants.

[9] The Fund has a policy to permit residents of New Zealand and Australia to redeem Creation Units solely for cash because residents of those countries are subject to unfavorable tax consequences if they are eligible to receive in-kind redemption proceeds from the Fund.

Any advertising material where features of obtaining, buying or selling Creation Unit aggregations of WEBS are described, or where there is a reference to redeemability, will prominently disclose that WEBS are not redeemable and that owners of WEBS may acquire and tender WEBS for redemption to the Fund in Creation Unit aggregations only. The same type of disclosure will be provided in each WEBS Index Series' prospectus, statement of additional information (''SAI''), marketing or advertising materials published under rule 482 under the Securities Act of 1933 (''Securities Act''), and all reports to shareholders.[10] The Fund will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of WEBS.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a) (1) and (2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because WEBS will not be individually redeemable, applicants request an order under section 6(c) of the Act that would permit the Fund to register and operate as an open-end management investment company and issue WEBS that are redeemable in Creation Unit aggregations. Applicants state that investors may purchase WEBS in Creation Units from each WEBS Index Series and redeem Creation Units through each WEBS Index Series. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors generally should be able to sell WEBS in the secondary market at approximately their NAV.

[10] Applicants state that persons purchasing Creation Units will be cautioned in the prospectus or SAI that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent WEBS, and sells WEBS directly to its customers; or if it chooses to couple the creation of a supply of new WEBS with an active selling effort involving solicitation of secondary market demand for WEBS. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus or SAI also will state that broker-dealer firms should note that dealers who are not ''underwriters'' but are effecting transactions in WEBS, whether or not participating in a distribution of WEBS, are generally required to deliver a prospectus because the prospectus delivery exemption in section 4(3) of the Securities Act is not available to such transactions under section 24(d) of the Act.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in WEBS will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of WEBS in the secondary market will not comply with section 22(d) and rule 22c–1. Applicants request an exemption under section 6(c) of the Act from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing WEBS. Applicants maintain while there is little legislation history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (i) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices,

and (iii) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting WEBS to trade in the secondary market at negotiated prices. Applicants state (i) that secondary market trading in WEBS would not cause dilution for owners of WEBS because such transactions do not directly involve Fund assets, and (ii) to the extent different prices exist during a given trading day, or from day to day, these variances will occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in WEBS will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of WEBS and their NAV generally remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that local market delivery cycles for transferring Portfolio S ecurities to redeeming investors, together with local market holiday schedules, will require a delivery process in excess of seven calendar days for some WEBS Index Series in certain circumstances during the calendar year. Applicants request relief under section 6(c) from section 22(e) so that certain of the WEBS Index Series may pay redemption proceeds up to twelve calendar days after the tender of WEBS for redemption.[11] Except as otherwise subsequently disclosed in the prospectus or SAI for the relevant WEBS Index Series, applicants expect, however, that these WEBS Index Series will be able to deliver redemption proceeds within seven days at all other times.[12]

8. The principal reason for the requested exemption is that settlement of redemptions for the WEBS Index Series is contingent not only on the settlement cycle of the United States market but also on the currently practicable delivery cycles in the local markets for the underlying foreign securities of each WEBS Index Series. Applicants believe that the Fund will be able to comply with the delivery requirement of section 22(e) except where the holiday schedule applicable to the specific foreign market will not permit delivery of redemption proceeds within seven calendar days.

9. Applicants state that section 22(e) of the Act was designed to prevent unreasonable, undisclosed, and unforeseen delays in the payment of redemption proceeds. Applicants assert that their requested relief will not lead to the problems section 22(e) was designed to prevent. Delays in the payment of WEBS redemption proceeds will occur principally due to local holidays. Applicants state that the local holidays relevant to each WEBS Index Series (for the following year) will be listed in the series' prospectus or SAI or both, and these disclosure documents will identify instances in such year when, due to such holidays, more than seven days will be needed to deliver redemption proceeds.

Section 17(a) of the Act

10. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units may be ''in-kind'' rather than cash transactions, section 17(a) may prohibit affiliated persons of a WEBS Index Series from purchasing or redeeming Creation Units in-kind. Because the definition of ''affiliated person'' of another person in section 2(a)(3) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the WEBS Index Series so long as fewer than twenty Creation Units are extant. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit affiliated persons of the WEBS Index Series to purchase and redeem Creation Units.

11. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting affiliated persons of the WEBS Index Series described above from purchasing or redeeming Creation Units. The composition of a Portfolio Deposit made by a purchaser or given to a redeeming investor will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for an affiliated person of a WEBS Index Series to effect a transaction detrimental to the other holders of WEBS. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the WEBS Index Series.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a new WEBS Index Series of the Fund, whether identical or similar to a WEBS Index Series, by means of filing a post-effective amendment to the Fund's registration statement or by any other means, unless applicants have requested and received with respect to such new series, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission.

2. Each WEBS Index Series' prospectus will clearly disclose that, for purposes of the Act, WEBS are issued by the WEBS Index Series and that the acquisition of WEBS by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

[11] Specifically, applicants request that the (i) Brazil WEBS Index Series be permitted to make redemption payments up to ten calendar days after the tender of a Creation Unit for redemption, (ii) Indonesia (Free) WEBS Index Series be permitted to pay redemption proceeds up to twelve calendar days after the tender of a Creation Unit for redemption, (iii) South Korea WEBS Index Series be permitted to pay redemption proceeds up to ten calendar days after the tender of a Creation Unit for redemption, (iv) Taiwan WEBS Index Series be permitted to pay redemption proceeds up to eleven calendar days after tender of a Creation Unit for redemption, (v) Thailand (Free) WEBS Index Series be permitted to pay redemption proceeds up to ten calendar days after tender of a Creation Unit for redemption, (vi) Turkey WEBS Index Series be permitted to pay redemption proceeds up to ten calendar days after tender of a Creation Unit for redemption, and (vii) EMU WEBS Index Series be permitted to pay redemption proceeds up to twelve calendar days after tender of a Creation Unit for redemption. Applicants do not request relief from section 22(e) with respect to the other four WEBS Index Series.

[12] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

3. As long as the Fund operates in reliance on the requested order, the WEBS will be listed on a national securities exchange.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14873 Filed 6–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 14, 1999.

An open meeting will be held on Monday, June 14, 1999, at 10:00 a.m., in Room 1C30.

Closed meetings will be held on Monday, June 14, 1999, following the 10:00 a.m. open meeting and on Thursday, June 17, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meetings in a closed session.

The subject matter of the open meeting scheduled for Monday, June 14, 1999, at 10:00 a.m., will be:

The Commission will hear oral argument on appeal by the Division of Enforcement from an administrative law judge's initial decision. For further information, please contact Joan L. Loizeaux at (202) 942–0950.

The subject matter of the closed meeting scheduled for Monday, June 14, 1999, following the 10:00 a.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Thursday, June 17, 1999, at 11:00 a.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated; June 7, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15056 Filed 6–9–99; 3:46 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41475; File No. SR–CBOE–99–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market-Maker Surcharge Fee Schedule

June 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III and below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage.*[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to to CBOE Rule 2.40, the Equity Floor Procedure Committee (''Committee'') approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract)[4]
Level Three (QHN)	4)$0.08	$0.00
Disney (DIS)	0.08	0.00
Echostar Communications (QHS)	0.15	0.00
Terayon Communications (TUN)	0.11	0.00
Manugistics Group, Inc. (ZUQ)	0.17	0.00
Taiwan Semiconductor (TSM)	0.03	0.00
Veeco Instruments, Inc. (QVC)	0.12	0.00
Airtran Holdings, Inc. (VJQ)	0.25	0.00

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

[4] The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract) [4]
Amerisource Health (AAS)	0.10	0.00
Finish Line Inc	0.15	0.00
Kemet Corporation (KQE)	0.20	0.00
Florida Panthers (PAW)	0.15	0.00
Pegasus Systems (PUG)	0.15	0.00
Lucent Technologies (LU)	0.12	0.00
NCR Corp.	0.12	0.00
HMT Technology (HTQ)	0.12	0.00
Estee Lauder (EL)	0.09	0.00
iMall Incorporated (IUM) **	0.10	0.00

These fees will be effective as of June 1, 1999, except for the surcharge and change in the Order Book Official brokerage fee for iMall Incorporated (which is a newly listed class) which went into effect on May 27, 1999. All of the fees will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) [5] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) [6] and subparagraph (f)(2) of Rule 19b–4 thereunder. [7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. [8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–22 and should be submitted by July 2, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14868 Filed 6–10–99; 8:45 am]

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[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41476; File No. SR–DTC–99–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to DTC's Enhancement of its Repo Tracking System

June 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 19, 1999, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change enhances DTC's Repo Tracking System (''RTS'') [2] to enable participants to use a new participant terminal system (''PTS'') function to cancel principal and income (''P&I'') distributions that result from RTS tracking.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

[1] 15 U.S.C. 78s(b)(1).

[2] For a detailed description of RTS, refer to Securities Exchange Act Release No. 28765 (January 10, 1991), 56 FR 1832.

in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide participants with additional flexibility in their use of RTS. Under RTS, a participant that has purchased a security (''repo buyer'') is obligated to make payments on future P&I distributions, other than the final distribution, to the participant recorded in RTS as the seller of the security (''repo seller''). At issue is the concern for a P&I distribution which includes a principal payment large enough to significantly affect the value of the securities. In such cases, RTS tracking of the distribution might expose the repo buyer to significant credit risk until a related ''mark-to-market'' payment is received from the repo seller.

To control this risk, DTC's current procedures permit the repo buyer to unilaterally cancel a particular P&I payment through RTS at the participant level by submitting a hard copy letter of instruction to DTC by 11:30 a.m. (ET) on the distribution payment date. The rule change provides a PTS function, called PIAR (Principal and Income Adjustments resulting from Repurchase agreements), to submit instructions to cancel a P&I payment, and thus eliminate the need to submit a hard copy letter of instruction.[4] Participants will be charged the current $.09 PTS inquiry fee for each PIAR PTS inquiry and the same $.31 fee currently charged for RTS adjustments for each credit or debit adjustment that results from a PIAR entry.

Under the rule change, participants will be able to use the new PIAR PTS function to review and cancel P&I payments resulting from RTS tracking. The PIAR function will allow repo buyers to cancel P&I payments scheduled to be credited to the repo seller on payable date and it will also allow participants to view all of their repo P&I payments, both as repo buyer and repo seller, for the current day.

DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(A) of the Act[5] and the rules and regulations thereunder because the proposed rule change will give participants greater flexibility in controlling risk without substantially changing the current operation of RTS.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was developed in response to an ongoing effort by The Bond Market Association to address industry concerns regarding potential credit exposure as a result of principal paydowns. The proposed rule change has been developed through discussions with several participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[6] and pursuant to Rule 19b–4(f)(1)[7] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC.

All submissions should refer to File No. SR–DTC–99–13 and should be submitted by July 2, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14869 Filed 6–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41478; File No. SR–NSCC–99–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change That Establishes Additional Procedures for Class A Surveillance of Certain Settling Members and Permits the Collection of Clearing Fund and Other Collateral Deposits From These Settling Members

June 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 10, 1999, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and amended on June 2, 1999, the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through May 31, 2000.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] DTC has included in its filing an Important Notice to Participants, dated April 19, 1999, which describes the rule change enhancements to RTS and includes a new section of the dividend service guide relating to PIAR. DTC's filing is available for inspection at the Commission's Public Reference Room or through DTC.

[5] 15 U.S.C. 78q–1(b)(3)(A).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78(b)(1).

[2] Letter from Julie Beyers, Vice President and Associate Counsel, NSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (June 2, 1999).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the temporary approval of additional procedures which govern the placement of NSCC members on Class A surveillance and the clearing fund deposit and other collateral requirements for such members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC seeks to extend the temporary approval of a rule change governing the application of Class A surveillance procedures and the additional collateralization requirements to settling members that engage in certain over-the-counter (''OTC'') market making activities.[4] To decrease the risk associated with OTC market makers, NSCC has added Addendum O to its rules and procedures. Addendum O permits NSCC to place setting members on Class A surveillance under certain conditions.

NSCC has also adopted an interim collateralization policy which permits NSCC in its discretion to require settling members that clear for or are themselves OTC market makers and that are placed on Class A surveillance to deposit special collateral in amounts based upon the settling member's OTC activities relative to its amount of excess net capital.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because the surveillance procedures and additional collateralization will facilitate the prompt and accurate clearance and settlement of securities transactions and in general will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and generally to protect investors and the public interest. As the Commission previously stated, it finds that the proposed rule change is consistent with NSCC's obligations under the Act because it will help NSCC protect itself, its members, and investors from members that pose an increased risk because of their involvement in OTC market making.[6]

Under the proposal, NSCC will continue to have the authority with respect to settling members which participate in OTC market making activities or clear for correspondents that engage in such activity (1) to place such members on Class A surveillance, (2) to require such members to post additional collateral with NSCC, and (3) to calculate an alternative clearing fund requirement for such members when additional risk factors are present. Collectively, the higher level of surveillance, the additional level of collateralization, and the alternative clearing fund requirements should help ameliorate NSCC's exposure which in turn should assist NSCC in fulfilling its obligations under the Act to safeguard securities and funds for which it has control of or is responsible for and to protect investors and the public interest.[7]

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing because accelerated approval will allow NSCC to continue to utilize its Class A surveillance procedures, the interim collateralization policy, and the alternative clearing fund formula without interruption until it makes a filing requesting permanent approval of the rule change. This will allow NSCC to continue to protect itself and its participants from the potential risks of OTC market making activities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of such filings will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–99–06 and should be submitted by July 2, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–99–06) be, and hereby is, approved on an accelerated basis through June 4, 2000.

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] For a complete discussion of NSCC's Class A surveillance procedures and collateralization requirements, refer to Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR–NSCC–95–17]; 38622 (May 19, 1997), 62 FR 27285 [File No. SR–NSCC–97–04]; and 40034 (May 27, 1998), 63 FR 30277 [File No. SR–NSCC–98–03].

[5] 15 U.S.C. 78q–1

[6] *Supra* note 3.

[7] As noted in each of the previous approval orders, prior to filing a proposed rule change seeking permanent approval of the procedures set forth in this temporary approval order, NSCC shall present to the Commission a more detailed report on its findings regarding the adequacy of the controls and discussing any changes to be made to the procedures.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14867 Filed 6–10–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41477; File No. SR–NSCC–99–04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding NSCC's Annuities Processing Service

June 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 30, 1999, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends NSCC's Annuities Processing Service (''APS'') to change the name of the service to ''Insurance Processing Service.'' In addition, the rule change makes corresponding name and clarification changes to reflect that NSCC's members may use the service to submit data, information, and settle payments for life insurance products as well as for annuity products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On September 19, 1997, the Commission approved NSCC's rule filing to establish APS,[3] which provides a centralized communication link connecting participating insurance carriers with their multiple distribution channels, including broker-dealers, banks, and the broker-dealers' or banks' affiliated insurance agencies (''distributors'') where appropriate. Phase one of the APS system provided NSCC participants with the ability to send and receive daily information regarding annuity contract positions, the value of the contract's underlying assets, and the settlement of commission monies.

The Commission approved phase two of APS on December 16, 1998,[4] which provides distributors with the ability to transmit to insurance carriers information regarding annuity applications and subsequent premium payments and to settle initial and subsequent premiums. In addition, phase two enables insurance carriers to transmit to distributors information about transactions and events that have occurred with respect to existing annuity contracts.

On October 8, 1998,[5] the Commission approved a rule change to permit NSCC to transmit data and information and to settle payments regarding life insurance products as well as annuity products. At that time, no changes were made to the rules which referred only to annuities processing. Thus, the purpose of the proposed rule change is to change the name of the APS service and make corresponding name and clarification changes to the related provisions of NSCC's rules and procedures to reflect the nature of the insurance processing services available to NSCC's members.[6]

NSCC believes that the proposed rule change is consistent with Section 17A of the Act[7] and the rules and regulations thereunder because it clarifies NSCC's rules and procedures to more accurately reflect the nature of its annuity and insurance processing system, which facilitates the prompt and accurate clearance and settlement of securities transactions by providing centralized communication between insurance carriers and broker-dealers, banks, and their affiliated insurance agencies.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[8] and pursuant to Rule 19b–4(f)(1)[9] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416, for a detailed description of APS.

[4] Securities Exchange Act Release No. 40799 (December 16, 1998), 63 FR 71175.

[5] Securities Exchange Act Release No. 40634 (November 4, 1998), 63 FR 63096.

[6] Under the rule change, NSCC is also deleting the provisions of Section I.B of Addendum Q which were originally included by mistake.

[7] 15 U.S.C. 78q–1

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549.

Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–99–04 and should be submitted by July 2, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41479; File No. SR–NYSE–98–32]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Thereto Relating to Shareholder Approval of Stock Option Plans

June 4, 1999.

I. Introduction

On October 13, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's shareholder approval policy (''Policy'') with respect to stock option and similar plans. The proposed rule change was published for comment in the **Federal Register** on November 19, 1998.[3] The Exchange submitted an amendment to the filing on November 17, 1998.[4] On December 26, 1998, the Commission extended the comment period until January 25, 1999.[5] The Commission received 19 comments on the proposal in response to both the regular and extended comment periods.[6] On March 12, 1999, the Exchange submitted Amendment No. 2.[7] This order approved the proposal, as amended, on a pilot basis until September 30, 2000.

II. Background

The Exchange proposes to amend paragraphs 312.01, 312.03, and 312.04 of the Listed Company Manual (''Manual''). The proposal amends the Exchange's Policy with respect to stock option and similar plans (''Plans'').

The Policy requires, as a prerequisite to listing, shareholder approval of Plans or any other arrangement pursuant to which either officers or directors acquire stock. There are, however, four exemptions from this requirement, one of which is an exemption for Plans that are ''broadly-based.'' Historically, the Exchange had not provided a definition of what constituted a ''broadly-based'' Plan other than to state that such a Plan must include employees other than officers and directors. The only example in the Policy of such a Plan was an employee stock option plan, or ''ESOP.''

In December 1997, the Exchange filed a proposed rule change amending the Policy. The proposal was amended on January 28, 1998 and was then published for public comment by the Commission (''Original Proposal'').[8] The Original Proposal codified, among other things, existing Exchange interpretations regarding ''broadly-based'' Plans. Specifically, the Original Proposal stated that the determination of whether a Plan was ''broadly-based'' required the review of a number of factors, including the number of persons included in the Plan, and the nature of the company's employees, such as whether there were separate compensation arrangements for salaried and hourly employees. The proposal also codified a non-exclusive safe harbor for Plans in which at least 20 percent of a company's employees were eligible, provided that the majority of those eligible were neither officers nor directors.[9] The Commission did not receive any comments on the proposal, and subsequently approved it, as amended, on April 8, 1998.[10]

Following the Commission's approval of the Original Proposal, the Exchange and the Commission received a significant number of inquiries and comments regarding the Original Proposal. Many of these inquiries and comments originated from the institutional investor community and focused on the definition of ''broadly-based.'' Commenters expressed general concern that, without shareholder approval, companies could dilute the value of existing shares by creating new Plans.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] /Securities Exchange Act Release No. 40679 (November 13, 1998), 63 FR 64304.

[4] Letter from James E. Buck, Senior Vice President and Secretary, NYSE to Richard C. Strasser, Assistant Director, Division of Market Regulation, SEC, dated November 25, 1998 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified the reason why its proposed ''broadly-based'' definition is limited to ''exempt employees'' under the Fair Labor Standards Act of 1938 in the eligibility part of the definition but not in the participation part.

[5] In response to the solicitation of comments, the Commission received a request to extend the comment period. Letter from Sarah Teslik, Council of Institutional Investors, to Jonathan G. Katz, Secretary, SEC, dated November 20, 1998 (''CII Comment Period Extension Request''). As originally noticed, the comment period expired on December 10, 1998.

[6] Letters from Aldo Del Nou to Commissioner (sic) Arthur Levitt, SEC, dated October 17, 1998; CII Comment Period Extension Request; Kurt N. Schacht, Chief Legal Officer, State of Wisconsin Investment Board to Jonathan G. Katz, Secretary, SEC, dated November 30, 1998; Nell Minow, Lens Investment Management, LLC, to Jonathan G. Katz, Secretary, SEC, dated December 1, 1998; Sarah Teslik, Council of Institutional Investors, to Jonathan G. Katz, Secretary, SEC, dated November 30, 1998 (''CII–I''); Howard D. Sherman, President, Institutional Shareholder Services, to Jonathan G. Katz, Secretary, SEC, dated December 2, 1998; James E. Heard, Chairman and Chief Executive Officer, Proxy Monitor, to Jonathan G. Katz, Secretary, SEC, dated December 4, 1998; Richard Ferlauto, Managing Director, Proxy Voter Services, to Jonathan G. Katz, Secretary, SEC, dated December 8, 1998; Linda S. Selbach, Barclays Gloval Investors, to Jonathan G. Katz, Secretary, SEC, dated December 7, 1998; Lewis A. Sanders, Sanford C. Bernstein & Co., Inc. to Jonathan G. Katz, Secretary, SEC, dated December 9, 1998; Kay R.H. Evans, Executive Director, Maine State Retirement System, to Jonathan G. Katz, Secretary, SEC, dated December 10, 1998; Jack M. Marco, The Marco Consulting Group, to Jonathan G. Katz, Secretary, SEC, dated December 9, 1998; George M. Philip, Executive Director, New York State Teachers' Retirement System, to Jonathan G. Katz, Secretary, SEC, dated December 9, 1998; Kayla J. Gillan, General Counsel, California Public Employees' Retirement System, to Jonathan G. Katz, Secretary, SEC, dated December 9, 1998 (''Cal PERS''); John J. Sweeney, President, American Federation of Labor and Congress of Industrial Organizations, to Jonathan G. Katz, Secretary, SEC, dated December 10, 1998 (''AFL–CIO''); Bart Naylor, Director, Corporate Affairs, International Brotherhood of Teamsters, to Jonathan G. Katz, Secretary, SEC, dated December 10, 1998; Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated December 10, 1998; Michelle Edkins, Corporate Governance Executive, Hermes Investment Management Limited, to Jonathan G. Katz, Secretary, SEC, dated January 18, 1999; Sarah Teslik, Council of Institutional Investors, to Jonathan G. Katz, Secretary, SEC, dated April 14, 1999 (''CII–II'').

[7] Letter from James E. Buck, Senior Vice President and Secretary, NYSE to Jonathan G. Katz, Secretary, SEC, dated March 11, 1999 (''Amendment No. 2''). In Amendment No. 2, the Exchange submitted a sunset provision pursuant to which the proposed rule change will expire on September 30, 2000. Amendment No. 2 also contained the Exchange's response to the comment letters.

[8] Securities Exchange Act Release No. 39659 (February 12, 1998), 63 FR 9036 (February 23, 1998).

[9] According to the NYSE, the 20% test was based upon the ''rule of thumb'' the Exchange had historically used in determining whether a Plan was ''broadly-based.'' *See Request for Comment on NYSE Shareholder Approval Requirement for Broadly-Based Stock Option Plans* at 2 (''Request for Comment'').

[10] Securities Exchange Act Release No. 39839, 63 FR 18481 (April 15, 1998).

In response, the Exchange issued the Request for Comment regarding the definition of ''broadly-based'' Plans. The Exchange received 166 comments in response to that request.[11] According to the NYSE, the listed company community favored retaining the new Policy, while the institutional investor community favored a narrower definition of what constituted a ''broadly-based'' Plan, and suggested that such definition be an exclusive test instead of a non-exclusive safe harbor.

A Stockholder Approval Policy Task Force (''Task Force'') was subsequently established to review the comments and to make recommendations concerning possible changes to the Policy. The Task Force was composed of representatives of the Exchange's Legal Advisory Committee, Individual Investor Committee, Pension Manager Advisory Committee, and Listed Company Advisory Committee. In addition, member of other Exchange constituencies, including the Council of Institutional Investors, were represented on the Task Force.

Following its deliberations, the Task Force recommended that certain changes be made to the definition of a ''broadly-based'' Plan.[12] In addition, the Task Force recommended that the Exchange actively consider setting an overall dilution maximum for all non-tax qualified Plans that otherwise would be exempt from shareholder approval requirements. The Task Force recommended that the Exchange direct it or another appropriate group to immediately consider this issue with a target date of the NYSE's September 1999 Board meeting. The Task Force further stated that the goal should be to complete this study in time for Exchange review prior to the year 2000 proxy statement season.

This proposed rule change implements the first three Task Force recommendations to change the existing rule.[13] The proposed rule change amends the definition of what constitutes a ''broadly-based'' Plan and adds some general language concerning approval of Plans under the Policy. In addition, in its filing, the Exchange stated that it had adopted the Task Force's final recommendation and had convened a new task force (''Dilution Task Force'') to consider a possible listing standard that would include a dilution test.

III. Description of Proposal

The proposed rule change amends the definition of ''broadly-based'' which is used to determine whether a Plan is exempt from shareholder approval. The new definition would classify a Plan as ''broadly-based'' if, pursuant to the terms of the Plan: (a) at least a majority of the issuer's full time, exempt U.S. employees [14] are eligible to participate under the Plan; and (b) at least a majority of the shares awarded under the Plan (or shares of stock underlying options awarded under the Plan) during the shorter of the three-year period commencing on the date the Plan is adopted by the issuer, or the term of the Plan itself, are made to employees [15] who are not officers or directors of the issuer.[16] The new definition is an exclusive test, not a safe harbor as in the current rule.

The proposed rule change also expresses the Exchange's general policy towards Plans. The Exchange recognized the increased use of Plans by companies and expressed its view that companies should consider submitting Plans to shareholders, whether or not required under the Exchange's Policy.

In its filing, the Exchange stated that the proposed changed blend tests based both on Plan eligibility and awards. Furthermore, the Exchange expects that the proposed rule change will provide certainty because it is an exclusive test applicable to all Plans and because it adopts the Commission's definition of ''officer.'' [17]

IV. Summary of Comments

The Commission received 19 comments on the proposed rule change.[18] Of the 19 comment letters, 13 letters opposed the proposed rule change,[19] three comment letters offered qualified support for the proposal,[20] one comment letter supported the proposed rule change,[21] and one comment requested an extension of the comment period.[22] One letter did not address the issues raised in the proposed rule change.[23]

These comment letters raised a number of concerns regarding the amendment to the Policy. The Exchange submitted a written response to the issues raised in the comment letters in Amendment No. 2.[24] The following discussion summarizes the issues raised by the commenters and the Exchange's response.

A. Dilution

A majority of the comment letters expressed concern over the lack of a dilution test.[25] Dilution refers to the diminished value of a shareholder's investment that can occur when stock options are granted. These commenters believe that the expanded definition of ''broadly-based'' Plans will essentially permit unlimited dilution to occur and

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[11] Interested persons are directed to the public file located at the Commission's Public Reference Room, 450 Fifth Street, N.W. Washington, D.C. 20549 to review the comments received by the NYSE. The public file contains: (1) a Summary of Comment Letters (Exhibit B); (2) the NYSE Request for Comment (Exhibit 2A); (3) the Comment Letters in Response to the Request for Comment (Exhibit 2B); and (4) the Report of the NYSE Task Force (Exhibit 2C). The public file may also be inspected at the principal office of the NYSE.

[12] *See Report of the Special Task Force on Stockholder Approval Policy.*

[13] *Id.*

[14] *See* 29 U.S.C. 213(a) for the definition of ''exempt'' employees.

[15] In Amendment No. 1, the Exchange explained that the proposed definition of ''broadly-based'' would be a two-part test. In the first prong, a majority of the company's full-time employees who are ''exempt'' employees must be eligible to receive stock. As a general matter, ''exempt'' employees are salaried employees in an executive, administrative, or professional capacity. According to the NYSE, the Task Force recommended limiting this prong of the definition to ''exempt employees'' because non-exempt employees are often covered by compensation arrangements that do not include stock options.

The second part of the test requires that at least a majority of the shares awarded under the Plan be awarded to employees who are not officers or directors. This part of the test is not limited to ''exempt'' employees, allowing the calculation of the ''majority of shares awarded'' to include both ''exempt'' and non-exempt employees who are not officers or directors. According to the NYSE, the focus of this requirement is to ensure that a company actually implements a Plan in a ''broadly-based'' fashion. In this regard, it does not matter whether the awards to persons other than officers or directors are to ''exempt'' or non-exempt employees.

[16] In this regard, the Exchange proposes to use the definition of ''officer'' contained in Commission Rule 16a–1(f) under the Act, 17 CFR 240.16a–1(f).

[17] *See supra* note 16.

[18] *See supra* note 6.

[19] *See* letters from State of Wisconsin Investment Board; Lens Investment Management; CII–I; Institutional Shareholder Services; Proxy Monitor; Proxy Voter Services; Barclays Global Investors; Maine State Retirement System; Marco Consulting Group; AFL–CIO; Teamsters; Hermes Investment Management; and CII–II.

[20] *See* letters from Sanford C. Bernstein; NY State Teachers' Retirement System; and Cal PERS. Cal PERS, while not specifically addressing the substance of the proposed amendments, suggested that they should only be approved for one year while a dilution test is developed. As discussed below, Cal PERS also supported disclosure.

[21] *See* letter from Investment Company Institute urging adoption of the proposed rule change and stating that the proposed definition addresses many of their previouis concerns with the existing rule.

[22] *See* CII Comment Period Extension Request letter. This letter did not address the proposed rule change's substantive issues.

[23] *See* letter from Mr. Del Nou. Mr. Del Nou's letter requested that shareholders be offered stock options and raised purported constitutional issues regarding shareholder voting rights.

[24] *See supra* note 7.

[25] *See* letters from State of Wisconsin Investment Board; Lens Investment Management; CII–I; Institutional Shareholder Services; Proxy Monitor; Barclays Global Investors; Sanford C. Bernstein; Maine State Retirement System; NY State Teachers' Retirement System; Cal PERS; AFL–CIO; Investment Company Institute Hermes Investment Investment Management; and CII–II.

allow unlimited amounts of equity to be given to Plan participants without share holder approval.[26] Many of these commenters questioned why any Plan that has a dilutive effect on a shareholder's investment should be exempt from a shareholder vote. For example, one commenter observed that shareholders are concerned with the cost of equity-based Plans and not the business decision of who can (or does) receive equity-based compensation.[27] Another commenter suggested that the grant of stock options may also have the effect of a stealth hostile takeover from within the company be diluting shareholders' voting power.[28] Several commenters stated that the definition of ''broadly-based'' Plans should only be adopted in conjunction with adoption of a dilution test and were opposed to the NYSE's decision to consider a dilution test at a later date.[29] Other commenters believe there should be no exemption for ''boardly-based'' Plans and that a dilution commenters believe there should be no exemption for ''broadly-based'' Plans and that a dilution test should be the sole standard.[30]

In Amendment No. 2, the Exchange responded to the comments on dilution. The Exchange stated that while it agrees that it is appropriate to consider a dilution test and is committed to doing so, a dilution test raises numerous policy issues that it was unable to consider in time for the 1999 proxy season. Moreover, the Exchange did not originally seek comment on this issue in the Request for Comment. The Exchange further expressed its commitment to review this issue by amending its proposal to be effective only until September 30, 2000. The Exchange stated that while it expects to propose a dilution test to replace the revised stockholder approval test in advance of the year 2000 proxy season, it proposes to make the current changes to the ''broadly-based'' test effective through the 2000 proxy season in the event there is any unforseen delay in this schedule.

B. Conflict of Interest

Another area of concern for commenters was the apparent conflict of interest of officers and directors.[31] The commenters remarked on the inherent conflict of interest that arises because officers and directors themselves benefit from the Plans they cause a company to establish without shareholder approval and oversight. The comment letters expressed concern over the removal of shareholder oversight and suggested that where officers and directors are allowed to participate in a Plan, the Plan should not be allowed to be considered ''broadly-based.'' [32]

The Exchange contends that ''broadly-based'' Plans have long been exempt from shareholder approval requirements. The Exchange explained that the ''broadly-based'' exemption originally was adopted requirements. The Exchange explained that the ''broadly-based'' exemption originally was adopted because the NYSE believed that any potential concerns regarding preferential treatment of officers or directors would be mitigated if a Plan was boardly available to a company's employees. The Exchange, however, did reiterate its plan to examine whether to continue to rely on the concept of ''broadly-based'' Plans as a basis for exemption from the shareholder approval requirement or whether to abandon that standard in a favor of a dilution test.

C. The Use of an ''Exempt'' Employee Test

Several commenters expressed concerns about the proposed eligibility standard in the proposed rule.[33] As discussed above, the eligibility standard provides that in determining if a Plan is ''broadly-based,'' the Exchange will look at the number of ''exempt'' employees eligible to participate in the Plan. The term ''exempt'' employee is based upon the definition found in the Fair Labor Standards Act of 1934.[34] The commenters believe that limiting the eligibility requirement to require only a majority of a company's full-time ''exempt'' employees could potentially exclude a majority of a company's workforce. Many of the commenters quoted Department of Labor statistics showing that only about 25 percent of the overall U.S. workforce is classified as ''exempt.'' [35] According to these figures, on average, only 12.5 percent of a company's workforce would need to be eligible to participate for a Plan to be considered ''broadly-based'' under the NYSE proposed rule—and thus avoid a shareholder vote.[36] Several of these commenters also expressed concern over excluding low level workers from eligibility because they believed the proposed rule change could be interpreted as a disincentive to grant non-exempt employees stock options, or conversely as an incentive to make stock options available only to a privileged few.[37] Finally, commenters asserted that the NYSE's rationale for excluding non-exempt employees because they are covered by other compensation arrangements is not correct.[38]

In response, the Exchange states that it continues to believe that limiting the proposal to ''exempt'' employees is appropriate. NYSE states that the Task Force, which included representatives of listed companies, leading investor groups, and institutional investors, unanimously proposed the ''exempt'' employee distinction. The Task Force believed that stock options are primarily used to compensate ''exempt'' employees. Moreover, the Task Force expressed its belief that non-exempt employees generally seek other forms of compensation or benefits, such as cash, medical benefits, or retirement packages. The NYSE notes that the Task Force was aware that some parties thought that limiting this prong of the test to ''exempt'' employees was too narrow. Despite these contentions, the Task Force unanimously accepted the ''exempt'' employee distinction.

The Task Force's recommendations were further reviewed and considered by the Exchange's Board. In approving the proposal, the Board accepted the Task Force's recommendation and also

[26] *See* letters from State of Wisconsin Investment Board; Lens Investment Management; Institutional Shareholder Services; Proxy Monitor; Cal PERS; Hermes Investment Investment Management; and CII–II.

[27] *See* letter from Institutional Shareholder Services.

[28] *See* letter from Lens Investment Management.

[29] *See, e.g.,* letters from Lens Investment Management stating that ''under no circumstances should the Exchange be permitted to bifurcate the rulemaking in this way'' and letter from Institutional Shareholder Services stating that ''the proposed listing standard, absent a meaningful ''dilution'' test, is fundamently flawed.'' *See also* letter from State of Wisconsin Investment Board; and CII–II.

[30] *See* letters from State of Wisconsin Investment Board; Barclays Global Investors; Sanford C. Bernstein; Maine State Retirement System; Marco Consulting Group; and Hermes Investment Management.

[31] *See* letters from Lens Investment Management; CII–I; Proxy Voter Services; Sanford C. Bernstein; NY State Teachers' Retirement System; Cal PERS; Teamsters; and Hermes Investment Management. *See also* letter from AFL–CIO, which was concerned about Plans that allow board member participation.

[32] *See* letter from Proxy Voter Services. *See also* letter from Cal PERS stating that ''to the extent those who participate in the decision to approve a plan also may personally benefit from it, and obvious conflict of interest exists.''

[33] *See* letters from Lens Investment Management; CII–I; Institutional Shareholder Services; Proxy Voter Services; AFL–CIO; Marco Consulting Group; and Teamsters.

[34] *See supra* note 14.

[35] *See* letter from CII–I; Institutional Shareholder Services; Proxy Voter Services; AFL–CIO; and Marco Consulting Group.

[36] For example, the AFL–CIO stated that the ''definition effectively assures that ''broadly-based' plans will not be truly 'broadly-based.' ''

[37] *See* letters from Proxy Voter Services; AFL–CIO; and Teamsters.

[38] *See* letters from Proxy Voter Services; and AFL–CIO. In their letter, Proxy Voter Services stated that ''a growing number of companies include grant options and other types of stock awards to 'non-exempt' employees as part of their total compensation packages.''

endorsed limiting the test to ''exempt'' employees. According to the NYSE, the Board expressed its concern that not limiting the test to ''exempt'' employees could result in companies structuring their compensation programs to offer non-exempt employees stock options instead of other benefits that may be preferred by those employees simply to comply with the Exchange's shareholder approval policy, and not because it was an appropriate compensation policy. The Board believed that management should establish compensation policies based on what management believes is best for its company.

D. Participation Test

One commenter supported the participation prong of the proposed rule change.[39] The commenter stated that, by requiring review of awards granted during the first three years of a Plan, the Exchange recognized the importance of implementing a Plan in a truly ''broadly-based'' fashion.

Three commenters argued that the participation prong of the ''broadly-based'' test does not sufficiently prevent companies from granting a majority of options awarded under a Plan to executives after the three-year time period.[40] These commenters pointed out that a company could reserve a majority of shares to be awarded under a Plan and grant them to officers and directors after the three-year time period had elapsed.[41] Moreover, a company could either grant no awards during the initial time period or only a nominal amount and then make the remaining grants to executives after the three-year time period expires. In either of these scenarios, the commenters noted, the company would be in compliance with the proposed rule although shareholders would not have been provided the opportunity to approve the awards to executives. To resolve this, one commenter recommended limiting Plans to three years.[42] Another commenter suggested changing the test so that a majority of the shares must be awarded to nonofficers and directors over the entire life of the Plan or over a rolling three-year period.[43]

The Exchange recognizes that the three-year test could, in theory, allow a company to administer a Plan in a non-broadly-based manner after the initial three years. The Exchange stated, however, that it anticipates that companies will act in good faith, and it has no reason to believe that companies will drastically change their compensation policies in the later years of a Plan.

According to the Exchange, the Task Force specifically considered this issue and determined that if a Plan is to be exempt from shareholder approval, it is critical not only to require a broad group of employee eligibility, but also to require that a company administer a Plan in a ''broadly-based'' manner. However, when considering how to best measure a company's administration of a Plan, the Task Force decided that a three-year period was realistic. The Exchange expressed the Task Force's concern that imposing a one-year test could result in companies structuring their Plans to comply with Exchange rules instead of promoting sound compensation policies. For these reasons, the NYSE determined that the Task Force recommendation was reasonable, recognizing that is was a package of compromises, and that the Exchange needed to consider this recommendation in the context of the full Task Force report. Moreover, the Exchange noted that this issue may well be moot if the Exchange later implements a dilution test.[44]

E. Disclosure

Seven commenters requested that the Commission require full disclosure to shareholders of all Plans implemented without shareholder approval.[45] One commenter observed that shareholders have diminished access to important information regarding issues that are not approved by shareholder votes.[46]

F. Other Issues [47]

Three commenters suggested that the Commission should decide the issues on which shareholders can vote because of the competition between exchanges is gaining listed companies.[48] One commenter suggested that a uniform standard be applied to all exchanges to safeguard shareholder interests in this area.[49] Finally, several commenters argued that all Plans should be subject to shareholder approval.[50]

One commenter supported the proposed rule change as an exclusive test, rather than a non-exclusive safe harbor as under the existing rule.[51] This commenter believed it should ensure shareholder protection and provide greater certainty to the process.

V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[52] In particular, the Commission believes the proposal is consistent with the requirement of section 6(b)(5) of the Act.[53] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between issuers.

The Commission has carefully considered the proposed rule change and believes the amended proposed rule change to be consistent with the requirements of the Act. In approving the proposal, the Commission recognizes that the majority of the

[39] *See* letter from Investment Company Institute.

[40] *See* letters from Institutional Shareholder Services; Marco Consulting Group; and NY State Teachers' Retirement System.

[41] *See, e.g.,* letter from Marco Consulting Group, which stated that most stock option Plans last for 10 years.

[42] *See* letter from NY State Teachers' Retirement System.

[43] *See* letter from Institutional Shareholder Services.

[44] Plans approved under the rules approved today, however, will continue to be subject to the participation test. If a Plan is not administered in a ''broadly-based'' fashion during the first three years, shareholder approval will be required for any shares that the company later seeks to add to the Plan. The Exchange will review all listing applications seeking to add additional shares to any Plan approved under the rules approved today. Telephone call between Steven Walsh, NYSE, Michael Simon, Milbank, Tweed, Hadley & McCloy, and Kelly McCormick, SEC, on March 30, 1999.

[45] *See* letters from State of Wisconsin Investment Board; Lens Investment Management; CII–I; NY State Teachers' Retirement System; Cal PERS; Teamsters; and Hermes Investment Management; and CII–II.

[46] *See* letter from Teamsters.

[47] One comment letter, Sanford C. Bernstein, addressed concerns regarding key employee Plans (*i.e.,* non-broadly-based Plans that (a) provide that no single officer or director may acquire more than 1 percent of the issuer's common stock and (b) together with all non-broadly-based Plans of the issuer, do not authorize the issuance of more than 5 percent of the issuer's common stock at the time the Plan is adopted. The key employee exemptions were at issue in the Original Proposal and were not considered or amended in the current proposed rule change.

[48] *See* letters from CII–I; AFL–CIO and Cal PERS.

[49] *See* letter from Cal PERS, which argues that shareholder voting is a national issue and ''urges the Commission to take steps necessary to ensure that a uniform standard is applied to safeguard shareholders' interests in this area.'' *See also* letter from CII–II.

[50] *See* letters from State of Wisconsin Investment Board; Barclays Global Investors; Sanford C. Bernstein; Maine State Retirement System; Marco Consulting Group; and Hermes Investment Management. In addition, Lens Investment Management asserted that the Exchange had not adequately justified the exemption for ''broadly-based'' Plans.

[51] *See* letter from investment Company Institute.

[52] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[53] 15 U.S.C. 78f(b)(5).

commenters opposed the proposal and believed a dilution standard would be more appropriate. Nevertheless, the Commission believes that, by including a specific test to ensure that Plans are actually implemented in a ''broadly-based'' fashion, the proposed rule change is an improvement over the existing rule. Moreover, the proposed rule change amends the definition of ''broadly-based'' by making it an exclusive test instead of the current non-exclusive safe harbor. By providing issuers with an exclusive rule, all Plans reviewed by the Exchange will be subject to the same standards. This standardization of review should enable issuers to more easily comply with the Exchange's listing standards and prevent uneven application of the rule. Accordingly, this aspect of the proposed rule will help to ensure that, consistent with the Act, the rule is not designed to permit unfair discrimination among issuers.

The Commission is approving the rule change on a pilot basis until September 30, 2000 in order to give the NYSE time to develop a dilution test. Based on the task force's recommendations, the Exchange has established the Dilution Task Force to study the dilution issue and has stated that it currently expects to propose a dilution test to replace the revised ''broadly-based'' test by the year 2000 proxy season.[54] Accordingly, the Commission is satisfied, for the reasons discussed more fully below, that the proposed rule change should address concerns raised by commenters to the Original Proposal, while also satisfying the requirements of section 6(b)(5) of the Act.[55]

A. Conflict of Interest

A number of the commenters raised concerns about exempting from shareholder approval any Plan in which officers and directors can participate, because of the apparent conflict of interest. Upon careful review, however, the Commission is satisfied that this aspect of the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act for the reasons discussed below.

NYSE current rules and proposed rules will continue to require shareholders to vote on Plans pursuant to which officers and directors may acquire stock unless a Plan meets one of four exemptions set forth in the NYSE Manual.[56] As noted by the Exchange, one of these exemptions, the ''broadly-based'' exemption, has been recognized by the Exchange for many years and was implemented because of the belief that Plans available to a broad group of employees would alleviate concerns that the Plan could give preferential treatment to officers and directors. The Commission believes that it is reasonable for the NYSE to determine that Plans that are ''broad-based'' should be eligible for the exemption even though officers and directors may participate in the Plan because Plans that are truly ''broadly-based'' should provide sufficient protection to shareholders from officer and director conflicts of interest and self-dealing.

While the NYSE could decide to eliminate the ''broadly-based'' exemption, the Act does not dictate how a self-regulatory organization should regulate in this area. Rather, the Commission must find that a self-regulatory organization's proposed rules are consistent with the Act before they can be adopted.[57] The Commission believes that the rationale behind the ''broadly-based'' exemption is sound and will protect investors from self-dealing by officers and directors, consistent with the requirements of section 6(b)(5) of the Act.

B. Definition of ''Broadly-Based''

The proposal defines a ''broadly-based'' Plan as one in which at least a majority of the issuer's full-time ''exempt'' employees are eligible to participate.[58] In contrast, the current definition provides that a Plan would be considered ''broadly-based'' if at least 20 percent of all of a company's employees are eligible to receive stock or options under a Plan and at least half of those eligible are neither officers nor directors. In other words, the proposal limits the eligibility prong of the test to ''exempt'' employees while the current rule does not. Some comment letters suggested that the proposal unfairly limits the number and classification of employees eligible to participate in a Plan. Several commenters also were critical of limiting the eligibility prong to ''exempt'' employees because this excludes a large part of the workforce and could result in companies not offering such Plans to low level workers.

Upon review, however, the Commission notes that the proposal is not a significant change from the current approved standards. The current rule requires that 20 percent of a company's workforce be eligible, but only requires that 10 percent of those eligible be non-officers and directors. The proposed rule change requires that at least half of an issuer's full-time ''exempt'' workforce be eligible to participate. A number of comment letters cited to Department of Labor statistics, which state that 25 percent of the U.S. workforce is exempt. If this number is correct, the majority of employees eligible to participate should be approximately 12.5 percent, on average, which could result in a slight increase in required eligibility over the current rule. Although it is difficult to precisely compare these two measures, on the whole, the number of eligible employees measured to determine if a Plan is ''broadly-based'' under the proposed rule change is not significantly different from the existing approved rule. Accordingly, limiting eligibility to ''exempt'' employees does not appear to significantly alter the number of employees currently being offered participation in a Plan.

Several factors also minimize concerns about the eligibility prong of the proposed test. First, the Commission notes that nothing in the NYSE rules prevents companies from offering a Plan to more than ''exempt'' employees. The eligibility prong is the minimum required for a Plan to be eligible for the ''broadly-based'' exemption. Second, companies currently offering Plans to all employees except officers and directors already are not required to submit these Plans to a shareholder vote. The Commission believes it is unlikely that companies will change these Plans to comply with the minimum requirements of the rules approved today. Finally, the Commission notes that certain companies may need to expand the base of employees eligible for a Plan in order to meet the participation prong of the ''broadly-based'' definition. Thus, the proposed change to the eligibility prong appears to include a reasonable number of employees eligible to participate in Plans which should help to protect investors, pursuant to section 6(b)(5) of the Act.

The participation prong of the ''broadly-based'' definition requires that at least a majority of the shares awarded under a Plan during the shorter of the three-year period commencing on the Plan adoption date or the term of the

[54] Because there may be slippage in its schedule, the Exchange is proposing to extend the pilot through the year 2000 proxy season.

[55] The Commission notes that under Section 19(b)(2) of the Act, the Commission must approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules thereunder. The Commission must disapprove a proposed rule change only if it does not make such a finding. The Commission's standard of review for the proposed rule changes of self-regulatory organizations is determined by, among other things, Section 6(b) of the Act.

[56] *See* NYSE Manual Paragraph 312.03.

[57] *See supra* note 55.

[58] *See supra* notes 14 and 15.

Plan be made to employees who are not officers or directors of the issuer. In contrast, the current rule does not have any requirements regarding actual awards or grants under a Plan. The Commission believes that this portion of the proposal should help to ensure that Plans are ''broadly-based.'' To comply with the participation prong of the test, companies will need to monitor the awards granted to officers and directors under ''broadly-based'' Plans to ensure that officers and directors are not the primary recipients of such awards. Participation under ''broadly-based'' Plans also will be monitored by the Exchange to ensure compliance with the Exchange rules.[59] This should provide protection to investors, consistent with section 6(b)(5) of the Act, by ensuring that companies do not take advantage of the exemption by merely allowing non-executives to be eligible for awards under Plans without actually granting them awards.

While the participation prong is an improvement over the current rule in that it requires that Plans actually be administered in a ''broadly-based'' manner, the Commission recognizes that, as proposed, the participation requirement will only apply for the first three years of a Plan (or the term of the Plan if it is shorter than three years). Accordingly, as some commenters argued, for Plans that are longer than three years, companies could nominally comply with the participation requirement by granting no, or a small amount of, awards during the first three years of the Plan to non-executives and reserve the majority of shares to be awarded to officers and directors after the three years have elapsed.

In response to these concerns, the NYSE stated that it recognized that ''in theory a company could administer a Plan in a non-broadly based manner.'' [60] Nevertheless, the NYSE stated that it expects companies to act in good faith and has no reason to believe that a company will drastically change its compensation policy in later years of a Plan. The Commission agrees with the NYSE but expects the NYSE to monitor whether companies are continuing to administer Plans in a ''broadly-based'' manner after the initial three-year period to determine if changes need to be made to the participation prong of the test. While the Commission recognizes that the NYSE is working on a dilution standard that may replace the ''broadly-based'' standard by the next proxy season, the NYSE should monitor and notify those companies that are subject to this rule if it believes that they are not complying with the spirit of the rule by delaying actual awards under a Plan until the three-year period has expired.

If the NYSE proposes to retain the participation prong of the ''broadly-based'' test long with a dilution standard, the Commission requests further information on actual awards made by issuers to comply with the participation prong. The NYSE also should address whether the development of a rolling three-year period would give companies the flexibility they need to make awards under Plans while at the same time ensuring that Plans are administered in a ''broadly-based'' manner or some other alternative to address the concerns discussed above. In approving the participation prong with the three-year limit, the Commission has considered the need to provide companies with flexibility in administering awards under the Plan. The Commission believes that the sixteenth-month pilot period, along with the NYSE's monitoring of Plans complying with the ''broadly-based'' exemption, should help to ensure that any necessary changes will be made to the rule if companies violate the spirit of the rule by offering a majority of shares to offices and directors after the three-year period has lapsed.

C. Dilution Standard and Pilot

The Exchange has committed to study a dilution standard for determining when shareholder approval is necessary for Plans. As noted above, a substantial majority of comments expressed concern about the potential dilution of shareholder's equity upon the grant of stock options under a Plan. These commenters were generally critical of the NYSE's decision to consider dilution at a later date. While some of these commenters believed that a dilution test should replace the ''broadly-based'' exemption immediately, other believed the definition of ''broadly-based'' Plans should only be adopted along with a dilution test.

While the majority of commenters believe that dilution is a preferable standard over the current proposal, the Commission's standards for reviewing the NYSE's proposal is whether it is consistent with the Act. For the reasons discussed above, the Commission believes that, until such time as a dilution standard is developed, the proposal is a reasonable effort to clarify which Plans are ''broadly-based'' and therefore except from shareholder approval. Accordingly, the adoption of he proposed rule for the pilot period should protect investors in accordance with section 6(b)(5) of the Act by helping to ensure that only ''broadly-based'' Plans will be exempted from shareholder approval. In making this finding, as noted above, the Commission does have some questions about how certain portions of the two prong test will be implemented. The pilot period should provide the NYSE with necessary time to monitor the changes approved today and to address these questions if the NYSE determines that the ''broadly-based'' test should continue to be applied together with a dilution standard.[61]

The pilot period also should provide the NYSE with the necessary time to formulate a dilution standard. We note that one commenter suggested a one-year pilot and another commenter was critical of the proposed sixth-month sunset provisions, suggesting that it would unduly delay the adoption of a dilution standard.

The Commission believes, however, that it is appropriate to approve the proposed rule so that it is effective until September 30, 2000. The NYSE has shown its commitment to be responsive to the comments on dilution by immediately establishing the Dilution Task Force to consider this issue. The NYSE represents that it intends to consider adopting a dilution standard to be place prior to he next proxy season in the year 2000. Because the Commission recognizes that matters involving shareholder voting rights are extremely important and involve a wide variety of interested parties, the Commission believes that adoption of the proposed rule change until September 30, 2000 will ensure that the NYSE is given adequate time to consider and implement and alternative to the proposal. Further this schedule would not prevent the NYSE from replacing the proposal being approved today with a dilution standard prior to the pilot's expiration, assuming Commission approval pursuant to section 19(b) of the Act.[62]

Finally, we note that several commenters stated that disclosure of Plans adopted without shareholder

[59] *See supra* note 44.

[60] *See* Amendment No. 2, *supra* note 7.

[61] We note that nay extension of the current proposal would have to be approved by the Commission pursuant to Section 19(b)(2) of the Act. Of course, as detailed above, NYSE has indicated its intention to submit a proposal, pursuant to Section 19(b)(2) of the Act, to replace or supplement the pilot with a dilution standard. *See infra* note 62.

[62] We note that the Commission would expeditiously publish for comment and review any proposal submitted by the NYSE to adopt a dilution standard so that such a standard could be put in place as soon as possible.

approval should be required. The Division of Corporation Finance is presently reviewing Commission rules requiring disclosure of executive and director compensation (Item 402 of Regulations S–K; Item 10 of Schedule 14A) and director and director nominee qualifications and relationships (Items 401 and 404 of Regulation S–K), with a view toward determining whether to recommend changes to the Commission. One of the issues to be examined is the extent to which additional disclosure should be provided in registrant filings about non-shareholder approved Plans.

D. Conclusion

In summary, the Commission believes that the current proposal helps to address some of the earlier concerns raised by the NYSE's Original Proposal for determining when a Plan including officers and directors is ''broadly-based'' enough to be exempt from the shareholder approval requirements. The Original Proposal merely intended to codify the NYSE's existing policy interpreting the ''broadly-based'' exemption, which it had used for many years. While the Original Proposal was submitted to a full notice and comment period, no comments were received on the rule prior to its approval. Nevertheless, after Commission approval of the NYSE's rule, several commenters, particularly those representing institutional investors, raised concerns over the Commission's approval process as well as the NYSE's role in developing its definition of a ''broadly-based'' Plan.

Both the NYSE and the Commission have taken these concerns seriously. While the Original Proposal provided the NYSE with more flexibility in determining when a Plan was ''broadly-based'' and entitled to the exemption, the current proposal has the benefit of providing a clear bright line test. This should provide benefits to both investors and issuers consistent with section 6(b)(5) of the Act.

The NYSE has indicated its strong commitment to develop a dilution standard that potentially could replace the current proposal by the next proxy season. The Commission requests that any proposal by the NYSE to adopt a dilution standard be submitted to the Commission by October 15, 1999. This should provide the Commission with sufficient time to review and solicit comment on the proposal prior to the beginning of the proxy season in 2000. If the NYSE is unable to submit a proposal by this date, the Exchange must submit a status report by October 15, 1999 on the NYSE's progress in developing a dilution standard.[63]

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Exchange submitted Amendment No. 1 to clarify the use of the ''exempt'' employee definition in the eligibility prong of the test and not in the participation prong of the test. As discussed earlier, the Commission is satisfied that the use of ''exempt'' employees in determining the level of eligibility does not unfairly exclude a large number of employees. Because the amendment only serves to clarify and does not change the meaning or intent of the proposed rule, it does not raise any new regulatory issues. Therefore, the Commission believes good cause exists, consistent with section 6(b)(5) [64] and section 19(b) [65] of the Act, to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

The Commission also finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 amends the proposal so that it would be effective for a pilot period until September 30, 2000. As discussed above, this pilot period seems reasonable and should provide the NYSE with adequate time to monitor the rule as well as provide the NYSE with time to develop a dilution test. Amendment No. 2 does not substantially change the meaning or intent of the proposed rule change. Because Amendment No. 2 further explains the Exchange's commitment regarding the development of a dilution test and raises no new issues or regulatory concern regarding the proposed rule change, the Commission believes that good cause exists, consistent with section 6(b)(5) [66] and section 19(b) [67] of the Act, to approve the amendment on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether they are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–32 and should be submitted by July 2, 1999.

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[68] that the amended proposed rule change (SR–NYSE–98–32) is approved on a pilot basis until September 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[69]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14871 Filed 6–10–99; 8:45 am]

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[63] The Commission recognizes that the NYSE could decide, as some commenters suggested, to keep the ''broadly-based'' exemption in its rules and adopt a dilution standard as part of the test. Any request by the NYSE to change or extend the standard being adopted in this order must be submitted to the Commission no later than May 18, 2000 along with a monitoring report about the Plans utilizing the revised ''broadly-based'' exemption. Any new proposal containing the new definition approved today should also address the questions noted above about the three-year limit in the participation prong. Further, the monitoring report should include, at a minimum, information on the types and number of employees who are eligible to participate under a Plan, as well as information concerning actual awards being made under the Plans.

[64] 15 U.S.C. 78f(b)(5).

[65] 15 U.S.C. 78s(b).

[66] 15 U.S.C. 78f(b)(5).

[67] 15 U.S.C. 78s(b).

[68] 15 U.S.C. 78s(b)(2).

[69] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41481; File No. SR–PCX–99–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to 50-Up During High Volume, and/or High Volatility Situations

June 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 20, 1999,[3] the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the maximum permissible number of option contracts for orders that are executable through PCX's automatic execution system (''Auto-Ex'') to fifty contracts. Proposed new language is italicized.

¶ 4889 Unusual Market Circumstances

Rule 6.28(a)–(b)(8)—No change.

(9) The Exchange may increase the permissible size of orders that may be automatically executed over the Auto-Ex system to up 50 contracts, to be effected on a case-by-case basis in a particular option issue, or for all option issues, when two Floor Officials and one Floor Governor deem such an increase to be appropriate. Pursuant to this Rule, the ability to execute orders of up to 50 contracts will only occur during high volume or high volatility emergency situations. At all other times, the order size for Auto-Ex will remain to be the number of contracts permitted under Rule 6.87.

(c) and (d)—No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On May 28, 1999 the PCX filed Amendment No. 1. *See* letter to John Roeser, Attorney, Division of Market Regulation, Commission, from Robert P. Pacelio, Staff Attorney, PCX, dated May 27, 1999. In amendment No. 1, the Exchange made a technical modification to the proposed rule filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

In 1990, the Exchange implemented its Auto-Ex system through which public customer market and marketable limit orders may be executed automatically at the best bid or offer displayed at the time the order is entered into the Pacific Options Exchange Trading System (''POETS'').[4] Initially, Auto-Ex was limited to implementation in all equity options classes, for the number or contracts approved by the Options Floor Trading Committee (''OFTC''), at two trading posts and any option that became multiply traded.[5] In 1993, the Commission approved a proposal by the PCX to designate option orders of ten contracts or less in all options series, including Long-term Equity AnticiPation Securities (''LEAPS''), to be eligible for automatic execution through Auto-Ex.[6] In 1994, the Commission approved a proposal by the PCX to designate options orders of twenty contracts or less to be eligible for execution through Auto-Ex.[7] Currently, because Auto-Ex is only permitted to automatically execute option orders of twenty contracts or less, market and marketable limit orders of more than twenty contracts are routed by POETS to members on the trading floor for manual representation.

The PCX is now proposing to increase the maximum permissible number of option contracts for order that may be executed through the Auto-Ex system to fifty contracts. The PCX proposes that this increase in permissible order size to fifty contracts for Auto-Ex be done on a case-by-case basis for an individual option issue, or for all option issues when two Floor Officials and one Floor Governor deem such an increase appropriate. The PCX currently anticipates that the ability to execute orders of up to fifty contracts through Auto-Ex will only occur during high volume, and/or high volatility emergency situations. At all other times, the order size for Auto-Ex will remain at twenty contracts, unless the Commission approves an Exchange proposal to increase that number to greater than twenty contracts.[8]

The PCX believes that Auto-Ex has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other non-emergency situations for certain option issues. Automatic executions of orders for up to fifty contracts during such high volume situations will help alleviate a backlog of orders in the systems that may occur and allow for the quick, efficient execution of public customer orders. The Exchange represents that the existing system has sufficient capacity to implement the increase in order size.

The Exchange's proposed rule change specifically states that the Exchange may increase the permissible size of orders that may be automatically executed over the Auto-Ex system to up to fifty contracts, to be effected on a case-by-case basis in a particular option issue, or for all option issues, when two Floor Officials and one Floor Governor deem such an increase to be appropriate. It further states that, pursuant to this rule, the ability to execute orders of up to fifty contracts will only occur during high volume or high volatility emergency situations, and at all other times, the order size for Auto-Ex will remain the number of contracts permitted under Rule 6.87.

Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) [9] of the Act in general and

[4] The Commission approved the POETS and its Auto-Ex feature as a pilot program in January 1990. *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990) (order approving File No. SR–PSE–89–26). On July 30, 1993, the Commission approved the program on a permanent basis. *See* Securities Exchange Act Release No. 32703 (July 30, 1993), 58 FR 42117 (August 6, 1993) (''Release No. 34–32703'').

[5] *See* Securities Exchange Act Release No. 28264 (July 26, 1990), 55 FR 31272 (August 1, 1990) at note 2.

[6] *See* Release No. 34–32703.

[7] *See* Securities Exchange Act Release No. 34946 (November 6, 1994), 59 FR 59265 (November 16, 1994).

[8] On February 10, 1999, the PCX filed a proposal (SR–PCX–99–04) with the Commission to increase the number of option orders that may be executed automatically to fifty contracts without regard to whether a high volume or high volatility emergency situation exists.

[9] 15 U.S.C. 78f(b).

furthers the objectives of section 6(b)(5) [10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to improve impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on competition.

B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) Does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,[11] it has become effective pursuant to section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6).[13]

The Commission believes that increasing to fifty the number of option contracts executable through the Exchange's Auto-Ex order execution system should enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option classes consistent with its obligations under the Act. The Commission finds good cause to allow the proposed rule change to become operational on June 4, 1999. This accelerated operative date should facilitate the enhancement of execution and operational efficiencies through Auto-Ex during high volume or high volatility emergency situations. The Commission has previously approved a substantially similar proposal by the American Stock Exchange LLC.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–14 and should be submitted by July 2, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[10] 15 U.S.C. 78f(b)(5).

[11] The Commission has waived the requirement that the Exchange provide written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* Securities Exchange Act Release No. 41098 (February 24, 1999), 64 FR 10511 (March 4, 1999).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29088]

Airport Privatization Pilot Program; Public Meeting

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of extension of comment period for final application of Stewart International Airport, Newburgh, New York; Notice of Public Meeting.

SUMMARY: On April 8, 1999, the Federal Aviation Administration (FAA) published a notice in the **Federal Register** (64 FR 17208) seeking information and comments from interested parties on the final application by the State of New York for participation of Stewart International Airport (SWF) in the Airport Privatization, Pilot Program. The deadline for submitting comments was June 7, 1999. The comment period has now been extended until June 28, 1999 to allow the public more time to examine and comment on the final application. A public meeting will be held on June 12, 1999.

DATES: Comments must be received by June 28, 1999. The public meeting will be held on Saturday, June 12, 1999 from 11am to 3pm.

ADDRESSES: The public meeting will be held in the auditorium of the Little Britain Elementary School, 1160 Little Britain Road, New Windsor, New York, (914) 496–2301. The SWF final application is available for public review in the Federal Aviation Administration Office of Chief Counsel, 800 Independence Avenue, SW—Room 915G., Washington, DC 20591. The New York State Department of Transportation (NYSDOT), the airport sponsor, has also made as copy of the application available at the following locations:

Town Clerk's Office, Town of New Windsor, Town Hall 555 Union Avenue, New Windsor, NY 12553.

Town Clerk's Office, Town of Newburgh, Town Hall, 20–26 Union Avenue, Newburgh, NY 12550.

Newburgh Free Library, 124 Grand Street, City of Newburgh, Newburgh, NY 12550.

Orange County Planning Department, 124 Main Street, Goshen, NY 10924.

Airport Director's Office, Airport Administration Building, 1035 First Street, Stewart International Airport, New Windsor, NY 12553.

Comments on the SWF final application must be delivered or mailed, in quadruplicate, to the Federal Aviation Administration Office of Chief Counsel (AGC–200), 800 Independence Avenue, SW., Washington, DC 20591, Attention: Docket No. 29088. All comments must be marked ''Docket No. 29088''. Commenters wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 29088.'' The postcard will be date stamped and returned to the commenter. Comments on this Notice may be delivered to or examined in the aforementioned FAA Office of Chief Counsel (Room 915G) on weekdays, except Federal holidays, between 8:30 am and 5:00 pm.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Compliance Officer, (202–267–8741), Airport Compliance Division (AAS–400), Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Section 149 of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104–264 (October 9, 1996), added a new section 47134 to Title 49 of the U.S. Code, Section 47134 authorizes the Secretary of Transportation and, through delegation, the FAA Administrator to exempt a sponsor of a public use airport that has received Federal assistance from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. Such exemption will require approval of 65 percent of the air carriers serving the airport and having 65 percent of the landed weight. The Administrator is also authorized to exempt a private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport. No air carrier approval is necessary for the latter exemption.

On January 10, 1999, NYSDOT filed a final application for SWF. The FAA determined that the application is substantially complete. As part of its review of the SWF final application on April 8, 1999, the FAA requested comments and information submitted by interested parties during the 60-day comment period ending June 7, 1999. This notice extends the comment period until June 28, 1999.

The public meeting scheduled for June 12, 1999, will consist of two parts. The first part of the meeting will accept public comments on the SWF final application for inclusion in Docket No. 29088. The second part of the meeting will be an informal session for the FAA to answer general questions on the Airport Privatization Pilot Program and how FAA requirements will apply to private airport operators generally. Because the SWF final application is presently before the agency for a decision, the FAA will not be able to discuss the application or the pending agency decision. Issued in Washington, DC on June 7, 1999.

David L. Bennett,

Director, Office of Airport Safety and Standards.

[FR Doc. 99–14853 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Final Environmental Impact Statement Colorado Airspace Initiative (CAI)

AGENCY: Federal Aviation Administration (FAA).

ACTION: Extension of the time period during which the FAA will receive public comment on its Notice of Availability and Intent to Adopt the Final Environmental Impact Statement for the Colorado Airspace Initiative.

SUMMARY: On Tuesday, April 27, 1999, the Federal Aviation Administration provided notice that it was recirculating and intended to adopt the Final Environmental Impact Statement (FEIS) prepared by the Air National Guard (ANG) for the modification of exiting, and the establishment of new military training airspace areas in Colorado, hereinafter known as the Colorado Airspace Initiative (CAI). Due to public interest in this initiative, the FAA is extending the public comment period until 2 August 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gaffin, Environmental Specialist, Environmental Programs Division (ATA–300), Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–3075.

SUPPLEMENTARY INFORMATION: As provided in 40 CFR 1506.3 and FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, the FEIS of another Federal Agency may be adopted in accordance with the procedures in 40 CFR 1506.3 Under 40 CFR 1506.3(b), if the actions covered by an EIS and the actions proposed by another Federal agency are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. The FAA has determined that the proposed action of modifying existing and establishing new military training airspace areas over the State of Colorado is substantially the same as the actions considered in the ANG's FEIS. FAA staff has independently reviewed the ANG FEIS to determine if it is current and that the FAA NEPA procedures have been satisfied. FAA has determined that the FEIS adequately assesses and discloses the potential environmental impacts of the proposed action. FAA staff concluded that, after mitigation measures are taken into consideration, the existing airspace can be modified and new military training airspace can be established with no significant impacts on environmental resources.

The proposal will modify existing and establish new military training airspace areas over the State of Colorado. The ANG has requested this action to respond to changes in readiness training requirements. The requirements are reflected in specific United States Air Force regulations for military aircraft and personnel operating in the affected airspace. Additionally, this action responds to the changes in commercial aircraft arrival and departure corridors required for operation of the Denver International Airport.

The ANG evaluated the environmental impacts of the CAI in its document, Final Environmental Impact State for the Colorado Airspace initiative, (FEIS) dated August 1997. The preferred alternative was also the environmentally preferred alternative in the FEIS. THe preferred alternative was modified in response to concerns raised by private citizens, government agencies, and various public interest groups. The ANG changed its proposal to narrow the widths of portions of corridors of four military training routes and withdrew one route. Subsequently, the ANG issued a Record of Decision (ROD) on October 28, 1997, approving the preferred alternative as modified. The ANG then submitted the FEIS to the FAA with it application for airspace approval.

In furtherance of CEQ regulations, in addition to the executive summary of the ANG FEIS, the FAA is recirculating the following information: (1) the ANG's ROD; (2) a summary of public comments submitted during the aeronautical review and responses to the comments; and (3) a summary of the refinements that ANG made in the Rod to the preferred alternative after the ANG FEIS was issued.

Any person may obtain a copy of the ANG FIS, ROD and the above-referenced information by submitting a request to: Air National Guard Readiness Center, Program Manger, CAI EIS, ANGRC/

CEVP, 3500 Fetchet Avenue, Andrews Air Force Base, MD 20762–5157.

Written comments may be sent to the address below, and are due by August 2, 1999: Federal Aviation Administration, Environmental Programs Division, Air Traffic Airspace Management Program, Attn.: Elizabeth Gaffin, rm. 422, 800 Independence Ave., SW, Washington, DC 20591.

Issued in Washington, DC on June 7, 1999.

William J. Marx,

Manager, Environmental Programs Division.

[FR Doc. 99–14854 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 99–10]

Operating Subsidiary Notice

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Notice and request for comment on an operating subsidiary application.

SUMMARY: The Office of the Comptroller of the Currency (OCC) requests comment concerning an application filed by the National Bank of Commerce, Memphis, Tennessee (NBC Bank) to expand the activities of its operating subsidiary, NBC Capital Markets Group, Inc., (NBCCMG), to purchase, sell, underwrite, and deal in certain debt obligations.

DATES: Comments should be submitted by July 12, 1999.

ADDRESSES: Written comments regarding the application should be submitted to the Office of the Comptroller of the Currency, Communications Division, Docket No. 99–10, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile to fax number (202) 874–5274, or by Internet mail to REGS.COMMENTS@OCC.TREAS.GOV. A copy of the application and comments received will be available for inspection at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC 20219. Appointments to inspect the application and review the comments received can be made by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Beth Kirby, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210, or Beverly Evans, Senior Bank Structure Analyst, Bank Organization and Structure, (202) 874–5060.

SUPPLEMENTARY INFORMATION:

Background Information

NBC Bank has filed an application with the OCC, under 12 CFR 5.34(f), to expand the activities of its operating subsidiary, NBCCMG. The application requests the OCC's permission to purchase, sell, underwrite, and deal in certain debt obligations, including corporate debt, and securities issued by a trust or other vehicle secured by, or representing interests in, debt obligations.

NBCCMG is authorized currently to underwrite and deal in, to a limited extent, municipal revenue bonds and to conduct securities brokerage services, underwrite and deal in U.S. Government obligations and general obligations of States and their political subdivisions, and buy and sell money market instruments. See Decision of the Comptroller of the Currency on the Application by National Bank of Commerce, Memphis, Tennessee to Commence New Activities in an Operating Subsidiary (October 20, 1998) (''Commerce Decision'').

NBCCMG would continue to operate within the framework of limitations in 12 CFR 5.34(f) and would continue to be subject to the conditions set forth in the Commerce Decision. In particular, NBC Bank has committed that the revenues NBCCMG would receive from any underwriting and dealing activity not permissible for a national bank would not exceed 25% of the total revenues of NBCCMG.

Under section 5.34(f), the OCC may permit a national bank to conduct an activity through its operating subsidiary that is different from that permissible for the parent national bank, subject to the additional requirements specified in 12 CFR 5.34(f), if the OCC concludes that the activity is part of or incidental to the business of banking or is permitted under other statutory authority.

In considering the proposed activities, the OCC will consider each proposed activity and will weigh:

(1) The form and specificity of any restriction applicable to the parent bank;

(2) Why the restriction applies to the parent bank; and

(3) Whether it would frustrate the purpose underlying the restriction on the parent bank to permit a subsidiary of the bank to engage in the particular activity.

The OCC's evaluation of these factors will also take into account the safety and soundness implications of the activity for the operating subsidiary and the parent national bank, the regulatory safeguards that apply to the operating subsidiary and to the activity itself, any conditions that may be imposed in conjunction with an application approval, and any additional undertakings by the bank or the operating subsidiary that address the foregoing factors.

For activities not previously approved by the OCC, the OCC provides public notice and opportunity for comment on the application by publishing notice of the application in the **Federal Register**. In publishing notice of the application, the OCC does not take a position on issues raised by the proposal. Notice is published solely to seek the views of interested persons on the issues. Publication does not represent a determination by the OCC that the proposal meets, or is likely to meet, the criteria outlined earlier. Interested parties are invited to comment on any aspect of the application.

Dated: June 3, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–14908 Filed 6–10–99; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3206

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3206, Information Statement by United Kingdom Withholding Agents Paying Dividends From U.S. Corporations to Residents of the United States and Certain Treaty Countries.

DATES: Written comments should be received on or before August 10, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Statement by United Kingdom Withholding Agents Paying Dividends From U.S. Corporations to Residents of the United States and Certain Treaty Countries.

OMB Number: 1545–0153.

Form Number: 3206.

Abstract: Form 3206 is used to report dividends paid by U.S. corporations through United Kingdom nominees to beneficial owners who are residents of countries other than the United Kingdom with which the U.S. has a tax treaty providing for reduced withholding rates on dividends. The data is used by IRS to determine whether the proper amount of income tax was withheld.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 3 hrs., 7 min.

Estimated Total Annual Burden Hours: 15,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14884 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8843

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8843, Statement for Exempt Individuals and Individuals With a Medical Condition.

DATES: Written comments should be received on or before August 10, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Statement for Exempt Individuals and Individuals With a Medical Condition.

OMB Number: 1545–1411.

Form Number: 8843.

Abstract: Form 8843 is used by an alien individual to explain the basis of the individual's claim that he or she is able to exclude days of presence in the United States because the individual is a teacher/trainee or student; professional athlete; or has a medical condition or problem.

Current Actions: There are no changes being made to Form 8843 at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 1 hr., 11 min.

Estimated Total Annual Burden Hours: 177,120.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14885 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8308

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8308, Report of a Sale or Exchange of Certain Partnership Interests.

DATES: Written comments should be received on or before August 10, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Report of a Sale or Exchange of Certain Partnership Interests.

OMB Number: 1545–0941.

Form Number: 8308.

Abstract: Form 8308 is an information return that gives the IRS the names of the parties involved in an exchange of a partnership interest under Internal Revenue Code section 751(a). It is also used by the partnership as a statement to the transferor and transferee. It alerts the transferor that a portion of the gain on the sale of a partnership interest may be ordinary income.

Current Actions: There are no changes being made to Form 8308 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 7 hr., 18 min.

Estimated Total Annual Burden Hours: 1,460,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14886 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of the Electronic Tax Administration Advisory Committee (ETAAC).

SUMMARY: In 1998 the IRS established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements.

There will be a meeting of ETAAC Friday, June 18, 1999. The meeting will be held in the United States Capitol Building, Room HC5, Washington, D.C. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting Friday, June 18, 1999

9:00 Meeting Opens
12:00 Break for Lunch
1:00 Meeting Resumes
3:00 Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) 1999 Filing Season—Lessons Learned
(2) Initiatives for 2000 Filing Season
(3) Account Management Presentation
(4) PRIME Contractor
(5) Fed/State Relations
(6) Report to Congress

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Assistant Commissioner, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service (IRS) strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

The meeting will be open to the public, and will be in a room that accommodates approximately 150 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. To get your name on the access list, *notification of intent to attend the meeting must be made with Ms. Robin Marusin by June 14, 1999. Ms. Marusin can be reached at 202–622–8284.* Notification of intent should include your name, organization and phone number. If you leave this information for Ms. Marusin in a voice-mail message, please spell out all names. A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Robin Marusin on or after Monday June 7 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, to have a copy of the agenda faxed to you, or to get general information about ETAAC call Robin Marusin at 202–622–8184.

Terrence H. Lutes,

Acting Assistant Commissioner, Electronic Tax Administration.

[FR Doc. 99–14887 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The IRS Advisory Council (IRSAC) will hold a public meeting on the IRS modernization; taxpayer burden reduction efforts; performance measures; filing season overview and planning; and IRS automated information tools.

DATES: The meeting will be held, Wednesday, June 30, 1999.

ADDRESSES: The meeting will be held in Room 3313, Main Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lorenza Wilds; Office of Public Liaison and Small Business Affairs, CL:PL, Room 7559 IR, 1111 Constitution Avenue, N.W., Washington, DC 20224, telephone 202–622–5188 not a toll-free number. E-mail address: *public __liaison@ccgate.hq.irs.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the IRSAC will be held on Wednesday, June 30, 1999, beginning at 9 am in Room 3313, main building, 1111 Constitution Avenue, NW, Washington, DC 20225.

Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice. The meeting will be in a room that accommodates approximately 50 people, including IRSAC members and IRS officials. Due to the limited space and security specifications, please call Lorenza Wilds to confirm your attendance. Ms. Wilds can be reached at (202) 622–5188 (not toll-free). Attendees are encouraged to arrive at least 30 minutes prior to the starting time of the meeting, to allow enough time to clear security at the 1111 Constitution Avenue, N.W., entrance. If you would like for the IRSAC to consider a written statement, please call (202) 622–5081, write to Merci del Toro, Office of Public Liaison, CL:PL, Internal Revenue Service, 1111 Constitution Avenue, N.W., Room 7559 IR, Washington, D.C. 20224, or E-mail at *public__liaison@ccgate.hq.irs.gov.

Dated: June 8, 1999.

Susanne M. Sottile,

Designated Federal Official, National Director, Office of Public Liaison and Small Business Affairs.

[FR Doc. 99–14888 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 01–99

Questions Presented

a. May compensation be paid under 38 U.S.C. 1151 for disability incurred or aggravated as the result of a sexual assault by a Department of Veterans Affairs (VA) physician which occurred while a veteran was receiving an examination or medical treatment at a VA facility?

b. May compensation be paid under 38 U.S.C. 1151 for a psychiatric disability incurred or aggravated as the result of a VA examination or medical treatment, or is compensation under those provisions limited to incurrence or aggravation of physical disability?

Held:

a. Section 1151 of title 38, United States Code, as applicable to claims filed before October 1, 1997, does not authorize payment of compensation for disability incurred or aggravated as the result of a sexual assault by a Department of Veterans Affairs (VA) physician which occurred while a veteran was receiving treatment or an examination at a VA facility. For purposes of compensation under those provisions, the disability must result from the medical treatment or examination itself and not from independent causes occurring coincident with the treatment or examination. A sexual assault generally would not constitute medical treatment or examination within the meaning of 38 U.S.C. 1151 and would not provide a basis for compensation under those provisions. However, if the actions or procedures alleged to have constituted an assault would otherwise be within the ordinary meaning of the terms ''medical treatment or ''examination,'' then compensation may be payable under section 1151. Accordingly, it may be necessary to make factual determinations in individual cases as to whether the actions or procedures alleged to have caused disability constituted part of ''medical treatment'' or ''examination'' or were independent actions merely coincidental with such treatment or examination.

b. VA may pay compensation under 38 U.S.C. 1151 for psychiatric disability due to a disease or injury incurred or aggravated as a result of VA hospitalization, medical or surgical treatment, examination, or vocational rehabilitation.

Effective Date: February 16, 1999.

VAOPGCPREC 02–99

Redesignated Advisory Opinion VAOPGCADV 08–99

Date: April 7, 1999.

VAOPGCPREC 03–99

Question Presented

What is the proper effective date of the award and date of commencement of payment for a monetary allowance for spina bifida awarded under 38 U.S.C. 1805 in a case where the claim for such benefits was filed prior to November 21, 1997 (the date of enactment of Pub. L. No. 105–114, which amended 38 U.S.C. 1806 retroactive to October 1, 1997), or prior to October 1, 1997 (the date 38 U.S.C. 1805 and 1806 became effective)?

Held

Section 1806 of title 38, United States Code, as amended by Pub. L. No. 105–114, governs the determination of the effective date and date of commencement of payment for any monetary allowance awarded under 38 U.S.C. 1805 for spina bifida in children of Vietnam veterans. Although Pub. L. No. 105–114 was enacted on November 21, 1997, Congress expressly provided that the amendment to section 1806 would be retroactive to October 1, 1997, when 38 U.S.c. 1805 and 1806 first became effective. Because Congress expressly prescribed the retroactive reach of Pub. L. 105–114, the judicial default rules stated in *Landgraf* v. *USI Film Products,* 511 U.S. 244 (1994) and *Karnas* v. *Derwinski*, 1 Vet. App. 308 (1991), are inapplicable. Accordingly, the provisions the provisions of section 1806, as amended, would govern the effective date and date of commencement of payment of any award under section 1805, including awards based on claims filed prior to October 1, 1997. The proper effective date and date of commencement of payment in any particular case must be determined by application of the statutory provisions referenced in section 1806, as amended.

Effective Date: March 26, 1999.

By Direction of the Secretary.

Leigh A. Bradley,

Genenral Counsel.

[FR Doc. 99–14915 Filed 6–10–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 64, No. 112

Friday, June 11, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-930-1430-01;NMNM-102308]

Notice of Proposed Withdrawal; New Mexico

Correction

In notice document 99– 9556 beginning on page 18932 in the issue of Friday, April 16, 1999, make the following correction:

On page 18933, first column, lines twelve and thirteen beneath the first land description (**New Mexico Principal Meridian, New Mexico**) is corrected to read as follows:

Sec. 17, N½, N½S½, S½SW¼, and SW¼SE¼;

[FR Doc. C9–9556 Filed 6–10–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP97–006

Correction

In notice document 99–12579 beginning on page 27343, in the issue of Wednesday, May 19, 1999, make the following correction:

On page 27346, remove Figure 4 and insert Figure 3 as follows:

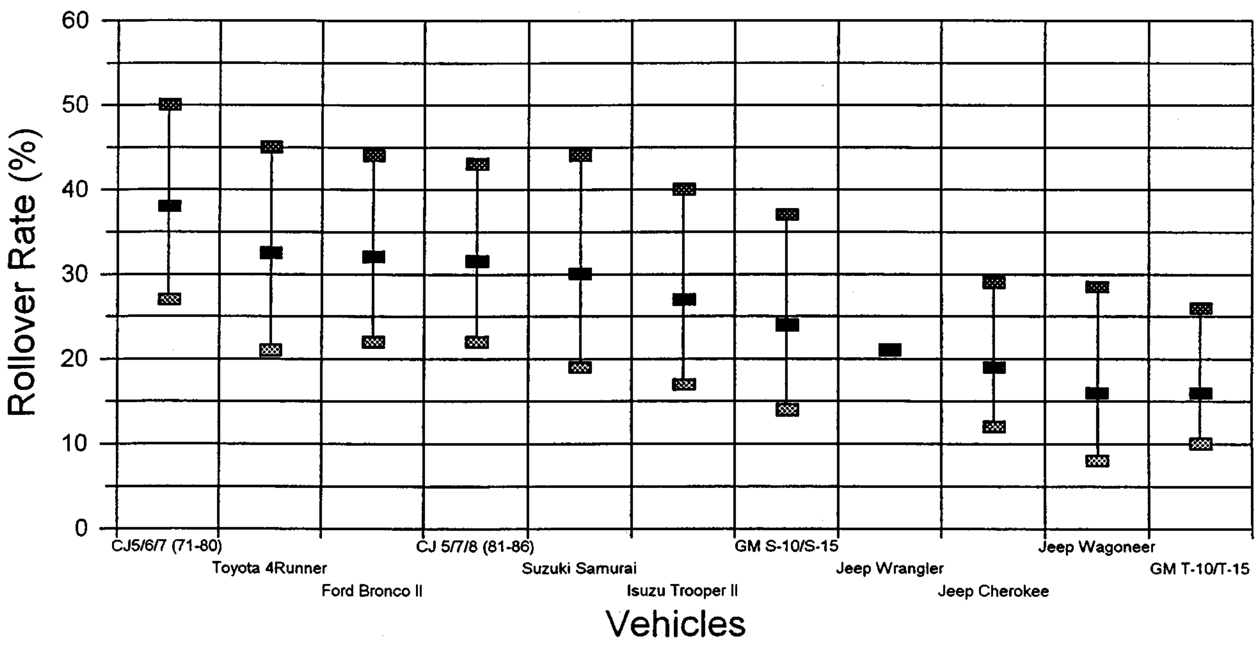

Figure 3. Predicted Percentage of First-Event Single-Vehicle Rollover per Single-Vehicle Crash with 95% Confidence Intervals, for Crash Years 1986 through 1988 (Maryland, Michigan, New Mexico, and Utah), EA89-013.

[FR Doc. C9–12579 Filed 6–10–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Friday
June 11, 1999

Part II

Department of Justice

Office of Juvenile Justice and Deliquency Prevention

Office of Community Oriented Policing Services

Department of Education

Office of Elementary and Secondary Education

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Office of the Assistant Secretary for Planning and Evaluation

National Evaluation of the Safe Schools/ Healthy Students Initiative; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Office of Community Oriented Policing Services

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office of the Assistant Secretary for Planning and Evaluation

[OJP (OJJDP)–1232]

RIN 1121–ZB65

National Evaluation of the Safe Schools/Healthy Students Initiative

AGENCIES: Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP); Department of Justice, Office of Community Oriented Policing Services (COPS); Department of Education, Office of Elementary and Secondary Education, Safe and Drug-Free Schools Program; Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS); Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

ACTION: Notice of funding availability.

SUMMARY: The Departments of Justice, Education, and Health and Human Services are requesting applications for a national evaluation of the Safe Schools/Healthy Students Initiative. The overarching goal of the evaluation is to document the effectiveness of collaborative community efforts to promote safer schools and provide opportunities for children's healthy development. The evaluation will demonstrate how community collaborative efforts develop, function, and facilitate change within community institutions and within individuals. Further, the evaluation must explore each of the six individual components of the collaboration-school safety, alcohol and other drug and violence prevention and intervention programs, school and community mental health preventive and treatment intervention services, early childhood psychosocial and emotional development programs, education reform, and safe school policies. The overarching collaborative questions and each of the six facets must be examined in terms of surveillance, process, and intensive outcome analyses.

DATES: Applications must be received by Wednesday, July 21, 1999.

ADDRESSES: An application package containing a copy of the solicitation for the National Evaluation of the Safe Schools/Healthy Students Initiative with application instructions and forms is available online at the following Web sites: www.ojjdp.ncjrs.org; www.ed.gov/fedreg.htm; www.ed.gov/offices/OESE/SDFS; www.samhsa.gov; www.mentalhealth.org; and www.usdoj.gov/cops. The application package can also be obtained by calling OJJDP's Juvenile Justice Clearinghouse at 800–638–8736. The address for submitting completed application is provided in the application package.

FOR FURTHER INFORMATION CONTACT: Kellie J. Dressler, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 202–514–4817. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, October 19, 1998, Pub. L. 105–277.

Background

The Safe Schools/Healthy Students Interagency Evaluation Management Team (IEMT) seeks qualified applicants to assist in conducting an evaluation of the Safe Schools/Healthy Students (SS/HS) Initiative. The IEMT comprises representatives of the three Departments participating in the Safe Schools/Healthy Students Initiative and will provide oversight for the national evaluation. The successful applicant will conduct cross-site process and outcome evaluations, monitor a core set of indicators (surveillance), and provide evaluation support to grantees for local evaluation activities. Applicants are encouraged to review the Safe Schools/Healthy Students Initiative Program Announcement for detailed information about the initiative. (The SS/HS Program Announcement is available at www.ojjdp.ncjrs.org or by calling the Juvenile Justice Clearinghouse at 800–638–8736.) The period of performance for the evaluation is anticipated to be September 1999 to September 2004.

The IEMT will competitively award one cooperative agreement under this solicitation. Given the purpose of the evaluation, the overall evaluation design is intended to carefully document both the process and the outcome aspects of the initiative. The design should encompass the broad issue of formation of community collaborations, the impact of these collaborations on school safety and development of healthy students, economic analyses, and surveillance of core indicators.

Eligibility Requirements

The IEMT invites applications from public and private agencies, organizations, institutions, or individuals. Applicants must demonstrate that they have experience in evaluating broad-based community initiatives. Private, for-profit organizations must agree to waive any profit or fee. Joint applications from two or more eligible applicants are welcome, as long as one is designated the primary applicant (for purposes of correspondence, awards, and management) and any others as coapplicants.

Award Period

The project will be funded for up to 5 years in five 1-year budget periods. Applicants should submit a 5-year project plan. Funding after the first budget period depends on performance of the grantee, availability of funds, and other criteria established at the time of award.

Award Amount

Up to $3 million is available for the initial 1-year budget period.

Dated: May 25, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Dated: May 25, 1999.

Joseph E. Brann,

Director, Office of Community Oriented Policing Services.

Dated: May 27, 1999.

Judith Johnson,

Acting Assistant Secretary, Office of Elementary and Secondary Education.

Dated: May 26, 1999.

Nelba Chavez,

Administrator, Substance Abuse and Mental Health Services Administration.

Dated: May 25, 1999.

Margaret A. Hamburg,

Assistant Secretary, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–14139 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–18–P

federal register

Friday
June 11, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Security of Checked Baggage on Flights Within the United States; Extension of Comment Period; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. FAA–1999–5536; Notice No. 99–05]

RIN 2120–AG51

Security of Checked Baggage on Flights Within the United States; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On April 19, 1999, the FAA published a Notice of Proposed Rulemaking (NPRM) regarding security of checked baggage on flights within the United States and invited comments for a 60-day period. The comment period was originally scheduled to close on June 18, 1999; however, the FAA is extending the comment period an additional 60 days in response to a request from the Air Transport Association (ATA) for an extension to allow the ATA and its members to conduct an in-depth analysis of the proposal.

DATES: Comments must be received on or before August 17, 1999.

ADDRESSES: Comments should be mailed or delivered, in duplicate, to U.S. Department of Transportation Dockets, Docket No. FAA–1999–5536; 400 Seventh St., SW, Rm. Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: *9–NPRM–CMTS@faa.gov*. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except federal holidays.

Comments regarding national security information or sensitive security information should not be submitted to the public docket. These comments should be submitted according to procedures for safeguarding sensitive security information and sent to: Federal Aviation Administration, Office of Civil Aviation Security Operations, Attn: FAA Security Control Point, Docket No. FAA–1999–5536; 800 Independence Ave., SW, Washington, DC 20591. Questions on these procedures may be directed to Lon M. Siro (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Lon M. Siro, Aviation Security Specialist, Civil Aviation Security Office of Policy and Planning, ACP–100, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–3414.

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. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposal are also 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 contact with FAA personnel on this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action. Late-filed comments will be considered to the extent practicable. The proposal may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: Comments to Docket No. FAA–1999–5536. The postcard will be date-stamped and mailed to the commenter.

Availability of NPRM's

An electronic copy of the NPRM 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), or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322–2722 or (202) 267–5948.

Internet users may reach the FAA's webpage at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Federal Register's web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of the NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the docket number or notice number of the NPRM.

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, that describes the application procedure.

Extension of Comment Period

On April 19, 1999, the FAA published Notice No. 99–05, Security of Checked Baggage on Flights Within the United States (64 FR 19220). The FAA requested that comments to that document be submitted on or before June 18, 1999. By letter dated April 20, 1999, the Air Transport Association (ATA) requested that the FAA extend the comment period for 60 days. The ATA stated that the extension would allow both the ATA and its members to conduct an in-depth analysis of the proposal.

The FAA determines that extending the comment period is in the public interest and that good cause exists for taking this action. Accordingly, the comment period for Notice No. 99–05 is extended until August 17, 1999.

Issued in Washington, DC, on June 4, 1999.

Anthony Fainberg,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 99–14833 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

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Federal Register

Vol. 64, No. 112

Friday, June 11, 1999

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FEDERAL REGISTER PAGES AND DATES, JUNE

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 11, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Raisins produced from grapes grown in—
California; published 5-12-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Atlantic tuna fisheries:
Bluefin tuna; published 6-9-99

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
Iowa; published 4-12-99
Washington; published 4-12-99

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Georgia; published 4-12-99

Clean Air Act:
Acid rain program—
Permits and sulphur dioxide allowance system; revisions; published 5-13-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cytokinins, etc. (plant regulators); published 6-11-99
Sulfosate; published 6-11-99

Toxic substances:
Lead-based paint activities—
Training programs accreditation and contractors certification fees; published 6-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
New drug applications—
Neomycin sulfate; published 6-11-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Noncitizens; financial restrictions on assistance; published 5-12-99

INTERIOR DEPARTMENT

National Park Service

National Natural Landmarks Program; revision; published 5-12-99

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Documentary requirements:
Nonimmigrants; waivers; admission of certain inadmissible aliens; parole:
Haiti; adjustment for status of Haitian nationals; published 5-12-99

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:
Visitor notification requirements; published 5-12-99

NUCLEAR REGULATORY COMMISSION

Radiation protection standards:
Uranium recovery facilities; radiological criteria for license termination; published 4-12-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; published 5-7-99

UNITED STATES INFORMATION AGENCY

Exchange visitor program:
Foreign medical graduates; policy statement; published 6-11-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:
Iowa; comments due by 6-14-99; published 5-13-99

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
Irradiation of refrigerated or frozen uncooked meat, meat byproducts, etc.; comments due by 6-17-99; published 6-2-99

COMMERCE DEPARTMENT

Export Administration Bureau

Export administration regulations:
Chemical weapons convention; implementation; comments due by 6-17-99; published 5-18-99
Chemical Weapons Convention; implementation
Correction; comments due by 6-17-99; published 6-4-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
Caribbean, Gulf of Mexico, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 6-17-99; published 6-2-99

Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 6-14-99; published 4-14-99
West Coast States and Western Pacific fisheries—
Pacific whiting; comments due by 6-18-99; published 6-3-99
Western Pacific crustacean; comments due by 6-18-99; published 6-3-99

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
Manufacturing Technology Program; comments due by 6-15-99; published 4-16-99

EDUCATION DEPARTMENT

Postsecondary education:
Teacher quality enhancement grants program; comments due by 6-18-99; published 5-19-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
Fossil fuel-fired boilers and turbines; three new test methods for velocity and volumetric flow rate in stacks or ducts; comments due by 6-14-99; published 5-14-99
Correction; comments due by 6-14-99; published 5-20-99

Air programs approval and promulgation; State plans for designated facilities and pollutants:
North Dakota; comments due by 6-14-99; published 5-13-99

Air programs:
Accidental release prevention—
Risk management programs; comments due by 6-16-99; published 5-26-99
Worst-case release scenario analysis for flammable substances; comments due by 6-16-99; published 5-26-99

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
North Dakota; comments due by 6-14-99; published 5-13-99

Air quality implementation plans; approval and promulgation; various States:
California; comments due by 6-14-99; published 5-13-99
Iowa; comments due by 6-14-99; published 5-13-99
Maine; comments due by 6-14-99; published 5-14-99
Minnesota; comments due by 6-14-99; published 5-13-99
Wyoming; comments due by 6-18-99; published 5-19-99

Drinking water:
National primary drinking water regulations—
Unregulated contaminant monitoring regulation for public water systems; comments due by 6-14-99; published 4-30-99
Unregulated contaminant monitoring regulation for public water systems; correction; comments due by 6-14-99; published 6-8-99

Hazardous waste:
Identification and listing—
Fossil fuel combustion; report to Congress; comments due by 6-14-99; published 4-28-99

Radiation protection programs:
Idaho National Engineering and Environmental

Laboratory; waste characterization program; documents availability
Inspection dates; comments due by 6-14-99; published 5-13-99
Los Alamos National Laboratory; transuranic radioactive waste proposed for disposal at Waste Isolation Pilot Plant; documents availability; comments due by 6-16-99; published 5-17-99
Water pollution; effluent guidelines for point source categories:
Waste combustors; comments due by 6-16-99; published 5-17-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Commercial mobile radio services—
Wireless services compatibility with enhanced 911 service; comments due by 6-17-99; published 6-11-99
Wireline services offering advanced telecommunications capability; deployment; comments due by 6-15-99; published 4-30-99
Radio stations; table of assignments:
Utah; comments due by 6-14-99; published 4-30-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
Adjuvants, production aids, and sanitizers—
Anthra(2,1,9-def:6,5,10-d'e'f')diisoquinoline-1,3,8,10(2H,9H)-tetrone(C.I. Pigment Violet 29); comments due by 6-17-99; published 5-18-99
General enforcement regulations:
Exports; notification and recordkeeping requirements; comments due by 6-16-99; published 4-2-99
Medical devices:
Reclassification of 38 preamendments class III devices into class II; comments due by 6-14-99; published 3-15-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Fair housing:
Complaint processing; plain language revision and reorganization; comments due by 6-14-99; published 4-14-99

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:
Documents incorporated by reference; update; comments due by 6-17-99; published 3-19-99

LABOR DEPARTMENT

Mine Safety and Health Administration

Education and training:
Shell dredging and mining of sand, gravel, surface stone, surface clay, cooloidal phosphate, and surface limestone; comments due by 6-14-99; published 4-14-99

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards, etc.:
Employer payment for personal protective equipment; comments due by 6-14-99; published 3-31-99

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
East River, NY; safety zone; comments due by 6-16-99; published 5-25-99
First Coast Guard District navigable waters; regulated navigation area; comments due by 6-14-99; published 3-15-99
First Coast Guard District navigable waters; regulated navigation area; correction; comments due by 6-14-99; published 3-31-99
Regattas and marine parades:
First Coast Guard District fireworks display; comments due by 6-14-99; published 4-15-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:
Checked baggage; security on domestic flights; comments due by 6-18-99; published 4-19-99
Airworthiness directives:
Bell Helicopter Textron; comments due by 6-15-99; published 4-16-99
Bombadier; comments due by 6-16-99; published 5-17-99
Empresa Brasileira de Aeronautica S.A.; comments due by 6-17-99; published 5-18-99
Raytheon; comments due by 6-18-99; published 4-28-99
Robinson Helicopter Co.; comments due by 6-14-99; published 4-13-99
Sikorsky; comments due by 6-15-99; published 4-16-99
Class E airspace; comments due by 6-18-99; published 5-4-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Defect and noncompliance reports and notification; manufacturer notification to dealers of safety related defects; implementation; comments due by 6-18-99; published 5-19-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials transportation:
Registration and fee assessment program; comments due by 6-14-99; published 4-15-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 1121/P.L. 106–33

To designate the Federal building and United States courthouse located at 18 Greenville Street in Newnan, Georgia, as the ''Lewis R. Morgan Federal Building and United States Courthouse''. (June 7, 1999; 113 Stat. 117)

H.R. 1183/P.L. 106–34

Fastener Quality Act Amendments Act of 1999 (June 8, 1999; 113 Stat. 118)

Last List June 3, 1999

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