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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-221-AD; Amendment 39-9039; AD 94-20-10]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -15, -30, and -40 Series Airplanes and KC-10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10-10, -15, -30, and -40 series airplanes and KC-10A (military) airplanes, that requires inspections to detect fatigue-related cracking in certain areas of the horizontal stabilizer; and repair of cracked parts. It also requires installation of terminating modifications, which, when accomplished, would eliminate the repetitive inspections. This amendment is prompted by reports of fatigue-related cracks found on the horizontal stabilizer. The actions specified by this AD are intended to prevent loss of the load carrying and fail safe capability of the horizontal stabilizer, damage to the adjacent structure, and subsequent reduced structural integrity of the airplane, due to the problems associated with fatigue cracking.

DATES: Effective October 31, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 3, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. 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 FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Transport Airplane Directorate, Los Angeles ACO, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5324; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-10-10, -15, -30, and -40 series airplanes and KC-10A (military) airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 30, 1994 (59 FR 14800). That action proposed to require inspections to detect fatigue-related cracking in certain areas of the horizontal stabilizer; and repair of cracked parts. It also proposed to require the installation of certain terminating modifications that would eliminate the need for the repetitive inspections.

Immediate Adoption of This Regulation

Since issuance of the NPRM, one operator has reported finding a crack in the area of the forward spar upper cap on the horizontal stabilizer on a Model DC-10-10 series airplane that had accumulated approximately 16,000 landings. This evidence indicates that fatigue cracking may begin in this area much earlier than what was previously considered. In light of this, the FAA has reconsidered the compliance time proposed for the initiation of inspections to detect cracking in this subject area on these airplanes. The FAA now has determined that the initiation of inspections of Model DC-10-10 and -15 series airplanes must begin prior to the accumulation of 12,000 total landings or 90 days after the effective date of this AD, whichever occurs later. (The compliance time for this action that was proposed in the notice was 18,000 total landings.) The lowered threshold of 12,000 total landings is necessary to ensure that cracking is detected and corrected in a timely manner, and to prevent the loss of load-carrying and fail safe capability of the horizontal stabilizer due to the problems associated with fatigue cracking. The compliance time for the inspections specified in paragraph (a) of this final rule has been revised accordingly.

In making this revision, the FAA finds that, with respect to the reduced compliance threshold, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–221–AD." The postcard will be date stamped and returned to the commenter.

Discussion of Comments Received to the NPRM

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

One commenter supports the proposal.

Several commenters request that the proposed rule be revised to exclude the Models DC–10–30 and –40 from the applicability until more information is gathered to substantiate that these airplanes are subject to the addressed unsafe condition. These commenters point out that cracks have been reported on Model DC–10–10 series airplanes only. One commenter states that the airframe manufacturer previously had requested that operators of Model DC–10 series airplanes inspect their airplanes for cracking and, as a result, none was found on any models other than the Model DC–10–10 and –15 series. Another commenter suggests that the spar cap and skin panel installed on Models DC–10–30 and –40 are thicker than those on Models DC–10–10 and –15; therefore, the possibility of these items cracking on the Model DC–10–30 and –40 airplanes is very low.

The FAA does not concur with these commenters' request. Although fatigue cracking may not have been detected on in-service Model DC–10–30 and –40 series airplanes, the airframe manufacturer has conducted load, fatigue, and damage-tolerance analyses, which indicate that fatigue-related cracking is likely to occur on all Model DC–10 series airplanes as these airplanes accumulate flight cycles. The compliance thresholds specified in this AD, as well as the compliance times for the required initial and repetitive inspections, were developed in consideration of these analyses and with the participation of the airframe manufacturer.

Several commenters request that the rule be revised to give credit for visual inspections of the area that were performed previously, and to add a visual inspection as an option for accomplishment of the initial eddy current inspection. These commenters state that a damage tolerance assessment conducted by the airframe manufacturer has shown that an initial visual inspection will ensure that the structural integrity of the horizontal stabilizer spar cap and skin is maintained. Additionally, by permitting a visual inspection to be performed, which takes less time and materials than an eddy current inspection, the economic impact of non-scheduled maintenance and removal of aircraft from service would be reduced for operators, as well as the corresponding inconvenience for the traveling public.

The FAA concurs with these commenters' request. Subsequent to the issuance of the notice, the FAA reviewed and approved Revision 1 to McDonnell Douglas DC–10 Service Bulletins 55–24 and 55–25, both dated August 3, 1994. These revised service bulletins contain revised instructions for accomplishing the eddy current inspection (to make it less complicated), and instructions for performing an optional visual inspection in lieu of the initial eddy current inspection to determine if cracks exist in the horizontal stabilizer forward cap and skin panel. The FAA has revised the final rule to permit operators to perform this optional visual inspection as the initial inspection only. All repetitive inspections must be performed using eddy current techniques.

Several commenters request that the proposed rule be revised to eliminate the compliance time for the terminating modifications. These commenters consider that these modifications should be optional instead of mandatory. Other commenters indicate that fatigue-related cracks are cycle-dependent, not calendar time-dependent; therefore, it is inappropriate to impose a calendar time compliance time on a cycle-dependent phenomenon. The commenters also consider that the proposed compliance time of five years for installation of the terminating modifications could be unfair to operators of low-time airplanes, since, in some cases, an operator could be required to install the terminating modifications before the airplane has reached the threshold for the initial inspection.

The FAA does not concur with the commenters' request to allow the terminating action to be optional. The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The modifications required by this AD are in consonance with these considerations.

The FAA does acknowledge, however, that the proposed compliance time for installation of the terminating modifications could present an unfair situation to operators of low-time airplanes. This was not the FAA's intent. Therefore, the FAA has revised paragraph (d) of the final rule to specify modification prior to the accumulation of a certain number of cycles (depending upon airplane model) or within 5 years, whichever occurs later.

The FAA has revised paragraphs (a)(1), (b)(1), and (c)(1) of the final rule to delete the previously proposed requirement to continue inspections after installation of a repair that has been approved by the Manager of the Los Angeles Aircraft Certification Office. The FAA has determined that deletion of this requirement is appropriate, since some repairs that have been approved have incorporated a terminating action, thereby eliminating the need for continuing repetitive inspections.

Cost Impact

There are approximately 427 Model DC–10–10, –15, –30, and –40 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 241 airplanes of U.S. registry will be affected by this AD.

The accomplishment of the optional initial visual inspection will take approximately 1 workhour per airplane per inspection, at an average labor charge of $55 per workhour. Based on these figures, the total cost impact of this optional inspection on U.S. operators who elect to accomplish it is estimated to be $55 per airplane.

The accomplishment of the eddy current inspections will take approximately 3 workhours per airplane per inspection, at an average labor charge of $55 per workhour. Based on these figures, the total cost impact of the inspection requirement on U.S. operators is estimated to be $39,765, or $165 per airplane, per inspection cycle.

The accomplishment of the modification of the forward spar upper cap will take approximately 248 workhours per airplane. Likewise, the accomplishment of the modification of the forward upper skin panel will take approximately 248 workhours per airplane. The average labor rate is $55

per workhour. Required parts will cost approximately $10,600 per airplane. Based on these figures, the total cost impact of the modification actions AD on U.S. operators is estimated to be $9,129,080, or $37,880 per airplane.

The FAA recognizes that the required modifications require a large number of workhours to accomplish. However, the 5-year compliance time specified in paragraph (d) of this proposed AD should allow ample time for the modifications to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The total 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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–20–10 McDonnell Douglas: Amendment 39–9039. Docket 93–NM–221–AD.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes and KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletins 55–24 and 55–25, Revision 1, both dated August 3, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane, accomplish the following:

(a) For Model DC–10–10 and –15 series airplanes: Prior to the accumulation of 12,000 total landings, or within 90 days after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 4,500 landings, perform either an initial an eddy current inspection or visual inspection to detect fatigue-related cracking of the forward spar upper caps on the horizontal stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–24, Revision 1, dated August 3, 1994.

Note 1: Eddy current inspections accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 55–24, dated October 25, 1993, are considered acceptable for compliance with this paragraph.

(1) If any crack is detected, prior to further flight, repair the crack in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If no crack is detected, perform repetitive inspections thereafter in accordance with the service bulletin and in accordance with the following schedule:

(i) If the initial inspection was performed using visual techniques, perform an eddy current inspection within 1,000 landings after the visual inspection. Thereafter, repeat the eddy current inspection at intervals not to exceed 4,500 landings.

(ii) If the initial inspection was performed using eddy current techniques, repeat the eddy current inspection thereafter at intervals not to exceed 4,500 landings.

(b) For Model DC–10–10 and –15 series airplanes: Prior to the accumulation of 10,000 total landings, or within 120 days after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 4,500 landings, perform either an initial eddy current inspection or visual inspection to detect fatigue-related cracking of the forward upper skin panel of the horizontal stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994.

Note 2: Eddy current inspections performed in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, dated October 25, 1993, are considered acceptable for compliance with this paragraph.

(1) If any crack is detected, prior to further flight, repair the crack in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(2) If no crack is detected, perform repetitive eddy current inspections thereafter in accordance with the service bulletin and in accordance with the following schedule:

(i) If the initial inspection was performed using visual techniques, perform an eddy current inspection within 1,000 landings after the visual inspection. Thereafter, repeat the eddy current inspection at intervals not to exceed 4,500 landings.

(ii) If the initial inspection was performed using eddy current techniques, repeat the eddy current inspection thereafter at intervals not to exceed 4,500 landings.

(c) For Model DC–10–30 and –40 series airplanes: Prior to the accumulation of 17,500 total landings, or within 120 days after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 4,500 landings, perform either an initial eddy current inspection or visual inspection to detect fatigue-related cracking of the forward upper skin panel of the horizontal stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994.

Note 3: Eddy current inspections performed in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, dated October 25, 1993, are considered acceptable for compliance with this paragraph.

(1) If any crack is detected, prior to further flight, repair the crack in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(2) If no crack is detected, perform repetitive eddy current inspections thereafter in accordance with the service bulletin and in accordance with the following schedule:

(i) If the initial inspection was performed using visual techniques, perform an eddy current inspection within 1,000 landings after the visual inspection. Thereafter, repeat the eddy current inspection at intervals not to exceed 4,500 landings.

(ii) If the initial inspection was performed using eddy current techniques, repeat the eddy current inspection thereafter at intervals not to exceed 4,500 landings.

(d) For all airplanes: Install the preventative modifications specified in McDonnell Douglas DC–10 Service Bulletin 55–24, Revision 1, dated August 3, 1994; and McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994; in accordance with the following schedule. Accomplishment of these preventative modifications constitutes terminating action for the repetitive inspections required by this AD.

Note 4: Accomplishment of these preventative modifications in accordance

with McDonnell Douglas DC–10 Service Bulletin 55–24, dated October 25, 1993; or McDonnell Douglas DC–10 Service Bulletin 55–25, dated October 25, 1993; as applicable; is considered acceptable for compliance with this paragraph.

(1) For Model DC–10–10 and –15 series airplanes:

(i) Prior to the accumulation of 21,000 total landings, or within 5 years after the effective date of this AD, whichever occurs later, accomplish the preventative modifications of the forward spar upper cap on the horizontal stabilizer in accordance with McDonnell Douglas DC–10 Service Bulletin 55–24, Revision 1, dated August 3, 1994.

(ii) Prior to the accumulation of 19,000 total landings, or within 5 years after the effective date of this AD, whichever occurs later, accomplish the modification of the forward upper skin panel on the horizontal stabilizer in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994.

(2) For Model DC–10–30 and –40 series airplanes:

(i) Prior to the accumulation of 44,250 total landings, or within 5 years after the effective date of this AD, whichever occurs later, accomplish the modification of the forward spar upper cap on the horizontal stabilizer in accordance with McDonnell Douglas DC–10 Service Bulletin 55–24, Revision 1, dated August 3, 1994.

(ii) Prior to the accumulation of 26,500 total landings, or within 5 years after the effective date of this AD, whichever occurs later, accomplish the modification of the forward upper skin panel on the horizontal stabilizer in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(g) The inspections and modifications shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 55–24, Revision 1, dated August 3, 1994; and McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994. 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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on October 31, 1994.

Issued in Renton, Washington, on September 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–24199 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 450

[Docket No. 94N–0302]

Antibiotic Drugs; Bleomycin Sulfate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for standards of an antibiotic drug, bleomycin sulfate bulk drug substance. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 3, 1994; written comments, notice of participation, and request for a hearing by November 3, 1994; data, information, and analyses to justify a hearing by December 5, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James Timper, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6714.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval to provide for bleomycin sulfate bulk drug substance. The agency has concluded that the data supplied by the manufacturer concerning the antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR part 450 to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective on November 3, 1994. However, interested persons may, on or before November 3, 1994, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 3, 1994, a written notice of participation and request for a hearing, and (2) on or before December 5, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and

Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 450

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 450 is amended as follows:

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 450 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 450.10 is added to subpart A to read as follows:

§ 450.10 Bleomycin sulfate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Bleomycin sulfate is the amorphous sulfate salt of bleomycin. Bleomycin has been separated into several similar glyco-peptide molecules. It is a cream-colored powder that is so purified and dried that:

(i) Its potency is not less than 1.5 units and not more than 2.0 units of bleomycin per milligram.

(ii) It contains no depressor substances.

(iii) Its loss on drying is not more than 6.0 percent.

(iv) Its pH in an aqueous solution containing 10 units per milliliter is not less than 4.5 and not more than 6.0.

(v) Its copper content is not greater than 0.1 percent.

(vi) Its content of various bleomycins is as follows: Bleomycin A_2 is not less than 55 percent and not more than 70 percent; bleomycin B_2 is not less than 25 percent and not more than 32 percent; bleomycin B_4 is not more than 1 percent. Bleomycins A_2 and B_2 should comprise not less than 85 percent of the total bleomycins.

(vii) It passes the identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5(b) of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, depressor substances, loss on drying, pH, copper, content of various bleomycins, and identity.

(ii) Samples required: For all tests: A minimum of 20 immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*M* potassium phosphate buffer, pH 7.0 (solution 16), to provide a stock solution of convenient concentration. Dilute the sample thus obtained with solution 16 to provide a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 16 to the reference concentration of 0.04 unit of activity per milliliter (estimated).

(2) *Depressor substances.* Proceed as directed in § 436.35 of this chapter.

(3) *Loss on drying.* Proceed as directed in § 436.200(a) of this chapter, using the total contents of two or three vials.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 units per milliliter.

(5) *Copper content*—(i) *Reagents.* Dissolve 10 milligrams of zinc dibenzyldithiocarbamate in 100 milliliters of carbon tetrachloride.

(ii) *Preparation of standard copper solution.* Accurately weigh 1.965 grams of cupric sulfate pentahydrate and transfer to a 1-liter volumetric flask. Dissolve the material in 0.1*N* hydrochloric acid, dilute to volume with 0.1*N* hydrochloric acid, and mix well. Transfer 3 milliliters of this stock solution to a 1-liter volumetric flask, dilute to volume with 0.1*N* hydrochloric acid, and mix well. This standard copper solution contains 0.0015 milligram of copper per milliliter. Transfer 10 milliliters of the standard copper solution to a 60-milliliter separatory funnel.

(iii) *Preparation of the sample.* Accurately weigh approximately 15 milligrams of sample into a 60-millilter separatory funnel. Dissolve the sample in 10 milliliters of 0.1*N* hydrochloric acid.

(iv) *Procedure.* To the separatory funnels containing the sample solution and standard copper solution, add 10 milliliters of the zinc dibenzyldithiocarbamate solution and shake the funnels vigorously for 1 minute. Allow the phases to separate. Filter the carbon tetrachloride phase (lower phase) through 1 gram of anhydrous sodium sulfate to remove excess water. Using a suitable spectrophotometer equipped with 1-centimeter cells, and carbon tetrachloride as a blank, measure the absorbance of the standard copper solution and the sample solution at 435 nanometers. Calculate the percent copper as follows:

$$\text{Percent copper} = \frac{\text{Absorbance of sample solution X 1.5}}{\text{Absorbance of standard copper solution X Sample weight in milligrams}}$$

(6) *Content of various bleomycin fractions.* Proceed as directed in § 436.339 of this chapter.

(7) *Identity test.* Proceed as directed in § 436.211 of this chapter, using the method described in paragraph (b)(1) of that section, using a 1 percent mixture.

Dated: September 27, 1994.

David B. Barr,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–24543 Filed 10–3–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8565]

RIN 1545–AM88

Limitation on Passive Activity Losses and Credits—Definition of Activity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations defining the term "activity" for purposes of applying the limitations on passive activity losses and passive activity credits. The final regulations affect taxpayers subject to the limitations on passive activity losses and passive activity credits and provide them with the guidance necessary to comply with the law.

DATES: These regulations are effective May 11, 1992.

For dates of applicability of these regulations, see § 1.469–11 of these regulations.

FOR FURTHER INFORMATION CONTACT: William M. Kostak at (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide additional rules under section 469. Section 469 limits the use of passive activity losses and passive activity credits. Section 469(l)(1) provides that the Treasury Department will prescribe regulations that may be necessary or appropriate to carry out the provisions of section 469, including regulations that specify what constitutes an activity for purposes of that section.

On May 15, 1992, the IRS published in the **Federal Register** a notice of proposed rulemaking (57 FR 20802) to replace certain temporary regulations defining the term "activity." A number of public comments were received concerning the proposed regulations, and a public hearing was held on September 3, 1992. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

I. General Background

Section 469 disallows losses from passive activities to the extent they exceed income from passive activities and similarly disallows credits from passive activities to the extent they exceed tax liability allocable to passive activities. Passive activities are defined, generally, as rental activities and activities in which the taxpayer does not materially participate, but the statute does not define the term "activity." Except for modifications in response to comments received on the proposed regulations, the final regulations generally adopt the same definition of activity as contained in the proposed regulations.

II. Public Comments

One comment suggested that the regulations make explicit that the same facts and circumstances may result in more than one permissible grouping of activities. In response to this comment, the final regulations clarify that there may be more than one reasonable method for grouping a taxpayer's activities after taking into account all the relevant facts and circumstances.

Another comment concerned an example in the proposed regulations that illustrates the grouping of two activities, both conducted through partnerships, where one activity involves the sale of non-food items to grocery stores and the other activity involves the warehousing of goods predominantly for the first activity. The comment suggested clarifying whether the warehousing activity is a rental activity or a trade or business activity. To clarify this point, the final regulations use the example of a trucking activity rather than a warehousing activity.

Several comments requested clarification of the rule that trade or business activities may be grouped together with rental activities only if one is insubstantial in relation to the other. Some comments suggested specifying that the term "insubstantial" refers to factors other than gross income. Other comments suggested adopting a bright-line or safe-harbor gross revenue test. Because the regulations already adopt a facts-and-circumstances test that looks at all of the pertinent factors, it is not necessary to specify that the term insubstantial refers to factors other than gross income. In addition, to avoid complex and mechanical rules, the final regulations do not adopt a bright-line or safe-harbor gross revenue test.

Another comment suggested that the insubstantial requirement should not apply when a taxpayer is renting property to the taxpayer's trade or business. In response to this comment, the final regulations provide that the portion of a rental activity that involves the rental of items of property to a trade or business activity may be grouped with the trade or business activity, regardless of whether one activity is insubstantial in relation to the other, provided each owner of the trade or business activity has the same proportionate ownership interest in the rental activity.

As under the proposed regulations, the Commissioner is authorized to issue guidance identifying activities that may not be grouped with other activities. The final regulations clarify that this authority is not restricted to activities owned by limited partners or limited entrepreneurs.

A commentator requested clarification on whether activities conducted through a C corporation may be grouped with activities not conducted through the C corporation. The final regulations clarify that in determining whether a taxpayer materially or significantly participates in an activity, a taxpayer may group that activity with activities conducted through C corporations that are subject to section 469 (that is, personal service and closely held C corporations).

In response to a comment, the final regulations clarify that an owner of an interest in an entity may not treat as separate activities the activities grouped together by the entity. However, if the activities are not grouped together by the entity, an owner of that entity may group the activities together so long as the grouping is appropriate under the general rules for grouping activities.

The final regulations also clarify the Commissioner's regrouping authority. Under the final regulations, the Commissioner may regroup a taxpayer's activities if any of the activities resulting from the taxpayer's grouping is not an appropriate economic unit and a principal purpose of the taxpayer's grouping is to circumvent the underlying purposes of section 469. If the Commissioner can show that the effect of a taxpayer's grouping is the circumvention of the underlying purposes of section 469, this will be evidence, sufficient in certain cases, of a principal purpose of the grouping. It is expected, however, that the Commissioner's regrouping authority will be exercised infrequently.

Tax practitioners have also inquired concerning the circumstances in which suspended losses will be allowed on the disposition of part of an activity. The final regulations modify the rule in the proposed regulations to provide that the rule allowing suspended losses on partial dispositions applies only to dispositions of substantially all of an activity. However, the effective date of the final regulations provides transitional rules that allow taxpayers to use the rules provided in the proposed regulations for taxable years beginning before October 4, 1994.

Several comments requested guidance on when activities grouped in accordance with the rules in the temporary regulations must be regrouped under the final regulations. In accordance with the effective date provisions, taxpayers that grouped their activities under the rules in the temporary regulations must regroup their activities if their activities are not appropriate economic units under these regulations. The effective date and transition rules reflect this clarification.

These regulations do not address the grouping of rental real estate activities by taxpayers subject to section 469(c)(7), as enacted by the Revenue Reconciliation Act of 1993.

III. Effective Dates

In general, these regulations are effective for taxable years ending after May 10, 1992. However, for taxable years in which these regulations apply and that begin before October 4, 1994,

a taxpayer may determine its tax liability in accordance with proposed § 1.469–4 published at 1992–1 C.B. 1219. For taxable years ending on or before May 10, 1992, taxpayers must apply the rules of § 1.469–4T. For the taxable year that includes May 10, 1992, taxpayers may choose to apply the rules in § 1.469–4T, rather than the rules in these regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Ronald M. Gootzeit and William M. Kostak, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry "§§ 1.469–1, 1.469–1T, 1.469–2, 1.469–2T, 1.469–3, 1.469–3T, 1.469–5, 1.469–5T and 1.469–11" and adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.469–1 also issued under 26 U.S.C. 469(l).

Section 1.469–1T also issued under 26 U.S.C. 469(l).

Section 1.469–2 also issued under 26 U.S.C. 469(l).

Section 1.469–2T also issued under 26 U.S.C. 469(l).

Section 1.469–3 also issued under 26 U.S.C. 469(l).

Section 1.469–3T also issued under 26 U.S.C. 469(l).

Section 1.469–4 also issued under 26 U.S.C. 469(l).

Section 1.469–5 also issued under 26 U.S.C. 469(l).

Section 1.469–5T also issued under 26 U.S.C. 469(l).

Section 1.469–11 also issued under 26 U.S.C. 469(l). * * *

Par. 2. Section 1.469–0 is amended by:

1. Revising the heading for § 1.469–4 and adding entries for § 1.469–4 (a) through (h).

2. Revising the entry for § 1.469–11(b)(1).

3. Revising the entry for § 1.469–11(b)(2).

4. Adding entries for § 1.469–11(b)(2)(i) and (ii).

5. Adding an entry for § 1.469–11(b)(3).

6. The additions and revisions read as follows:

§ 1.469–0 Table of contents.

* * * * *

§ 1.469–4 Definition of Activity

(a) Scope and purpose.
(b) Definitions.
(1) Trade or business activities.
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(c) General rules for grouping activities.
(1) Appropriate economic unit.
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(d) Limitation on grouping certain activities.
(1) Grouping rental activities with other trade or business activities.
(i) Rule.
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(2) Grouping real property rentals and personal property rentals prohibited.
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(4) Other activities identified by the Commissioner.
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(ii) Cross reference.
(e) Disclosure and consistency requirements.
(1) Original groupings.
(2) Regroupings.
(f) Grouping by Commissioner to prevent tax avoidance.
(1) Rule.
(2) Example.
(g) Treatment of partial dispositions.
(h) Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7) for taxable years beginning after December 31, 1993 [Reserved].

* * * * *

§ 1.469–11 Effective Date and Transition Rules

* * * * *

(b) * * *

(1) Application of 1992 amendments for taxable years beginning before October 4, 1994.

(2) Additional transition rules for 1992 amendments.

(i) In general.

(ii) Additional rule for activity regulations.

(3) Certain investment credit property.

* * * * *

Par. 3. Section 1.469–4 is added to read as follows:

§ 1.469–4 Definition of activity.

(a) *Scope and purpose.* This section sets forth the rules for grouping a taxpayer's trade or business activities and rental activities for purposes of applying the passive activity loss and credit limitation rules of section 469. A taxpayer's activities include those conducted through C corporations that are subject to section 469, S corporations, and partnerships.

(b) *Definitions.* The following definitions apply for purposes of this section—

(1) *Trade or business activities. Trade or business activities* are activities, other than rental activities or activities that are treated under § 1.469–1T(e)(3)(vi)(B) as incidental to an activity of holding property for investment, that—

(i) Involve the conduct of a trade or business (within the meaning of section 162);

(ii) Are conducted in anticipation of the commencement of a trade or business; or

(iii) Involve research or experimental expenditures that are deductible under section 174 (or would be deductible if the taxpayer adopted the method described in section 174(a)).

(2) *Rental activities. Rental activities* are activities that constitute rental activities within the meaning of § 1.469–1T(e)(3).

(c) *General rules for grouping activities*—(1) *Appropriate economic unit.* One or more trade or business activities or rental activities may be treated as a single activity if the activities constitute an appropriate economic unit for the measurement of gain or loss for purposes of section 469.

(2) *Facts and circumstances test.* Except as otherwise provided in this section, whether activities constitute an appropriate economic unit and, therefore, may be treated as a single activity depends upon all the relevant facts and circumstances. A taxpayer may use any reasonable method of applying the relevant facts and circumstances in grouping activities. The factors listed below, not all of which are necessary for a taxpayer to treat more than one activity as a single activity, are given the greatest weight in

determining whether activities constitute an appropriate economic unit for the measurement of gain or loss for purposes of section 469—

(i) Similarities and differences in types of trades or businesses;

(ii) The extent of common control;

(iii) The extent of common ownership;

(iv) Geographical location; and

(v) Interdependencies between or among the activities (for example, the extent to which the activities purchase or sell goods between or among themselves, involve products or services that are normally provided together, have the same customers, have the same employees, or are accounted for with a single set of books and records).

(3) *Examples.* The following examples illustrate the application of this paragraph (c).

Example 1. Taxpayer *C* has a significant ownership interest in a bakery and a movie theater at a shopping mall in Baltimore and in a bakery and a movie theater in Philadelphia. In this case, after taking into account all the relevant facts and circumstances, there may be more than one reasonable method for grouping *C*'s activities. For instance, depending on the relevant facts and circumstances, the following groupings may or may not be permissible: a single activity; a movie theater activity and a bakery activity; a Baltimore activity and a Philadelphia activity; or four separate activities. Moreover, once *C* groups these activities into appropriate economic units, paragraph (e) of this section requires *C* to continue using that grouping in subsequent taxable years unless a material change in the facts and circumstances makes it clearly inappropriate.

Example 2. Taxpayer *B*, an individual, is a partner in a business that sells non-food items to grocery stores (partnership *L*). *B* also is a partner in a partnership that owns and operates a trucking business (partnership *Q*). The two partnerships are under common control. The predominant portion of *Q*'s business is transporting goods for *L*, and *Q* is the only trucking business in which *B* is involved. Under this section, *B* appropriately treats *L*'s wholesale activity and *Q*'s trucking activity as a single activity.

(d) *Limitation on grouping certain activities.* The grouping of activities under this section is subject to the following limitations:

(1) *Grouping rental activities with other trade or business activities*—(i) *Rule.* A rental activity may not be grouped with a trade or business activity unless the activities being grouped together constitute an appropriate economic unit under paragraph (c) of this section and—

(A) The rental activity is insubstantial in relation to the trade or business activity;

(B) The trade or business activity is insubstantial in relation to the rental activity; or

(C) Each owner of the trade or business activity has the same proportionate ownership interest in the rental activity, in which case the portion of the rental activity that involves the rental of items of property for use in the trade or business activity may be grouped with the trade or business activity.

(ii) *Examples.* The following examples illustrate the application of paragraph (d)(1)(i) of this section:

Example 1. (i) *H* and *W* are married and file a joint return. *H* is the sole shareholder of an S corporation that conducts a grocery store trade or business activity. *W* is the sole shareholder of an S corporation that owns and rents out a building. Part of the building is rented to *H*'s grocery store trade or business activity (the grocery store rental). The grocery store rental and the grocery store trade or business are not insubstantial in relation to each other.

(ii) Because they file a joint return, *H* and *W* are treated as one taxpayer for purposes of section 469. See § 1.469–1T(j). Therefore, the sole owner of the trade or business activity (taxpayer *H–W*) is also the sole owner of the rental activity. Consequently, each owner of the trade or business activity has the same proportionate ownership interest in the rental activity. Accordingly, the grocery store rental and the grocery store trade or business activity may be grouped together (under paragraph (d)(1)(i) of this section) into a single trade or business activity, if the grouping is appropriate under paragraph (c) of this section.

Example 2. Attorney *D* is a sole practitioner in town *X*. *D* also wholly owns residential real estate in town *X* that *D* rents to third parties. *D*'s law practice is a trade or business activity within the meaning of paragraph (b)(1) of this section. The residential real estate is a rental activity within the meaning of § 1.469–1T(e)(3) and is insubstantial in relation to *D*'s law practice. Under the facts and circumstances, the law practice and the residential real estate do not constitute an appropriate economic unit under paragraph (c) of this section. Therefore, *D* may not treat the law practice and the residential real estate as a single activity.

(2) *Grouping real property rentals and personal property rentals prohibited.* An activity involving the rental of real property and an activity involving the rental of personal property (other than personal property provided in connection with the real property or real property provided in connection with the personal property) may not be treated as a single activity.

(3) *Certain activities of limited partners and limited entrepreneurs*—(i) *In general.* Except as provided in this paragraph, a taxpayer that owns an interest, as a limited partner or a limited entrepreneur (as defined in section 464(e)(2)), in an activity described in section 465(c)(1), may not group that activity with any other activity. A taxpayer that owns an interest as a limited partner or a limited entrepreneur in an activity described in the preceding sentence may group that activity with another activity in the same type of business if the grouping is appropriate under the provisions of paragraph (c) of this section.

(ii) *Example.* The following example illustrates the application of this paragraph (d)(3):

Example. (i) Taxpayer *A*, an individual, owns and operates a farm. *A* is also a member of *M*, a limited liability company that conducts a cattle-feeding business. *A* does not actively participate in the management of *M* (within the meaning of section 464(e)(2)(B)). In addition, *A* is a limited partner in *N*, a limited partnership engaged in oil and gas production.

(ii) Because *A* does not actively participate in the management of *M*, *A* is a limited entrepreneur in *M*'s activity. *M*'s cattle-feeding business is described in section 465(c)(1)(B) (relating to farming) and may not be grouped with any other activity that does not involve farming. Moreover, *A*'s farm may not be grouped with the cattle-feeding activity unless the grouping constitutes an appropriate economic unit for the measurement of gain or loss for purposes of section 469.

(iii) Because *A* is a limited partner in *N* and *N*'s activity is described in section 465(c)(1)(D) (relating to exploring for, or exploiting, oil and gas resources), *A* may not group *N*'s oil and gas activity with any other activity that does not involve exploring for, or exploiting, oil and gas resources. Thus, *N*'s activity may not be grouped with *A*'s farm or with *M*'s cattle-feeding business.

(4) *Other activities identified by the Commissioner.* A taxpayer that owns an interest in an activity identified in guidance issued by the Commissioner as an activity covered by this paragraph (d)(4) may not group that activity with any other activity, except as provided in the guidance issued by the Commissioner.

(5) *Activities conducted through section 469 entities*—(i) *In general.* A C corporation subject to section 469, an S corporation, or a partnership (a section 469 entity) must group its activities under the rules of this section. Once the section 469 entity groups its activities, a shareholder or partner may group those activities with each other, with activities conducted directly by the shareholder or partner, and with activities conducted through other section 469 entities, in accordance with the rules of this section. A shareholder or partner may not treat activities grouped together by a section 469 entity as separate activities.

(ii) *Cross reference.* An activity that a taxpayer conducts through a C corporation subject to section 469 may be grouped with another activity of the taxpayer, but only for purposes of determining whether the taxpayer materially or significantly participates in the other activity. See § 1.469–2T(c)(3)(i)(A) and (c)(4)(i) for the rules regarding dividends on C corporation stock and compensation paid for personal services.

(e) *Disclosure and consistency requirements*—(1) *Original groupings.* Except as provided in paragraph (e)(2) of this section, once a taxpayer has grouped activities under this section, the taxpayer may not regroup those activities in subsequent taxable years. Taxpayers must comply with disclosure requirements that the Commissioner may prescribe with respect to both their original groupings and the addition and disposition of specific activities within those chosen groupings in subsequent taxable years.

(2) *Regroupings.* If it is determined that a taxpayer's original grouping was clearly inappropriate or a material change has occurred that makes the original grouping clearly inappropriate, the taxpayer must regroup the activities and must comply with disclosure requirements that the Commissioner may prescribe.

(f) *Grouping by Commissioner to prevent tax avoidance*—(1) *Rule.* The Commissioner may regroup a taxpayer's activities if any of the activities resulting from the taxpayer's grouping is not an appropriate economic unit and a principal purpose of the taxpayer's grouping (or failure to regroup under paragraph (e) of this section) is to circumvent the underlying purposes of section 469.

(2) *Example.* The following example illustrates the application of this paragraph (f):

Example. (i) Taxpayers *D, E, F, G,* and *H* are doctors who operate separate medical practices. *D* invested in a tax shelter several years ago that generates passive losses and the other doctors intend to invest in real estate that will generate passive losses. The taxpayers form a partnership to engage in the trade or business of acquiring and operating X-ray equipment. In exchange for equipment contributed to the partnership, the taxpayers receive limited partnership interests. The partnership is managed by a general partner selected by the taxpayers; the taxpayers do not materially participate in its operations. Substantially all of the partnership's services are provided to the taxpayers or their patients, roughly in proportion to the doctors' interests in the partnership. Fees for the partnership's services are set at a level equal to the amounts that would be charged if the partnership were dealing with the taxpayers at arm's length and are expected to assure the partnership a profit. The taxpayers treat the partnership's services as a separate activity from their medical practices and offset the income generated by the partnership against their passive losses.

(ii) For each of the taxpayers, the taxpayer's own medical practice and the services provided by the partnership constitute an appropriate economic unit, but the services provided by the partnership do not separately constitute an appropriate economic unit. Moreover, a principal purpose of treating the medical practices and the partnership's services as separate activities is to circumvent the underlying purposes of section 469. Accordingly, the Commissioner may require the taxpayers to treat their medical practices and their interests in the partnership as a single activity, regardless of whether the separate medical practices are conducted through C corporations subject to section 469, S corporations, partnerships, or sole proprietorships. The Commissioner may assert penalties under section 6662 against the taxpayers in appropriate circumstances.

(g) *Treatment of partial dispositions.* A taxpayer may, for the taxable year in which there is a disposition of substantially all of an activity, treat the part disposed of as a separate activity, but only if the taxpayer can establish with reasonable certainty—

(1) The amount of deductions and credits allocable to that part of the activity for the taxable year under § 1.469–1(f)(4) (relating to carryover of disallowed deductions and credits); and

(2) The amount of gross income and of any other deductions and credits allocable to that part of the activity for the taxable year.

(h) *Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7) for taxable years beginning after December 31, 1993.* [Reserved]

Par. 4. Section 1.469–11 is amended as follows:

1. Paragraph (a)(1) is revised.
2. Paragraph (b)(1) is revised.
3. Paragraph (b)(2) is redesignated as paragraph (b)(3).
4. A new paragraph (b)(2) is added.
5. The added and revised provisions read as follows:

§ 1.469–11 Effective date and transition rules.

(a) * * *

(1) The rules contained in §§ 1.469–1, 1.469–1T, 1.469–2, 1.469–2T, 1.469–3, 1.469–3T, 1.469–4, 1.469–5, and 1.469–5T apply for taxable years ending after May 10, 1992.

* * * * *

(b) * * * (1) Application of 1992 amendments for taxable years beginning before October 4, 1994. Except as provided in paragraph (b)(2)(i) of this section, for taxable years that end after May 10, 1992, and begin before October 4, 1994, a taxpayer may determine its tax liability in accordance with Project PS–1–89 published at 1992–1 C.B. 1219 (see § 601.601(d)(2)(ii)(b) of this chapter).

(2) *Additional transition rules for 1992 amendments*—(i) *In general.* If a taxpayer's first taxable year ending after May 10, 1992, begins on or before that date, the taxpayer may treat the taxable year, for purposes of paragraph (a) of this section, as a taxable year ending on or before May 10, 1992.

(ii) *Additional rule for activity regulations.* For the first taxable year in which the rules in § 1.469–4 apply, taxpayers that are not in compliance with those rules must regroup their activities under those rules, without regard to the manner in which the activities were grouped in prior taxable years.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: August 1, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 94–24392 Filed 10–3–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 94–010]

RIN 2115–AA97

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring, in part, practice flights by the U.S. Navy Blue Angels flight team on October 6 and October 7, and an air show including the U.S. Navy Blue Angels and civilian aircraft on October 9, 1994. To ensure the safety of Fleetweek participants and spectators, the Coast Guard proposes to establish a Safety Zone on the waters of San Francisco Bay, California, encompassing the entire water area bounded by the following: Commencing at the point 37°–48′–40″ N, 122°–28′–38″ W; thence to 37°–49′–10″ N, 122°–28′–41″ W; thence to 37°–49′–31″ N, 122°–25′–18″ W; thence to 37°–49′–31″ N, 122°–24′–19″ W; thence to 37°–48′–27.5″ N, 122°–

24'–04" W; and thence returning along the shoreline to the point of origin. Entry into, transit through, or anchoring within this zone by deep draft vessels, 1600 gross tons or greater, and tug and barge combinations is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This Safety Zone will be in effect on October 6, 7 and 9, 1994, commencing at 12 noon PDT on October 6, 11 a.m. PDT on October 7, and 9:30 a.m. PDT on October 9 and will conclude at 4 p.m. PDT each day unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Sean Regan, Coast Guard Marine Safety Office, San Francisco Bay, California; (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the scope of activities potentially attracting a number of spectator craft and thus requiring a safety zone was not finalized until a date fewer than 30 days prior to the event date.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) Sean Regan, Project Officer for the Captain of the Port, and Lieutenant Commander C.M. Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will commence at 12 noon PDT on October 6, 11 a.m. PDT on October 7 and 9:30 a.m. PDT on October 9, 1994 and will conclude at 4 p.m. PDT each day, unless canceled earlier by the Captain of the Port. This Safety Zone is necessary to ensure the safety of pleasure boaters against injury from collision with deep draft vessels or tug and barge combinations. Deep draft vessels, 1600 gross tons or greater, and tug and barge combinations are prohibited from entering into, transiting through, or anchoring within the Safety Zone unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

Regulation

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

1. The authority citation for 33 CFR Part 165 continues to read as follows:

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

2. A new § 165.T11–095 is added to read as follows:

§ 165.T11–095 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a Safety Zone: The waters of San Francisco Bay, CA, encompassing the entire water area bounded by the following: Commencing at the point 37°–48'–40" N, 122°–28'–38" W; thence to 37°–49'–10" N, 122°–28'–41" W; thence to 37°–49'–31" N, 122°–25'–18" W; thence to 37°–49'–31" N, 122°–24'–19" W; thence to 37°–48'27.5" N, 122°–24'–04" W; and thence returning along the shoreline to the point of origin.

(b) *Effective dates.* This section will be in effect on October 6, 7 and 9, 1994, commencing at 12 noon PDT on October 6, 11 a.m. PDT on October 7, and 9:30 a.m. PDT on October 9 and will conclude at 4 p.m. PDT each day unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this Part, entry into, transit through, or anchoring within this zone by deep draft vessels, 1600 gross tons or greater, and tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Dated: September 22, 1994.

D.P. Montoro,

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

[FR Doc. 94–24523 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Francisco Bay 94–011]

RIN 2115–AA97

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring, in part, a Parade of Ships. To ensure the safety of Fleetweek participants and spectators, the Coast Guard proposes to establish a Safety Zone on the waters of San Francisco Bay, California, in the area of the Golden Gate Bridge on October 8, 1994. The zone will encompass the following areas: (1) To the west of the Golden Gate Bridge, an area comprised of the entire Main Ship Channel extending between the sea buoy, at latitude 37°45'00" N and longitude 122°23'09" W, and the Golden Gate Bridge and including, in their entirety, the West Bound San Francisco Bay Traffic Lane, the East Bound San Francisco Bay Traffic Lane, and the Separation Line; and (2) an area to the east of the Golden Gate Bridge, described by those San Francisco Bay waters falling within a 2000-yard radius of the point at latitude 37°49'11" N and longitude 122°28'43" W. Entry into, transit through, or anchoring within this zone by deep draft vessels, 1600 gross tons or greater, and tug and barge combinations is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This Safety Zone will be in effect on October 8, 1994 between 8

a.m. PDT and 11 a.m. PDT, unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Sean Regan, Coast Guard Marine Safety Office, San Francisco Bay, California; (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the scope of activities potentially attracting a number of spectator craft and thus requiring a safety zone was not finalized until a date fewer than 30 days prior to the event date.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) Sean Regan, Project Officer for the Captain of the Port, and Lieutenant Commander C.M Juckiness, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this Safety Zone will occur on October 8, 1994 between 8 a.m. PDT and 11 a.m. PDT, unless canceled earlier by the Captain of the Port. This Safety Zone is necessary to allow for the safe maneuvering and navigation of 17 Naval ships and the USNS JEREMIAH O'BRIEN during the formation for, and conduct of, the Parade of Ships. Entry into, transit through, or anchoring within this Safety Zone by deep draft vessels, 1600 gross tons or greater, and tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

Regulation

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

1. The authority citation for 33 CFR Part 165 continues to read as follows:

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

2. A new § 165.T11–096 is added to read as follows:

§ 165.T11–096 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a Safety Zone: The waters of San Francisco Bay, California: (1) to the west of the Golden Gate Bridge, an area comprised of the entire Main Ship Channel extending between the sea buoy, at latitude 37°–45′–00″ N and longitude 122°–23′–09″ W, and the Golden Gate Bridge and including, in their entirety, the West Bound San Francisco Bay Traffic Lane, the East Bound San Francisco Bay Traffic Lane, and the Separation Line; and (2) an area to the east of the Golden Gate Bridge, described by those San Francisco Bay waters falling within a 2000-yard radius of the point at latitude 37°–49′–11″ N and longitude 122°–28′–43″ W.

(b) *Effective date.* This section will be in effect on October 8, 1994 between 8 a.m. PDT and 11 a.m. PDT, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this Part, entry into, transit through, or anchoring within this zone by deep draft vessels, 1600 gross tons or greater, and by tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Dated: September 22, 1994.

D.P. Montero,

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

[FR Doc. 94–24524 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Francisco Bay 94–012]

RIN 2115–AA97

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring, in part, a fireworks display. To ensure the safety of Fleetweek spectators, the Coast Guard proposes to establish a Safety Zone on the waters of San Francisco Bay, California in the vicinity of Treasure Island on October 12, 1994. The zone encompasses an area within a 400-yard radius of the point at latitude 37°–48′–58″ N and longitude 122°–22′–16″ W. Entry into, transit through, or anchoring within this Safety Zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This Safety Zone will be in effect on October 12, 1994 between 8 p.m. PDT and 9 p.m. PDT, unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Sean Regan, Coast Guard Marine Safety Office San Francisco Bay, California; (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the scope of activities potentially attracting a number of spectator craft and thus requiring a safety zone was not finalized until a date fewer than 30 days prior to the event date.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) Sean Regan, Project Officer for the Captain of the Port, and Lieutenant Commander C. M. Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this proposed regulation will begin at approximately 8 p.m. PDT on October 12, 1994, with a fireworks display, and will continue until 9 p.m. PDT unless canceled earlier by the Captain of the Port. This Safety Zone is necessary to ensure the safety of pleasure craft and spectators from possible damage or injury resulting from the hazards associated with the Fleetweek fireworks display. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

Regulation

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

1. The authority citation for 33 CFR Part 165 continues to read as follows:

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

2. A new § 165.T11–097 is added to read as follows:

§ 165.T11–097 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a Safety Zone: The waters of San Francisco Bay, California in the vicinity of Treasure Island, encompassed within a 400-yard radius of the point at latitude 37°–48′–58″ N and longitude 122°–22′–16″ W.

(b) *Effective date.* This section will be in effect on October 12, 1994 between 8 p.m. PDT and 9 p.m. PDT, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this Part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Dated: September 22, 1994.

D.P. Montoro,

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

[FR Doc. 94–24525 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Francisco Bay 94–013]

RIN 2115–AA97

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring, in part, a Parade of Ships and a U.S. Navy Blue Angels Air Show on October 8, 1994. To ensure the safety of Fleetweek participants and spectators, the Coast Guard proposes to establish a Safety Zone on the waters of San Francisco Bay, California, encompassing the entire water area bounded by the following: Commencing at the point 37°–48′40″ N, 122°–28′–38″ W; thence to 37°–49′–10″ N, 122°–28′41″ W; thence to 37°–49′–31″ N, 122°–25′–18″ W; thence to 37°–49′–36″ N, 122°–22′–44″ W; thence to 37°–48′–28″ N, 122°–22′02″ W, thence to 37°–47′–21″ N, 122°–23′–14″ W; and thence returning along the shoreline to the point of origin. Entry into, transit through, or anchoring within this Safety Zone by deep draft vessels, 1600 gross tons or greater, and tug and barge combinations is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This Safety Zone will be in effect on October 8, 1994 between 9 a.m. PDT and 4 p.m. PDT, unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (junior grade) Sean Regan, Coast Guard Marine Safety Office San Francisco Bay, California; (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the scope of activities potentially attracting a number of spectator craft and thus requiring a safety zone was not finalized until a date fewer than 30 days prior to the event date.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) Sean Regan, Project Officer for the Captain of the Port, and Lieutenant Commander C.M. Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this Safety Zone will begin on October 8, 1994 at 9 a.m. PDT and will conclude at 4 p.m. PDT, unless canceled earlier by the Captain of the Port. This Safety Zone is necessary to ensure the safety of pleasure boaters against injury from collision with deep draft vessels or tug and barge combinations during the Parade of Ships and U.S. Navy Blue Angels Air Show. Entry into this zone by deep draft vessels, 1600 gross tons or greater, or tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

Regulation

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

1. The authority citation for 33 CFR Part 165 continues to read as follows:

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

2. A new § 165.T11–098 is added to read as follows:

§ 165.I11–098 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a Safety Zone: The waters of San Francisco Bay, CA, encompassing the entire water area bounded by the following: Commencing at the point 37°–48′–40″ N, 122°–28′–38″ W; thence to 37°–49′–10″ N, 122°–28′–41″ W; thence to 37°–49′–31″ N, 122°–25′–18″ W; thence to 37°–49′–36″ N, 122°–22′–44″ W; thence to 37°–48′–28″ N, 122°–22′–02″ W, thence to 37°–47′–21″ N, 122°–23′–14″ W; and thence returning along the shoreline to the point of origin.

(b) *Effective date.* This section will be in effect on October 8, 1994 between 9 a.m. PDT and 4 p.m. PDT, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this Part, entry into, transit through, or anchoring within this zone by deep draft vessels, 1600 gross tons or greater, or by tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Dated: September 22, 1994.

D. P. Montoro,

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

[FR Doc. 94–24526 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN17–3–6325; [FRL–5077–2]

Approval and Promulgation of Implementation Plans; Carbon Monoxide; Oxygenated Gasoline Program; Minnesota

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving a State Implementation Plan (SIP) revision submitted by the State of Minnesota. This revision requires an oxygenated gasoline program in the Minneapolis-St. Paul Metropolitan Statistical Area (MSA). Two areas were originally required to implement an oxygenated gasoline program because of past violations of the carbon monoxide standard, but on April 14, 1994, the Duluth area was redesignated to attainment of the National Ambient Air Quality Standards for carbon monoxide (CO). This SIP revision was submitted to satisfy the requirement for Minnesota of section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act), which requires all CO nonattainment areas with a design value of 9.5 parts per million (ppm) or above based on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. USEPA is approving the oxygenated gasoline program.

EFFECTIVE DATE: This final rule becomes effective on November 3, 1994.

ADDRESSES: Copies of the SIP revision, public comments, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Maggie Greene, at (312) 886–6088 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604.

A copy of this revision to the Minnesota Oxygenated Gasoline SIP is available at the following address: Office of Air and Radiation (OAR), Docket and Information Center, (Air Docket 6102), room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (202) 260–7548, and Program Development Section, Air Quality Division, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155–3898.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air Enforcement Branch (AE–17J), U.S Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

The Minneapolis-St. Paul area and St. Louis County (Duluth) in the State of Minnesota (the control area) were designated nonattainment for CO and classified as moderate with a design value of 11.4 and 9.9 parts per million respectively, based on 1988 and 1989 data. USEPA redesignated the Duluth area to attainment on April 14, 1994 (59 FR 17706) in the **Federal Register**. Under section 211(m) of the Act, Minnesota was required to submit a revised SIP under section 110 and part D of the Act which includes an oxygenated gasoline program for Minneapolis-St. Paul and Duluth-Superior by November 15, 1992. On November 9, 1992, the Minnesota Pollution Control Agency (MPCA) submitted to USEPA a revised SIP including the oxygenated gasoline program containing legislation that was signed by the Governor on April 29, 1992, and became effective on August 1, 1992. The USEPA issued a completeness letter to the State on January 20, 1993. The notice of proposed rulemaking was published in

the January 20, 1994 (59 FR 3047) **Federal Register.**

II. Public Comment/USEPA Response

A thirty-day public comment period was provided to allow interested parties the opportunity to comment on USEPA's proposed action. USEPA received three comments from the American Institute of Certified Public Accountants (CPAs), the Koch Refining Company, and the MPCA. The comments and USEPA's responses are addressed below.

Comment: The American Institute of CPAs objected to the use of the word "Account" when the word should be "Accountant" which is used to denote a CPA. This appeared in the section entitled "Registration Requirements."

Response: USEPA agrees that the sentence should have read, "The USEPA guidelines also require that CARs commission an annual attest engagement, performed by either an internal auditor or independent Certified Public Accountant (CPA)."

Comment: The Koch Refining Company supported the oxygenated gasoline program in Minnesota, but only within the control area and during the control period. On November 12, 1993, the MPCA submitted a contingency plan to require year-round oxygenated fuel beginning in 1995. Koch opposed this contingency plan. While Koch understood that the USEPA's proposed rule did not address the contingency plan and addressed only the oxygenated gasoline program within the control area and during the control period, Koch opposed any use of oxygenated gasoline outside of the control period. Koch will submit additional comments on the contingency plan when that plan is proposed for Federal rulemaking.

Response: USEPA will propose rulemaking on the contingency plan in another **Federal Register** notice. This final action only deals with the oxygenated gasoline program.

Comment: The MPCA noted that the officially designated nonattainment area for CO does not include Superior, Wisconsin, or St. Louis County, but only the City of Duluth, Minnesota. At this time, the State does not plan to enforce the oxygenated gasoline program in Duluth, which has been meeting standards since 1989. Also, it does not plan to enforce in the remaining portion of St. Louis County, which is largely a wilderness area and has never had a modeled or monitored "CO" problem.

Response: This issue is moot. The State of Minnesota requested that USEPA redesignate Duluth to attainment for CO. Minnesota submitted a draft request to USEPA on October 2, 1992, and a final request before November 1, 1992. USEPA requested additional information several months later, and the State responded to this request by sending the information in early December 1993. The USEPA redesignated the Duluth area to attainment for CO on April 14, 1994 (59 FR 17706) in the **Federal Register.**

Additional Information: During the public comment period, USEPA contacted the MPCA and requested that it withdraw from the Oxygenated SIP, the MPCA Board resolution of October 27, 1992, which was a part of the program plan. The resolution allowed the State to unilaterally take action to eliminate the oxygenated gasoline program upon submission by the State of a request for redesignation. This concept goes against USEPA redesignation procedures and cannot be approved as part of the State's plan. In a letter dated August 12, 1994, the State withdrew the October 27, 1992, MPCA Board Resolution from the requested SIP revision.

III. Rulemaking Action

In this action, USEPA is approving in final the SIP revision submitted by the State of Minnesota. The State of Minnesota has submitted and implemented an oxygenated gasoline program for the existing CO nonattainment area substantially in accordance with the requirements of the Act. The USEPA is, therefore, approving this submittal.

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

USEPA received no significant public comments on the proposed action. As a direct result, the Regional Administrator reclassified this action from Table 2 to a Table 3 action under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The USEPA submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. OMB exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements. I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307 (b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1994. 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 each rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307 (b)(2)).

List of Subjects in 40 CFR Part 52

Environmenal protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 8, 1994.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—[Amended]

2. Section 52.1220 is amended by adding paragraph (c)(34) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(34) On November 9, 1992, the State of Minnesota submitted the Oxygenated Gasoline Program. This submittal satisfies the requirements of section 211(m) of the Clean Air Act, as amended.

(i) Incorporation by reference.

(A) Minnesota Laws Chapter 2509, sections 1 through 31, except for sections 29 (b) and (c), enacted by the Legislature and signed into Law on April 29, 1992.

(ii) Additional material.

(A) Letter dated August 12, 1994, from the Minnesota Pollution Control Agency (MPCA), to the United States Environmental Protection Agency that withdraws the MPCA Board resolution dated October 27, 1992, and any reference to it, from the oxygenated gasoline State Implementation Plan revision request of 1992.

[FR Doc. 94–24420 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MA–24–1–6557; A–1–FRL–5074–8]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts—Amendment to Massachusetts' SIP (for Ozone and for Carbon Monoxide) for Transit Systems Improvements and High Occupancy Vehicle Facilities in the Metropolitan Boston Air Pollution Control District)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the Commonwealth of Massachusetts' Executive Office of Transportation and Construction to construct and operate specified transit facilities and high occupancy vehicle (HOV) lanes established therein. Implementation of the defined transportation projects will help reduce the use of automobiles, provide for additional transit facilities in the Metropolitan Boston Region, and improve traffic operations on the region's roadways, resulting in improved air quality. This action should have a beneficial effect on air quality because it is intended to reduce vehicle miles traveled (VMT) in the Boston Metropolitan Area. The emissions to be reduced include hydrocarbons (ground-level ozone precursors) and carbon monoxide (CO).

This action is being taken under sections 110 (a) and (l) of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on November 3, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., (LE–131), Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, (617) 565–3227.

SUPPLEMENTARY INFORMATION: On January 19, 1994 (59 FR 2795), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of a revision to Massachusetts' SIP for Transit Systems Improvements and HOV Facilities in the Metropolitan Boston Air Pollution Control District. The formal SIP revision was submitted by Massachusetts on December 9, 1991.

This new regulation commits the Massachusetts Executive Office of Transportation and Construction (MA EOTC) to pursue implementation, monitoring, and enforcement of transit system improvements and HOV facilities listed in Table 1, that were identified as transportation and air quality mitigation measures in a 1990 Final Supplemental Environmental Impact Statement for the CA/THT project. EPA determined five of the proposed transportation control measures (TCMs) were necessary to help achieve an air quality benefit from the CA/THT. The Massachusetts regulation amends 310 CMR 7.00 by adding two new sections; 310 CMR 7.36—"Transit System Improvements," and 310 CMR 7.37—"High Occupancy Vehicle Lanes."

TABLE 1

Project type and assigned completion date	Project description
HOV Project 12/31/91	HOV Lane: I–93 Southbound HOV Lane, North Of The Southbound Bank Of The Charles River, Shall Be Extended Toward Route 128 To The Northernmost Point Appropriate. No Addition Of New Lanes.
HOV Project 12/31/91	HOV Lane: The Final Design Of The Charles River Crossing On The Southbound Side Of I–93 Extending Down To The Exit Ramp To Nashua Street Shall Include A HOV Lane On The Southbound Side Of I–93. HOV Lane Shall Be Available With Opening Of CA/THT Project.
Transit Project 12/31/92	Lynn Central Square Station & Parking Garage.
Transit Project 12/31/92	North Station High Platform & High Tracks.
Transit Project 12/31/92	Lynn Transit Station Bus Terminal.
HOV Project 05/31/92	HOV Lane: Northbound & Southbound on I–93 Beginning At The Intersection Of I–93 With I–90 & Extending To A Point Immediately North On The Intersection Of I–93 & Route 3. [If The Threshold Standards Are Violated For Three Consecutive Months. Earlier Implementation If EOTC Determines.
Transit Project 12/31/94	South Station Bus Terminal.
Transit Project 12/31/94	South Station Track Number 12.
Transit Project 12/31/94	Ipswich Commuter Rail Line Extension To Newburyport.
Transit Project 12/31/96	Old Colony Commuter Rail Line Extension.
Transit Project 12/31/96	Framingham Commuter Rail Link Extension To Worcester.

TABLE 1—Continued

Project type and assigned completion date	Project description
Transit Project 12/31/96	Park & Ride & Commuter Rail Parking Spaces Outside Of The Boston Core [10,000].
Transit Project 12/31/97	Green Line Arborway Restoration.
Transit Project 12/31/98	Blue Line Platform Lengthening & Modernization.
Transit Project 12/31/99	Park & Ride & Commuter Rail Station Parking Spaces Outside Of The Boston Core In Addition To Those Completed by Dec. 31, 1996 [10,000].
Transit Project 12/31/01	South Boston Piers Electric Bus Service.
Transit Project 12/31/11	Green Line Extension To Ball Square/Tufts University.
Transit Project 12/31/11	Blue Line Connection From Bowdoin Station To The Red Line At Charles Station.

Other specific requirements of the Commonwealth's State Implementation Plan (SIP) Amendment for Ozone and for Carbon Monoxide, for Transit System Improvements and High Occupancy Vehicle Facilities, and the rationale for EPA's proposed action, are explained in the NPR and will not be restated here.

Three public comments were received on the NPR. On February 16, 1994, a private citizen from Michigan submitted comments regarding Massachusetts' car and truck vehicle registrations, and the effect on the Massachusetts Inspection and Maintenance (I/M) program. EPA has found this comment not germane to approval of the Transit and HOV Facilities rules as a SIP Amendment. On February 18, 1994, The Conservation Law Foundation (CLF) submitted comments generally supporting approval of the Transit System Improvement and HOV rules into the SIP. Finally, on February 18, 1994, the Massachusetts Department of Environmental Protection (MA DEP) submitted comments requesting that EPA consider delaying final action on the HOV/Transit SIP rules.

The region has responded fully to CLF and MA DEP comments in a memorandum attached to the Technical Support Document (TSD) available in the docket for this action. A brief summary of these comments and EPA's responses appears below.

The Conservation Law Foundation generally supported approval of the Transit System Improvement and HOV rules into the SIP, but also requested clarification of several aspects of EPA's proposed approval. In support of the transit system improvement rule, CLF noted that several of the transit measures provided for in the rule are mitigation measures responding to the potential air quality impacts of the Central Artery/Third Harbor Tunnel. EPA agrees that completion of these measures, including the "Old Colony" rail line, are important transportation control measures that should help reduce VMT growth on the Central Artery. What follows is EPA's response to CLF's particular concerns.

1. Specific Requirements of These Rules Will Be Enforceable in a Citizens Suit

CLF is concerned that by characterizing these rules as "directionally sound," EPA is suggesting that they are not enforceable by citizens. EPA intended no such conclusion. The proposal expressed EPA's concern that the substitution provisions in these rules allow MA DEP to authorize different projects to substitute for those enumerated in the rules.[1] EPA believes that there is no reliable way to predict the reductions Massachusetts might achieve with these rules since their requirements might change in ways that are difficult to quantify in advance. Therefore, EPA is not prepared to give Massachusetts emissions reduction credit in the SIP for projects until they are substantially complete and a SIP revision requesting credit is submitted.

Withholding SIP credit for these projects, however, does not mean the requirements of these rules are not enforceable by MA DEP, EPA, or citizens under the Clean Air Act. Each rule contains the kind of specific objective requirements and compliance schedules that courts have required in a SIP as a basis for a citizen suit to enforce transportation control measures (TCMs). See e.g. *Wilder* v. *Thomas*, 854 F.2d 605, 615–616 (2d. Cir. 1988). As CLF points out for example, the transit rule identifies specific mass transit improvements to be implemented by certain dates and the HOV rule establishes a series of specific steps to establish and operate HOV lanes depending on traffic conditions. 310 CMR 7.36(2) and 7.37(2)–(7).[2] EPA's concerns relate to the planning implications of a rule with specific requirements that can be revised without case-by-case EPA approval. This concern does not affect citizens' ability to enforce those specific requirements as they may appear in these SIP rules at the time of the enforcement action.

2. When Is a Project "Substantially Complete"?

In response to the uncertainty about which projects will actually be implemented under this rule, EPA proposed to grant emissions reductions credits in the SIP for projects once they are substantially complete. EPA invited comment on how to define the substantial completion of a transit project, especially in the case of projects that do not require significant construction. CLF commented that projects should be credited under the SIP either (1) When funds have been irrevocably committed to them and all government approvals are obtained, or (2) when operation begins, whichever is earlier. CLF went on to say that any actual emissions reductions should not begin to accrue until operation has commenced. CLF believes this standard should apply to both construction and non-construction projects.

EPA appreciates CLF's efforts to devise an approach that would grant the Commonwealth SIP credit for funded projects as soon as possible. EPA is concerned, however, that given the length of the construction schedules involved with some transit projects and the vagaries of the transportation funding process, it will be difficult to determine what constitutes an irrevocable commitment of funds. EPA believes that it will be easier to determine objectively when a construction project is substantially

[1] The Transit System Improvement Rule section 7.36(4)(a) provides that other "transit improvement projects" may substitute for projects listed in section 7.36(2). Whereas the HOV rule allows an "alternative project" to substitute in section 7.37(8)(a). In theory, MA DEP could go so far as to substitute a non-transit project for an HOV lane under the HOV rule, although it may be difficult to make the demonstration that a non-transit project achieves the equivalent mix of CO, NMHC, and NO_x emissions reductions as a transit project as required under section 7.36(8)(a)1.

[2] EPA cites these provisions as examples of specific enforceable requirements in these rules, not an exclusive or exhaustive list of enforceable requirements.

complete. As for non-construction projects, EPA believes the second element of CLF's test is an appropriate clarification of the "ready to implement" concept EPA proposed. Massachusetts can apply for SIP credit for non-construction projects when operation begins.[3]

3. Are Completion Deadlines Expeditious?

Finally, CLF asserts that Massachusetts must submit SIP revisions committing the Commonwealth to firm completion deadlines for these projects to obtain SIP credit as soon as possible. CLF reads *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990) as creating a presumption that omitting any TCMs listed in section 108(f) of the Act delays attainment in violation of the requirement that all nonattainment areas attain as expeditiously as practicable.

EPA believes that these rules contain deadlines for action on transit projects and HOV lanes. It is true that the Transit System Improvement rule 310 CMR 7.36(3) provides for delays in the deadlines listed in section 7.36(2) for up to three years, but it is also clear that at the end of those three years, either the project must be completed or there must be a proposed substitute. While it might be more desirable to have a fixed completion deadline without the "escape valve" for project delays in section 7.36(3), EPA cannot conclude that the possible three year delay authorized by this section causes these rules to violate any obligation to implement TCMs as expeditiously as practicable. Massachusetts has assembled an impressive roster of transportation measures, many of which must be implemented by the attainment year of 1999, even allowing for the possible three year delay.[4]

The Massachusetts DEP's comment advised EPA that the Commonwealth of Massachusetts may be developing changes to the transit improvement and HOV rules that could be submitted to EPA in calendar 1994. DEP suggested that it might be prudent for EPA to delay final action on these rules until EPA receives MA DEP's revisions. MA DEP did not, however, ask to withdraw the rules from EPA's consideration as a SIP revision. While EPA appreciates DEP's desire to avoid iterative SIP actions on these rules, EPA has an obligation to process SIP revisions consistent with section 110(k) of the Act to the extent practicable, including the requirement to act on the SIP submission within a year of deeming it complete. Furthermore, MA DEP has not clearly withdrawn this SIP action. At most their comment appears to be a suggestion to EPA about how to avoid repetitive rulemakings. EPA cannot suspend its statutory obligation to act on SIP submittals without a clear expression from a state that it is withdrawing the package. Suspending final action on these rules in anticipation of rule changes that EPA has not yet seen in draft would only aggravate any delays in processing these rules as a SIP revision to accommodate what is now a speculative rule change.

Final Action

EPA is approving the Transit Systems Improvements and High Occupancy Vehicle Facilities in the Metropolitan Boston Air Pollution Control District as a revision to the Massachusetts SIP.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976), 42 U.S.C. 7410(a)(2).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

[3] Note that the limitations EPA is putting on the SIP credit for these rules is *not* based on any view that TCMs are not fully creditable in a SIP demonstration pursuant to a binding SIP rule. Rather, it is the substitution process in these rules that causes EPA to require substantial completion of projects before giving SIP credit. If these rules had no substitution process, thereby committing to specific TCMs by specific dates, EPA could calculate SIP credit for these measures now.

[4] For example, section 7.36(2)(c)1. requires the Old Colony Commuter Rail Line Extension, one of the most significant transportation measures in 7.36, to be "complete and open to full public use" by December 31, 1996. Even the worst case scenario of a full three year delay would have the Old Colony in full use only 46 days after the attainment deadline for the Commonwealth, November 15, 1999.

Dated: September 7, 1994.

Patricia Meaney,

Acting Deputy Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(101) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(101) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on December 9, 1991.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated December 9, 1991 submitting a revision to the Massachusetts State Implementation Plan.

(B) Massachusetts Regulation 310 CMR 7.36, entitled "Transit System Improvements", Massachusetts Regulation 310 CMR 7.37, entitled "High Occupancy Vehicle Facilities", and amendments to 310 CMR 7.00, entitled "Definitions," effective in the Commonwealth of Massachusetts on December 6, 1991.

For the State of Massachusetts:

§ 52.1167 [Amended]

3. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citations for amendments to 310 CMR 7.00, entitled "Definitions"; and by adding new state citations for Massachusetts Regulation 310 CMR 7.36, entitled "Transit System Improvements" and Massachusetts Regulation 310 CMR 7.37, entitled "High Occupancy Vehicle Facilities" to read as follows:

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	FEDERAL REGISTER citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.00.	Definitions	12/9/91	October 4, 1994	[Insert *FR* citation from published date].	101	Definitions of baseline roadway conditions, high occupancy vehicle, high occupancy vehicle lane, peak hour, performance standard, and roadway threshold standard.
*	*	*	*	*	*	*
310 CMR 7.36.	Transit system improvements regulations.	12/9/91	October 4, 1994	[Insert *FR* citation from published date].	101	Transit system improvement regulation for Boston metropolitan area.
*	*	*	*	*	*	*
310 CMR 7.37.	High occupancy vehicle lanes regulation.	12/9/91	October 4, 1994	[Insert *FR* citation from published date].	101	High occupancy vehicle lanes regulation for Boston metropolitan area.
*	*	*	*	*	*	*

[FR Doc. 94–24421 Filed 10–3–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[CA 13–8–6570; FRL–5073–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Sacramento Metropolitan Air Quality Management District, South Coast Air Quality Management District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on December 17, 1993 and April 7, 1994. The revisions concern rules from the following local agencies: The Sacramento Metropolitan Air Quality Management District (SMAQMD), the South Coast Air Quality Management District (SCAQMD), and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from municipal landfills, graphic arts operations, barbecue charcoal ignition, and municipal sewage treatment plants. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on November 3, 1994.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

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

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule

Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182
Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento CA 95826
Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Erik H. Beck, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1190. Internet E-mail: beck.erik@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1993 in 58 FR 65959, EPA proposed to approve the following rules into the California SIP: SMAQMD Rule 450 "Graphic Arts Operations", and VCAPCD Rule 74.19 "Graphic Arts". On April 7, 1994 in 59 FR 16580, EPA proposed to approve the following rules into the California SIP: SCAQMD Rule 1174 "Control of Volatile Organic Compound Emissions from the Ignition of Barbecue Charcoal", SCAQMD Rule 1179 "Publicly Owned Treatment Works Operations", and VCAPCD Rule 74.17 "Solid Waste Disposal Sites". SMAQMD adopted Rule 450 on February 23, 1993. SCAQMD adopted Rule 1174 on October 5, 1990, and Rule 1179 was adopted on March 6, 1992. VCAPCD adopted Rule 74.17 on September 17, 1991, and Rule 74.19 was adopted on August 11, 1992. These rules were submitted to EPA by the California Air Resources Board on the following dates: May 13, 1991 (SCAQMD Rule 1174); January 28, 1992 (VCAPCD 74.17); September 14, 1992 (SCAQMD Rule 1179); November 12, 1992 (VCAPCD Rule 74.19 "Graphic Arts"); April 6, 1993(SMAQMD Rule 450).

These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the Notices of Proposed Rulemaking (NPRM) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRMs cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 58 FR 65959 and 59 FR 16580 and in technical support documents (TSDs) available at EPA's Region IX office. These TSDs are dated: November 16, 1993 (SMAQMD Rule 450 and VCAPCD Rule 74.19) and February 7, 1994 (SCAQMD Rule 1174 and 1179, and VCAPCD Rule 74.17).

Response to Public Comments

A 30-day public comment period was provided in both 58 FR 65959 and in 59 FR 16580. EPA received no comments on these NPRMs.

EPA Action

EPA is finalizing this action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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

Regulatory Process

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

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 6, 1994.

John Wise,

Deputy Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (184)(i)(B)(*4*), (187)(i)(B), (189)(i)(A)(*5*), (190), and (192)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(184) * * *

(i) * * *

(B) * * *

(*4*) New Rule 1174, adopted on October 5, 1990.

* * * * *

(187) * * *

(i) * * *

(B) Ventura County Air Pollution Control District.

(*1*) New Rule 74.17, adopted on September 17, 1991.

* * * * *

(189) * * *

(i) * * *

(A) * * *

(*5*) New Rule 1179, adopted March 6, 1992.

* * * * *

(190) New and amended regulations for the following APCDs were submitted on November 12, 1992, by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(*1*) Revised Rule 74.19, adopted August 11, 1992.

* * * * *

(192) * * *

(i) * * *

(A) * * *

(*3*) Revised Rule 450, adopted February 23, 1993.

* * * * *

[FR Doc. 94–24418 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[LA-2-1-5200; FRL-5075-9]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Alternative Emission Control Plan for Dow Chemical, U.S.A., Louisiana Division, Plaquemine, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is announcing final approval of the alternative emission reduction (bubble) plan for the Dow Chemical Plaquemine facility as a revision to the Louisiana State Implementation Plan (SIP). The bubble plan uses the emissions reduction credit (ERC) from a process modification at the Glycol II expander unit in lieu of controlling emissions from four volatile organic compounds (VOC) storage tanks. The bubble plan was reviewed for consistency with the final Emissions Trading Policy Statement (ETPS) published by the EPA in the **Federal Register** on December 4, 1986. The ERC is determined to be valid for emissions trading.

EFFECTIVE DATE: This final rule is effective on November 3, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the locations listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, Dallas, TX 75202.

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

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet, Baton Rouge, LA 70810.

FOR FURTHER INFORMATION CONTACT: Bill Deese or Russell Parr of the EPA Region 6 Air Programs Branch at (214) 665-7253 and at the EPA Region 6 address.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 1983, the Governor of Louisiana submitted a request to revise the Louisiana SIP to include an alternative emission reduction plan for the Dow Chemical facility located in Plaquemine, Iberville Parish. The State submittal contains verification that adequate public notice was given and a public hearing was held for the bubble plan. The EPA proposed to approve the bubble plan in a rulemaking document published on June 21, 1991 (56 FR 28509). Brief background information about the bubble plan is provided in this final rulemaking notice; see the proposed rulemaking notice for a more comprehensive discussion of relevant issues and details.

In June 1977, a process modification instituted at the Glycol II expander unit reduced actual emissions of VOC from a waste gas vent by 455.1 tons per year (TPY), from 595.7 to 140.6 TPY. The modification involved adding an additional reactor to the process that reduced the amount of VOC entering and being emitted from the incinerator. The bubble plan uses the emissions reduction from the waste gas vent to offset uncontrolled emissions from four VOC storage tanks. Louisiana Administrative Code requires emissions from the four VOC storage tanks be controlled. Allowable emissions from the four tanks are 0.45 TPY, and total actual emissions from the tanks are 42.33 TPY. The actual emissions from one of the methanol tanks (8X) is 0.69 TPY greater than what was presented in the proposal (1.35 TPY as proposed versus 2.04 TPY as approved), due to an increased turnover rate reported by the Dow Chemical Company after publication of the proposed rulemaking notice. Of the 455.1 TPY ERC generated from the waste gas vent, 41.88 TPY is utilized to offset the noncompliance emissions from the four storage tanks and 5.7 TPY is utilized for improvement in air quality, leaving 407.5 TPY of ERC remaining. The 5.7 TPY improvement in air quality is a State requirement imposed on Dow Chemical. The entire trade as approved is summarized in the following table.

ERC from reduction of vent emissions (−455.1 TPY)

Emissions from four VOC storage tanks (+41.88 TPY)

Net air quality benefit (+5.7 TPY)

REMAINING ERC [1]

[−407.5 TPY]

Emissions (tons/year)							
	Actual			Allowable			
Source	Before bubble	After bubble	Change	Before bubble	After bubble	Change	ID
Storage tanks	5.72	5.72	0.0	0.16	5.72	5.56	6L
	2.04	2.04	0.0	0.03	2.04	2.01	8X
	28.00	28.00	0.0	0.14	28.00	27.86	8S
	6.57	6.57	0.0	0.12	6.57	6.45	8T
Waste gas vent	595.7	140.6	−455.1	595.7	140.6	−455.1	2L
Air quality benefit	0.0	0.0	0.0	0.0	5.7	5.7	
Total	638.03	182.93	−455.1	596.15	188.63	−407.5 [1]	

[1] The 407.5 tons per year of remaining ERC has been voided for future use by Dow Chemical as credit. This has been reflected in the State permit number 1838T(M-2) dated October 16, 1991.

The figures in the table for the waste gas vent have had the ethane component removed because the EPA policy does not treat ethane as a VOC. Currently, emissions from three of the VOC storage tanks (6L, 8S and 8T) are controlled.

Discussion

The State submittal was reviewed for compliance with requirements of

section 110 of the Clean Air Act (CAA), 40 CFR part 51, and proposed and final ETPS published by the EPA on April 7, 1982 (47 FR 15076) and December 4, 1986 (51 FR 43814), respectively. The EPA Evaluation Report titled Alternative Emission Control Plan for Dow Chemical, U.S.A., has been prepared and updated to correspond with circumstances presented in this final rulemaking notice.

Before the EPA would grant final approval of this bubble, the State of Louisiana was required to furnish the EPA with the following assurances specified in the proposed rulemaking: (1) That the State will document that none of the ERC was ever utilized in former planning to develop the SIP for the area so the entire 595.7 TPY serves as baseline; (2) that the State will document that the 407.5 TPY of remaining ERC designated for the bank is voided; (3) that the State will submit a revised, more enforceable permit—modeled after the ones finally issued and approved for Vulcan Materials Company, Geismar Chemical, and American Cyanamid Company Fortier facility bubbles and, ultimately, corresponding with the emissions table presented above; (4) that the State is addressing the post-87 SIP call; (5) that the State will submit a plan to demonstrate attainment for the area; and (6) that the State has resources to fulfill the requirements of numbers (4) and (5). On October 16, 1991, the permit was revised and a copy forwarded to the EPA. The State of Louisiana provided assurances addressing each of the six required elements in a letter to the EPA dated September 17, 1991.

Public Comment and EPA Response

Besides responses from the State of Louisiana, the EPA received one comment on the proposed June 21, 1991, rulemaking in response to publication of the proposed approval. The Ohio EPA, Division of Air Pollution Control, submitted the following comment. The comment has been paraphrased to reflect what the EPA believes is an accurate summary of the commenters' concerns.

In order for ERC to be valid, the 1977 process change should have occurred after the SIP baseline year in effect for ozone at the time of the submittal. This would ensure the emission reduction as surplus. The proposed rulemaking did not identify the SIP baseline year in effect when this bubble was submitted to the EPA on October 19, 1983. The EPA may want to require the affected storage tanks to meet the RACT regulations in the future ozone SIP without the benefit of the 1977 process change.

EPA Response: The final ETPS of December 4, 1986 (51 FR 43814) sets out current policy for approving bubbles. The EPA policy differs depending on whether the bubble is in a nonattainment area with an approved attainment demonstration (NAWAD) or a nonattainment area lacking an approved attainment demonstration (NALAD). When this bubble was submitted to the EPA on October 19, 1983, Plaquemine and Iberville Parishes were considered NAWAD. With the subsequent SIP call on May 26, 1988, these two parishes were considered part of the Baton Rouge Metropolitan Statistical Area and, therefore, were converted to NALAD. The EPA has determined that different requirements should apply to a pending bubble in a SIP call area, such as this one. Namely, the existing bubble can continue to use the baseline that was consistent with the assumptions in the original attainment demonstration. For this bubble, the EPA interprets the baseline as the emission level established by the underlying Reasonably Available Control Technology (RACT) regulation. RACT, in this case, is determined by the regulation approved by the State of Louisiana in 1980 which requires incineration (a control device). This control device was already installed when the process improvement resulting in the additional reduction of VOC was made in 1977. The additional reductions result from the process improvement before the incinerator, thereby reducing the amount of VOC going to the control device.

To be valid for trading purposes, an emission reduction must be surplus, enforceable, permanent, and quantifiable. First, Dow has shown that a significant VOC reduction was achieved, beyond what was required by RACT, by the process modification. Second, the emission reductions were made enforceable when the State issued to Dow a modified permit [Permit Number 1838T(M–2)] on October 16, 1991, that delineated the terms of the emission trade. Third, the emission reductions are permanent since the process change is permanent. Finally, the ERC's are quantifiable in that the VOC emissions can be calculated and the reduction in waste gases produced by the process can be measured. Therefore, the emission reduction credits associated with this bubble are valid.

With regard to requiring the affected storage tanks to meet the RACT regulation in future ozone SIP's, much of this has already been accomplished. Waste gas vents (emission point 2L) have been rerouted for recovery by the ethylene recovery unit under State Permit Number 2032. The tanks used for hexane storage (emission points 8S and 8T) have been replaced by pressurized tanks under State Permit Number 2033. One of the methanol tank vents (emission point 6L) will be rerouted for recovery under State Permit Number 2037. Only one methanol tank vent (emission point 8X) remains uncontrolled as originally proposed. Emissions from this vent have been revised from 1.37 tons per year to 2.04 tons per year based on an increased turnover rate.

Final Action

The EPA is taking final action to approve the alternative emission reduction (bubble) plan for the Dow Chemical Plaquemine facility as submitted by the Governor of Louisiana in a letter dated October 19, 1983, and amended with a permit number 1838T(M–2) dated October 16, 1991, and State assurances provided in a letter from the Louisiana Department of Environmental Quality dated September 17, 1991.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions

concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1994. Filing a petition for reconsideration of this final rule by the Administrator would not affect the finality of this rule for purposes of judicial review nor would it extend the time within which a petition for judicial review may be filed, and would not postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 7, 1994.

J.D. Winkle,

Regional Administrator (6A).

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(62) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(62) Alternative emission reduction (bubble) plan for the Dow Chemical facility located in Plaquemine, Iberville Parish, as adopted by the Louisiana Environmental Control Commission on July 28, 1983, submitted by the Governor on October 19, 1983, and amended by the Louisiana Department of Environmental Quality with permit number 1838T(M–2) issued on October 16, 1991.

(ii) Incorporation by reference.

(A) Permit number 1838T(M–2) as issued by the Louisiana Department of Environmental Quality on October 16, 1991.

(ii) Additional material.

(A) Letter dated September 17, 1991, from the Administrator of the Office of Air Quality at the Louisiana Department of Environmental Quality to the Chief of the Planning Section at the Air Programs Branch of the U.S. Environmental Protection Agency—Region 6, furnishing State assurances.

* * * * *

[FR Doc. 94–24419 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–41–01–6273a; FRL–5075–8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Ozone Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to Texas' SIP for ozone. This action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act (Act), as amended November 15, 1990, and the Photochemical Assessment Monitoring Stations (PAMS) regulations. The PAMS regulation requires the State to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of PAMS by November 12, 1993.

DATES: This final rule is effective December 5, 1994 unless adverse comments are received by November 3, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons who want to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, TX 75202–2733.

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

Texas Natural Resource Conservation Commission (TNRCC), Air Quality Planning Annex, 12118 North IH–35, Park 35 Technology Center, Building A, Austin, TX 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Cupp, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8015.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 15, 1993, the TNRCC submitted to the EPA a SIP revision, incorporating PAMS into the ambient air quality monitoring network of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS). The State will establish and maintain PAMS as part of its overall ambient air quality monitoring network.

Section 182(c)(1) of the Act and the General Preamble (57 FR 13515) require that the EPA promulgate rules for enhanced monitoring of ozone, oxides of nitrogen (NOX), and volatile organic compounds (VOC) no later than 18 months after the date of the enactment of the Act. In addition, the Act requires that, following the promulgation of the rules relating to enhanced ambient monitoring, the State must commence actions to adopt and implement a program based on these rules, to improve monitoring for ambient concentrations of ozone, NOX, and VOC and to improve monitoring of emissions of NOX and VOC.

The final PAMS rule was promulgated by the EPA on February 12, 1993 (58 FR 8452). Section 58.40(a) of the revised rule requires the State to submit a PAMS network description, including a schedule for implementation, to the Administrator within six months after promulgation or by August 12, 1993. Further, § 58.20(f) requires the State to provide for the establishment and maintenance of a PAMS network within nine months after promulgation of the final rule or by November 12, 1993.

On August 23, 1994, the TNRCC submitted a PAMS network description for the State of Texas, including a schedule for implementation. This submittal is currently being reviewed by the EPA and is intended to satisfy the requirements of 40 CFR 58.40(a). Since network descriptions may change annually, they are not part of the SIP as recommended by the Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR part 58.

However, the network description is negotiated and approved during an annual review as required by 40 CFR 58.25 and 58.36, respectively, and the revision to be codified at 40 CFR 58.46.

The TNRCC approved the proposed revision to the Texas ozone SIP on November 10, 1993. On November 15, 1993, the TNRCC submitted the SIP revision to the EPA. This submittal was included with the State's 15% Rate of Progress SIP; however, in this action, the EPA is only acting on and approving the PAMS section of the SIP, and this section will be referred to as the PAMS SIP revision. The EPA will address the remainder of the 15% Plan in later FR documents.

The EPA sent the Governor of Texas a letter on January 14, 1994, finding the submittal administratively complete.

Texas PAMS SIP revision is intended to meet the requirements of section 182(c)(1) of the Act and affect compliance with the PAMS regulations, to be codified at 40 CFR part 58, as promulgated on February 12, 1993.

The TNRCC held public hearings on the PAMS SIP revision on August 23–26, 1993, and no comments were received either during the public hearings or public comment period with the exception of the comment by the EPA as referenced below relating to the need for public access to a description of the monitoring network and the implementation schedule.

II. Analysis of State Submittal

The Texas PAMS SIP revision will provide Texas with the authority to establish and operate the PAMS sites, secure State funds for PAMS and provide the EPA with the authority to enforce the implementation of PAMS, since their implementation is required by the Act.

The criteria used to review the proposed SIP revision are derived from the PAMS regulations, to be codified at 40 CFR part 58, the Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR part 58 (EPA–450/4–78–038, Office of Air Quality Planning and Standards, November 1979), the September 2, 1993, memorandum from G. T. Helms entitled Final Boilerplate Language for the PAMS SIP Submittal (Helms boilerplate memorandum), the Act and the General Preamble.

The September 2, 1993, Helms boilerplate memorandum stipulates that the PAMS SIP, at a minimum, must: enable the monitoring of criteria pollutants, such as ozone and Nitrogen Dioxide and non-criteria pollutants, such as NOX, Nitric Oxide, speciated VOC, including carbonyls, as well as meteorological parameters; provide a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, for public inspection during the public notice and/or comment period provided for in the SIP revision or, alternatively, provide information to the public upon request concerning the State's plans for implementing the rules; make reference to the fact that PAMS will become a part of the State or local air monitoring stations (SLAMS) network; and provide a statement that SLAMS will employ Federal reference (FRM) or equivalent methods while most PAMS sampling will be conducted using methods approved by the EPA which are not FRM or equivalent.

The Texas PAMS SIP revision provides that the State will implement PAMS as required in 40 CFR part 58, as amended February 12, 1993. The State will amend its SLAMS and its National Air Monitoring Stations (NAMS) monitoring systems to include the PAMS requirements. It will develop its PAMS network design and establish monitoring sites pursuant to 40 CFR part 58 in accordance with an approved network description and as negotiated with the EPA through the 105 grant process on an annual basis. The State has begun implementing its PAMS network as required in 40 CFR part 58.

The Texas PAMS SIP revision also includes a provision to meet quality assurance requirements as contained in 40 CFR part 58, appendix A. The State also assures that the State's PAMS monitors will meet monitoring methodology requirements contained in 40 CFR part 58, appendix C. Lastly, the State assures that the Texas PAMS network will be phased in over a period of five years as required in § 58.44. The State's PAMS SIP submittal and the EPA's technical support document are available for viewing at the EPA Region 6 Office and the TNRCC Austin Office as outlined under the "Addresses" section of this FR document.

The State revised its PAMS SIP to include Region 6's comment on the draft SIP that the description of the monitoring network and implementation schedule should be made available to the public. The final PAMS SIP for which the public hearing was held included a statement that the network description and implementation schedule will be on file for public inspection.

III. Rulemaking Action

In this action, the EPA is approving the revision to the Texas ozone SIP for PAMS. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the FR publication, the EPA is proposing to approve the SIP revision should adverse comments be received. Thus, the action will be effective December 5, 1994 unless, by November 3, 1994, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document which will withdraw the final action. All public comments will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective on December 5, 1994.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the Clean Air Act Amendments. The EPA has determined that this action conforms with those requirements.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600*et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions

concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by December 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the FR on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Office of Air and Radiation. The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the FR on July 1, 1982.

Dated: September 13, 1994.

Jane N. Saginaw,

Regional Administrator.

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. 7401–7671q.

2. Section 52.2270 is amended by adding paragraph (c)(90) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(90) A revision to the Texas SIP regarding ozone monitoring. The State of Texas will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. The State's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.

(i) Incorporation by reference.

(A) TNRCC Order Number 93–24 as adopted by the TNRCC November 10, 1993.

(B) SIP narrative plan entitled "Revisions to the State Implementation Plan (SIP) for the Control of Ozone Air Pollution" adopted by the TNRCC on November 10, 1993, addressing: 1993 Rate-of-Progress SIP for Dallas/Fort Worth, El Paso, Beaumont/Port Arthur and Houston/Galveston Ozone Nonattainment Areas, Section VI: Control Strategy, B. Ozone Control Strategy, 7. SIP Revisions for 1993 Rate-of-Progress (new.), a. Ozone Control Plan, 1) General, f) Photochemical Assessment Monitoring Stations, page 87, second paragraph, first sentence; third paragraph; fourth paragraph; and, the fifth paragraph which ends on page 88; page 88, first complete paragraph, including numbers (1), (2) and (3).

(ii) Additional material.

(A) The Texas SIP revision narrative regarding PAMS.

(B) TNRCC certification letter dated November 10, 1993, and signed by Gloria A. Vasquez, Chief Clerk, TNRCC.

[FR Doc. 94–24423 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[NH–8–1–6599; A–1–FRL–5075–4]

Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire for the purpose of establishing a small business stationary source technical and environmental compliance assistance program (PROGRAM). The SIP revision was submitted by the State to satisfy the Federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act (CAA). The rational for this conditional approval is set forth in this final rulemaking action; additional information is available at the address indicated below.

EFFECTIVE DATE: This final rule is effective on November 3, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3248.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a PROGRAM, and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the EPA to oversee these PROGRAMS and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.On June 14, 1994 (59 FR 30564), EPA published a notice of proposed rulemaking (NPR) for the State of New Hampshire. The NPR proposed conditional approval of the State's PROGRAM. The formal SIP revision was submitted by New Hampshire on January 12, 1993 and May 19, 1994. A more detailed account of EPA's action can be found in the proposed rule.

In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a small business assistance program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State small business ombudsman to represent the interests of small

businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Summary of Submittal

EPA reviewed New Hampshire's PROGRAM and is conditionally approving it pursuant to section 110(k)(4) of the CAA. This approval is on the condition that New Hampshire meet its commitment to submit documentation to EPA by November 15, 1994 of adequate legal authority to establish and implement the PROGRAM and also submits the documentation designating a state agency to house the small business ombudsman. Additionally, the PROGRAM must be fully operational by November 15, 1994.

Other specific requirements of this SIP revision and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is conditionally approving the SIP revision submitted by the State of New Hampshire on January 12, 1993 and May 19, 1994 as a revision to the New Hampshire SIP. The State must submit to EPA by November 15, 1994 documentation of a designated state agency to house the small business ombudsman and adequate legal authority which allows a compliance advisory panel and a small business ombudsman to be established and implemented, incorporating all the elements listed in section 507(e) of the CAA; the PROGRAM must also be fully operational by that date. If the State fails to do so, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved New Hampshire SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new legislative authority. If EPA disapproves the new submittal, the conditionally approved small business program will also be disapproved at that time. If EPA approves the submittal, the small business program will be fully approved in its entirety and replace the conditionally approved program in the SIP.

If the conditional approval is converted to a disapproval, such action will trigger EPA's authority to impose sanctions under section 110(m) of the CAA at the time EPA issues the final disapproval or on the date the State fails to meet its commitment. In the latter case, EPA will notify the State by letter that the conditional approval has been converted to a disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). Pursuant to section 507(b)(3), EPA will provide for implementation of the program provisions required under section 507(a)(4) in any State that fails to submit such a program under that subsection. Therefore, EPA would have to provide for a compliance assistance program which assists small business stationary sources in determining applicable requirements and in receiving permits under the CAA.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it substitute a new Federal requirement.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. The Office of Management and Budget (OMB) has exempted this action under Executive Order 12866.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Small business assistance program.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: August 26, 1994.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart EE—New Hampshire

2. Section 52.1519 is added to subpart EE to read as follows:

§ 52.1519 Identification of plan—Conditional approval.

(a) The following plan revisions were submitted on the dates specified.

(1) On January 12, 1993, the New Hampshire Department of Environmental Services submitted a small business stationary source technical and environmental compliance assistance program (PROGRAM). On May 19, 1994, New Hampshire submitted a letter deleting portions of the January 12, 1993 submittal. In these submissions, the State commits to designate a state agency to house the small business ombudsman and to submit adequate legal authority to establish and implement a compliance advisory panel and a small business ombudsman. Additionally, the State commits to have a fully operational PROGRAM by November 15, 1994.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Department of Environmental Services dated January 12, 1993 submitting a revision to the New Hampshire State Implementation Plan.

(B) State Implementation Plan Revision for a Small Business Technical and Environmental compliance Assistance Program dated January 12, 1993.

(C) Letter from the New Hampshire Department of Environmental Services dated May 19, 1994 revising the January 12, 1993 submittal.

(ii) Additional materials.

(A) Non-regulatory portions of the State submittal.

[FR Doc. 94–24422 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 62

[ME–14–1–6648a; A–1–FRL–5080–4]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Plan for Controlling Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. Maine revised its "111(d) plan" for the control of total reduced sulfur (TRS) emissions from existing kraft pulp mills. The revised plan was submitted by the Maine Department of Environmental Protection (DEP) on April 27, 1994. The revised plan consists of a revised regulation entitled "Chapter 124: Total Reduced Sulfur Control From Kraft Pulp Mills." The revised plan satisfies EPA's requirements for adoption and submittal of a plan to control TRS emissions from designated facilities in accordance with section 111(d) of the Clean Air Act (CAA).

DATES: This final rule is effective December 5, 1994 unless, by November 3, 1994, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Daria L. Dilaj at (617) 565–3249.

SUPPLEMENTARY INFORMATION: On September 19, 1990 (55 FR 38545), EPA approved Maine's 111(d) plan for controlling total reduced sulfur (TRS) emissions from existing kraft pulp mills in accordance with section 111(d) of the Clean Air Act. Maine's 111(d) plan consists of a regulation entitled "Chapter 124: Total Reduced Sulfur Control from Kraft Pulp Mills." The State of Maine, in adopting a plan pursuant to section 111(d) of the CAA to control TRS emissions from existing kraft pulp mills, chose to adopt requirements for existing brown stock washer systems which are not required to be controlled under EPA guidance. Under section 116 of the CAA, the State of Maine is legally entitled to adopt more stringent emission standards for stationary sources than required or recommended by EPA. The State of Maine in its response to public comments on the proposed regulation specified that they felt that the control of TRS emissions from brown stock washers was important because of the magnitude of potential emissions from uncontrolled washers and the height at which they are emitted (i.e., they are more likely to have negative impacts on local residential areas because they are emitted at lower levels and are subject to less dispersion). Kraft pulp mills were required to meet most of the requirements of the regulation by January 1991, but were given until January 1, 1994 to meet the requirements for brown stock washers.

On April 27, 1994, the State of Maine submitted a formal revision of Chapter 124 as an amendment to the 111(d) plan. The purpose of the revision is to extend the deadline (i.e., January 1, 1994) for brown stock washer systems to January 1, 1997. This extension addresses industry's concern that it be allowed to coordinate its efforts to comply with the SIP with its efforts to comply with EPA's forthcoming Maximum Achievable Control Technology (MACT) standard for the pulp and paper industry. This MACT standard is expected to be promulgated by September 1995. Maine believes a three-year compliance extension of the brown stock washer controls should be sufficient to allow industry to consider any impacts of the Federal MACT standard.

Since the brown stock washer requirements of Maine's TRS regulation are more stringent than the applicable EPA requirements in the EPA guideline document entitled "Kraft Pulping: Control of TRS Emissions from Existing Mills" (EPA–450/2–78–003b), the compliance extension for the brown stock washers is acceptable.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 5, 1994 unless, by November 3, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not

institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 5, 1994.

Final Action

EPA is approving the revised 111(d) plan controlling TRS emissions from kraft pulp mills submitted by Maine Department of Environmental Protection. The revised plan which consists of the revised regulation entitled "Chapter 124: Total Reduced Sulfur From Kraft Pulp Mills" affects six existing kraft pulp mills in the State of Maine.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future submittal of a 111(d) plan by any State. Each request for approval of a 111(d) plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. The US EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on US EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1994. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements.

Dated: August 17, 1994.

John P. DeVillars,

Regional Administrator, Region I.

Title 40 of the Code of Federal Regulations, chapter I, part 62, is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 62.4845 is amended by adding paragraph (b)(3) to read as follows:

§ 62.4845 Identification of plan.

* * * * * *

(b) * * *

(3) A revision to the plan to control TRS from existing kraft pulp mills, which extends the final compliance date for brown stock washers to January 1, 1997, was submitted on April 27, 1994.

* * * * *

[FR Doc. 94–24406 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–17

[FPMR Temp. Reg. D–76, Suppl. 3]

Federal Property Management: Public Buildings and Space; Space Utilization and Assignment

AGENCY: Public Buildings Service, General Services Administration (GSA).

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation D–76 to August 26, 1995. Temporary Regulation D–76 provides procedures governing the assignment and utilization of space in Federal or leased facilities under the custody and control of the General Services Administration.

DATES: *Effective Date:* October 4, 1994. *Expiration Date:* August 26, 1995.

ADDRESSES: Comments should be submitted to the General Services Administration, (PQ), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Robert E. Ward, Director, Real Estate; Office of Real Property Development, at (202–501–4266).

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to extend Temporary Regulation D–76 until such time as the Final Rule which will supersede it is approved for publication.

GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

List of Subjects in 41 CFR Part 101–17

Administrative practices and procedures, Federal buildings and facilities, Government real property management.

Authority: (Sec. 205(c), 63 Stat. 390 40 U.S.C. 486(c)).

In 41 CFR Chapter 101, FPMR Temp. Reg. D–76, Supplement 3 is added to the appendix at the end of Subchapter D to read as follows:

Federal Property Management Regulations, Temporary Regulation D-76, Supplement 3

To: Heads of Federal Agencies
Subject: Assignment and Utilization of Space

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D–76.

2. *Effective date.* October 4, 1994.

3. *Expiration of change.* This supplement expires August 26, 1995.

4. *Explanation of change.* The expiration date in Temporary Regulation D–76 is revised to August 26, 1995.

Dated: September 2, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 94–24399 Filed 10–3–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7092

[ID–943–4070–02; IDI–15651 01, IDI–15798 02]

Partial Revocation of Executive Order Dated July 2, 1910, and Geological Survey Order Dated July 26, 1948; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes one Executive order and one Geological Survey order insofar as they affect 3,116.49 acres of public lands withdrawn for the Bureau of Land Management's Powersite Reserve No. 77 and Powersite Classification No. 390. The lands are no longer needed for this purpose. The lands are within the Hagerman Fossil Beds National Monument which is managed by the National Park Service, and the revocation is needed to give the National Park Service total jurisdiction. The lands have been and will remain closed to surface entry, mining, and mineral leasing. This is a record-clearing action only.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated July 2, 1910, which established Powersite Reserve No. 77, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 7 S., R. 13 E.,
Sec. 10, lots 3 and 6, and SE¼SW¼;
Sec. 15, lot 4;
Sec. 21, lots 2, 3, and 8;
Sec. 28, lots 2, 3, 6, and 7, and NW¼NW¼;
Sec. 33, lots 2, 3, 6, and 7.
T. 8 S., R. 13 E.,
Sec. 3, lot 7;
Sec. 4, lots 7, 8, and 9.

The area described contains 717.53 acres in Twin Falls County.

2. The Geological Survey Order dated July 26, 1948, which established Powersite Classification No. 390, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 7 S., R. 13 E.,
Sec. 9, E½SE¼ and SW¼SE¼;
Sec. 10, N½SW¼, SW¼SW¼, and NW¼SE¼;
Sec. 17, E½NE¼, SW¼NE¼, N½SE¼, and SE¼SE¼;
Sec. 20, E½NE¼ and NE¼SE¼;
Sec. 21, W½NW¼, SE¼NW¼, N½SW¼, and SW¼SW¼;
Sec. 29, E½NE¼, SE¼SW¼, and SE¼;
Sec. 32, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 33, SW¼SW¼.
T. 8 S., R. 13 E.,
Sec. 3, SW¼;
Sec. 4, lots 2 and 3, S½NW¼, and S½;
Sec. 5, lot 1 and SE¼NE¼.

The area described contains 2,398.96 acres in Twin Falls County.

3. The lands described in paragraphs 1 and 2 will remain closed to surface entry, mining, and mineral leasing due to the lands being located within the Hagerman Fossil Beds National Monument.

Dated: September 26, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–24402 Filed 10–3–94; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 92–053]

Tonnage Measurement of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Technical amendment.

SUMMARY: The Coast Guard is correcting an address error that appeared in its final rule published on December 17, 1992 (57 FR 59937). The rule updated the list of organizations authorized to measure vessels and made technical changes to conform the regulations to tonnage measurement laws.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth C. Hixson, Vessel Documentation and Tonnage Survey Branch at (202) 267–1492.

SUPPLEMENTARY INFORMATION:

Background

The final rule, as published in the **Federal Register**, contained an address in 46 CFR 69.15 for Det Norske Veritas (DNV/USA) that is now incorrect. The authority citation also contains an erroneous reference. This document amends § 69.15 to reflect the correct address, and revises the authority citation to reflect the correct reference.

Need for Correction

As published, the regulations contain an erroneous address which could cause applications for measurement of vessels to be misrouted in the mail or lost; and a technical error in the authority citation.

List of Subjects in 46 CFR Part 69

Measurement standards, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard corrects 46 CFR Part 69 by making the following technical amendments:

PART 69—MEASUREMENT OF VESSELS

1. The authority citation for part 69 is revised to read as follows:

Authority: 46 U.S.C. 14102; 14103; 49 CFR 1.46. Section 69.29 issued under 44 U.S.C. 3507; 49 CFR 1.45.

§ 69.15 [Amended]

2. In § 69.15(a), the words "80 Grand Avenue, suite 201" are removed and the words "70 Grand Avenue" are added in their place.

Dated: September 29, 1994.

E.L. Ziff,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–24521 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[PR Docket 93-253, FCC 94-240]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, reconsiders and clarifies various decisions made with regard to designated entities in the *Third Memorandum and Order* in this docket. This *Order on Reconsideration* adopts installment payments for businesses owned by minorities and/or women so that these entities have a greater opportunity to participate successfully in the upcoming auction for licenses for regional narrowband personal communication services and clarifies its definition of businesses owned by minorities and/or women.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Peter Tenhula, Office of General Counsel, (202) 418-1720.

SUPPLEMENTARY INFORMATION:

Order on Reconsideration

Adopted: September 22, 1994.
Released: September 22, 1994.

By the Commission: Commissioner Barrett not participating.

1. In this Order, we reconsider on our own motion various decisions made with regard to designated entities in the *Third Memorandum Opinion and Order* in this docket.[1] In addition, we take this opportunity to clarify other rules adopted in that Order.

I. Installment Payments for Women and Minority-Owned Businesses

2. In the *Third Memorandum Opinion and Order*, we adopted certain provisions to ensure the opportunity for businesses owned by women and minorities and small businesses to participate in the regional narrowband PCS auction to be held October 26, 1994. Specifically, we adopted a 40 percent bidding credit for women and minority-owned firms and installment payments for small businesses. Small businesses are defined as businesses with less than $40 million in annual gross revenues. On further reflection, we believe that to ensure that designated entities have the opportunity to participate in narrowband PCS, minority and women-owned companies, as opposed to just small businesses, should be allowed to pay their winning bids in installments.

3. As we noted in the *Third Memorandum Opinion and Order*, the original provisions adopted for designated entities in the narrowband PCS service were based on assumed relatively low capital entry costs. The experience in the nationwide narrowband PCS auction in July led us to adjust the designated entity provisions for the regional auction to take into account the much higher than expected prices paid for narrowband licenses. Specifically, we raised the bidding credit from 25 percent to 40 percent for women and minority-owned businesses and we raised the financial thresholds for businesses wishing to qualify as small businesses. We remain concerned, however, that, given these high costs, businesses owned by women and minorities will be unable to participate successfully in the upcoming regional auction without installment payments.

4. In the *Fifth Report and Order* in this proceeding, we documented the serious funding problems faced by women and minorities. Indeed, we noted that Congress had recognized that these problems were even more severe for minority and women-owned businesses than for small businesses.[2] We also referred to a number of studies that supported the congressional findings regarding the difficulties minorities and women have accessing capital.[3]

5. In its petition for reconsideration in this proceeding, Cook Inlet Region, Inc. asked us to reconsider the scope of the installment payment option for designated entities. It contended that failure to extend the availability of installment payments to all women and minority-owned companies, instead of just small businesses, will exclude a substantial number of designated entities from meaningful participation in spectrum-based services. Cook Inlet argued that this result is contrary to the intent of Congress.[4] In response to this, we stated with respect to our generic auction rules that, while installment payments would not generally be available to all designated entities irrespective of their economic status, we retained the flexibility to expand or modify the installment payment option on a service-specific basis where the spectrum costs, capital infrastructure requirements and other economic barriers necessitate their application to other entities.[5] "[T]his additional flexibility will allow us to take account of differences in capital requirements across services and license blocks, and to provide access to capital in ways that will give various groups of designated entities a realistic chance to participate in offering service."[6]

6. In addition, in a recent *ex parte* filing, Essence Communications, Inc. further elaborates on the various broad congressional initiatives that have been aimed at helping minorities overcome obstacles to financing.[7] For example, Essence notes that the Equal Credit Opportunity Act (ECOA) Amendments[8] impose a federal ban on race-based denials of extension of credit. The legislative history to the ECOA Amendments highlights the challenges faced by entrepreneurs seeking credit to fund their businesses.[9] In addition, Essence states that Congress recently amended the Community Reinvestment Act (CRA)[10] to bolster the evaluations of financial institutions that subsidize minority banks in predominately minority areas.[11] According to Essence, this aspect of the CRA is entirely race-conscious and contains no financial thresholds.

7. Essence further asserts that both these congressional measures and the steps taken by the Commission to improve minority access to capital have had limited success in reducing the barriers to entry for minority entrepreneurs. Therefore, Essence emphasizes that the Commission must do more to ensure the opportunity for minority participation in narrowband PCS. It states that the Commission's

[1] *See Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in PP Docket No. 93-253, FCC 94-219 (released August 17, 1994), 59 FR 44058 (August 26, 1994) ("*Third Memorandum Opinion and Order*").

[2] *Fifth Report and Order* in PP Docket No. 93-253, FCC 94-178 at ¶ 98 (released July 15, 1994), 59 FR 37566 (July 22, 1994).

[3] *Id.* at ¶¶ 98-103. We incorporate by reference here the discussion of these issues in the *Fifth Report and Order*.

[4] Petition for Reconsideration of Cook Inlet Region, Inc., PP Docket No. 93-253, May 20, 1994, at 3-6. *See also*, Petition for Reconsideration of the Association of Independent Designated Entities, PP Docket No. 93-253, June 3, 1994.

[5] *See Second Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-215 at ¶¶ 114, 128 (released August 15, 1994), 59 FR 44272 (August 26, 1994).

[6] *Id.* at ¶ 128.

[7] Comments and Recommendations of Essence Communications, Inc. in Response to the Commission's Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, September 14, 1994, at 8-10.

[8] Pub. L. 94-239, 90 Stat. 251 (1976).

[9] S. Rep. No. 589, 94th Cong., 2d Sess. 3 (1976), *reprinted in* 1976 U.S.C.C.A.N. 403, 405.

[10] Pub. L. 95-128, 91 Stat. 1147 (1977).

[11] *See* Resolution Trust Corporation Refinancing, Restructuring and Improvement Act, Pub. L. No. 102-233, § 302, 105 Stat. 1761 (1991).

conclusion that bidding credits are the most cost effective and efficient means of achieving this congressional objective was mistaken and that the July 1994 narrowband auction proved that "bidding credits do not and cannot sufficiently address financing obstacles nor provide a competitive advantage with regard to the national licenses."[12] Accordingly, Essence argues that the Commission should either adopt an "entrepreneur block" scheme for the upcoming regional narrowband PCS auction or raise the small business financial threshold for minority-owned companies.

8. Based on this additional information, our experience from the recent nationwide narrowband auctions and upon further reflection, we agree that the funding problems faced by minority and women-owned companies, combined with the potentially high cost of purchasing a narrowband PCS license at auction, erect a significant hurdle for these entrepreneurs. Because of these difficulties, we already have adopted a 40 percent bidding credit for businesses owned by women and minorities,[13] regardless of size, on two of the regional narrowband PCS licenses.[14] We think that allowing these applicants owned by women and minorities to pay for their licenses over time will go a long way toward overcoming this barrier to entry. It will also provide more meaningful opportunities for designated entities bidding in the upcoming regional auctions. Accordingly, we adopt an installment payment plan for women and/or minority-owned businesses that obtain a regional narrowband PCS license on Channel 13 and Channel 17. Similar to the installment payments for larger entities in the entrepreneurs' blocks for broadband PCS auctions, this plan provides for interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. treasury obligations, plus 2.5 percent.[15] Payments of interest only will be due for the first two years, with principal and interest payments amortized over the remaining years of the license. In addition, as we did for small businesses, we will permit businesses owned by minorities and women to pay only half of the down payment (or 10 percent of the bid price) five business days after close of the auction. The remaining 10 percent payment will be deferred until five days after grant of the license.

II. Definition of Businesses Owned by Women and Minorities

9. In the rules adopted pursuant to the *Third Memorandum Opinion and Order*, we changed the definition of a business owned by women and minorities for purposes of the regional narrowband PCS auction. See 47 CFR 24.320(c). In particular, we departed from the definition adopted in the *Second Report and Order*, 59 FR 22980 (May 4, 1994) that required minorities and/or women to have at least 50.1 percent ownership and a 50.1 percent controlling interest in the applicant. 47 CFR 1.2110(b)(2). The new definition requires an applicant owned by women and/or minorities to establish a "control group" consisting entirely of women or minorities that has both *de jure* and *de facto* control of the applicant. It then gives the applicant two options for taking on passive investors. Under the first option, a single investor may hold as much as 49.9 percent of the applicant's passive equity if the control group holds at least 50.1 percent of the total equity.[16] The second option allows the control group to reduce its equity stake to 25 percent provided that no single other investor holds more than 25 percent of the applicant's passive equity. Under either option, the control group must control the applicant and, in the case of corporations, hold at least 50.1 percent of the voting stock. For partnerships, all general partnership interests will be considered to be part of the control group.

10. In the Third Memorandum Opinion and Order we neglected, however, to explain this change in course. We take that opportunity here. We believe that the "control group" approach to defining a woman or minority-owned business provides these designated entities with greater flexibility to access capital than the rule adopted in the *Second Report and Order*. In particular, it allows these companies to reduce by 25 percent the amount of equity the minority or women principals must hold. This ability to sell more equity will help designated entities raise the capital necessary to participate in the auctions as well as to construct their systems. Moreover, like the definition set forth in the *Second Report and Order*, the new rule gives a minority or women-owned company the option to partner with one large company instead of seeking multiple investors so long as the control group retains 50.1 percent of the equity. This option meets the needs of designated entities that are able to attract investors that desire a more substantial equity stake in the venture. Thus, we believe that modification of the definition of minority and/or women-owned businesses more fully satisfies the congressional mandate that the Commission provide the opportunity for companies owned by these designated entities to participate in spectrum-based services.

11. The new rule's requirement that investors take only passive interest also provides more assurance that the minority and women principals maintain control of their companies. As a result, we reduce the opportunity for fronts and help ensure that only *bona fide* designated entities will be able to take advantage of the 40 percent bidding credit and installment payments offered in the regional narrowband auctions.

12. In addition, we believe that modifying the definition in this manner provides consistency with the definition of a small business adopted in the *Third Memorandum Opinion and Order*, which also uses a "control group" approach. Thus, businesses will not have to satisfy disparate rules regarding levels of equity investment to receive both bidding credits and the installment payment option available to small businesses.

13. Although not explicitly stated in the *Third Memorandum Opinion and Order*, we also clarify here that we are departing from the provision in the *Second Report and Order* that bars publicly traded companies from qualifying as minority and women-owned businesses. This prohibition was based on our assumption that companies traded on the public market would not require government-sponsored measures to succeed in spectrum auctions. The high prices paid for the nationwide narrowband PCS licenses in the auction held in July 1994 has led us to conclude, however, that even publicly traded companies owned by women and minorities will require bidding credits and installment payments to participate successfully in the regional auction. We recognized these increased capital requirements in the *Third Memorandum Opinion and Order* by raising significantly the financial thresholds for qualifying for small business installment payments.

[12] Essence *ex parte* filing at 11–12.

[13] *See* 47 CFR 24.320(c). *See also infra* ¶¶ 9–13.

[14] *See* 47 CFR 24.129(b), 24.309(b)(2).

[15] *Compare* 47 CFR 24.711(a)(3). Standard installment payments— at the 10-year treasury interest rate—remain available to small businesses, including small businesses owned by minorities and/or women, on all regional licenses. *See Third Report and Order* in PP Docket No. 93–253, FCC 94–98 at ¶¶86–89 (released May 10, 1994), 59 FR 26741 (May 24, 1994).

[16] As provided in Section 24.320(g) of the Commission's rules, "passive equity" means "(i) for corporations, non-voting stock or stock that includes no more than fifteen percent of the voting equity; (ii) for partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity." 47 CFR 24.320(g).

The same rationale applies to our decision here to give publicly traded minority and women-owned applicants government assistance in the form of bidding credits and installment payments. We emphasize, however, that these companies must comply with the control group and equity investment requirements set out above and in our rules.

14. Finally, we do not intend to suggest that by clarifying this rule change here we have reached a decision regarding the designated entity issues raised by petitioners in the broadband PCS auction proceeding. After further analysis of those petitions, it is possible that we will make additional adjustments to our rules with regard to broadband PCS. In addition, if those changes loosen the restrictions on designated entities, we may decide to apply them to designated entity licensees in the regional narrowband service.

III. Conclusion

15. Accordingly, *it is ordered* That Part 24 of the Commission's Rules is amended as set forth below.

16. *It is further ordered* That the rules changes made herein will become effective 30 days after their publication in the **Federal Register**. This action is taken pursuant to Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

List of Subjects in 47 CFR Part 24

Communications common carriers, Communications equipment, Competitive bidding, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Change

Part 24 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 24—PERSONAL COMMUNICATION SERVICES

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.309 is amended by revising paragraph (b)(1) to read as follows:

§ 24.309 Designated entities.

* * * * *

(b) * * *

(1) Installment payments.

(i) Small businesses, including small businesses owned by members of minority groups and women, will be eligible to pay the full amount of their winning bids on any regional, MTA or BTA license in installments over the term of the license pursuant to the terms set forth § 1.2110(e) of this chapter.

(ii) Businesses owned by members of minority groups and women that are winning bidders for the regional licenses indicated by an (**) in § 24.129 may pay the full amount of their winning bids (less the applicable bidding credit and down payment) in installments with

(A) Interest imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent;

(B) Interest-only payments for the first two years; and

(C) Principal and interest payments amortized over the remaining eight years of the license.

* * * * *

[FR Doc. 94–24404 Filed 10–3–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 225

Defense Federal Acquisition Regulation Supplement; Offset Administrative Costs

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to change the criteria for contractor recovery of offset administrative costs under foreign military sales.

EFFECTIVE DATE: September 28, 1994.

FOR FURTHER INFORMATION CONTACT: LTC Ed King, (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

This revision originated based on a Defense Security Assistance Agency (DSAA) procedural change on offset administrative costs. A proposed rule was published at 59 FR 17756 on April 14, 1994. The proposed rule is adopted as final without change. DSAA will issue a corresponding revision to the Security Assistance Manual.

B. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it is unlikely that a substantial number of small entities have foreign military sales contracts. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The final rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Accordingly, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7303–2(a) is revised to read as follows:

§ 225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in § 225.7303–1 do not exist, recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to—

(1) Selling expenses (not otherwise limited by FAR part 31), e.g.—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Paragraph 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR part 121) may require Government approval for these costs to be allowable. If Government approval is required for promotion or demonstration costs to be allowable, the approval must be obtained.

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(2) Product support and post-delivery service expenses, such as—

(i) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(ii) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(3) Offset administrative costs.

(i) A U.S. defense contractor may recover costs incurred to administer specific requirements of its offset agreement with a foreign government or international organization if the foreign military sale Letter of Offer and Acceptance is financed wholly with customer cash or repayable foreign military finance credits.

(ii) The U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

(iii) Some examples of offset administrative costs are—

((A) In-house and/or purchased: organizational, administrative and technical support, including offset staffing; quality assurance, manufacturing, purchasing support; data acquisition; proposal, transaction and report preparation; broker/trading services; legal support; and similar support activities;

(B) Off-shore operations for technical representative and consultant activities, office operations, customer and industry interface, capability surveys;

(C) Marketing assistance and related technical assistance, transfer of technical information and related training;

(D) Employee travel and subsistence costs; and

(E) Taxes and duties.

(4) Costs that are the subject of advance agreement under the appropriate provisions of FAR part 31; or where the advance understanding places a limit on the amounts of cost that will be recognized as allowable in defense contract pricing, and the agreement contemplated that it will apply only to DoD contracts for the U.S. Government's own requirement (as distinguished from contracts for FMS).

* * * * *

[FR Doc. 94–24461 Filed 10–3–94; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[I.D. 092694B]

Summer Flounder Fishery

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

ACTION: Notification of commercial quota transfer.

SUMMARY: NMFS announces that the State of New Jersey is transferring 23,085 lb (10,471 kg) of commercial summer flounder quota to the State of Connecticut. NMFS adjusted the quotas and announces the revised commercial quota for each state involved.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20.

The commercial quota for summer flounder for the 1994 calendar year was set equal to 16,005,560 lb (7,260,000 kg), and the allocations to each state were published March 7, 1994 (59 FR 10586). At that time, New Jersey was allocated a quota of 2,676,928 lb (1,214,234 kg), and Connecticut was allocated a quota of 361,258 lb (163,864 kg). The 1994 quotas for several states were adjusted for overages occurring in 1993, as required under § 625.20(d)(2), on May 25, 1994 (59 FR 26971). Since Connecticut's quota was not exceeded in 1993, its 1994 quota was unaffected by this adjustment; the New Jersey quota after the adjustment for overages was 2,533,830 lb (1,149,338 kg).

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS, (Regional Director) to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1) in the evaluation of requests for quota transfers or combinations.

New Jersey has agreed to transfer 23,085 lb (10,471 kg) of commercial quota to Connecticut. The Regional Director has determined that the criteria set forth in § 625.20(f) have been met, and publishes this notification of quota transfers. The revised quotas for the calendar year 1994 are: New Jersey, 2,510,745 lb (1,138,855 kg); and Connecticut, 384,343 lb (174,335 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216–6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

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

Dated: September 28, 1994.

Richard H. Schaefer,

Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–24489 Filed 9–29–94; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 191
Tuesday, October 4, 1994

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN: 3150–AD57

Fracture Toughness Requirements for Light Water Reactor Pressure Vessels

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for light-water-cooled nuclear power plants to clarify several items related to the fracture toughness requirements for reactor pressure vessels (RPV). The proposed amendments would clarify the pressurized thermal shock (PTS) requirements, make changes to the Fracture Toughness Requirements and the Reactor Vessel Material Surveillance Program Requirements, and provide new requirements for thermal annealing of a reactor pressure vessel.

DATES: The comment period expires January 3, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Comments may be delivered to: One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 am and 4:15 pm on Federal workdays. Comments received on the proposed rules may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

A free single copy of draft regulatory guides DG–1023, DG–1025, and DG–1027 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, ATTN: Distribution and Mail Services Section, Room P–130A, Washington, DC 20555. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alfred Taboada, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–6014.

SUPPLEMENTARY INFORMATION:

Background

Maintaining the structural integrity of the reactor pressure vessel (RPV) of light-water-cooled reactors is a critical concern related to the safe operation of nuclear power plants. To assure the structural integrity of RPVs, NRC regulations and regulatory guides have been developed to provide analysis and measurement methods and procedures to assure that each RPV has adequate safety margins for continued operation. Structural integrity of a reactor pressure vessel is generally assured through a fracture mechanics evaluation, including measurement or estimation of the fracture toughness of the materials which compose the RPV. However, the fracture toughness of the RPV materials varies with time. As the plant operates, neutrons escaping from the reactor core impact the vessel beltline materials (e.g. the materials that surround the reactor core), causing embrittlement of those materials. The NRC's regulations and regulatory guides related to RPV integrity provide the criteria and methods needed to estimate the extent of the embrittlement, to evaluate the consequences of the embrittlement in terms of the structural integrity of the RPV, and to provide methods to mitigate the deleterious effects of the embrittlement.

The NRC has several regulations and regulatory guides that establish criteria and procedures for assuring the structural integrity of RPVs. With the addition of a proposed rule on thermal annealing and several draft regulatory guides, the existing and proposed regulatory documents contribute to a comprehensive set of regulations and regulatory guidance pertaining to RPV integrity, including:

1. The fracture toughness criteria that each RPV must satisfy (10 CFR 50.60, 10 CFR 50.61, and 10 CFR Part 50, Appendix G).
2. Irradiation embrittlement surveillance requirements (10 CFR Part 50, Appendix H).
3. Guidance for estimating the fracture toughness of the RPV (Regulatory Guide 1.99 and a draft regulatory guide on dosimetry).
4. Guidance for cases in which the RPV is estimated to exceed specified screening criteria (Regulatory Guide 1.154 and a draft regulatory guide on evaluating RPVs with Charpy upper-shelf energy less than 50 ft-lb).
5. Requirements and guidance for using thermal annealing of the RPV as a method for mitigating the effects of neutron irradiation (proposed 10 CFR 50.66 and a draft regulatory guide).

This notice proposes changes to the following requirements:

a. The Pressurized Thermal Shock (PTS) rule (10 CFR 50.61).
b. Appendix G of 10 CFR Part 50, "Fracture Toughness Requirements."
c. Appendix H of 10 CFR Part 50, "Reactor Vessel Material Surveillance Program Requirements."

This notice also proposes a thermal annealing requirement, 10 CFR 50.66. In addition to the proposed amendments addressed in this document, the NRC will publish for public comment a draft regulatory guide on thermal annealing, DG–1027 (the availability of this draft regulatory guide for will be announced in the **Federal Register** at a later date comment.)

Two related draft regulatory guides have been published for public comment (58 FR 51392; October 1, 1993). These draft regulatory guides are:

1. A draft regulatory guide that addresses evaluation of RPVs with Charpy upper-shelf energy levels less than 50 ft-lb (DG–1023).
2. A draft regulatory guide on dosimetry (DG–1025).

Other regulatory guides pertaining to RPV integrity, Regulatory Guides 1.99 and 1.154, are under evaluation. Revisions to these guides, if any, will be addressed in the future.

Other regulatory issues related to reactor pressure vessel integrity, such as low temperature over-pressure protection system setpoints, are being addressed as part of a broader scope evaluation of the pressure vessel regulations and are not part of this proposed amendment.

Reasons for the Proposed Changes

The needs for these proposed amendments to the fracture toughness regulations have been identified from three sources:

1. The 1989 Nuclear Utility Backfitting and Reform Group (NUBARG) appeal concerning use of nuclear heat to warm the RPV for system leakage and hydrostatic pressure tests;
2. The 1990 review of the RPV integrity of the Yankee Nuclear Power Station; and
3. A comprehensive review of the regulations by NRC staff, resulting in the identification of the need for clarifications, corrections, and improved guidance in certain areas.

The recognition in 1986 by NRC staff that certain boiling water reactor (BWR) units were using nuclear heat to warm the system prior to performing leakage and pressure tests led to an NRC staff initiative to amend Appendix G to 10 CFR Part 50. During the NRC staff review to determine if this use of nuclear heating was permissible under either the ASME Code or the NRC regulations, the Nuclear Utility Backfitting and Reform Group (NUBARG) filed a backfitting claim, and later an appeal of the determination that a backfit was not involved. Stemming from this claim and appeal process, the Committee to Review Generic Requirements recommended to the Executive Director for Operations that the affected portions of Appendix G be revised to clearly indicate that all required leakage and pressure tests of the reactor pressure vessel must be performed when the core is not critical.

In 1990, the NRC began a review of the integrity of the Yankee Nuclear Power Station (YNPS) RPV. That review, along with stated plans by the licensee to consider thermal annealing of the RPV, highlighted the need for the NRC to amend its regulations and guidance pertaining to RPV integrity. The NRC staff proposed a plan to revise and clarify the pertinent regulations in SECY-91-333 (October 22, 1991) and SECY-92-283 (August 14, 1992), including schedules and general descriptions of the changes contemplated. The proposed changes included clarifications and corrections planned prior to the YNPS review. However, the YNPS review identified the need to clarify the requirements in Sections IV and V of Appendix G to 10 CFR Part 50, and the need to provide more complete requirements and guidance for thermal annealing.

The PTS rule, 10 CFR 50.61, was amended on May 15, 1991 (56 FR 22300) to make the method for evaluating irradiation embrittlement consistent with the recommended procedures of Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials." Subsequent inquiries to the Commission concerning the appropriate margin terms and use of surveillance data indicated that the PTS rule required clarification. A recent review of the rule by NRC staff concluded that the PTS rule should also be modified to bring the procedures for evaluating RTPTS into complete agreement with the recommended procedures in Regulatory Guide 1.99, Revision 2.

Overview of the Proposed Changes

PTS Rule (10 CFR 50.61)

The pressurized thermal shock rule, 10 CFR 50.61, was initially published in final form on July 23, 1985 (50 FR 29937) and amended on May 15, 1991 (56 FR 22300). This rule provides a screening criterion for irradiation embrittlement of RPV beltline materials, above which the plant cannot continue to be operated without justification. Historically, a value of reference temperature has been determined for each vessel beltline material for comparison to the PTS screening criteria. These values of reference temperature are termed RT_{PTS} values. However, the method for evaluating RT_{PTS} values has not been consistent with the embrittlement estimates used for other purposes, such as pressure-temperature limit calculations. The May 15, 1991, amendment was a step towards unifying the embrittlement estimate methodology. The amendment included the procedures given in Regulatory Guide 1.99, Revision 2, for the evaluation of irradiation embrittlement of the RPV beltline materials. The 1991 amendment left two differences between the rule and Regulatory Guide 1.99, Revision 2. These two differences are:

1. Values of unirradiated RT_{NDT} are specified for general classes of material in the PTS rule, while greater flexibility in determining unirradiated values is permitted in Regulatory Guide 1.99, Revision 2; and

2. The margin terms used in the PTS rule are based on assumptions which are not consistent with the method used in Regulatory Guide 1.99, Revision 2 for calculating the margin term.

This proposed amendment is intended to make the evaluation of RT_{PTS} consistent with the recommended methods of Regulatory Guide 1.99, Revision 2, which are used to evaluate RT_{NDT}. In this case, the RT_{PTS} value for each vessel beltline material is simply the RT_{NDT} value estimated for the projected end of license fluence.

This proposed amendment to the PTS rule would make three changes:

1. The Regulatory Guide 1.99, Revision 2, method for determining RT_{NDT}, of which RT_{PTS} is a unique value determined for the end of license fluence, would be incorporated in total, including treatment of the unirradiated RT_{NDT} value, the margin term, and the explicit definition of "credible" surveillance data.

2. The section would be restructured to improve clarity, with the requirements section giving only the requirements for the RT_{PTS} value. The method for calculating RT_{PTS} would be moved to a new paragraph of the rule.

3. Thermal annealing would be introduced as a method for mitigating the effects of neutron irradiation, thereby reducing RT_{PTS}.

Additionally, it should be noted that evaluations of current surveillance data have indicated that the standard deviation of the differences between predicted and measured shifts in RT_{NDT}, termed the residual, are higher than the margin values used in the PTS rule and in Regulatory Guide 1.99, Revision 2, particularly for plate materials. However, the mean embrittlement estimation equations in the rule and in Regulatory Guide 1.99, Revision 2, overestimate the actual surveillance data by less than 10°F on average. The NRC staff considered amending the PTS rule to incorporate the revised margin terms and the overestimation bias, but decided against such an amendment due to the small number of plants that would be affected by such a change, and a related NRC research program that addresses the overall issue of irradiation embrittlement correlations. The number of plants which would have their RT_{PTS} values change "significantly" by such a change to the margin terms is not large; the impact of the revised margin terms on those plants is being addressed through other regulatory mechanisms. The effect of the revised margin on pressure-temperature limits is being handled in a similar manner.

As noted, this proposed amendment to 10 CFR 50.61 introduces thermal annealing of the reactor pressure vessel beltline as a method for mitigating the effects of neutron irradiation and reducing RT_{PTS} to levels below the screening criteria. As specified in § 50.61(b)(7) of this proposed rule, the use of thermal annealing would be subject to the requirements of the proposed new section on thermal annealing (10 CFR 50.66).

Thermal Annealing Rule (10 CFR 50.66)

The proposed thermal annealing rule, 10 CFR 50.66, would provide a consistent set of requirements for the use of thermal annealing to mitigate the effects of neutron irradiation. The proposed rule would replace the requirements for annealing in the current Appendix G of 10 CFR Part 50 with the proposed consistent set of requirements in this proposed rule. Also, the PTS rule would be amended to add a new paragraph (b)(7) which would reference the proposed thermal annealing rule as a method for mitigating the effects of neutron irradiation, thereby reducing RT_{PTS}. Therefore, the intent of the thermal annealing rule, and related changes in 10 CFR 50.61 and Appendix G of 10 CFR Part 50, is to provide requirements for use of thermal annealing to mitigate the deleterious effects of neutron irradiation on reactor vessel material properties.

Consistent with guidance in Section V.D of the current Appendix G, the proposed thermal annealing rule would specify that thermal annealing would be subject to the approval of the Director, Office of Nuclear Reactor Regulation (NRR). Section 50.66(a) of the proposed thermal annealing rule would require submittal of an application containing three sections: a thermal annealing operating plan, a requalification inspection and test program, and a fracture toughness recovery and reembrittlement rate assurance program. This application would be required to be submitted at least three years before the proposed date of the annealing operation. This three-year period is specified only to provide NRC staff with sufficient time to review the thermal annealing application. The licensee may initiate the thermal annealing program as soon as NRC approval is given, even if this approval is given before three years from the date of the application.

The thermal annealing operating plan also must include an evaluation of the effects of temperature, and of mechanical and thermal stresses on the reactor and associated equipment to demonstrate that the operability of the reactor will not be detrimentally affected. The temperatures and times used in this analysis define the proposed annealing conditions. If these conditions are exceeded during the vessel annealing, then the evaluation would no longer be valid, and the acceptability of the actual vessel annealing would have to be demonstrated.

Upon completion of the thermal annealing and before subsequent operation of the plant, the licensee would be required to certify that the thermal annealing was performed in accordance with the approved application, that the approved criteria were satisfied, and that the proposed annealing conditions were not exceeded. However, in the event that the licensee cannot make this certification, a justification for subsequent operation would have to be submitted for approval by the Director, NRR. However, this provision does not relieve the licensee from obtaining 10 CFR 50.12 exemptions from any other requirements of this part that cannot be satisfied.

Two items of particular importance to the overall annealing are the recovery of fracture toughness and the rate of reembrittlement of the RPV beltline materials. This proposed rule provides three alternative methods for determining these values, ranging from assessments using plant-specific materials to an assessment using a generic computation.

Two methods for evaluating annealing recovery are experimental methods to determine plant-specific annealing recovery, and the third method is a generic computational method. The first method would be required for those plants with "credible" surveillance programs and where surveillance specimens are available. The second method would be an optional method, in which the licensee may remove material from the beltline of the RPV to evaluate annealing recovery. This method should provide the most accurate evaluation of annealing recovery. Presumably, it would be selected for those plants without credible surveillance programs or when surveillance specimens are not available. However, for this method to be acceptable, the vessel must be sufficiently thick so that the stress limits in Section III of the ASME Code can be satisfied, considering the effects of fatigue and corrosion.

The third method would use generic computational methods, for which appropriate justification would be required.

Paragraph (d) of § 50.66 describes the experimental methods and the computational method for estimating recovery of RT_{NDT} and Charpy upper-shelf energy of the beltline materials. The experimental methods for estimating recovery of RT_{NDT} and the Charpy upper-shelf energy utilize either surveillance program specimens or material removed from the vessel beltline. The experimental methods provide a plant-specific estimate of recovery, rather than the generic value evaluated from the computational method. It is the intent of this proposed rule to require that surveillance specimens from "credible" surveillance programs must be used to develop plant-specific recovery data, if such specimens are available. It is not the intent of this rule to require the removal of material from the RPV beltline to permit plant-specific evaluation of recovery.

As described previously, the computational method would require appropriate justification.

Reembrittlement trends are estimated, and monitored by continued surveillance in accordance with Appendix H of 10 CFR Part 50.

Paragraph (b)(3)(ii) provides that the reembrittlement rate must be monitored using a surveillance program which conforms to Appendix H of this part. Some older plants conform to Appendix H by applying issues of ASTM Standard E 185 that do not require the use of the vessel "limiting materials" in the surveillance program. Within this context, the term "limiting materials" refers to the materials predicted to have the highest RT_{NDT} or the lowest Charpy upper shelf energy during the operational lifetime of the plant. It is the intent of this rule that, as required by later issues of ASTM Standard E 185, the vessel "limiting materials" should be used to monitor reembrittlement if the materials are available.

Appendix G of 10 CFR Part 50

Appendix G of 10 CFR Part 50 specifies fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light-water-cooled nuclear power reactors. These requirements provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests. The proposed amendments to Appendix G are principally of a clarifying or a restructuring nature. These amendments include:

1. Sections IV and V of Appendix G which would be combined and rewritten to clarify the Charpy upper-shelf energy requirements, and the pressure-temperature and minimum permissible temperature requirements.

2. An explicit statement that would be added to Section IV requiring that pressure and leak tests of the reactor pressure vessel required by Section XI of the American Society of Mechanical Engineers Boiler & Pressure Vessel (B&PV) Code (ASME Code) must be completed before the core is critical.

3. The proposed thermal annealing rule, 10 CFR 50.66, that would be referenced in lieu of the details on thermal annealing previously given in Section V.D.

4. The reference to the ASME Code that would be changed from Appendix G of Section III to Appendix G of Section XI of the ASME Code.

5. The "design to permit annealing" requirement (Section IV.B), which would be deleted.

The restructuring of Sections IV and V is intended to promote clarity of the requirements in these sections. The procedures required for cases in which the Charpy upper-shelf energy of a RPV beltline material falls below 50 ft-lb also would be clarified by consolidating the requirements previously addressed in parts of Sections IV and V.

The provisions in Section V.C concerning requirements for "volumetric inspection" and "additional evidence of fracture toughness" would be removed. The volumetric examination requirement would be removed because it was unnecessary, given the inspection and performance demonstration programs currently required under 10 CFR 50.55a. The "additional evidence of fracture toughness" requirement in Section V.C.2 would be incorporated in the "equivalent margins" analysis in Section IV.A.1, as a provisional method for developing fracture toughness data needed for that analysis. At the present time there is an adequate generic fracture toughness data base available to perform these analyses, with appropriate bounding considerations. The modification would permit a licensee to develop plant-specific data. Generally, plant-specific data would result in a reduction in the margin applied to the fracture toughness data, to reflect the reduction in uncertainties due to the availability of plant-specific data. However, this must be evaluated on a case-by-case basis.

The pressure-temperature and minimum permissible temperature requirements in Section IV would be restructured, with the principal feature being the addition of a table which summarizes the pressure-temperature limit requirements and minimum temperature requirements as a function of the plant operating condition, the vessel pressure, whether fuel is in the vessel, and whether the core is critical. In addition, Section IV would be reworded to clarify the minimum permissible temperature requirement by indicating the criteria for use in determining the location in the component or material which must satisfy the minimum temperature requirement. This minimum temperature is defined in Section IV as the metal temperature of the controlling material in the region which has the least favorable combination of stress and temperature for the appropriate plant condition.

The requirement that all pressure and leak tests of the RPV required by Section XI of the ASME Code must be completed before the core is critical is intended to prohibit the use of nuclear heat, i.e., core criticality, before the completion of these tests. The use of nuclear heat before the completion of such tests is considered unsafe for several reasons, including the hindrance of finding leaks with the vessel at such a high temperature and the potential for exacerbating the consequences of a vessel rupture (in the extremely unlikely event that it should occur) by having the core critical. The explicit prohibition of nuclear heat in these cases was recommended to the Executive Director for Operations by the Committee to Review Generic Requirements in a memorandum dated June 7, 1990.

The requirements on thermal annealing contained in the current Appendix G (Section V.D) would be replaced by a reference to the proposed Thermal Annealing rule, 10 CFR 50.66.

Changing the reference to Appendix G of the ASME Code from Section III to Section XI means that the requirements for operating plants will no longer come from the construction code (Section III of the ASME Code) but instead will come from Section XI, the in-service inspection code. Appendix G to Section XI and Appendix G to Section III are identical, so this amendment would not result in a change in technical requirements.

Section IV.B of Appendix G requires that:

"Reactor vessels for which the predicted value of upper-shelf energy at end of life is below 50 ft-lb or for which the predicted value of adjusted reference temperature at end of life exceeds 200 °F (93 °C) must be designed to permit a thermal annealing treatment * * *"

This proposed rule would delete that requirement. This deletion conforms with Commission direction from 1985 and public comments to delete this section. An additional consideration to delete this requirement is that there should be no requirement to ensure the feasibility of a (future) voluntary activity.

During the Commission review of the revision of Appendix G published final on May 27, 1983 (48 FR 24009), the requirement to "design to permit annealing" was criticized because licensee response to the requirement was perfunctory and staff review of the responses was cursory, as detailed in SECY–83–254 (June 27, 1983). Further, there were no criteria to assess whether a design would permit annealing. An additional problem cited with the requirement was that it was misinterpreted to mean that plant operation with an RT_{NDT} greater than 200°F or a Charpy upper-shelf energy below 50 ft-lb was unsafe. The Commission indicated that it would seek public comments on the proposed deletion of the requirement, and this was done concurrently with the publication of the proposed PTS rule on February 4, 1984 (49 FR 4498). All sixteen of the commenters on this item recommended deletion of the paragraph, although eight of them urged that the deletion should not in any way imply that annealing is no longer an option to increase safety margins. In the notice of final rulemaking for the PTS rule published on July 23, 1985 (50 FR 29944), the "Supplementary Information" noted that the Commission planned a separate rulemaking action to delete Section IV.B. That planned deletion was delayed so that it could be combined with other amendments to Appendix G.

Appendix H of 10 CFR Part 50

Changes in the fracture toughness properties of the RPV beltline materials due to irradiation embrittlement are monitored using a surveillance program, as required in Appendix H of 10 CFR Part 50, "Reactor Vessel Material Surveillance Program Requirements". Appendix H references American Society for Testing and Materials (ASTM) standard E 185 ("Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels") for many of the detailed requirements of surveillance programs, and permits the use of integrated surveillance programs, wherein surveillance program capsules for one reactor are irradiated in another reactor. This proposed amendment would make the following changes:

1. End the provision for "reducing the amount of testing" for integrated surveillance programs,
2. Restructure the section on requirements for integrated surveillance programs (Section II.C), and
3. Clarify the version of ASTM Standard E 185 that applies to the surveillance program.

Integrated surveillance programs are permitted under Section II.C of

Appendix H of 10 CFR Part 50. One provision of this section is that "the amount of testing may be reduced if the initial results agree with predictions." It is proposed to discontinue this provision as of the effective date of the Appendix, although previous authorizations granted by the Director, Office of Nuclear Reactor Regulation, would continue in effect.

A second proposed change to Appendix H restructures Section II.C to clarify the requirements for integrated surveillance programs.

The other principal change to Appendix H clarifies the version of ASTM Standard E 185 that applies to the various portions of the surveillance programs. Appendix H recognizes the need to separate surveillance programs into two essential parts, specifically the design of the program, and subsequent testing and reporting of results from the surveillance capsules. Since the design of the surveillance program cannot be changed once the program is in place, the requirements for design of the surveillance program are static for each plant. However, the testing and reporting requirements are updated along with technical improvements made to ASTM standard E 185. The clarification proposed in this revision indicates that the design of the program and the withdrawal schedule must meet the requirements of ASTM E 185–73, or the edition of ASTM E 185 that is current on the issue date of the ASME Code to which the reactor vessel was purchased, whichever is latest. Licensees could choose to comply with later editions of ASTM E 185, up through the 1982 edition. Further, specimen test procedures and reporting requirements must meet the requirements of ASTM E 185–82 "to the extent practicable for the configuration of the specimens in the capsule."

The NRC staff intended that this proposed amendment to Appendix H would incorporate by reference a version of ASTM standard E 185 updated from the currently available 1982 version. However, that standardization process has not been completed, and it was decided to proceed with this proposed amendment. A subsequent amendment to Appendix H will be considered after the NRC staff has reviewed the updated ASTM standard.

Request for Public Comments

On June 13, 1994 (SECY–94–163) the staff requested Commission approval to publish for public comment these proposed revisions and provided a discussion of options for public participation related to thermal annealing. The Commission approved issuance of the proposed revisions but directed that the staff to (1) include with the proposed rule package a discussion of options the staff has considered for structuring of the regulatory process for the proposed thermal annealing rule (10 CFR 50.66), which is included in the following section, and (2) request comments on the following issues related to the proposed regulation on thermal annealing:

1. The technical adequacy of the staff's guidance;
2. The sufficiency of the guidance and criteria to support a certification that if satisfied, a plant with an annealed vessel can safely resume operation;
3. Whether health and safety concerns are best served by approval of the thermal annealing plan or of readiness for restart;
4. The preferred regulatory process (including opportunities for public participation) and the commenter's basis for recommending a particular process; and
5. Whether there are health and safety issues concerning thermal annealing that cannot be addressed generically and would warrant plant-specific consideration.

Options the Staff Has Considered for Structuring of the Regulatory Process Related to Public Participation in Thermal Annealing

A significant issue with respect to thermal annealing, identified in SECY–92–283 (August 14, 1992), is the nature and timing of public participation related to the NRC's review and approval of a licensee's proposal for thermal annealing. The proposed rule does not address public participation per se, but instead provides the performance requirements that a licensee would have to meet to gain NRC approval of a thermal annealing application and to permit subsequent operation. Under the proposed rule, there are three circumstances that arguably require an opportunity for hearing pursuant to Section 189 of the Atomic Energy Act of 1954 (AEA) in connection with NRC review and approval of thermal annealing. First, a licensee seeking to anneal its reactor vessel must obtain NRC approval of the content of the thermal annealing plan prior to implementing the plan (see § 50.66(a) of the proposed rule). Second, and apart from the NRC approval required under § 50.66(a), the thermal annealing process as described in the licensee's plan may necessitate license amendments (including technical specification changes). License amendments may be required if the licensee's final safety analysis report (FSAR) needs to be revised to reflect the thermal annealing process, and the licensee is unable to conclude that such FSAR changes do not constitute "unreviewed safety questions" under 10 CFR 50.59. Implementation of the thermal annealing plan may also violate existing technical specifications, necessitating requests for changes to technical specifications. Any license amendment and technical specification change must be approved by the NRC before the licensee may implement the thermal annealing plan. Finally, after the licensee implements the annealing plan, if he determines that he cannot meet the criteria specified in § 50.66(c)(1) of the proposed rule, then NRC approval is needed in order for the licensee to resume operation (see § 50.66(c)(2) of the proposed rule).

It is clear that any license amendments and technical specification changes necessitated by the thermal annealing plan would require an opportunity for hearing, in accordance with Section 189 of the AEA. However, the scope of such a hearing would normally be limited to consideration of whether the proposed license amendment and technical specification changes are in accordance with the Commission's rules, and therefore provide reasonable assurance of adequate protection to the public health and safety. Issues related to the more general matter of the acceptability of the thermal annealing plan proposed by the licensee would not fall within the scope of any hearing for license amendment or technical specification change, except as they fall directly in the scope of the requested amendment or technical specification change.

However, there is some question whether the AEA requires an opportunity for hearing in connection with the NRC approval of the thermal annealing plan or the NRC decision approving resumption of operation under the proposed rule. There are four primary alternatives with respect to providing an opportunity for hearing in connection with thermal annealing. These alternatives are discussed in greater detail below:

Alternative 1. No Opportunity for Hearing Under Rule as Proposed

Under this alternative, the contention is that Section 189 of the AEA does not afford an interested member of the public a right to request a hearing in connection with NRC approvals of thermal annealing plans and resumption of operation under § 50.66(c)(2). This alternative is consistent with other

provisions in 10 CFR Part 50 where approval by the Director of NRR is required and hearings are not routinely offered.

Notwithstanding the lack of a requirement for a public hearing, the staff anticipates that, with respect to the initial or the first several applications for thermal annealing, several informal hearings or public meetings would be held by the staff to permit discussion of both the thermal annealing plan proposed by the licensee and the technical issues related to annealing. These hearings or meetings would ensure that all of the pertinent technical issues have been addressed by the licensee in its thermal annealing plan and by the staff in its review of the plan. These hearings or meetings would be noticed in the Federal Register.

Alternative 2. Discretionary Opportunity for Hearing Under Rule as Proposed

Under this alternative, the contention is that Section 189 of the AEA does not afford an interested member of the public a right to request a hearing. However, as a matter of discretion, the Commission would determine on a case-by-case basis whether an opportunity for hearing will be provided in connection with the Director of NRR's determination on a thermal annealing application under § 50.66(b) of the proposed rule. In the hearing, the Commission would consider issues related to the adequacy of the thermal annealing plan, as well as the vessel's ability to perform its safety function after being annealed.

A case-by-case determination would also be made by the NRC with respect to providing an opportunity for hearing on the Director of NRR's determination on the licensee's justification for subsequent operation under the proposed § 50.66(c)(2).

In both cases, the Commission would publish a notice in the Federal Register announcing the NRC's approval of the licensee's thermal annealing plan or approval of resumed operation under § 50.66(c)(2). Neither implementation of the thermal annealing plan nor resumption of operation, once approved by the NRC, would be contingent upon completion of any hearing; i.e., the Commission does not believe that it is required to make a Section 189 "no significant hazards determination" ("Sholly finding") when it provides a discretionary hearing.

Alternative 3. Required Opportunity for Hearing Under Rule as Proposed

Under this alternative, the contention is that a hearing is required by Section 189 of the AEA for both NRC's approval of the thermal annealing plan and any NRC approval of resumed operation following annealing. The adequacy of the thermal annealing plan, as well as the vessel's ability to perform its safety function after being annealed, could be raised in the hearing associated with approval of the thermal annealing plan. Licensee implementation of the thermal annealing plan could not commence until any hearing is concluded unless the NRC makes a "no significant hazards determination" with respect to the thermal annealing.

Alternative 4. Modify Proposed Rule to Require Suspension of License Prior to Thermal Annealing

Under this alternative, the proposed rule's regulatory approach for thermal annealing would be modified to include a suspension of the operating license during thermal annealing. The suspension would be automatic under the rule, without the need for a suspension order, although a letter confirming the licensee's status under the annealing rule would be prepared. The rule itself, as is currently drafted, would specify the conditions for lifting of the suspension (Section 50.66(b)). The licensee would anneal its reactor vessel without prior NRC approval of its program for conducting the annealing. Upon completion, the suspension would be lifted only if the licensee demonstrated that the thermal annealing has addressed the reactor enbrittlement such that it is acceptable to operate the plant. There would be no opportunity for hearing associated with the lifting of the suspension, and since there would be no prior NRC approval of the annealing program, a hearing opportunity under Section 189 would not be implicated by any such approval.

Submission of Comments in Electronic Format

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the letter in electronic format on a DOS-formatted (IBM compatible) 5.25 or 3.5 inch computer diskette. Text files should be provided in WordPerfect format or unformatted ASCII code. The format and version should be identified on the diskette's external label.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of human environment and, therefore, an environmental impact statement is not required.

As discussed below, the individual actions covered in this proposed rulemaking would either serve to enhance safety of the reactor pressure vessel, thereby decreasing the environmental impact of plant operation, or have no impact on the environment. Therefore, in all cases these individual actions will not have an adverse impact on the environment.

PTS Rule (10 CFR 50.61)

The inclusion of thermal annealing as an option for mitigating the effects of neutron irradiation would serve to decrease the environmental impact of plant operation by enhancing the safety of the reactor pressure vessel.

The incorporation of the Regulatory Guide 1.99, Revision 2, method for determining RT_{NDT} into the PTS rule would have no impact on the environment because this change will result in values of RT_{PTS} which are consistent with those currently used in plant operation.

The restructuring of the PTS rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

Thermal Annealing Rule (10 CFR 50.66)

The proposed thermal annealing rule (10 CFR 50.66) would permit and provide requirements for the thermal annealing of a reactor vessel to restore fracture properties of the reactor vessel material which have been degraded by neutron irradiation. This rule does not affect all plants but provides an alternative for assuring compliance with the requirements in 10 CFR 50.61 and Appendix G of 10 CFR Part 50, and would only apply when a licensee elects to use it.

The application of thermal annealing to a reactor vessel would improve the condition of the reactor vessel material. In addition, this rule would establish requirements to avoid damaging the reactor system and to protect against accidents during the annealing operation, with attendant environmental consequences.

This rule is one of several regulatory requirements that will function to ensure reactor vessel integrity. In that sense, this rule would have a positive impact on the environment by reducing the potential for vessel failure. For these reasons, the Commission has determined that there would be no significant impact and, therefore, an

environmental statement is not required.

Appendix G of 10 CFR Part 50

Concerning the amendments proposed to Appendix G of 10 CFR Part 50, the prohibition of core criticality before completion of the required pressure and leak tests will serve to reduce the potential for vessel failure, and thereby decrease the environmental impact of plant operation.

The restructuring of Sections IV and V of Appendix G is clarifying or corrective in nature, and hence is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

The changing of the reference from Appendix G of Section III of the ASME Code to Appendix G of Section XI of the ASME Code has no impact on the environment since the requirements in the Appendices are identical. Therefore, there is no adverse impact on the environment from this change.

The referencing of the thermal annealing rule results in no adverse impact on the environment since Appendix G currently permits the use of thermal annealing to reduce fracture toughness loss of the RPV materials due to irradiation embrittlement.

The deletion of the "design to permit annealing" requirement has no adverse impact on the environment. This assessment is based on the fact that annealing is a voluntary activity.

Appendix H of 10 CFR Part 50

Concerning the amendments proposed to Appendix H of 10 CFR Part 50, the requirement that all irradiation surveillance tests be made (i.e., no reduction in testing is permitted) would have a positive impact on the environment in helping to assure the integrity of the reactor pressure vessel.

The restructuring of Section II.C is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

The clarification of the applicable version of ASTM Standard E 185 will result in no adverse impact to the environment since there will be no change to current surveillance programs. Changes to future surveillance programs will make the programs more effective in assessing irradiation embrittlement effects to the RPV materials, thereby helping to assure the integrity of the reactor pressure vessel.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 6,000 hours per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0011), Office of Management and Budget, Washington, D.C. 20503.

Regulatory Analysis

The NRC staff has prepared a regulatory analysis for the proposed amendments to 10 CFR 50.61, 10 CFR Part 50, Appendix G and 10 CFR Part 50 Appendix H, which describes the factors and alternatives considered by the Commission in deciding to propose these amendments. A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555. Single copies of the analysis may be obtained from Alfred Taboada, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone, (301) 415–6014.

Single copies of the regulatory analysis prepared for 10 CFR 50.66 may be obtained from Alfred Taboada, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone, (301) 415–6014.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that, if adopted, the proposed amendments would not have a significant economic impact on a substantial number of small entities. The rules which would be affected by the proposed amendments: (1) Preclude brittle fracture of embrittled vessels during PTS events, (2) provide the general fracture toughness requirements for RPVs, including ductile fracture toughness requirements and pressure-temperature limits, (3) provide the requirements for surveillance programs to monitor irradiation embrittlement of RPV beltline materials, and (4) provide for a method for restoring the fracture toughness of RPV beltline materials used in nuclear facilities licensed under the provision of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of the definition of "small entities" as set forth in the Regulatory Flexibility Act or the Small Business Size Standards in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

PTS Rule (10 CFR 50.61)

The proposed revision to Section 50.61 would require licensees to calculate RT_{PTS} using the same methodology specified in Regulatory Guide 1.99, Revision 2 for determining RT_{NDT}. This proposal is logically a requisite part of the 1991 revisions to § 50.61, which addressed a unified method for calculating radiation enbrittlement of the reactor beltline materials. However, the Commission inadvertently failed to make the conforming change to § 50.61. Therefore, the Commission believes that the backfit statement for the 1991 amendments, which determined that the backfits were necessary to ensure that the facility provides adequate protection to the public health and safety, are applicable to this conforming change to § 50.61.

The restructuring of the PTS rule does not impose any backfits as defined in 10 CFR 50.109(a)(1), since there is no change in requirements due to this restructuring.

The inclusion of thermal annealing does not impose any backfits as defined in 10 CFR 50.109(a)(1), for the reasons set forth below in "Thermal Annealing Rule (10 CFR 50.66)."

Thermal Annealing Rule (10 CFR 50.66)

The proposed thermal annealing rule would establish new requirements with respect to applications for thermal annealing. However, the Commission has determined that the proposed rule would not impose a "backfit" as defined in 10 CFR 50.109(a)(1). The proposed thermal annealing rule would not require any licensee to perform thermal annealing. Under existing requirements, all licensees are required to evaluate whether they exceed the PTS screening limits in 10 CFR 50.61 and the Charpy

upper shelf screening limits in 10 CFR Part 50, Appendix G. However, these rules provide an alternative means to meet these screening limits, *viz.*, performing thermal annealing. No licensee currently has pending before the NRC an application for thermal annealing, nor has any current licensee been granted permission to conduct thermal annealing. In addition, the proposed rule does not reflect any new or different Staff position which conflicts with a prior Staff position or Commission rule. Thus, the proposed rule would have a purely prospective effect on future applications for thermal annealing. The Commission has stated in other rulemakings establishing prospective requirements, *e.g.*, 10 CFR Part 52 and the License Renewal Rule, 10 CFR Part 54, that the Backfit Rule was not intended to protect the future applicant from current changes in Commission requirements when there are no prior NRC positions upon which the "substantial increase in overall protection" can be measured. Accordingly, the Commission concludes that the proposed rule does not impose backfits and a backfit analysis need not be prepared for the proposed thermal annealing rule.

10 CFR Part 50 Appendix G

The restructuring of Sections IV and V of this appendix, referencing of the thermal annealing rule, changing the reference from Appendix G of Section III of the ASME Code to Appendix G of Section XI of the ASME Code, and deleting the "design to permit annealing" requirement do not impose any backfits as defined in 10 CFR 50.109(a)(1), because they are either prospective in nature or of a clarifying nature.

The explicit prohibition on core criticality before the completion of pressure and leak tests can be construed as a backfit, although NRC staff intent was never to permit such a procedure (letter from J. M. Taylor, NRC, to N. S. Reynolds and D. F. Stenger, NUBARG, dated February 2, 1990). The Commission has concluded that any backfit requirements in this amendment are necessary to bring the facilities into compliance with licenses, or the rules and orders of the Commission, or into conformance with written commitments by the licensees. Therefore, a backfit analysis is not required pursuant to 10 CFR 50.109(a)(4)(i). This amendment underscores the prior intent of the Commission to prohibit the use of nuclear heat before the completion of leak and pressure tests that is implicit in 10 CFR 50.55a and Section XI of the ASME Code. The Commission's intent in this regard is demonstrated by the fact that only a very small minority of licensees actually used nuclear heat to conduct pressure and leak tests required by the ASME Code.

10 CFR Part 50 Appendix H

The amendments to Appendix H of 10 CFR Part 50 are either prospective in nature or of a clarifying nature, and hence do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

Criminal Penalties

For purposes of Section 223 of the Atomic Energy Act (AEA), the Commission proposes to issue the proposed rule under one or more of Sections 161b, 161i or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 - 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat 955 (42 U.S.C. 2237).

2. Section 50.61 is revised to read as follows:

§ 50.61 Fracture toughness requirements for protection against pressurized thermal shock events.

(a) Definitions. For the purposes of this section:

(1) *ASME Code* means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section III, Division I, "Rules for the Construction of Nuclear Power Plant Components," edition and addenda and any limitations and modifications thereof as specified in § 50.55a of this part.

(2) *Pressurized Thermal Shock Event* means an event or transient in pressurized water reactors (PWRs) causing severe overcooling (thermal shock) concurrent with or followed by significant pressure in the reactor vessel.

(3) *Reactor Vessel Beltline* means the region of the reactor vessel (shell material including welds, heat affected zones and plates or forgings) that directly surrounds the effective height of the active core and adjacent regions of the reactor vessel that are predicted to experience sufficient neutron radiation damage to be considered in the selection of the most limiting material with regard to radiation damage.

(4) RT_{NDT} means the reference temperature for a reactor vessel material, under any conditions. For the reactor vessel beltline materials, RT_{NDT} must account for the effects of neutron radiation.

(5) $RT_{NDT(U)}$ means the reference temperature for a reactor vessel material in the pre-service or unirradiated condition, evaluated according to the procedures in the ASME Code, Paragraph NB–2331.

(6) *EOL Fluence* means the best-estimate neutron fluence projected for a specific vessel beltline material at the clad-base-metal interface on the inside surface of the vessel at the location where the material receives the highest fluence on the expiration date of the operating license, the proposed expiration date if a change in the term of the operating license has been requested, or the end of a renewal term if an application for a renewed license under 10 CFR Part 54 has been submitted.

(7) RT_{PTS} means the reference temperature, RT_{NDT}, evaluated for the

EOL Fluence for each of the vessel beltline materials, using the procedures of paragraph (c) of this section.

(8) *PTS Screening Criterion* means the value of RT_{PTS} for the vessel beltline material above which the plant cannot continue to operate without justification.

(b) Requirements.

(1) For each pressurized water nuclear power reactor for which an operating license has been issued, the licensee shall have projected values of RT_{PTS}, accepted by the NRC, for each reactor vessel beltline material for the EOL fluence of the material. The assessment of RT_{PTS} must use the calculative procedures given in paragraph (c)(1) of this section, except as provided in paragraphs (c)(2) and (c)(3) of this section. The assessment must specify the bases for the projected value of RT_{PTS} for each vessel beltline material, including the assumptions regarding core loading patterns, and must specify the copper and nickel contents and the fluence value used in the calculation for each beltline material. This assessment must be updated whenever there is a significant [1] change in projected values of RT_{PTS}, or upon a request for a change in the expiration date for operation of the facility.

(2) The pressurized thermal shock (PTS) screening criterion is 270 °F for plates, forgings, and axial weld materials, and 300 °F for circumferential weld materials. For the purpose of comparison with this criterion, the value of RT_{PTS} for the reactor vessel must be evaluated according to the procedures of paragraph (c) of this section, for each weld and plate, or forging, in the reactor vessel beltline. RT_{PTS} must be determined for each vessel beltline material using the EOL fluence for that material.

(3) For each pressurized water nuclear power reactor for which the value of RT_{PTS} for any material in the beltline is projected to exceed the PTS screening criterion using the EOL fluence, the licensee shall implement those flux reduction programs that are reasonably practicable to avoid exceeding the PTS screening criterion set forth in paragraph (b)(2) of this section. The schedule for implementation of flux reduction measures may take into account the schedule for submittal and anticipated approval by the Director, Office of Nuclear Reactor Regulation, of detailed plant-specific analyses, submitted to demonstrate acceptable risk with RT_{PTS} above the screening limit due to plant modifications, new information or new analysis techniques.

(4) For each pressurized water nuclear power reactor for which the analysis required by paragraph (b)(3) of this section indicates that no reasonably practicable flux reduction program will prevent RT_{PTS} from exceeding the PTS screening criterion using the EOL fluence, the licensee shall submit a safety analysis to determine what, if any, modifications to equipment, systems, and operation are necessary to prevent potential failure of the reactor vessel as a result of postulated PTS events if continued operation beyond the screening criterion is allowed. In the analysis, the licensee may determine the properties of the reactor vessel materials based on available information, research results, and plant surveillance data, and may use probabilistic fracture mechanics techniques. This analysis must be submitted at least three years before RT_{PTS} is projected to exceed the PTS screening criterion.

(5) After consideration of the licensee's analyses, including effects of proposed corrective actions, if any, submitted in accordance with paragraphs (b)(3) and (b)(4) of this section, the Director, Office of Nuclear Reactor Regulation, may, on a case-by-case basis, approve operation of the facility with RT_{PTS} in excess of the PTS screening criterion. The Director, Office of Nuclear Reactor Regulation, will consider factors significantly affecting the potential for failure of the reactor vessel in reaching a decision.

(6) If the Director, Office of Nuclear Reactor Regulation, concludes, pursuant to paragraph (b)(5) of this section, that operation of the facility with RT_{PTS} in excess of the PTS screening criterion cannot be approved on the basis of the licensee's analyses submitted in accordance with paragraphs (b)(3) and (b)(4) of this section, the licensee shall request and receive approval by the Director, Office of Nuclear Reactor Regulation, prior to any operation beyond the criterion. The request must be based upon modifications to equipment, systems, and operation of the facility in addition to those previously proposed in the submitted analyses that would reduce the potential for failure of the reactor vessel due to PTS events, or upon further analyses based upon new information or improved methodology.

(7) If the limiting RT_{PTS} value of the plant is projected to exceed the screening criteria in paragraph (b)(2), or the criteria in paragraphs (b)(3) through (b)(6) of this section cannot be satisfied, the reactor vessel beltline may be given a thermal annealing treatment to recover the fracture toughness of the material, subject to the requirements of § 50.66. The reactor vessel may continue to be operated only for that service period within which the predicted fracture toughness of the vessel beltline materials satisfy the requirements of paragraphs (b)(2) through (b)(6) of this section, with RT_{PTS} accounting for the effects of annealing and subsequent irradiation.

(c) Calculation of RT_{PTS}. RT_{PTS} must be evaluated using the same procedures used to calculate RT_{NDT}, as indicated in paragraph (c)(1) of this section, and as provided in paragraphs (c)(2) and (c)(3). RT_{PTS} must be calculated for each vessel beltline material using a fluence value, f, which is the EOL fluence for the material.

(1) Equation 1 must be used to calculate values of RT_{NDT} for each weld and plate, or forging, in the reactor vessel beltline.

Equation 1:

$$RT_{NDT} = RT_{NDT(U)} + M + \Delta RT_{NDT}$$

(i) $RT_{NDT(U)}$ is the reference temperature, RT_{NDT}, of the material in the pre-service or unirradiated condition, evaluated according to the procedures in the ASME Code, Paragraph NB–2331.

(A) If a measured value of $RT_{NDT(U)}$ is not available, a generic mean value for the class [2] of material may be used if there are sufficient test results to establish a mean and a standard deviation for the class.

(B) For weld metals, the following generic mean values must be used, unless justification for different values is provided: 0 °F for welds made with Linde 80 flux, and −56 °F for welds made with Linde 0091, 1092 and 124 and ARCOS B–5 weld fluxes.

(ii) *M* means the margin to be added to account for uncertainties in the values of $RT_{NDT(U)}$, copper and nickel contents, fluence and the calculational procedures. M is evaluated from Equation 2.

Equation 2:

$$M = 2\sqrt{\sigma_U^2 + \sigma_\Delta^2}$$

(A) In Equation 2, σ_U is the standard deviation for $RT_{NDT(U)}$. If a measured value of $RT_{NDT(U)}$ is used, then σ_U is determined from the precision of the test method. If a measured value of

[1] Changes to RT_{PTS} values are considered significant if either the previous value or the current value, or both values, exceed the screening criterion prior to the expiration of the operating license, including any renewed term, if applicable, for the plant.

[2] The class of material for estimating $RT_{NDT(U)}$ is generally determined for welds by the type of welding flux (Linde 80, or other), and for base metal by the material specification.

$RT_{NDT(U)}$ is not available and a generic mean value for that class of materials is used, then σ_U is the standard deviation obtained from the set of data used to establish the mean. If a generic mean value given in paragraph (c)(1)(i)(B) for welds is used, then σ_U is 17 °F.

(B) In Equation 2, $\sigma\Delta$ is the standard deviation for ΔRT_{NDT}. The value of $\sigma\Delta$ to be used is 28 °F for welds and 17 °F for base metal; the value of $\sigma\Delta$ shall not exceed one-half of ΔRT_{NDT}.

(iii) ΔRT_{NDT} is the mean value of the transition temperature shift, or change in RT_{NDT}, due to irradiation, and must be calculated using Equation 3.

Equation 3:

$$\Delta RT_{NDT} = (CF)f^{(0.28-0.10 \log f)}$$

(A) *CF* (°F) is the chemistry factor, which is a function of copper and nickel content. CF is given in Table 1 for welds and in Table 2 for base metal (plates and forgings). Linear interpolation is permitted. In Tables 1 and 2, "Wt-% copper" and "Wt-% nickel" are the best-estimate values for the material, which will normally be the mean of the measured values for a plate or forging. For a weld, the best estimate values will normally be the mean of the measured values for a weld deposit made using the same weld wire heat number as the critical vessel weld. If these values are not available, the upper limiting values given in the material specifications to which the vessel material was fabricated may be used. If not available, conservative estimates (mean plus one standard deviation) based on generic data[3] may be used if justification is provided. If none of these alternatives are available, 0.35% copper and 1.0% nickel must be assumed.

(B) *f* is the best estimate neutron fluence, in units of 10^{19} n/cm² (E greater than 1 MeV), at the clad-base-metal interface on the inside surface of the vessel at the location where the material in question receives the highest fluence for the period of service in question. As specified in paragraph (c), the EOL fluence for the vessel beltline material is used in calculating RT_{PTS}.

(2) To verify that RT_{NDT} for each vessel beltline material is a bounding value for the specific reactor vessel, licensees shall consider plant-specific information that could affect the level of embrittlement. This information includes but is not limited to the reactor vessel operating temperature and surveillance program results.

(i) Results from the plant-specific surveillance program must be integrated into the RT_{NDT} estimate if the plant-specific surveillance data has been deemed credible as judged by the following criteria:

(A) The materials in the surveillance capsules must be those which are the controlling materials with regard to radiation embrittlement.

(B) Scatter in the plots of Charpy energy versus temperature for the irradiated and unirradiated conditions must be small enough to permit the determination of the 30-foot-pound temperature unambiguously.

(C) Where there are two or more sets of surveillance data from one reactor, the scatter of ΔRT_{NDT} values must be less than 28 °F for welds and 17 °F for base metal. Even if the range in the capsule fluences is large (two or more orders of magnitude), the scatter may not exceed twice those values.

(D) The irradiation temperature of the Charpy specimens in the capsule must equal the vessel wall temperature at the cladding/base metal interface within ±25 °F.

(E) The surveillance data for the correlation monitor material in the capsule must fall within the scatter band of the data base for the material.

(ii) Surveillance data deemed credible according to the criteria of paragraph (c)(2)(i) must be used to determine a material-specific value of CF for use in Equation 3. A material-specific value of CF is determined from Equation 4.

Equation 4:

$$CF = \frac{\sum_{i=1}^{n}\left[A_i \times f_i^{(0.28-0.10 \log f_i)}\right]}{\sum_{i=1}^{n}\left[f_i^{(0.56-0.20 \log f_i)}\right]}$$

In Equation 4, "n" is the number of surveillance data points, "A_i" is the measured value of ΔRT_{NDT} and "f_i" is the fluence for each surveillance data point.

(iii) For cases in which the results from a credible plant-specific surveillance program are used, the value of $\sigma\Delta$ to be used is 14 °F for welds and 8.5 °F for base metal; the value of $\sigma\Delta$ may not exceed one-half of ΔRT_{NDT}.

(iv) The use of results from the plant-specific surveillance program may result in an RT_{NDT} that is higher or lower than those determined in paragraph (c)(1).

(3) Any information that is believed to improve the accuracy of the RT_{PTS} value significantly must be reported to the Director, Office of Nuclear Reactor Regulation. Any value of RT_{PTS} that has been modified using the procedures of paragraph (c)(2) is subject to the approval of the Director, Office of Nuclear Reactor Regulation when used as provided in this section.

TABLE 1.—CHEMISTRY FACTOR FOR WELD METALS, °F

Copper, Wt-%	Nickel, Wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
.02	21	26	27	27	27	27	27
.03	22	35	41	41	41	41	41
.04	24	43	54	54	54	54	54
.05	26	49	67	68	68	68	68
.06	29	52	77	82	82	82	82
.07	32	55	85	95	95	95	95
.08	36	58	90	106	108	108	108

[3] Data from reactor vessels fabricated to the same material specification in the same shop as the vessel in question and in the same time period is an example of "generic data."

TABLE 1.—CHEMISTRY FACTOR FOR WELD METALS, °F—Continued

Copper, Wt-%	Nickel, Wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
.09	40	61	94	115	122	122	122
.10	44	65	97	122	133	135	135
.11	49	68	101	130	144	148	148
.12	52	72	103	135	153	161	161
.13	58	76	106	139	162	172	176
.14	61	79	109	142	168	182	188
.15	66	84	112	146	175	191	200
.16	70	88	115	149	178	199	211
.17	75	92	119	151	184	207	221
.18	79	95	122	154	187	214	230
.19	83	100	126	157	191	220	238
.20	88	104	129	160	194	223	245
.21	92	108	133	164	197	229	252
.22	97	112	137	167	200	232	257
.23	101	117	140	169	203	236	263
.24	105	121	144	173	206	239	268
.25	110	126	148	176	209	243	272
.26	113	130	151	180	212	246	276
.27	119	134	155	184	216	249	280
.28	122	138	160	187	218	251	284
.29	128	142	164	191	222	254	287
.30	131	146	167	194	225	257	290
.31	136	151	172	198	228	260	293
.32	140	155	175	202	231	263	296
.33	144	160	180	205	234	266	299
.34	149	164	184	209	238	269	302
.35	153	168	187	212	241	272	305
.36	158	172	191	216	245	275	308
.37	162	177	196	220	248	278	311
.38	166	182	200	223	250	281	314
.39	171	185	203	227	254	285	317
.40	175	189	207	231	257	288	320

TABLE 2.—CHEMISTRY FACTOR FOR BASE METALS, °F

Copper, Wt-%	Nickel, Wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
.02	20	20	20	20	20	20	20
.03	20	20	20	20	20	20	20
.04	22	26	26	26	26	26	26
.05	25	31	31	31	31	31	31
.06	28	37	37	37	37	37	37
.07	31	43	44	44	44	44	44
.08	34	48	51	51	51	51	51
.09	37	53	58	58	58	58	58
.10	41	58	65	65	67	67	67
.11	45	62	72	74	77	77	77
.12	49	67	79	83	86	86	86
.13	53	71	85	91	96	96	96
.14	57	75	91	100	105	106	106
.15	61	80	99	110	115	117	117
.16	65	84	104	118	123	125	125
.17	69	88	110	127	132	135	135
.18	73	92	115	134	141	144	144
.19	78	97	120	142	150	154	154
.20	82	102	125	149	159	164	165
.21	86	107	129	155	167	172	174
.22	91	112	134	161	176	181	184
.23	95	117	138	167	184	190	194
.24	100	121	143	172	191	199	204
.25	104	126	148	176	199	208	214
.26	109	130	151	180	205	216	221
.27	114	134	155	184	211	225	230
.28	119	138	160	187	216	233	239
.29	124	142	164	191	221	241	248
.30	129	146	167	194	225	249	257

TABLE 2.—CHEMISTRY FACTOR FOR BASE METALS, °F—Continued

Copper, Wt-%	Nickel, Wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
.31	134	151	172	198	228	255	266
.32	139	155	175	202	231	260	274
.33	144	160	180	205	234	264	282
.34	149	164	184	209	238	268	290
.35	153	168	187	212	241	272	298
.36	158	173	191	216	245	275	303
.37	162	177	196	220	248	278	308
.38	166	182	200	223	250	281	313
.39	171	185	203	227	254	285	317
.40	175	189	207	231	257	288	320

3. A new § 50.66 is added to read as follows:

§ 50.66 Requirements for thermal annealing of the reactor pressure vessel.

(a) For those light water nuclear power reactors where neutron radiation has reduced the fracture toughness of the reactor vessel materials, a thermal annealing treatment may be applied to the reactor vessel to restore the fracture toughness to acceptable levels. The use of a thermal annealing treatment is subject to the approval of the Director, Office of Nuclear Reactor Regulation, and to the requirements in this section. The application for the Director's approval must be submitted in accordance with § 50.4, and at least three years prior to the proposed date of the annealing operation.

(b) Thermal Annealing Application. The content of the application for approval by the Director, Office of Nuclear Reactor Regulation, for thermal annealing of the reactor vessel must include: a thermal annealing operating plan that includes an evaluation of the effects of mechanical and thermal stresses and temperatures, an inspection and test program to requalify the annealed reactor vessel, and a program for demonstrating that the recovery of fracture toughness and the re-embrittlement rate are adequate to permit subsequent safe operation of the reactor vessel for the period specified in the application.

(1) Thermal Annealing Operating Plan.

(i) The thermal annealing operating plan must include:

(A) A detailed description of the pressure vessel and all structures and components that will be affected by the thermal annealing operation;

(B) The methods, instrumentation and procedures proposed for performing the thermal annealing;

(C) A description of the heat source to be used; and

(D) The proposed thermal annealing operating parameters, including temperatures, times, and heatup and cooldown schedules.

(ii) The annealing time and temperature parameters selected must be based on projecting sufficient recovery of fracture toughness, using the procedures of paragraph (d) of this section, to satisfy the requirements of § 50.60 and § 50.61 for the proposed period of operation addressed in the application. In addition, the operating plan must describe any special precautions necessary to minimize occupational exposure, in accordance with the As Low As Reasonably Achievable (ALARA) principle and the provisions of § 20.1206.

(iii) An evaluation of the effects of mechanical and thermal stresses and temperatures on the vessel, attached piping and appurtenances, and adjacent equipment and components must demonstrate that operability of the reactor will not be detrimentally affected. A detailed thermal and structural analysis must be performed to establish the time and temperature profile of the annealing operation. These analyses must include heatup and cooldown rates, and must demonstrate that localized temperatures, thermal stress gradients, and subsequent residual stresses will not result in unacceptable dimensional changes or distortions in the vessel, attached piping and appurtenances, and that the thermal annealing cycle will not result in unacceptable degradation of the fatigue life of these components. The effects of localized high temperatures must be evaluated for degradation of the concrete adjacent to the vessel and changes in thermal and mechanical properties of the reactor vessel insulation. If the design temperature limitations for the adjacent concrete structure are to be exceeded during the annealing operation, an acceptable maximum temperature for the concrete must be established for the annealing operation using appropriate test data.

(iv) The time and temperature profile evaluated as part of the annealing operating plan, and supported by the evaluation results of paragraph (b)(1)(iii) of this section, represents the proposed annealing conditions that may not be exceeded during the annealing operation. If these conditions are exceeded, then the licensee cannot certify that the annealing operation was performed in accordance with the approved application, as required by paragraph (c)(1) of this section, and must comply with paragraph (c)(2) of this section.

(v) The projected percent recovery of both RT_{NDT} and Charpy upper-shelf energy must be determined by the procedures described in paragraph (d) of this section, using the proposed annealing time and temperature described in the operating plan. The projected post-anneal RT_{NDT} and Charpy upper-shelf energy must be determined from the projected percent recovery.

(vi) The projected rate of reembrittlement of RT_{NDT} must be calculated using the procedures in § 50.61(c), or must be the same rate as that used for the pre-anneal operating period. The projected rate of reembrittlement for Charpy upper-shelf energy must be the same rate as that used for the pre-anneal operating period.

(2) Requalification Inspection and Test Program. The inspection and test program to requalify the annealed reactor vessel must include the detailed monitoring, inspections, and tests proposed to demonstrate that the limitations on temperatures, times and temperature profiles, and stresses evaluated for the proposed annealing conditions of paragraph (b)(1)(iv) of this section have not been exceeded, and to determine the annealing time and temperature to be used in quantifying the fracture toughness recovery. In addition, the program must demonstrate that the annealing operation has not

degraded the reactor vessel, attached piping or appurtenances, or the adjacent concrete structures to a degree that could affect the safe operation of the reactor.

(3) Fracture Toughness Recovery and Reembrittlement Rate Assurance Program. The percent recovery of RT_{NDT} and Charpy upper-shelf energy obtained by the thermal annealing treatment must be determined from the time and temperature of the actual vessel annealing. The recovery of RT_{NDT} and Charpy upper-shelf energy provide the basis for establishing the post-anneal RT_{NDT} and Charpy upper-shelf energy for each vessel material. Changes in the RT_{NDT} and Charpy upper-shelf energy with subsequent plant operation must be determined using the post-anneal values of these parameters in conjunction with the projected reembrittlement rate determined in accordance with paragraph (b)(3)(ii) of this section.

(i) The recovery of RT_{NDT} and Charpy upper-shelf energy must be established using the procedures in paragraph (d) of this section, using the time and temperature of the actual vessel annealing.

(A) If the percent recovery is determined from testing surveillance specimens or from testing materials removed from the reactor vessel, then it shall be demonstrated that the proposed annealing parameters used in the test program are equal to or bounded by those used in the vessel annealing operation.

(B) If generic computational methods are used, appropriate justification must be submitted as a part of the application.

(ii) The reembrittlement rate of both RT_{NDT} and Charpy upper-shelf energy must be estimated, and must be monitored using a surveillance program which conforms to Appendix H of this part, "Reactor Vessel Material Surveillance Program Requirements."

(c) Certification of the Annealing Effectiveness.

(1) Upon completion of the anneal and prior to re-start of the nuclear power plant, the licensee shall certify to the Director, Office of Nuclear Reactor Regulation, that the thermal annealing was performed in accordance with the approved application required by paragraph (a) of this section, and meets the provisions of paragraph (b) of this section. In this certification, the licensee shall establish the period for which the reactor vessel will satisfy the requirements of § 50.60 and § 50.61, and shall provide:

(i) The post-anneal RT_{NDT} and Charpy upper-shelf energy values of the reactor vessel materials for use in subsequent reactor operation;

(ii) The projected reembrittlement trends for both RT_{NDT} and Charpy upper-shelf energy; and

(iii) The projected values of RT_{PTS} and Charpy upper-shelf energy at the end of the proposed period of operation addressed in the application.

(2) If the licensee cannot certify that the thermal annealing was performed in accordance with the approved application and the provisions of paragraph (b) of this section, the licensee shall submit a justification for subsequent operation for approval by the Director, Office of Nuclear Reactor Regulation.

(d) Procedures for Determining the Recovery of Fracture Toughness. The procedures of this paragraph must be used to determine the percent recovery of ΔPT_{NDT}, R_t, and percent recovery of Charpy upper-shelf energy, R_u. In all cases, R_t and R_u may not exceed 100.

(1) For those reactors with surveillance programs which have developed credible surveillance data as defined in § 50.61, percent recovery due to annealing (R_t and R_u) must be evaluated by testing surveillance specimens that have been withdrawn from the surveillance program and that have been annealed under the same time and temperature conditions as those given the beltline material.

(2) Alternatively, the percent recovery due to annealing (R_t and R_u) may be determined from the results of a verification test program employing materials removed from the beltline region of the reactor vessel[1] and that have been annealed under the same time and temperature conditions as those given the beltline material.

(3) Generic computational methods may be used to determine recovery if adequate justification is provided.

4. In 10 CFR Part 50, Appendix G is revised to read as follows:

Appendix G to Part 50—Fracture Toughness Requirements

Table of Contents

I. Introduction and Scope
II. Definitions
III. Fracture Toughness Tests
IV. Fracture Toughness Requirements

I. Introduction and Scope

This appendix specifies fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light water nuclear power reactors to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime.

The ASME Code forms the basis for the requirements of this appendix. "ASME Code" means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. If no section is specified, the reference is to Section III, Division 1, "Rules for Construction of Nuclear Power Plant Components." "Section XI" means Section XI, Division 1, "Rules for Inservice Inspection of Nuclear Power Plant Components." If no edition or addenda are specified, the ASME Code edition and addenda and any limitations and modifications thereof, which are specified in § 50.55a, are applicable.

The sections, editions and addenda of the ASME Boiler and Pressure Vessel Code specified in § 50.55a have been approved for incorporation by reference by the Director of the **Federal Register**. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of the ASME Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th St., New York, NY 10017 and are available for inspection at the NRC Library, 11545 Rockville Pike, Two White Flint North, Rockville, Maryland 20852–2738.

The requirements of this appendix apply to the following materials:

A. Carbon and low-alloy ferritic steel plate, forgings, castings, and pipe with specified minimum yield strengths not over 50,000 psi (345 MPa), and to those with specified minimum yield strengths greater than 50,000 psi (345 MPa) but not over 90,000 psi (621 MPa) if qualified by using methods equivalent to those described in paragraph G–2110 of Appendix G of Section XI of the latest edition and addenda of the ASME Code incorporated by reference into § 50.55a(b)(2).

B. Welds and weld heat-affected zones in the materials specified in paragraph I.A. of this appendix.

C. Materials for bolting and other types of fasteners with specified minimum yield strengths not over 130,000 psi (896 MPa).

Note: The adequacy of the fracture toughness of other ferritic materials not covered in this section must be demonstrated to the Director, Office of Nuclear Reactor Regulation, on an individual case basis.

[1] For those cases where materials are removed from the beltline of the pressure vessel, the stress limits of the applicable portions of the ASME Code Section III must be satisfied, including consideration of fatigue and corrosion, regardless of the Code of record for the vessel design.

II. Definitions

A. *Ferritic material* means carbon and low-alloy steels, higher alloy steels including all stainless alloys of the 4xx series, and maraging and precipitation hardening steels with a predominantly body-centered cubic crystal structure.

B. *System hydrostatic tests* means all preoperational system leakage and hydrostatic pressure tests and all system leakage and hydrostatic pressure tests performed during the service life of the pressure boundary in compliance with the ASME Code, Section XI.

C. *Specified minimum yield strength* means the minimum yield strength (in the unirradiated condition) of a material specified in the construction code under which the component is built under § 50.55a.

D. RT_{NDT} means the reference temperature of the material, for all conditions.

(i) For the pre-service or unirradiated condition, RT_{NDT} is evaluated according to the procedures in the ASME Code, Paragraph NB–2331.

(ii) For the reactor vessel beltline materials, RT_{NDT} must account for the effects of neutron radiation.

E. ΔRT_{NDT} means the transition temperature shift, or change in RT_{NDT}, due to neutron radiation effects, which is evaluated as the difference in the 30 ft-lb (41 J) index temperatures from the average Charpy curves measured before and after irradiation.

F. *Beltline* or *Beltline region of reactor vessel* means the region of the reactor vessel (shell material including welds, heat affected zones, and plates or forgings) that directly surrounds the effective height of the active core and adjacent regions of the reactor vessel that are predicted to experience sufficient neutron radiation damage to be considered in the selection of the most limiting material with regard to radiation damage.

III. Fracture Toughness Tests

A. To demonstrate compliance with the fracture toughness requirements of Section IV of this appendix, ferritic materials must be tested in accordance with the ASME Code and, for the beltline materials, the test requirements of Appendix H of this part. For a reactor vessel that was constructed to an ASME Code earlier than the Summer 1972 Addenda of the 1971 Edition (under § 50.55a), the fracture toughness data and data analyses must be supplemented in a manner approved by the Director, Office of Nuclear Reactor Regulation, to demonstrate equivalence with the fracture toughness requirements of this appendix.

Test methods for supplemental fracture toughness tests described in paragraph IV.A.1.b of this appendix must be submitted to and approved by the Director, Office of Nuclear Reactor Regulation, prior to testing.

C. All fracture toughness test programs conducted in accordance with paragraphs III.A and III.B must comply with ASME Code requirements for calibration of test equipment, qualification of test personnel, and retention of records of these functions and of the test data.

IV. Fracture Toughness Requirements

The pressure-retaining components of the reactor coolant pressure boundary that are made of ferritic materials must meet the requirements of the ASME Code, supplemented by the additional requirements set forth below, for fracture toughness during system hydrostatic tests and any condition of normal operation, including anticipated operational occurrences. Reactor vessels may continue to be operated only for that service period within which the requirements of this section are satisfied. For the reactor vessel beltline materials, including welds, plates and forgings, the values of RT_{NDT} and Charpy upper-shelf energy must account for the effects of neutron radiation, including the results of the surveillance program of Appendix H of this part. The effects of neutron radiation must consider the radiation conditions (i.e., the fluence) at the deepest point on the crack front of the flaw assumed in the analysis.

1. Reactor Vessel Charpy Upper-Shelf Energy Requirements

a. Reactor vessel beltline materials must have Charpy upper-shelf energy,[1] in the transverse direction for base material and along the weld for weld material according to the ASME Code, of no less than 75 ft-lb (102 J) initially and must maintain Charpy upper-shelf energy throughout the life of the vessel of no less than 50 ft-lb (68 J), unless it is demonstrated in a manner approved by the Director, Office of Nuclear Reactor Regulation, that lower values of Charpy upper-shelf energy will provide margins of safety against fracture equivalent to those required by Appendix G of Section XI of the ASME Code. This analysis must use the latest edition and addenda of the ASME Code incorporated by reference into § 50.55a(b)(2) at the time the analysis is submitted.

[1] Defined in ASTM E 185–79 and –82 which are incorporated by reference in Appendix H to Part 50.

b. Additional evidence of the fracture toughness of the beltline materials after exposure to neutron irradiation may be obtained from results of supplemental fracture toughness tests, for use in the analysis specified in section IV.A.1.a.

c. The analysis for satisfying the requirements of section IV.A.1 of this appendix must be submitted, as specified in § 50.4, for review and approval on an individual case basis at least three years prior to the date when the predicted Charpy upper-shelf energy will no longer satisfy the requirements of section IV.A.1 of this appendix, or on a schedule approved by the Director, Office of Nuclear Reactor Regulation.

2. Pressure-Temperature Limits and Minimum Temperature Requirements

a. Pressure-temperature limits and minimum temperature requirements for the reactor vessel are given in Table 1, and are defined by the operating condition (i.e., hydrostatic pressure and leak tests, or normal operation including anticipated operational occurrences), the vessel pressure, whether or not fuel is in the vessel, and whether or not the core is critical. In Table 1, the vessel pressure is defined as a percentage of the preservice system hydrostatic test pressure. The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.

b. The pressure-temperature limits identified as "ASME Appendix G limits" in Table 1 require that the limits must be at least as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code.

c. The minimum temperature requirements given in Table 1 pertain to the controlling material, which is either the material in the closure flange or the material in the beltline region with the highest reference temperature. As specified in Table 1, the minimum temperature requirements and the controlling material depend on the operating condition (i.e., hydrostatic pressure and leak tests, or normal operation including anticipated operational occurrences), the vessel pressure, whether fuel is in the vessel, and whether the core is critical. The metal temperature of the controlling material, in the region of the controlling material which has the least favorable combination of stress and temperature, must exceed the appropriate minimum temperature requirement for the condition and pressure of the vessel specified in Table 1.

d. Pressure tests and leak tests of the reactor vessel that are required by Section XI of the ASME Code must be completed before the core is critical.

B. If the procedures of Section IV.A. of this appendix do not indicate the existence of an equivalent safety margin, the reactor vessel beltline may be given a thermal annealing treatment to recover the fracture toughness of the material, subject to the requirements of § 50.66. The reactor vessel may continue to be operated only for that service period within which the predicted fracture toughness of the beltline region materials satisfies the requirements of Section IV.A. of this appendix using the values of RTNDT and Charpy upper-shelf energy that include the effects of annealing and subsequent irradiation.

TABLE 1.—PRESSURE AND TEMPERATURE REQUIREMENTS

Operating condition	Vessel pressure(1)	Requirements for pressure-temperature limits	Minimum temperature requirements
1. Hydrostatic pressure and leak tests (core is not critical):			
1.a Fuel in the vessel	≤20%	ASME Appendix G Limits	(2) + 60 °F.
1.b Fuel in the vessel	>20%	ASME Appendix G Limits	(2)+90 °F.
1.c No fuel in the vessel (Preservice Hydrotest Only).	ALL	(Not Applicable)	(3)+60 °F.
2. Normal operation (incl. heat-up and cool-down), including anticipated operational occurrences:			
2.a Core not critical	≤20%	ASME Appendix G Limits	(2).
2.b Core not critical	>20%	ASME Appendix G Limits	(2)+120 °F (6).
2.c Core critical	≤20%	ASME Appendix G Limits+40 °F	Larger of [(4)] or [(2)+40 °F].
2.d Core critical	>20%	ASME Appendix G Limits+40 °F	Larger of [(4)] or [(2)+160 °F].
2.e Core critical for BWR (5)	≤20%	ASME Appendix G Limits+40 °F	(2)+60 °F.

(1) Percent of the preservice system hydrostatic test pressure.
(2) The highest reference temperature of the material in the closure flange region that is highly stressed by the bolt preload.
(3) The highest reference temperature of the vessel.
(4) The minimum permissible temperature for the inservice system hydrostatic pressure test.
(5) For boiling water reactors (BWR) with water level within the normal range for power operation.
(6) Lower temperatures are permissible if they can be justified by showing that the margins of safety of the controlling region are equivalent to those required for the beltline when it is controlling.

5. In 10 CFR Part 50, Appendix H is revised to read as follows:

Appendix H to Part 50—Reactor Vessel Material Surveillance Program Requirements

Table of Contents

I. Introduction
II. Definitions
III. Surveillance Program Criteria
IV. Report of Test Results

I. Introduction

The purpose of the material surveillance program required by this appendix is to monitor changes in the fracture toughness properties of ferritic materials in the reactor vessel beltline region of light water nuclear power reactors which result from exposure of these materials to neutron irradiation and the thermal environment. Under the program, fracture toughness test data are obtained from material specimens exposed in surveillance capsules, which are withdrawn periodically from the reactor vessel. These data will be used as described in Section IV of Appendix G to this part.

ASTM E 185–73, –79, and –82, "Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels," which are referenced in the following paragraphs, have been approved for incorporation by reference by the Director of the Federal Register. Copies of ASTM E 185–73, –79, and –82, may be purchased from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103 and are available for inspection at the NRC Library, 11545 Rockville Pike, Two White Flint North, Rockville, Maryland 20852–2738.

II. Definitions

All terms used in this Appendix have the same meaning as in Appendix G.

III. Surveillance Program Criteria

A. No material surveillance program is required for reactor vessels for which it can be conservatively demonstrated by analytical methods applied to experimental data and tests performed on comparable vessels, making appropriate allowances for all uncertainties in the measurements, that the peak neutron fluence at the end of the design life of the vessel will not exceed 10^{17} n/cm^2 (E >1 MeV).

B. Reactor vessels that do not meet the conditions of paragraph II.A of this appendix must have their beltline materials monitored by a surveillance program complying with ASTM E 185, as modified by this appendix.

1. The design of the surveillance program and the withdrawal schedule must meet the requirements of ASTM E 185–73 or the edition of ASTM E 185 that is current on the issue date of the ASME Code to which the reactor vessel was purchased, whichever is later. Later editions of ASTM E 185 may be used, but including only those editions through 1982. For each capsule withdrawal, the test procedures and reporting requirements must meet the requirements of ASTM E 185–82 to the extent practicable for the configuration of the specimens in the capsule.

2. Surveillance specimen capsules must be located near the inside vessel wall in the beltline region so that the specimen irradiation history duplicates, to the extent practicable within the physical constraints of the system, the neutron spectrum, temperature history, and maximum neutron fluence experienced by the reactor vessel inner surface. If the capsule holders are attached to the vessel wall or to the vessel cladding, construction and inservice inspection of the attachments and attachment welds must be done according to the requirements for permanent structural attachments to reactor vessels given in Sections III and XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). The design and location of the capsule holders must permit insertion of replacement capsules. Accelerated irradiation capsules may be used in addition to the required number of surveillance capsules.

3. A proposed withdrawal schedule must be submitted with a technical justification as specified in § 50.4. The proposed schedule must be approved prior to implementation.

C. Requirements for an Integrated Surveillance Program

1. In an integrated surveillance program, the representative materials chosen for surveillance for a reactor are irradiated in one or more other reactors that have similar design and operating features. Integrated surveillance programs must be approved by the Director, Office of Nuclear Reactor Regulation, on a case-by-case basis. Criteria for approval include the following:

a. The reactor in which the materials will be irradiated and the reactor for which the materials are being irradiated must have sufficiently similar design and operating features to permit accurate comparisons of the predicted amount of radiation damage.

b. Each reactor must have an adequate dosimetry program.

c. There must be adequate arrangement for data sharing between plants.

d. There must be a contingency plan to assure that the surveillance program for each reactor will not be jeopardized by operation at reduced power level or by an extended outage of another reactor from which data are expected.

e. There must be substantial advantages to be gained, such as reduced power outages or reduced personnel exposure to radiation, as a direct result of not requiring surveillance capsules in all reactors in the set.

2. No reduction in the requirements for number of materials to be irradiated, specimen types, or number of specimens per reactor is permitted.

3. After (the effective date of this section), no reduction in the amount of testing is permitted unless previously authorized by the Director, Office of Nuclear Reactor Regulation.

IV. Report of Test Results

A. Each capsule withdrawal and the test results must be the subject of a summary technical report to be submitted, as specified in § 50.4, within one year of the date of capsule withdrawal, unless an extension is granted by the Director, Office of Nuclear Reactor Regulation.

B. The report must include the data required by ASTM E 185, as specified in paragraph III.B.1 of this appendix, and the results of all fracture toughness tests conducted on the beltline materials in the irradiated and unirradiated conditions.

C. If a change in the Technical Specifications is required, either in the pressure-temperature limits or in the operating procedures required to meet the limits, the expected date for submittal of the revised Technical Specifications must be provided with the report.

Dated at Rockville MD, this 26th day of September 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94-24209 Filed 10-3-94; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08-94-028]

RIN 2115-AE47

Drawbridge Operation Regulation; Kelso Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the State Route 27 swing span drawbridge across Kelso Bayou, mile 0.7 at Hackberry, Cameron Parish, Louisiana. The proposed regulation would require that from about May 25 (the beginning of the shrimping season as set by the state yearly), until October 31, the bridge open on signal from 7 a.m. to 7 p.m. and open on 4-hours notice from 7 p.m. to 7 a.m. Then from November 1, through December 22, the draw would open on signal from 7 a.m. to 3 p.m. and from 3 p.m. to 7 a.m. open on 4-hours notice. From December 22, until about May 25, the draw would open on 24-hours notice. Presently, the bridge opens on signal from about May 25, until December 22. From December 22, until about May 25 the draw opens on 4-hours notice. Alternate routes are available.

This action would provide relief to the bridge owner and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396, or may be delivered to room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Watcher, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Background and Purpose

LDOTD has requested the new proposed regulation because of a decline in vessel traffic that passes the Kelso Bayou bridge at Hackberry, during certain times of the year. The new proposed regulation would allow the bridge owner relief from having a person available at the bridge site during the periods that vessel traffic is less frequent. This proposed new regulation would create a savings to the taxpayer while still serving the reasonable needs of navigational interest.

Discussion of Proposed Rules

The Kelso Bayou bridge is a 406 foot structure. Navigational clearances provided by the bridge are 9.1 feet

vertical above mean high water in the closed position and unlimited in the open position. Horizontal clearance is 50.0 feet. Navigation on the waterway consists of mainly small and large fishing boats, with occasional small oil field work boats. Data provided by LDOTD show that from January 1, through December 31, the number of vessels that passed the bridge totaled 740 for the year. This breaks down to about 61.6 vessels per month or 2.0 vessels per 24-hour period. Alternate routes are available. They are the Calcasieu Ship Channel, the Intracoastal Canal and the salt ditch.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the needs of local commercial fishing vessels; the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.459 is revised to read as follows:

117.459 Kelso Bayou.

The draw of the S27 bridge mile 0.7 at Hackerry, shall open on signal from 7 a.m. to 7 p.m. and open on 4 hours notice from 7 p.m. to 7 a.m. from about May 25 (the beginning of shrimp season as set by the state yearly), until October 31. Then from November 1 through December 22, the draw shall open on signal from 7 a.m. to 3 p.m. and from 3 p.m. to 7 a.m. the draw shall open on 4 hours notice. From December 22 until about May 25 the draw shall open on 24 hours notice.

Dated: September 20, 1994.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eight Coast Guard District.

[FR Doc. 94–24527 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD08–94–027]

RIN 2115–AE47

Drawbridge Operation Regulation; Mermentau River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the State Route 82 swing span drawbridge across the Mermentau River, mile 7.1 at Grand Chenier, Cameron Parish, Louisiana. The proposed regulation would require that the bridge open on signal from 6 a.m. to 6 p.m. and open on 4-hours notice from 6 p.m. to 6 a.m. Presently, the bridge opens on signal from 5 a.m. to 9 p.m. and from 9 p.m. to 5 a.m. the bridge opens on 4-hours notice. This action would provide relief to the bridge owner and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before November 18, 1994.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or may be delivered to room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation

may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Background and Purpose

LDOTD has requested the 4-hour difference in the time the bridgeowner is required to have an attendant on duty, because of a decline in vessel traffic that passes the Mermentau River bridge at Grand Chenier. The four-hour difference would allow the bridge owner relief from having a person available at the bridge site, thereby, creating a savings to the taxpayer while still serving the reasonable needs of navigational interest.

Discussion of Proposed Rules

The Mermentau River bridge is a 1049 foot structure. Navigational clearances provided by the bridge are 16-feet vertical above mean high water in the closed position and unlimited in the open position. Horizontal clearance is 69.5 feet. The depth of the waterway at the bridge site is approximately 20 feet. Navigation on the waterway consists of mainly small and large fishing boats, tugs with tows and work boats. Data provided by LDOTD show that from January 1, through December 31, 1993, the number of vessels that passed the bridge totaled 2929 for the year. This breaks down to about 240 vessels per month or 8.0 vessels per 24-hour period. Alternate routes are available. They are the Calcasieu Ship Channel and the Intracoastal Canal.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certified under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.480 is revised to read as follows:

§ 117.480 Mermentau River.

The draw of the S82 bridge mile 7.1 at Grand Chenier, shall open on signal; except that, from 6 p.m. to 6 a.m. the draw shall open on signal if at least 4 hours notice is given. During the advance notice period, the draw will open on less than 4 hours notice for an emergency and will open on demand should a temporary surge in waterway traffic occur.

Dated: September 20, 1994.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 94–24528 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD08–94–029]

RIN 2115–AE47

Drawbridge Operation Regulation; Superior Oil Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the State Route 82 swing span drawbridge across Superior Oil Canal, mile 6.3, between Grand Chenier and Pecan Island, Cameron Parish, Louisiana. The proposed regulation would require 8-hours notice for an opening of the draw. Presently, the bridge opens on signal from 6 a.m. to 6 p.m. and from 6 p.m. to 6 a.m. the bridge opens on 4-hour notice. This action would provide relief to the bridge owner and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before November 18, 1994.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or may be delivered to room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Watcher, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and

give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Background and Purpose

LDOTD has requested 8-hours notice for an opening of the draw because of a decline in vessel traffic that passes the Superior Oil Canal bridge. Thus, the reason for the proposed change. 8-hour notice would allow the bridge owner relief from having a person available at the bridge site from 6 a.m. to 6 p.m., creating a savings to the taxpayer while still serving the reasonable needs of navigational interests.

Discussion of Proposed Rules

The Superior Oil Canal bridge is a 589 foot structure. Navigational clearances provided by the bridge are 13-feet vertical above mean high water in the closed position and unlimited in the open position. Horizontal clearance is 63-feet. The depth of the waterway at the bridge site is approximately 20-feet. Navigation on the waterway consists of mainly small tugs and light work boats. Data provided by LDOTD show that from January 1, through December 31, 1993, the number of vessels that passed the bridge totaled 191 for the year. This breaks down to about 15.9 vessels per month or 1.9 vessels per 24-hour period.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.495 is revised to read as follows:

§ 117.495 Superior Oil Canal.

The draw of the S82 bridge mile 6.3 in Cameron Parish shall open on signal if at least 8 hours notice is given. Public vessels of the United States and vessels in distress shall be passed as soon as possible.

Dated: September 20, 1994.

R. C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 94–24529 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD13–93–031]

RIN 2115–AE47

Drawbridge Operation Regulations; Columbia River, OR and WA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing an amendment to the drawbridge regulations governing the operation of the twin Interstate 5 drawbridges across the Columbia River, mile 106.5, between Portland, Oregon and Vancouver, Washington. The original Notice of Proposed Rulemaking proposed an extension of the morning and afternoon time periods when the draw need not open for the passage of vessels without regard to vessel type or river flow condition. This supplemental notice of proposed rulemaking proposes an amendment which would provide for relatively uninterrupted vehicular flow during peak traffic times while being less restrictive to commercial navigation during periods of high river flow conditions.

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying

at 915 Second Avenue, Room 3410, Seattle, Washington. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 220–7272).

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The principle persons involved in drafting this notice are John E. Mikesell, project manager, and Lieutenant Laticia J. Argenti, project attorney.

Background and Purpose

The twin Interstate 5 vertical lift bridges across the Columbia River between Portland and Vancouver are required to open on signal, except that from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 6 p.m. Monday through Friday except Federal holidays the draws need not open. These closed periods are necessary to accommodate peak morning and afternoon vehicular commute traffic across the bridges. Both bridges also provide alternate mid-level fixed spans which provide greater vertical clearance than do the drawspans in the closed position. The alternate fixed spans are routinely used by tug and barge traffic except at higher water surface elevations. Because the number of vehicles crossing the interstate bridges has increased dramatically, particularly during commute times, any opening in close proximity, before or after, results in unacceptable vehicular traffic delays. Therefore, Oregon State Department of Transportation (ORDOT) has requested an extension of the weekday closed periods. On November 26, 1993, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (58 FR 62302). In addition, the Commander, Thirteenth Coast Guard District also published the proposal in a Public Notice dated December 14, 1993. Both notices advised the public that the Coast Guard was considering a proposal to extend the morning and afternoon time periods during which the draw need not open for the passage of vessels. The morning period would be changed to 5:30 a.m. to 9 a.m. and the afternoon period would be changed to 2:30 p.m. to 6 p.m. The Coast Guard received five comments in response to its public notice and no comments to its Federal Register notice. One commenter, a federal resource agency which routinely responds to our public notices did not take a position in favor or against the proposed amendment. Two commenters representing land transportation interests favored the proposal. Two commenters representing commercial navigation interests stated opposition to the proposal unless it was modified to provide the following: (1) When the vertical clearance under the green center of channel lights of the wide fixed span is less than 52 feet (river gauge 6.0 feet or more), the closed periods remain as existing. (2) When the vertical clearance under the green center of channel lights of the wide fixed span is greater than 52 feet (river gauge 5.9 feet or less), the proposed closed periods would be in effect.

Note: The referenced wide fixed span is the span between the vertical lift span and the designated alternate channel fixed span. Following further investigation by the Coast Guard it was determined that because vertical clearances of less than 52 feet under the center of the wide fixed span occur only during spring run off or other infrequent flood conditions, the requested change was reasonable for commercial navigation. We have incorporated it in this supplemental notice of proposed rulemaking. A public hearing was not requested and one was not held.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. it has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this action to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Because most waterway traffic can be accommodated by the alternate fixed span channel and the rule would revert to its previous less restrictive form when the vertical clearance under the alternate fixed span was less than 52 feet, the Coast Guard expects the economic impact of this propsal to be so minimal that a full Regulatory Evaluation is innecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et al.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because the impacts of this proposal are expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal will not have a significant impact on a substantial number of small entities.

Collection of Information

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

Federalism

This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This proposal has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation under the authority of 40 CFR Section 1507.3 and in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In section 117.869 paragraph (a) is revised to read as follows:

§ 117.869 Columbia River.

(a) The draws of the Interstate 5 highway bridges, mile 106.5, between Portland, OR and Vancouver, WA shall open on signal, except that:

(1) When the river gauge at the bridge indicates 0.0 feet, or more, as determined by the drawtender on duty, the draws need not open for the passage of commercial vessels from 6:30 a.m. to 8 a.m. and from 3:30 p.m. to 6 p.m. Monday through Friday except Federal Holidays.

(2) When the river gauge at the bridge indicates 5.9 feet, or less, as determined by the drawtender on day, the draws need not open for the passage of commercial vessels from 5:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday except Federal Holidays.

* * * * *

Dated: September 23, 1994.

John A. Pierson,

Captain, U.S. Coast Guard, Commander, 13th Coast Guard District, Acting.

[FR Doc. 94–24530 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 166 and 167

[CGD 83–032]

RIN 2115–AB29

Traffic Separation Schemes and Shipping Safety Fairways Off the Coast of California (CGD 83–032)

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking project was initiated to modify existing traffic separation schemes (TSSs) and establish a shipping safety fairway (SSF) off the coast of California to preserve a right of way for navigation through areas which were expected to be sites of offshore oil and gas development. The proposal was based on port access route studies conducted in the early 1980's. Congress later placed a moratorium on oil and gas drilling off California, and in September, 1992, the National Oceanic and Atmospheric Administration (NOAA) dedicated the Monterey Bay National Marine Sanctuary (MBNMS). The MBNMS encompasses the area where the Coast Guard had proposed the SSF to prohibit structures. The SSF is no longer needed because oil and gas drilling are prohibited in the Sanctuary. Additionally, the data that supported the proposed changes is now outdated. Therefore, the Coast Guard is terminating further rulemaking under docket number 83–032.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Short Range Aids to Navigation Division, U.S. Coast Guard Headquarters, (202) 267–0415.

SUPPLEMENTARY INFORMATION: The 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), required the Coast Guard to undertake a port access route study to determine the need for traffic separation schemes or shipping safety fairways to increase vessel traffic safety in offshore areas subject to the jurisdiction of the U.S. The Coast Guard initiated this study by publishing a Notice of Proposed Study on April 16, 1979 (44 FR 22543).

For the purposes of the port access route study, the U.S. coastline was divided into 32 geographically defined areas. Study area 22 included the coast of southern California and study areas 23 to 25 included the central and northern California coast. Through public participation and government agency consultation, the studies evaluated potential traffic density patterns, waterways use of conflicts, and the need for safe access routes in offshore areas.

The Study Results for the coast of southern California (area 22) were published on June 24, 1982 (47 FR 27430). An additional study of the Port Access Routes, Northern Approach to Santa Barbara Channel, was announced on July 26, 1984 (49 FR 30078), and results published on December 5, 1985 (50 FR 49861).

The Study Results for the central and northern coast of California (areas 23–25) were published on October 14, 1982 (47 FR 46043). An additional study on Port Access Routes, Entrance to San Francisco Bay was announced on December 17, 1984 (49 FR 48946), and the study results were published on May 8, 1986 (51 FR 17071).

The port access route studies recommended amendments to the TSSs off the coast of California and the designation of new SSFs to establish a comprehensive safe routing system for vessels proceeding to, from, or between the ports of San Francisco and Los Angeles-Long Beach. The Coast Guard published a proposed rule on April 27, 1989 (54 FR 18258) to implement the study recommendations. However, after considering information from public hearings, extensive written comments opposing the proposal, the Congressional moratorium on oil and gas drilling, and the effect of the MBNMS, the Coast Guard has determined that the proposed SSF is not needed. Therefore, this rulemaking is no longer necessary, and the Coast Guard is terminating further rulemaking under docket number 83–032. On August 24, 1993 (58 FR 44634), the Coast Guard announced a new study of the area to evaluate the need for routing measures in the approaches to California ports and the need for measures to regulate vessel traffic in the offshore California national marine sanctuaries to protect sanctuary resources.

Dated: September 29, 1994.

R. C. Houle,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–24522 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–13–2–6293; FRL–5084–7]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Division of Air Pollution Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) which control emissions from solvent degreasing operations, petroleum solvent dry cleaning, gasoline transfer, and the use of roadway asphalt. The intended effect of approving these rules is to regulate volatile organic compound (VOC) emissions in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP.

EPA proposed conditional approval of earlier submittals of several of these rules in the **Federal Register** on

September 29, 1992 based on the Maricopa County Division of Air Pollution Control's (the Division's) commitment to fix the rule deficiencies. The Division has fulfilled its commitment to fix the rules, and has submitted the revised rules being acted upon in this document. EPA has evaluated each of the rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Comments must be received on or before November 3, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3033 N. Central Avenue, Phoenix, AZ 85012.

Maricopa County Division of Air Pollution Control, 2406 South 24th Street, suite E–214, Phoenix, AZ 85034.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the Arizona SIP include: Maricopa County Division of Air Pollution Control (the Division) Rules 331, Solvent Cleaning; 333, Petroleum Solvent Dry Cleaning; 340, Cutback and Emulsified Asphalt; and 353, Transfer of Gasoline into Stationary Dispensing Tanks. These rules were submitted to EPA by the Arizona Department of Environmental Quality (ADEQ) on August 10 (Rules 331 and 333), November 13 (Rule 340), and June 29 (Rule 353), 1992.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included Maricopa County. 43 FR 8964, 40 CFR 81.303. On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area of Maricopa County to the Maricopa Association of Governments (MAG) Urban Planning Area. 44 FR 16391, 40 CFR 81.303. On February 24, 1984, EPA notified the Governor of Arizona, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the Division's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call, 49 FR 18827, May 3, 1984). On May 26, 1988, EPA again notified the Governor of Arizona that the Division's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, 53 FR 34500, September 7, 1988). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient RACT rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Calls used that guidance to indicate the necessary corrections for specific nonattainment areas. The MAG Urban Planning Area is classified as moderate[2]; therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On June 22, 1991, EPA notified the State of Arizona that EPA had not received by the May 15, 1991 deadline all required VOC rule corrections under section 182(a)(2)(A) of the CAA. The finding letter identified that the Division had failed to submit required rule corrections. The official finding notice was published in the **Federal Register** on October 22, 1991 (56 FR 54554). The Division's Rule 353 was listed in that finding notice. As a result, the Division had 18 months to submit those rules to EPA before a sanction would be imposed.

On September 29, 1992, in 57 FR 44718, EPA published a Notice of Proposed Rulemaking (NPRM) which proposed conditional approval of the following Division rules into the Arizona SIP: Dry Cleaning, and (3) Rule 340, Cutback and Emulsified Asphalt.[3] The conditional approval proposed for the rules was based on the State's commitment to correct deficiencies identified in the rules by EPA. The corrected rules were submitted before EPA finalized the conditional approval and were submitted to fulfill the State's commitment to correct the deficiencies.

The State of Arizona submitted several revised RACT rules for incorporation into its SIP on June 29, August 10, and November 13, 1992 including the rules being acted on in this document. This document addresses EPA's proposed action for the Division's Rule 331, Solvent Cleaning; Rule 333, Petroleum Solvent Dry Cleaning (both adopted by the Division on June 22, 1992); Rule 340, Cutback and Emulsified Asphalt (adopted September 21, 1992); and Rule 353, Transfer of Gasoline into Stationary Dispensing Tanks (adopted April 6, 1992). These submitted rules were found to be complete on September 3, 1992 (Rule 353), September 16, 1992, (Rule 340), and December 2, 1992 (Rules 331 and 333) pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[4] and are being proposed for approval into the SIP. The finding of completeness stopped the sanctions clock that had been started for Rule 353 on October 22, 1991.

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[1] Among other things, the pre-amended guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The MAG Urban Planning Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] The Division's Rules 332, Perchloroethylene Dry Cleaning and 100, General Provisions and Definitions, were also proposed for conditional approval in the NPR. EPA is not taking action on Rule 332 at this time because EPA has developed regulations for perchloroethylene under Title III of the CAA. The Division is revising Rule 100 and EPA will act on that version after it is submitted.

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

Rules 331, 333, 340, and 353 are rules that control VOC emissions from the cleaning (degreasing) of parts, from dry cleaning operations using petroleum solvents, from asphalt used for roadways, and from the filling of tanks with gasoline. VOCs contribute to the production of ground level ozone and smog. The original rules which were the subject of the proposed conditional approval were submitted in response to EPA's SIP-Calls and the CAA requirement that nonattainment areas to fix their deficient reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. The current rules were submitted in fulfillment of the Division's commitment to fix remaining deficiencies identified in EPA's proposed conditional approval or in response the EPA's finding of nonsubmittal. The rules were adopted as part of the Division's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs that apply to the four RACT rules follow:

Rule No.	CTG title	EPA No.
331	Control of volatile organic emissions from solvent metal cleaning	EPA–450/2–77–022
333	Control of volatile organic compound emissions from large petroleum dry cleaners	EPA–450/3–82–009
340	Control of volatile organic compounds from the use of cutback asphalt	EPA–450/2–77–037
353	Control of volatile organic emissions from bulk gasoline plants	EPA–450/2–77–035

Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The Division's submitted rules include the following significant changes from the current SIP:

Rule 331, Solvent Cleaning

1. The cooling capacity of freeboard chillers has been specified.
2. A provision for a vapor level control safety switch on vapor degreasers has been added.
3. Regulations for small conveyorized degreasers have been added.
4. Provisions for Control Officer approval of alternate control devices have been deleted.
5. Test methods for determining compliance and recordkeeping provisions have been added.
6. Exemption of wipe cleaners and a proposed schedule for compliance have been deleted.
7. A definition of "low volatility solvent" and standards applying to low and high volatility solvents have been added.
8. In response to EPA's comments during the rule revision period, (1) the term "leaks" has been defined, (2) a provision for covers for remote reservoir cleaners has been added, and (3) daily recordkeeping (except for wipe cleaning) has been added.

Rule 333, Petroleum Solvent Dry Cleaning

1. Operating requirements for dryers, filters and recovery units have been added.
2. A solvent use cutoff has been deleted.
3. Test methods and recordkeeping provisions used for determining compliance have been added.
4. A provision for the immediate placement of filtration material in sealed containers has been added.

Rule 340, Cutback and Emulsified Asphalt

1. A provision for a seasonal exemption has been deleted.
2. A provision allowing the Control Officer discretion for test methods has been deleted and the test methods provision clarified.
3. More stringent provisions for VOC content of asphalt have been added.
4. A number of exemptions have been deleted.
5. Recordkeeping provisions have been added.

Rule 353, Transfer of Gasoline into Stationary Dispensing Tanks

1. A definitions section has been added.
2. The standards section has been expanded to include use of approved Stage I vapor recovery equipment and leak-free equipment.
3. The maintenance section has been expanded to include owner responsibility to use equipment correctly, and to require owners to refuse offloading by delivery trucks not bearing a pressure test certification decal.
4. The exemption of non-resale operations is limited by a lower throughput cutoff of 120,000 gallons annually. The exemption for tanks serviced by exempt delivery vessels is now limited by a throughput cutoff of 120,000 gallons annually. Lastly, the exemption of certain storage tanks from the rule by the Control Officer has been deleted.
5. A compliance schedule requiring compliance within one year of the date of rule adoption has been added.
6. The monitoring and records section has been expanded to include throughput recordkeeping and test methods to use to determine compliance.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the Division's Rule 331, Solvent Cleaning; Rule 333, Petroleum Solvent Dry Cleaning; Rule 340, Cutback and Emulsified Asphalt; and Rule 353, Transfer of Gasoline into Stationary Dispensing Tanks, are being proposed for approval under section 110(k)(3) of

the CAA as meeting the requirements of section 110(a) and part D.

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

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted these actions from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 22, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–24508 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX41–01–6273b; FRL–5083–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Ozone Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to Texas' SIP for ozone. This action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act, as amended November 15, 1990, and the Photochemical Assessment Monitoring Stations (PAMS) regulations. The PAMS regulation requires the State to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of PAMS by November 12, 1993.

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by November 3, 1994.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, Emissions Inventory Branch, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Cupp, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8015.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the rules section of the **Federal Register**.

Dated: September 13, 1994.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 94–24424 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 62

[ME–14–1–6648b; A–1–FRL–5074–2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Plan For Controlling Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Maine's revised "111(d) plan" for the control of total reduced sulfur (TRS) emissions from existing kraft pulp mills into Maine's State Implementation Plan (SIP). The revised plan was submitted by the Maine Department of Environmental Protection (DEP) on April 27, 1994. The revised plan consists of a revised regulation entitled "Chapter 124: Total Reduced Sulfur Control From Kraft Pulp Mills." The revised plan satisfies EPA's requirements for adoption and submittal of a plan to control TRS emissions from designated facilities in accordance with section 111(d) of the Clean Air Act (CAA).

In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct

final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule.

If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received by November 3, 1994.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203.

Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Daria L. Dilaj at (617) 565–3249.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 17, 1994.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 94–24407 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 70

[LA–001; FRN–5084–8]

Clean Air Act Interim Approval of Operating Permits Program; Louisiana Department of Environmental Quality Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published August 25, 1994 (59 FR 43797). On August 25, 1994, EPA proposed interim approval of the operating permits program submitted by the State of Louisiana. EPA received letters from Louisiana Chemical Association and Louisiana Association of Business and Industry requesting a 30 day extension of the public comment period, and a verbal request from Louisiana Department of Environmental Quality. Therefore, EPA is extending the comment period until October 26, 1994.

DATES: Comments must be received in writing on or before October 26, 1994.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Joyce P. Stanton, New Source Review Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7218.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 25, 1994.

William B. Hathaway

Acting Regional Administrator (6A).

[FR Doc. 94–24509 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 721

[OPPTS–50621A; FRL–4914–7]

Dipropylene glycol dimethyl ether; Proposed Significant New Use Rule; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reopening of comment period.

SUMMARY: EPA is reopening the comment period for the proposed significant new use rule (SNUR) for dipropylene glycol dimethyl ether. As initially published in the Federal Register of August 22, 1994 (59 FR 43079), the comments were to be received on or before September 21, 1994. A party which intends to submit comments concerning this proposed rule requested additional time to prepare its response.

DATES: Written comments must be received by EPA on or before October 19, 1994.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50621.

A public version of the record, without any CBI, is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This reopening of the comment period will allow interested parties who intend to comment on the proposed rule additional time to prepare their responses.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: September 23, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–24501 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Ch. I

[CCD 94–080]

Alternate Inspection Compliance Programs for the U.S. Maritime Industry

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: As part of its Maritime Regulatory Reform Initiative, the U.S. Coast Guard is developing programs to provide alternatives by which the U.S.

maritime industry can demonstrate compliance with applicable vessel design, construction, equipment and operational requirements. A number of concepts are under consideration, including a program to accept tests and examinations performed by vessel owners or operators who employ a rigorous system of safety management. The Coast Guard desires input from the maritime industry on the safety management systems now in use and their value in assuring vessel safety. The Coast Guard will conduct a public meeting to obtain information from members of the regulated community and the general public on this issue.

DATES: The meeting will be held November 7, 1994 from 9 a.m. to 4:30 p.m. Written material should be submitted not later than November 21, 1994.

ADDRESSES: The meeting will be held in Room 2415, Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street, S.W., Washington, D.C. 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR David L. Scott, Project Manager, Commandant (G–MVI–1), U.S. Coast Guard, 2100 Second Street, S.W., Washington, D.C. 20593, telephone (202) 267–1464.

SUPPLEMENTARY INFORMATION: The Coast Guard has been actively engaged in maritime policy reforms designed to enhance the competitiveness of the U.S. maritime industry. One aspect of maritime policy reform is to provide efficient and cost effective alternatives by which owners and operators of inspected vessels can demonstrate compliance with applicable laws and regulations. One concept under consideration is to credit tests and examinations of a vessel's systems, components or equipment performed by the vessel's owners, operators or authorized third parties as satisfying Coast Guard inspection requirements. This concept can provide vessel owners and operators with greater flexibility in complying with Coast Guard inspection requirements and may significantly reduce the time necessary to complete, or may eliminate, certain periodic Coast Guard inspections.

Under such a program, vessel owners, operators or authorized third parties would conduct periodic tests and examinations in accordance with written procedures acceptable to the Coast Guard. These procedures would indicate the purpose and methodology of the test, as well as the qualifications of the personnel who perform and validate the test. They would also indicate how the test is to be documented. Periodic Coast Guard inspections would involve verifying the company's inspection records for the vessel and assessing the crew's ability to respond to likely shipboard emergencies.

This concept is predicated on the vessel owner or operator employing a rigorous system of safety management. The Coast Guard is seeking to establish the characteristics for a safety management system which should be recognized under this program. There are many ways to support the quality of safety management systems, such as the ISO 9000 series, the International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management [ISM] Code), the International Ship Managers Association Code of Ship Management Standards, or company specific in-house safety management systems, all of which if properly implemented and maintained, may provide a basis for Coast Guard acceptance of owner, operator or third party testing.

To aid the Coast Guard's efforts to establish the criteria for a recognized safety management system, and establish guidelines for alternative compliance inspection programs, views are solicited on the following questions:

1. What are the essential elements of a shipboard safety management system?

2. How should the effectiveness of a company's safety management system be measured?

3. How does a company get its safety management system qualified?

4. Should a company's safety system be certified by an independent quality system registrar as a condition for recognition by the Coast Guard?

5. What specific qualifications may be required of company personnel, including shipboard personnel, involved in the implementation and maintenance of a safety management system?

6. What other conditions should a company meet in order to participate in an alternative inspection compliance program?

7. Should the interval of Coast Guard inspections for vessels operating under a recognized safety management system be random boardings or fixed dates?

8. Should the scope of periodic Coast Guard inspections be modified based upon a company's voluntary certification to the ISM Code?

9. Must third parties who perform tests and inspection services on inspected vessels establish their own quality management system in order for vessel operators to receive Coast Guard inspection credit for third party activities?

10. What constitutes satisfactory test and inspection procedures?

11. What constitutes satisfactory documentation of tests and inspections?

12. What qualifications are required for personnel performing tests and inspections, and validating tests and inspections?

13. Which systems and equipment may be suitable for periodic testing by vessel owners, operators or third parties, and which should be retained by the Coast Guard?

14. How much Coast Guard oversight is necessary for a company with a safety management system?

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting.

Dated: September 29, 1994.

E. L. Ziff,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–24531 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 94–99; DA 94–987]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, through this action, invites comments on its proposal to amend its rules regarding the listing of major television markets, to change the designation of the Fresno-Visalia-Hanford-Clovis, California television market to include the community of Sanger, California. This action is taken at the request of Sanger Telecasters, Inc., licensee of television station KMSG–TV, channel 59, Sanger, California and it is

taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before November 10, 1994 and reply comments are due on or before November 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William H. Johnson, Cable Services Bureau, (202) 416–0856.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, CS Docket 94–99, adopted September 2, 1994 and released September 19, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington D.C. 20554.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rule Making filed by the petitioner, proposed to amend Section 76.51 of the Rules to add the community of Sanger to the Fresno-Visalia-Hanford-Clovis, California television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before the Commission that the television stations licensed to Fresno, Visalia, Hanford, Clovis, and Sanger, California do compete throughout much of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to the market designation and the market as a whole that "hyphenation" of the market should be proposed. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. Accordingly, comment is requested on the proposed addition of Sanger to the Fresno-Visalia-Hanford-Clovis, California television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before November 10, 1994, and reply comments on or before November 25, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

7. Accordingly, this action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Cable Services Bureau.

[FR Doc. 94–24463 Filed 10–3–94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 242

Defense Federal Acquisition Regulation Supplement; Production Surveillance

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for public comments.

SUMMARY: The Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement (DFARS) to revise the criteria for determining when to perform on-site technical production surveillance.

DATES: Comments on the proposed rule should be submitted to the address shown below on or before December 5, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Directorate, ATT: IMD 3D139, PDUSD (A&T), 3062 Defense Pentagon, Washington, D.C. 20301–3062, FAX (703) 697–5971. Please cite DFARS Case 93–D003 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green; (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule revised DFARS 242.1104 by replacing the current system of determining the type of production surveillance to be performed. Under current procedures, contracts are placed into categories 1, 2, and 3 which determine the level of surveillance the contract will receive. The proposed revisions would simplify

the method of determining when the contract would receive pre-delivery telephone surveillance or pre-delivery on-site production surveillance.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the frequency of on-site surveillance is not expected to change. The proposed rule merely simplifies the method used by the Government to determine when on-site surveillance will be performed. An initial Regulatory Flexibility Analysis (IRFA) has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and should cite DAR Case 93–D003 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule imposes no reporting and recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 242

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition, Regulations Directorate.

Therefore it is proposed that 48 CFR Part 242 be amended as follows:

1. The authority citation for 48 CFR Part 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Part 1.

PART 242—CONTRACT ADMINISTRATION

2. Section 242.1104 is revised to read as follows:

§ 242.1104 Surveillance requirements.

(a)(i) As a minimum, contracts will receive pre-delivery telephonic, surveillance.

(ii) Contracts in the following categories will receive pre-delivery on-site production surveillance.

(A) Contracts assigned criticality designator A (see FAR 42.1105).

(B) Contracts specifically identified for special surveillance by the contracting officer.

(C) Any contract where telephonic surveillance reveals actual or anticipated delinquency unless the contract administration office, in coordination with the contracting officer, decides that on-site surveillance is not warranted.

[FR Doc. 94–24462 Filed 10–3–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC99

Endangered and Threatened Wildlife and Plants; Proposed Endangered or Threatened Status for 10 Plants From the Foothills of the Sierra Nevada Mountains in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for four plants: *Brodiaea pallida* (Chinese Camp brodiaea), *Calyptridium pulchellum* (Mariposa pussypaws), *Lupinus citrinus* var. *deflexus* (Mariposa lupine), and *Mimulus shevockii* (Kelso Creek monkeyflower). The Service also proposes threatened status for six plants: *Allium tuolumnense* (Rawhide Hill onion), *Clarkia springvillensis* (Springville clarkia), *Carpenteria californica* (carpenteria), *Fritillaria striata* (Greenhorn adobe lily), *Navarretia setiloba* (Piute Mountains navarretia), and *Verbena californica* (Red Hills vervain). These plants are known from the annual grassland, chaparral, Joshua tree, pinyon-juniper, blue oak, and digger pine woodland communities in the foothills of the Sierra Nevada Mountains in central California. The 10 plants are threatened by one or more of the following: agricultural land conversion, urbanization, logging, highway construction and road maintenance activities, overgrazing, off-highway vehicle use, mining, insect predation, inadequate regulatory mechanisms, stochastic extinction from random natural events, and incompatible fire management techniques. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants.

DATES: Comments from all interested parties must be received by December 5, 1994. Public hearing requests must be received by November 18, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth Fuller (see **ADDRESSES**) at 916–978–4866.

SUPPLEMENTARY INFORMATION:

Background

Allium tuolumnense (Rawhide Hill onion), *Brodiaea pallida* (Chinese Camp brodiaea), *Calyptridium pulchellum* (Mariposa pussypaws), *Carpenteria californica* (carpenteria), *Clarkia springvillensis* (Springville clarkia), *Fritillaria striata* (Greenhorn adobe lily), *Lupinus citrinus* var. *deflexus* (Mariposa lupine), *Mimulus shevockii* (Kelso Creek monkeyflower), *Navarretia setiloba* (Piute Mountains navarretia), and *Verbena californica* (Red Hills vervain) are located in the western foothills of the Sierra Nevada Mountains in California, from Jamestown in Tuolumne County, to Bodfish in Kern County, to near Grapevine in the foothills of the Tehachapi Mountains in Kern County. The Sierra Nevada Mountains are California's largest mountain range, extending from the Mojave Desert in the south to the Modoc Plateau in the north. The Sierra Nevada Mountains are 645 kilometers (km) (400 miles) long, 95 to 130 km (60 to 80 miles) wide, and north-south oriented on the east side of California. Structurally, this mountain range is a westerly tilted Cenozoic fault block consisting of granitic and metamorphic rocks. These mountains have an elevational range of 1,000 to 4,000 meters (m) (3,000 to 12,000 feet (ft)) and a precipitation range of 750 to 2,030 millimeters (mm) (30 to 80 inches (in)). These mountains are a region of winter snow and some summer thunderstorms. Montane and subalpine coniferous forests dominate the area with minor components of deciduous forests. Lakes, swamps, rock outcrops, talus slopes, meadows, and montane chaparral occupy more than half of the ground surface.

Each of these 10 plant species exhibits strong substrate preferences. *Allium tuolumnense, Brodiaea pallida,* and *Verbena californica* are associated with serpentine soils in an elevational range from 260 to 600 m (850 to 2,000 ft) in the Red Hills and near Rawhide Hill in Tuolumne County. Serpentine soils are derived from ultramafic rocks such as

serpentinite, dunite, and peridotite, which are found in discontinuous outcrops in the foothills of the Sierra Nevada and in the Coast Ranges from Santa Barbara County to British Columbia, Canada. Although the ultramafic rocks may be of igneous origin (peridotite, dunite, or harzburgite) or metamorphics (serpentine), the major constituent of the parent rock is some variant of iron-magnesium silicate. Serpentine and other ultramafics weather into shallow, rocky, and highly erodible soils. Typically, these soils are rich in magnesium, iron, chromium, nickel, and silicates and are deficient in nitrogen, calcium, phosphorus, and molybdenum (Kruckeberg 1984). The unique mineral nutrition and cation status of serpentine soils are inhospitable for the growth of most plants. Nevertheless, serpentine soils support a diversity of plants, some of which are restricted entirely to these soils. *Allium tuolumnense* is associated with sunny, rocky, often south-facing slopes. *Brodiaea pallida* and *Verbena californica* are often found in the blue oak (*Quercus douglasii*) or digger pine (*Pinus sabiniana*) woodland communities.

Calyptridium pulchellum, *Lupinus citrinus* var. *deflexus*, and *Mimulus shevockii* are associated with sandy, decomposed granitic soils in foothill woodlands. *Fritillaria striata* and *Navarretia setiloba* are found in heavy clay soils in the openings of blue oak woodland. *Clarkia springvillensis* most often is found on roadbanks and openings in blue oak woodlands.

Marion Ownbey first recognized *Allium sanbornii* var. *tuolumnense* in "A California Flora" (Munz 1959). The first validly published description of the plant was Hamilton P. Traub's 1972 treatment. Stella Denison and Dale McNeal (1989) revised the *A. sanbornii* complex and elevated the variety to a species based upon the position of stamens and styles and the length and shape of perianth (sepals and petals) segments.

Allium tuolumnense is an erect, herbaceous perennial of the lily family (Liliaceae) that grows from underground bulbs. This species has fleshy, green entire leaves that reach a height of 25 to 50 centimeters (cm) (10 to 20 in), and has a loose, 20 to 60 flowered, white- or pink-flushed inflorescence appearing in late March to early May. *Allium tuolumnense* differs from *A. sanbornii* and *A. jepsonii* in its entire, spreading perianth segments, fringed ovarian bumps (processes), and early blooming period that does not overlap with any other *Allium* species. Although this plant can reproduce from seed, *A. tuolumnense* tends to reproduce asexually from its underground bulb, forming small colonies of usually fewer than 100 plants per colony (BioSystems Analysis 1984). *A. tuolumnense* is a highly restricted endemic that only grows on serpentine soils in the foothills of the Sierra Nevada in southwestern Tuolumne County from 400 to 600 m (1,310 to 1,970 ft) in elevation. *A. tuolumnense* is known from two localities: Table Mountain and the Red Hills. The entire range of the species includes a 342 square kilometer (sq km) (132 square mile (sq mi)) area. Approximately 25 percent of *A. tuolumnense* is found on private lands and 75 percent on lands administered by the Bureau of Land Management (BLM). *A. tuolumnense* is threatened by placer mining, urbanization, and potentially by overgrazing.

Robert Hoover (1938) first described *Brodiaea pallida* from specimens collected near Chinese Camp in Tuolumne County. *B. pallida* is an erect, herbaceous perennial in the lily family (Liliaceae). The plant grows from an underground bulb and has long, narrow, thick, succulent leaves that reach a height of 1 to 3 decimeters (dm) (4 to 12 in). Several to many rose-pink flowers appear in an umbrella-like cluster at the top of a leafless stem in late May to early June. *B. pallida* grows in association with two sympatric congeners and can hybridize with one of them (Keator 1993). Despite these incidences of hybridization, the species is considered stable (Blaine Rogers, Columbia Coll., pers. comm., 1993). *B. pallida* can be separated from its congeners and hybrids by flower color and the length, width, shape, and position of nonpollen bearing stamens.

Brodiaea pallida grows in seeps and springs in serpentine and volcanic soils within a stream channel on private land in the Red Hills, Tuolumne County. This species is restricted to a 3 to 6 m (10 to 20 ft) wide and 0.8 km (0.5 mi) long stretch of private land in an old, intermittent stream channel at an elevation of 385 m (1,260 ft). The species has always had an extremely limited distribution; searches of potential habitat in other areas have failed to locate any additional plants. The single population is threatened by urbanization, inadequate State regulatory mechanisms, and stochastic events. Several of the parcels of privately-owned land where the plant is located are for sale. Although The Nature Conservancy (TNC) has secured a 1-year lease on one of the parcels, permanent protection for this plant is lacking.

Joseph Congdon collected the type specimen of *Calyptridium pulchellum* on "Pea Ridge" in Mariposa County in 1901. Alice Eastwood (1902) first described this plant as *Spraguea pulchella*. Robert Hoover (1940) revised the genera *Spraguea* and *Calyptridium* and renamed this plant *Calyptridium pulchellum* based on the combination of flower and vegetative characteristics and habitat. *C. pulchellum* is a small, compact, rosette-forming, annual herb in the purslane family (Portulacaceae). The smooth, slender, prostrate stems are 1 to 2 dm (4 to 8 in) long, with smooth, spatula-shaped leaves. Rose-colored, four-petaled flowers appear in loose panicles between May and August.

The fibrous-rooted plant grows on decomposed granitic sands between elevations of 460 to 1,090 m (1,500 to 3,600 ft) in foothill woodlands and converted chaparral grasslands in the Sierra Nevada foothills. No other species of *Calyptridium* co-occurs with *C. pulchellum*. The seven populations of *C. pulchellum* are found in Fresno, Madera, and Mariposa Counties over a range of 1,940 sq km (750 sq mi). Six populations of *C. pulchellum* occur on private land and one population occurs on Forest Service land (Sierra National Forest). *C. pulchellum* is threatened by urbanization and potentially by overgrazing.

John C. Fremont collected *Carpenteria californica* from an area in the Kings River watershed on his third expedition to California in 1846. John Torrey (1852) first described *C. californica* from specimens sent to him by John Fremont. The monotypic genus *Carpenteria* is one of California's many endemic genera that are relicts without any close relatives; this genus probably had a wider range earlier in Tertiary time (Barbour and Major 1988).

Carpenteria californica is an erect to spreading evergreen shrub in the mock orange family (Philadelphaceae) that grows to a height of 1 to 6.5 m (3 to 13 ft). The plant has glossy green, opposite leaves and pale bark that peels in large sheets in the fall. Terminal, white, showy flowers appear in May or June and last through July at the upper elevational limits. *C. californica* is found in drainages and mesic areas on mostly granitic soils from 460 to 1,220 m (1,500 to 4,000 ft) in elevation within the chaparral and cismontane woodland communities of the foothills of the Sierra Nevada in eastern Fresno County. *C. californica* is known from six populations distributed over a 583 sq km (225 sq mi) area. One population of *C. californica* is on private lands, four are on lands administered by the U.S. Forest Service (Sierra National Forest),

and one is on both private and Forest Service lands. Collectively, approximately 30 percent of *C. californica* individuals occur on private lands. A portion of one population of *C. californica* is protected on a preserve owned by TNC. *C. californica* is threatened by urbanization, fire management practices, overgrazing and trampling by cattle, and inadequate State regulatory mechanisms. Logging, illegal dumping, highway construction, maintenance of roads and rights-of-way activities, and competition from native brush species have the potential to adversely impact this species.

Frank Vasek (1964) first collected and described *Clarkia springvillensis* from its type locality along Balch Park Road near Springville, Tulare County. *C. springvillensis* is an erect annual herb in the evening-primrose family (Onagraceae). The 1 m (3 ft) tall plant has simple or usually branched stems. The bright green leaves are 2 to 9 cm (0.8 to 3.5 in) long and 5 to 20 mm (0.2 to 0.8 in) wide. The lavender-pink flowers appear in May to July and usually have a dark purplish basal spot. *C. springvillensis* can be separated from the sympatric congener *C. unguiculata* by the absence of long hairs on the calyx and ovary, the purple sepals, and the dark purplish spot at the base of the petals.

Clarkia springvillensis is found on granitic soils in open sunny sites in blue oak woodlands and on roadbanks from 360 to 910 m (1,220 to 3,000 ft) in elevation. Nine of the 10 historically reported populations of *C. springvillensis* are extant, all in Tulare County. Eight of the nine populations are found within a 111 sq km (43 sq mi) area in eastern Tulare County, with the remaining population occurring 26 km (16 mi) to the northwest. One population of *C. springvillensis* is partially protected where it occurs on California Department of Fish and Game land, one population is on lands owned by Tulare County, three are on privately owned land, and four populations are on lands administered by the Forest Service (Sequoia National Forest). Urbanization, overgrazing, timber operations, inadequate State regulatory mechanisms, sphinx moth predation, and roadway maintenance activities threaten this plant.

Alice Eastwood (1931) described *Fritillaria striata* from specimens collected by Roy Weston on the Rattlesnake Grade in the Greenhorn Mountains of Kern County. *F. striata* is a slender, herbaceous perennial in the lily family (Liliaceae). An unbranched stem grows 5 to 10 cm (2 to 4 in) above the surface of the ground from an underground bulb. The predominantly basal, alternate to opposite leaves are oblong to lance-shaped, 1 to 2 cm (0.4 to 0.8 in) wide and 6 to 10 cm (2 to 4 in) long. The upper leaves are narrower and undulate. The one to four fragrant, bell-shaped flowers appear from February through April. *F. striata* differs from the related *F. pluriflora* (adobe lily), which occurs in the northern Sacramento Valley foothills, in the shape, size, and coloring of the flowers, the conspicuous nectaries, and the connivent (converging) stigmas (Stebbins 1989, Eastwood 1931).

Fritillaria striata is found on heavy, usually red clay soils on the grasslands and in the blue oak woodlands of the southeastern San Joaquin Valley and southern Sierra Nevada foothills. Fourteen populations of *F. striata* occur in Kern County and three populations are found in Tulare County (California Natural Diversity Data Base (CNDDB) 1993) discontinuously scattered over a 7,250 sq km (2,800 sq mi) area. The 17 populations range in elevation from 300 to 1,430 m (1,000 to 4,800 ft). All populations occur on private lands. *F. striata* is threatened by urbanization, livestock use, competition from nonnative grasses, agriculture land conversion, road widening, emergency road maintenance, inadequate State regulatory mechanisms, and off-highway vehicle use.

Joseph Congdon (1904) described *Lupinus deflexus* from specimen that he collected near Mariposa Creek in Mariposa County in 1903. Willis Jepson (1936) revised the treatment of this species and reduced the plant to the varietal status, *Lupinus citrinus* var. *deflexus*. *Lupinus citrinus* var. *deflexus* is an erect, diffusely-branched annual herb belonging to the pea family (Fabaceae). The 3 to 5 dm (12 to 20 in) high plants are short-hairy to hairless and have palmately compound leaves that are 15 to 25 mm (.5 to 1.0 in) long. The six to nine leaflets are about one-third as wide as they are long and are linear or spatulate in shape with rounded or obtuse tips. The white with pink or lavender-tipped flowers appear in April through May.

Lupinus citrinus var. *deflexus* grows on decomposed granitic sands on ridgetops and hillsides in openings in foothill woodlands from 475 to 580 m (1,400 to 1,900 ft) in elevation. The four populations of this plant occur on private lands in Mariposa County over a 40 sq km (15 sq mi) area. Two of the four populations co-occur with *Calyptridium pulchellum*. *Lupinus citrinus* var. *deflexus* is threatened by urbanization, inadequate State regulatory mechanisms, and potentially by overgrazing.

Lawrence Heckard and Rimo Bacigalupi (1986) first described *Mimulus shevockii* from specimen first collected by James Shevock around the Kelso Creek area near the east base of the Piute Mountains in Kern County. *M. shevockii* is an erect, desert annual in the snapdragon family (Scrophulariaceae). This plant grows to 1 dm (4 in) in height and has opposite, sessile, somewhat fleshy leaves along reddish stems. Asymmetric flowers appear from late March to May. The corolla is two-lipped. The upper flower lip has two short, entire, lateral maroon-purple lobes. The lower flower lip is similar but larger in size and has an additional large, partially divided yellow lobe with red mottling. *Mimulus androsaceus* and *M. fremontii* grow with *M. shevockii* and have some similar vegetative features but differ in flower color. *Mimulus androsaceus* has a red-purple flower and *M. fremontii* has a rose-purple flower.

Mimulus shevockii occurs predominately in loamy, coarse sands on alluvial fans and deposits of granitic origin within the Joshua tree (*Yucca brevifolia*) or California juniper (*Juniperus californica*) xeric woodlands in Kern County. *M. shevockii* is found within an elevational range of 975 to 1,250 m (3,200 to 4,100 ft). Six of the seven populations of *M. shevockii* are within a 31 sq km (12 sq mi) area, with the remaining population 14 km (9 mi) to the northwest. Two populations are found on private lands and five populations occur partially on BLM land and partially on private land. *M. shevockii* is threatened by urbanization, off-highway vehicle use, and agricultural land conversion.

Frederick Coville (1893) first described *Navarretia setiloba* from plants he collected from a ridge between Kernville and Havilah in Kern County. *Navarretia setiloba* is an erect annual herb in the phlox family (Polemoniaceae), and grows to a height of 8 to 20 cm (3 to 8 in). The linear, pinnately-lobed leaves have rigid, spinose lobes. The terminal lobe is broadly lanceolate and often purplish. The 20 to 30 purple-flowered inflorescence appears from April through June and is about 10 mm (0.4 in) long. The flowers are subtended by spiny bracts that are constricted in the middle. *Navarretia setiloba* is distinguished from sympatric cogeners by the broad terminal lobe on each leaf, and by its purple flowers.

The plant grows on heavy, often red-colored clay soils within blue oak, digger pine, or juniper woodlands

between 300 to 960 m (1,000 to 3,200 ft) in elevation. Six populations of *Navarretia setiloba* are known from northern Kern County over a 4,000 sq km (1,560 sq mi) area. One population occurs on land administered by the BLM and five populations are found on private lands. *Navarretia setiloba* is threatened by urbanization and off-highway vehicle use.

Harold A. Moldenke (1942) first described *Verbena californica* from specimen collected by Robert Hoover from an area north of Keystone in Tuolumne County. *Verbena californica* is an erect perennial herb in the vervain family (Verbenaceae), and grows to 60 cm (23 in) in height with opposite, bright green, sessile leaves. White-blue to purple blossoms appear from May through September. No closely related species co-occur with *Verbena californica*.

The nine historic and current populations of *Verbena californica* grow along intermittent and perennial streams underlain by serpentine rocks in the Red Hills of Tuolumne County. The populations have an elevational range from 260 to 335 m (850 to 1,150 ft) and are distributed over a 62 sq km (24 sq mi) area. Fifteen percent of the *V. californica* plants occur on lands administered by the BLM, and 85 percent of the plants occur on privately owned lands (CDFG 1993). *Verbena californica* is threatened by urbanization, recreational placer gold mining, and potentially by overgrazing.

Previous Federal Action

Federal government actions on these 10 plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Brodiaea pallida* and *Navarretia setiloba* as endangered and *Fritillaria striata* and *Lupinus citrinus* var. *deflexus* as threatened. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above four taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Brodiaea pallida*, *Calyptridium pulchellum*, and *Navarretia setiloba* were included as endangered in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). The notice included *Allium tuolumnense* (as *Allium sanbornii* var. *tuolumnense*), *Brodiaea pallida*, *Calyptridium pulchellum*, *Clarkia springvillensis*, *Fritillaria striata*, *Lupinus citrinus* var. *deflexus* (as *Lupinus deflexus*), *Navarretia setiloba*, and *Verbena californica* as category 1 candidates and *Carpenteria californica* as a category 2 candidate for Federal listing. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Category 2 species are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the notice of review (48 FR 53640). This supplement contained *Allium sanbornii* var. *tuolumnense*, *Brodiaea pallida*, and *Verbena californica* as category 1 candidates for Federal listing. This supplement also elevated *Carpenteria californica* to a category 1 candidate and reclassified *Clarkia springvillensis*, *Calyptridium pulchellum*, *Fritillaria striata*, *Lupinus citrinus* var. *deflexus*, and *Navarretia setiloba* to category 2. This supplement also added *Mimulus* sp./sp. nov. ined. (Kern County) and *Mimulus* sp./sp. nov. ined. (Tulare County) as a category 2 species. This species is now known as *Mimulus shevockii*.

The plant notice was revised on September 27, 1985 (50 FR 39526). The status of these 10 plants remained unchanged from the 1983 supplement. In the February 21, 1990 (55 FR 6184) notice, *Clarkia springvillensis*, *Navarretia setiloba*, and *Mimulus shevockii* were elevated to category 1 status. The status of the other seven taxa remained unchanged. In the September 30, 1993, plant notice of review (58 FR 51144), *Calyptridium pulchellum* was included as a category 2 species and the remaining nine taxa were included as category 1 species. Since publication of the 1990 notice and based on additional information received from botanists knowledgeable about the status of *Calyptridium pulchellum*, *Fritillaria striata*, *and Lupinus citrinus* var. *deflexus*, these species were placed in category 1 by the Director's approval.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1983, be treated as having been newly submitted on that date. This was the case for *Brodiaea pallida*, *Fritillaria striata*, *Lupinus citrinus* var. *deflexus*, and *Navarretia setiloba* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted but was precluded by other pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1983 through 1993. Publication of this proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Allium tuolumnense* (Traub) Denison and McNeal (Rawhide Hill onion), *Brodiaea pallida* Hoover (Chinese Camp brodiaea), *Carpenteria californica* Torrey (carpenteria), *Calyptridium*

pulchellum (Eastwood) Hoover (Mariposa pussypaws), *Clarkia springvillensis* Vasek (Springville clarkia), *Fritillaria striata* Eastwood (Greenhorn adobe lily), *Lupinus citrinus* Kellogg var. *deflexus* (Congdon) Jepson (Mariposa lupine), *Mimulus shevockii* Heckard and Bacigalupi (Kelso Creek monkeyflower), *Navarretia setiloba* Covelle (Piute Mountains navarretia), and *Verbena californica* Moldenke (Red Hills vervain) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range. Brodiaea pallida, Calyptridium pulchellum, Clarkia springvillensis, Lupinus citrinus* var. *deflexus, Mimulus shevockii, Allium tuolumnense, Carpenteria californica, Fritillaria striata, Navarretia setiloba,* and *Verbena californica* are restricted to grassland and woodland communities in the foothills of the Sierra Nevada and Tehachapi Mountains in California. The primary threat facing these 10 plants is the ongoing and threatened destruction and adverse modification of their habitats. The habitats of these 10 plants are being threatened by one or more of the following: urbanization, agricultural land conversion, off-highway vehicle use, mining, road and rights-of-way maintenance associated with hydroelectric operations, logging, illegal dumping, incompatible fire management techniques, and highway construction and maintenance projects.

The human populations in the counties where these species of plants occur are projected to grow significantly over the next decade. For example, Tuolumne County is projected to increase 46 percent between 1992 and 2005, Fresno County is predicted to grow 53 percent by 2005, and Tulare and Kern Counties are expected to increase 40 percent and 44 percent, respectively, by the year 2005 (California Department of Finance 1991, 1992). The increase in housing construction that will likely accompany this population growth threatens the populations of the 10 plants that occur on privately owned land.

Brodiaea pallida is only known from one population of 1,600 plants in the Red Hills. A portion of the population was destroyed prior to 1982 (CNDDB 1993). A subdivision has been proposed for the area containing the remainder of the population. Although the project has apparently been revised to exclude most of the *B. pallida* population from the area proposed for housing, the project is still expected to adversely affect the plant through its plan to encourage recreational activities in the area containing *B. pallida*. The project would also adversely affect this species because it would negatively impact the hydrological conditions necessary for growth and reproduction (Blaine Rogers, San Joaquin Delta College, *in. litt.*, 1985).

Six of the seven populations of *Calyptridium pulchellum* contain fewer than 300 plants (CNDDB 1993). The seventh population of *C. pulchellum* contains approximately 800 plants. Residential development threatens four populations of *C. pulchellum*. Two populations of *C. pulchellum* occur on 1-acre lots that are for sale in the midst of an existing subdivision (CNDDB 1993). A third population of *C. pulchellum* occurs on a ranch that is for sale; the potential exists for the ranch to be subdivided after it is sold (CNDDB 1993). A fourth population of *C. pulchellum* occurs on a vacant lot adjacent to and downslope from a developed lot. Run-off from landscape maintenance of the developed lot threatens this population (CNDDB 1993). This fourth population has not been seen since 1983 and may be extirpated (CNDDB 1993).

Disturbance associated with suburban foothill development destroyed part of one population of *Lupinus citrinus* var. *deflexus* in the early 1980s (CDFG 1989a). Since then, this population appears to be recovering (CDFG 1989a). The rapidly accelerating development of the western slope of the Sierra Nevada is a serious potential threat to all four populations of this species (CDFG 1989a). Presently, a home occupies each of the population sites south of the town of Mariposa in Mariposa County (California Native Plant Society (CNPS) 1990). The construction of these homes destroyed some of the plants.

The Joshua tree and pinyon-juniper woodland communities where *Mimulus shevockii* occurs are desirable for development because of their scenic viewsheds. Current mobile home development projects and associated road construction is adversely affecting *M. shevockii* at six sites; development projects planned for the future will also adversely affect this species (CNDDB 1993). Five of the populations of *M. shevockii* occur on a mixture of BLM and private lands and two populations occur on private lands. Parts of two populations have been destroyed by construction of a gravel road and an off-highway vehicle road (CNDDB 1993). Agricultural land conversion and mobile home lot development already have destroyed part of one of these populations and the remaining portion of this population is threatened with additional agricultural land conversion (CNDDB 1993).

Urbanization has destroyed one population of *Allium tuolumnense*. The type locality of *A. tuolumnense* once covered several hundred acres but has now been reduced to a total of 14 hectares (35 acres) as a result of land clearing for housing construction (CNDDB 1993). Urbanization continues to threaten this population; the 17 hectare (40 acre) Heavenly Hills subdivision is proposed for this site (CNDDB 1993). The 220 hectare (540 acre) Gardella subdivision southwest of Jamestown has been recently proposed, and would adversely affect an additional population of *A. tuolumnense* (Robin Wood, Tuolumne County Planning Department, *in litt.*, 1993, Skenfield 1992; Steve Stocking, San Joaquin Delta College, *in. litt.*, 1993). A 760 hectare (1,890 acre) proposed subdivision called Shotgun Creek Estates would adversely affect another population northwest of Jamestown (CNDDB 1993). The above three proposed subdivisions could directly affect *A. tuolumnense* through destruction of plants and habitat, or could indirectly affect the populations by altering the site hydrology through increased urban run-off of herbicides, pesticides, and fertilizers, or by lowering the water table.

As mentioned above, Fresno County is predicted to grow 53 percent by the year 2005 (California Department of Finance 1991, 1992). The development and construction of proposed subdivisions in Fresno County foothills will adversely affect the two populations of *Carpenteria californica* that occur on private land. These populations are already under threat from development projects (CNDDB 1993). The expansion of a portion of State Highway 168 from a two-lane to four-lane freeway partially destroyed and fragmented the largest population of *C. californica* (Joanna Clines, Sierra National Forest, pers. comm., 1993). The proposed realignment and expansion to four lanes of an additional section of the same highway potentially threatens portions of two populations of this plant (CNDDB 1993).

The University of California proposes to establish a new campus at one of three sites in the San Joaquin Valley (University of California 1993), including a site in Fresno County at the base of the foothills where *Carpenteria californica* occurs. The proposed new campus at the Fresno location and the attendant growth-inducing effects of 40,000 to 50,000 people are a potential threat to *C. californica* (Howard Latimer, California State University, Fresno, pers. comm., 1993).

The type locality of *Clarkia springvillensis* was destroyed by mobile home development in 1983 (CNPS 1988). Historically, road widening and cattle grazing have seriously reduced populations of *C. springvillensis* at six sites (CNPS 1988). Ongoing residential development, road maintenance activities, and timbering operations threaten three populations of *C. springvillensis* on private lands (CNDDB 1993). Prior to acquisition by CDFG, a preserve containing the largest population of *C. springvillensis* had an access road cut into the area, a well drilled, and a knoll levelled as a pad for home construction. These activities reduced and fragmented the population of *C. springvillensis* at that site. No restoration has occurred. One population of *Navarretia setiloba* occurs in a mobile home park (CNDDB 1993). Urbanization threatens two populations of *N. setiloba* near Lake Isabella and one population on Grapevine Peak in Kern County (Diane Mitchell, botanist, pers. comm., 1992). The Andrews Creek population of *Verbena californica*, containing 25 percent of all the plants, is threatened with a proposed subdivision (CNDDB 1993, CDFG 1993; Robin Wood, *in. litt.*, 1993). The Big Creek population of this plant, containing 40 percent of the population, is potentially threatened by residential development (Pat Stone, CNPS, pers comm., 1992).

Road maintenance activities adversely affect populations of several of the 10 plants included in this rule. Firebreak construction and road maintenance have destroyed part of one population of *Allium tuolumnense* (CNDDB 1993). The grading of access roads along hydroelectrical powerlines and the clearing of vegetation from powerlines and towers as part of hydroelectric operations of an electrical municipality potentially threaten one population of *Carpenteria californica* (CNDDB 1993). Historically, road widening and cattle grazing have seriously reduced populations of *C. springvillensis* at six sites (CNPS 1988). Two populations of *C. springvillensis* are currently threatened by road and fire break maintenance activities such as mowing and spraying (CNDDB 1993). Three of the four populations of *C. springvillensis* in the Sequoia National Forest occur along a road right-of-way for an electric municipality and are fenced and signed for protection but emergency maintenance activities, including vegetation removal, of the power towers and powerlines remains a threat (CNDDB 1993). A firebreak bisects one population of *Fritillaria striata* in Kern County and a powerline access road near Kern River State Park continues to adversely affect another population (CNDDB 1993). Vehicles driven along these access roads destroy the plants that grow in the roadway. Two populations of *F. striata* along Rancheria Road in Kern County face threats from a proposed road widening project (Stebbins 1989). Because of this species' affinity for clay soils that are unstable during wet months, emergency slope stabilization activities, such as road widening, could negatively affect two populations of *F. striata* along Rancheria Road in Kern County (Stebbins 1989).

Small scale logging on the privately-owned lands within the boundary of the Sierra National Forest has destroyed some plants and continues to threaten some populations of *Carpenteria californica* (J. Clines, pers. comm., 1993). Heavy equipment is driven across the plant populations to access the logging sites, and some plants are destroyed.

Proposed placer gold mining for a mining operation on private land threatens several populations of *Allium tuolumnense* (Robin Wood, *in. litt.*, 1993; Pat Stone, *in. litt.*, 1993). The proposed project is currently on hold. If planning were to resume, the resulting operation would adversely affect this plant through the placement of overburden on the plants occurring at these sites. Recreational gold mining and trampling associated with that activity adversely affects the four populations of *Verbena californica* at Six Bit Gulch, which contain 15 percent of the total individuals of the species (B. Rogers, pers. comm., 1992; CDFG 1993).

Conversion of land to agricultural uses threatens three of the subject species. *Fritillaria striata* was once known from the Frazier Valley, Porterville, Lindsay, and Strathmore. Agricultural land conversion has extirpated four populations of *F. striata* from those areas (Stebbins 1989). Most of the existing known populations of *F. striata* are threatened by agricultural land conversion, overgrazing, competition from nonnative grasses, and urbanization (Stebbins 1989). The spread of citrus orchards threatens three populations of *F. striata* at the lower elevations on the slopes of Lewis Hill near Frazier Valley (Stebbins 1989, 1991). One population of *Mimulus shevockii* is threatened with agricultural land conversion (CNDDB 1993). The type locality of *Navarretia setiloba* was extirpated by agricultural land conversion.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not currently known to be a factor for these 10 plants but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity following publication of this proposal. *Carpenteria californica* is well established in the cultivation and horticultural trade both in California and England. The plant is propagated by cuttings and is not threatened by collecting in the wild.

C. *Disease or predation.* One population of *Calyptridium pulchellum* is potentially threatened by grazing (CNDDB 1993). Two populations of *Verbena californica* and eight populations of *Allium tuolumnense* that occur on lands managed by BLM in the Red Hills are grazed by cattle. Observations in Andrews Creek in the Red Hills indicate that *Verbena californica* is able to withstand only light grazing before it disappears (Rogers 1983). Plants of *V. californica* were heavily cropped and noticeably smaller than in ungrazed sites (BioSystems Analysis 1984). Although current grazing levels do not appear to be adversely affecting these species, changes in timing or an increase in the number of animals grazing in the area is a potential threat to these populations. Moderate to heavy grazing adversely affects *Clarkia springvillensis* and *Lupinus citrinus* var. *deflexus* at five sites (CDFG 1987, CNPS 1990). The largest population of *C. springvillensis*, containing more plants than the other six populations combined, is protected in a 1.8 hectare (4.5 acre) ecological preserve owned by the California Department of Fish and Game (CNDDB 1993). The preserve boundary was not surveyed. The original fence was placed some distance off the boundary line and included some adjacent land. This error has protected a substantial portion of the currently extant population of *C. springvillensis* from the heavy grazing that occurs outside the fenced exclosure. If, in the future, the fence is placed on the actual boundary, livestock grazing could adversely impact approximately half the remaining *C. springvillensis* on this site (CDFG 1989). Another population of *C. springvillensis* on the Sequoia National Forest is potentially threatened by overgrazing (CNDDB 1993).

Heavy grazing by domestic livestock and rodents adversely affects three of four populations of *Fritillaria striata* in Kern County and a fourth population in Tulare County (Stebbins 1989, CNDDB 1993). In addition to grazing, trampling of individual plants by livestock in

populations in Kern County also negatively affects this species (Stebbins 1989, CNDDB 1993). Overgrazing currently adversely affects portions of two populations of *Carpenteria californica* in Fresno County (CNDDB 1993).

Clarkia springvillensis is susceptible to predation by the larvae of sphinx moths (Sphingidae). Larvae of this moth were observed feeding on the plant at one site (CDFG 1987). Sphinx moth predation may occur at other sites as well. However, the extent to which this factor threatens the plant is not known.

High numbers of California ground squirrels (*Spermophilus beecheyi*) frequently are associated with heavily grazed areas in the southern San Joaquin Valley and adjacent foothills. Ground squirrels likely feed on the subject plant species in addition to cattle in heavily grazed areas.

Deer were observed to have eaten most of the mature inflorescences of *Fritillaria striata* at the Tejoh Hills population (about 5,000 plants) during 1 week in 1987 (D. Taylor, pers. comm., 1988 in Stebbins 1989).

D. *The inadequacy of existing regulatory mechanisms.* The California Fish and Game Commission has listed *Brodiaea pallida* and *Clarkia springvillensis* as endangered species under the California Endangered Species Act (Chapter 1.5 § 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). The Commission also has listed *Carpenteria californica, Fritillaria striata,* and *Lupinus deflexus* (now known as *Lupinus citrinus* var. *deflexus*) as threatened species. Listing by the State requires individuals to obtain a memorandum of understanding with the California Department of Fish and Game (CDFG) to possess or "take" a listed species. Although both the California Native Plant Protection Act and the California Endangered Species Act prohibit the "take" of State-listed plants, State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law only requires that the land owner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (Native Plant Protection Act, Chapter 10 § 1913).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved even though they may cause significant environmental damage, such as destruction of an endangered species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

Verbena californica and *Brodiaea pallida* grow in mesic areas along defined stream channels that are generally small and may be treated as isolated wetlands or waters of the United States for regulatory purposes by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. Nationwide Permit No. 26 (33 CFR part 330.5 (a)(26)) was established by the Corps to facilitate issuance of permits for discharge of fill into wetlands up to 4 hectares (10 acres). For project proposals falling under Nationwide Permit 26, the Corps has been reluctant to withhold authorization unless a federally proposed or listed threatened or endangered species is known to be present, regardless of the significance of other wetland resources. The 404 regulations require an applicant to obtain an individual permit to fill isolated wetlands or waters greater than 4 hectares (10 acres). In either case, candidate species receive no special consideration. Additionally and equally important, the upland watersheds (mesic pools and seeps next to streams) are not provided any protection. Disturbance to or loss of pool hydrology has damaged populations and habitat of these two plants as discussed previously in Factor A. Reductions in water volume and inundation adversely affect these plants. Thus, as a consequence of the small scale of these stream channels and lack of protection of associated uplands, this regulatory mechanism is inadequate to protect these two species.

Of the 10 plants included in this proposed rule, only *Clarkia springvillensis, Calyptridium pulchellum,* and *Carpenteria californica* receive any kind of formal protection.

The largest population of *Clarkia springvillensis* occurs on a 1.8 hectare (4.5 acre) preserve owned by the California Department of Fish and Game (CDFG). A draft interim management plan was developed in 1989, but has not been finalized in part due to a lack of funding. No on-the-ground management of this population has occurred. The Sequoia National Forest developed a management plan in 1987 for the populations of *C. springvillensis* that occur on Forest Service land. Although three of the four populations are now fenced, no active management of the populations is occurring to protect and promote the recovery of the species.

One portion of a population of *Carpenteria californica* is protected at the Black Mountain Preserve, owned by The Nature Conservancy. Some recovery activities such as prescribed burns are not being conducted because of a lack of funding and concerns that prescribed burns would result in a wildfire (J. Clines, pers. comm., 1993). The Sierra National Forest has designated and fenced a botanical area for the preservation of one portion of a population of *C. californica,* but no active management is taking place to enhance and promote the recovery of the species.

One small population of *Calyptridium pulchellum* occurs on lands administered by the Sierra National Forest and is fenced to protect it from livestock trampling and grazing (J. Clines, pers. comm., 1993). However, the remaining populations are not protected.

E. *Other natural or manmade factors affecting their continued existence.* Low seedling establishment, trampling, competition from native brush, off-road vehicle (ORV) activity, potential realignment of a preserve boundary fence, fire suppression, illegal dumping, and stochastic extinction variously affect some populations of *Brodiaea pallida, Clarkia springvillensis, Fritillaria striata,* and *Carpenteria californica.*

ORV use has destroyed some plants in the past at one population of *Lupinus citrinus* var. *deflexus,* however, recent damage is not evident (CDFG 1989a). An ORV road bisects one population of *Mimulus shevockii* and a gravel road bisects another population (CNDDB 1993). Ongoing ORV activity threatens this plant. Two populations of *Allium tuolumnense* were partially destroyed by ORV use in the Red Hills (The Nature Conservancy 1987), which is currently closed to ORVs. ORV use threatens four populations of *Carpenteria californica*

(CNDDB 1993). One population of *Navarretia setiloba* in Kern County has received some disturbance from ORV use (CNDDB 1993), and another population is bisected by an ORV road (CNDDB 1993).

The single, small population of *Brodiaea pallida* is restricted to an intermittent drainage that is fed by some small springs. Any disruption to the hydrology of the springs or the upslope watershed would threaten this population of *B. pallida*. Local catastrophic events such as floods, disease outbreak, extended drought, landslides, or a combination of several such events could destroy a part or all of the population of *B. pallida*. Any local catastrophe could significantly decrease this population to so few individuals that the risk of extirpation due to genetic problems associated with small populations would increase.

Plants at one population of *Fritillaria striata* in Kern County have been trampled by cattle, and an additional population is potentially threatened by trampling (CNDDB 1993).

Because no seedlings of *Fritillaria striata* have been observed in nature, it is unknown to what degree this species is reproducing sexually (Stebbins 1989). The distribution of *F. striata* may be limited partially by its apparent reliance on vegetative reproduction (Stebbins 1989). The populations of this plant are discontinuously distributed throughout its range, making sexual reproduction difficult. By relying solely on vegetative reproduction, the genetic diversity of the species can be reduced, weakening the long-term viability of the species. *Fritillaria striata* also faces threats from nonnative grasses such as *Avena* and *Bromus* that compete with the subject plant for space, light, and nutrients (Stebbins 1989).

Fire suppression on private lands is a threat to the long-term survival of *Carpenteria californica* (J. Clines, pers. comm., 1993). *Carpenteria californica* exhibits low seedling establishment (CDFG 1991). The germination and seedling establishment of *C. californica* in nature was not observed or documented prior to 1989. However, a 1989 wildfire in Fresno County stimulated vigorous regrowth of the plant and the first recorded seedling establishment (J. Clines, *in. litt.*, 1993). Overgrazing and trampling by cattle directly after a wildfire, when seedlings are vulnerable, adversely affects the plant. *Carpenteria californica* requires more frequent fire than that is currently being experienced for successful sexual reproduction to occur (J. Clines, *in. litt.*, 1993). Fire is also important for maintaining the vigor of established individual shrubs of *C. californica*, by preventing associated species such as *Quercus wislizenii, Arctostaphylos mariposa*, and *Ceanothus leucodermis* from outcompeting *C. californica* for light, space, and nutrients (J. Clines, *in. litt.*, 1993).

Because the private lands containing the populations of *Carpenteria californica* consist of many small ranchettes and multiple landowners, it is unlikely that a controlled burn over an area large enough to effectively promote necessary sexual reproduction of *C. californica* could be successfully organized and carried out. Continued fire suppression and the inability to conduct needed controlled burns on private lands threaten all populations of *C. californica* that occur on private lands. The necessity of fire for sexual reproduction and for the long-term survival of this plant is understood by the Sierra National Forest. The policy of continued fire suppression to protect upslope timber stands is a threat to populations of *C. californica* on public lands.

Illegal dumping has been reported at two populations of *Carpenteria californica* (Stebbins 1988). Trash dumping destroys individual plants and degrades the habitat by introducing a wide variety of pollutants that inhibit seed germination and plant growth.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Endangered or threatened status is proposed for these species because large-scale human population increases and attendant urban growth and changes in agricultural land uses have destroyed significant quantities of foothill habitats and continue to eliminate plant populations. These plants and their habitats face current and future threats from urbanization, agricultural land conversion, highway construction, overgrazing, maintenance of roads and rights-of-way activities, mining, logging, off-highway vehicle use, stochastic extinction from random natural events, inadequate regulatory mechanisms, and insect predation.

Because the majority of threats facing four of these species are imminent, *Brodiaea pallida, Calyptridium pulchellum, Lupinus citrinus* var. *deflexus*, and *Mimulus shevockii* are in immediate danger of extinction throughout all or a significant portion of their respective ranges and, thus, fit the definition of an endangered species as defined in the Act. The only population of *Brodiaea pallida* is threatened by urbanization, inadequate regulatory mechanisms, and stochastic extinction. Four of the seven populations of *Calyptridium pulchellum* are imminently threatened by urbanization; one of those four sites is threatened potentially by overgrazing and an additional population threatened by grazing. Although TNC has voluntary verbal protection agreements with current landowners of one of the populations, no permanent preservation is assured at any of the populations sites. All four populations of *Lupinus citrinus* var. *deflexus* are threatened by urbanization and one population is potentially threatened by overgrazing. Although landowners of three of the four populations have registered each site with TNC for voluntary protection, no long-term protection is assured for any of the four known populations. Six of the seven known populations of *Mimulus shevockii* are threatened variously by mobile home development, agricultural land conversion, and off-highway vehicle use. None of the populations have any protection.

The plants proposed for listing as threatened are restricted to habitats somewhat less vulnerable to development and are faced with less imminent threats. However, these species are likely to become endangered in the foreseeable future unless current trends of urban development, agricultural land conversion, highway construction, road maintenance activities, improper fire management, off-highway vehicle use, and overgrazing are reversed. *Allium tuolumnense* is threatened by urbanization, overgrazing, mining, and off-highway vehicle use on 25 percent of its range on private lands. The remaining 75 percent of the population occurs on public lands and is potentially threatened by grazing on public lands. *Carpenteria californica* is imminently threatened by urbanization, highway construction, maintenance of roads and rights-of-way in connection with hydroelectrical operations, competition from native brush species, logging, illegal dumping, incompatible fire management activities, overgrazing, inadequate regulatory mechanisms, and off-highway vehicle use over the one-third of its range on private lands. *Carpenteria californica* is potentially threatened by alteration of natural fire cycles, off-highway vehicle use, and maintenance of roads and rights-of-way on the remaining two-thirds of its range on public lands. Four of the seven populations of *Clarkia springvillensis* are threatened by urbanization, road maintenance activities, insect predation, overgrazing, inadequate regulatory

mechanisms, and timber operations. The largest population is protected partially by a fenced preserve owned by the California Department of Fish and Game. A possible fence realignment potentially threatens a significant portion of this population. Although three of the four populations of *C. springvillensis* occurring on the Sequoia National Forest are fenced and signed for protection, those populations may be threatened by future emergency powerline maintenance. Of the 17 populations of *Fritillaria striata*, 9 populations are threatened variously by agricultural land conversion, urbanization, off-highway vehicle use, road widening, emergency road maintenance activities, overgrazing, and trampling. Additionally, all populations of *F. striata* are potentially threatened by inadequate State regulatory mechanisms and competition from nonnative grasses. Three of the six populations of *Navarretia setiloba* are threatened by urbanization and off-highway vehicle use. Seven of the nine populations of *Verbena californica*, containing 65 percent of the plants, are threatened by urbanization over a relatively small part of its range on private lands. Recreational placer gold mining threatens this plant and overgrazing potentially threatens this plant on its remaining range on public lands. These six plants are not yet in danger of extinction throughout all or a significant portion of their ranges, but appear likely to become in danger of extinction in the foreseeable future. As a result, the preferred action is to list *Allium tuolumnense, Carpenteria californica, Clarkia springvillensis, Fritillaria striata, Navarretia setiloba,* and *Verbena californica* as threatened species.

Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the taxa is listed. The Service finds that designation of critical habitat is not prudent for these species at this time. Because the 10 plants face numerous anthropogenic threats (see Factors A and E in "Summary of Factors Affecting the Species") and the 10 plants occur predominantly on private land, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of these species and increase enforcement problems. The listing of these species under the Act publicizes the rarity of these plants and, thus, can make these plants attractive to researchers or collectors of rare plants.

Protection of the habitat of these species will be addressed through the section 7 consultation and section 4 recovery processes. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time, because such designation would likely increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities potentially affecting 1 or more of the 10 plants include mining, grazing authorizations, and issuance of special use permits and rights-of-ways. Populations of 7 of the 10 plants occur on Federal lands. Approximately 70 percent of the *Carpenteria californica*, half the populations of *Clarkia springvillensis*, and one population of *Calyptridium pulchellum* occur on lands managed by the U.S. Forest Service. Approximately one-third of the populations of Allium tuolumnense, one-seventh the populations of *Verbena californica*, one-half the populations of *Mimulus shevockii*, and one population of *Navarretia setiloba* occur on lands managed by the BLM. These agencies would be required to confer with the Service if any activities authorized, funded, or carried out by these two agencies would likely jeopardize the continued existence of these species.

Other Federal agencies that may become involved as a result of this proposed rule include the Veterans Administration through their Federal mortgage programs, the U.S. Department of Housing and Urban Development (Federal Home Administration loans), and the Federal Highways Administration through the construction of roads and highways. Since at least three of these plants exist in or near stream beds, perennial streams or drainages, the U.S. Army Corps of Engineers may become involved through jurisdiction of section 404 of the Clean Water Act.

Listing these 10 plants would provide for the development of recovery plans. Such plans would bring together both State and Federal efforts for conservation of the plants. The plans would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plans would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of these 10 plants. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to affected States for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants and 17.71 and 17.72 for threatened plants not covered by a special rule, set forth a series of prohibitions and exceptions that apply to listed plant species. With respect to the four plants proposed to be listed as endangered, the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the

jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; remove and reduce to possession these species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law.

The six plants proposed to be listed as threatened would be subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E); 50 CFR 17.61, 17.71). Seeds from cultivated specimens of threatened plant taxa are exempt from these prohibitions provided that a statement "of cultivated origin" appears on the shipping containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates that trade permits may be sought or issued for at least 1 of these 10 plant species because *Carpenteria californica* is common in cultivation in England and California. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited is available upon request from the Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Kenneth Fuller, Sacramento Field Office (see **ADDRESSES** section); telephone 916/978–4866.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended for plants by adding the following, in alphabetical order under the plant families indicated, and by adding a new family, "Philadelphaceae—Mock orange family", in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
. .	.	.	.	.	.	.
Fabaceae—Pea family:						
. .	.	.	.	.	.	.
Lupinus citrinus var. *deflexus* (=*Lupinus deflexus*).	Mariposa lupine	U.S.A. (CA)	E		NA	NA
. .	.	.	.	.	.	.
Liliaceae—Lily family:						
. .	.	.	.	.	.	.
Allium tuolumnense (=*Allium sanbornii* var. *tuolumnense*).	Rawhide Hill onion	U.S.A. (CA)	T		NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *	*	*	*	*	*	*
Brodiaea pallida	Chinese Camp brodiaea	U.S.A. (CA)	E		NA	NA
* * *	*	*	*	*	*	*
Fritillaria striata	Greenhorn adobe lily	U.S.A. (CA)	T		NA	NA
* * *	*	*	*	*	*	*
Onagraceae—Evening primrose family:						
* * *	*	*	*	*	*	*
Clarkia springvillensis	Springville clarkia	U.S.A. (CA)	T		NA	NA
* * *	*	*	*	*	*	*
Philadelphaceae—Mock orange family:						
Carpenteria californica	Carpenteria	U.S.A. (CA)	T		NA	NA
* * *	*	*	*	*	*	*
Polemoniaceae—Phlox family:						
* * *	*	*	*	*	*	*
Navarretia setiloba	Piute Mountains navarretia	U.S.A. (CA)	T		NA	NA
* * *	*	*	*	*	*	*
Portulacaceae—Purslane family:						
* * *	*	*	*	*	*	*
Calyptridium pulchellum	Mariposa pussypaws	U.S.A. (CA)	E		NA	NA
* * *	*	*	*	*	*	*
Scrophulariaceae—Snapdragon family:						
* * *	*	*	*	*	*	*
Mimulus shevockii	Kelso Creek monkeyflower	U.S.A. (CA)	E		NA	NA
* * *	*	*	*	*	*	*
Verbenaceae—Vervain family:						
* * *	*	*	*	*	*	*
Verbena californica	Red Hills vervain	U.S.A. (CA)	T		NA	NA
* * *	*	*	*	*	*	*

Dated: September 27, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–24491 Filed 9–30–94; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AC 98

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Lessingia Germanorum (San Francisco Lessingia) and Threatened Status for the Plant Arctostaphylos Imbricata (San Bruno Mountain manzanita) From California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for *Lessingia germanorum* (San Francisco lessingia), and threatened status for *Arctostaphylos imbricata* (San Bruno Mountain manzanita), two plants from the San Francisco peninsula of California. *Lessingia germanorum* occurs in central dune scrub, and is known from five sites on the Presidio in San Francisco County, and one site on San Bruno Mountain in San Mateo County, California. This taxon has been affected by and is endangered by competition with invasive alien vegetation, residential and commercial development, sand quarrying, increased pedestrian traffic and recreational activities, inadequate regulatory mechanisms, bulldozing, shading by

native and non-native vegetation, incidental use of fertilizers, and other anthropogenic activities. *Arctostaphylos imbricata* occurs in coastal scrub habitat, and is only known from five small populations on San Bruno Mountain in San Mateo County; this plant has been affected by and is vulnerable to changes in fire frequency. This taxon is also threatened by collection, as it is used horticulturally as an ornamental plant. Because of the limited number of extant individuals of *A. imbricata* and *L. germanorum* and their severely restricted distribution, they also are subject to an increased likelihood of extinction from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants.

DATES: Comments from all interested parties must be received by December 5, 1994. Public hearing requests must be received by November 18, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp (see **ADDRESSES** section) at 916/978–5805.

SUPPLEMENTARY INFORMATION:

Background

Lessingia germanorum (San Francisco lessingia) and *Arctostaphylos imbricata* (San Bruno Mountain manzanita) are endemic to the northern San Francisco peninsula in California. *Lessingia germanorum* is found within the central dune scrub community. *Arctostaphylos imbricata* is a component of the coastal scrub community.

The natural communities of the northern San Francisco peninsula have undergone a number of changes as a result of human-caused activities. The northern part of the San Francisco peninsula is highly urbanized. By 1984, over 90 percent of the northern peninsula's natural habitat had been disturbed or eliminated (Orsak and Schooley 1984). Urbanization has eliminated *Lessingia germanorum* from part of its range, and intensive commercial and residential development are ongoing. San Bruno Mountain was the last large parcel of open space in the northern San Francisco peninsula, and pursuant to section 10(a)(1)(B) of the Act, was the site of the United States' first habitat conservation plan after a decade-long land use battle (Bean *et al.* 1991). Urban development also has fragmented the remaining habitats for these plants. Habitat fragmentation increases the risks of extinction due to chance events such as pest or disease outbreaks, reproductive failure (which is possibly devastating to annual plants), or other natural or human-caused disasters. Other anthropogenic activities such as sand quarrying, increased pedestrian traffic and recreational activities, change in fire frequency, bulldozing, or the incidental use of fertilizers, also variously threaten the remaining occurrences of these plants.

Discussion of the Two Species Proposed for Listing

Adelbert von Chamisso first collected *Lessingia germanorum* in 1816 on the sand hills of San Francisco, California (Howell 1929). Chamisso described *L. germanorum* in 1829 and named it in honor of the Lessings, a German family of scientists and authors. John Thomas Howell (1929) recognized 11 varieties of *L. germanorum*. According to the rules for botanical nomenclature, when a new subspecies is described in a species not previously divided into infraspecific taxa, an autonym (an automatically created name) is created (i.e. *Lessingia germanorum* var. *germanorum*). Howell distinguished *L. germanorum* var. *germanorum* from the other varieties by the presence of few glands and by the absence of either odorous or bitter glandular secretions. Other treatments (Ferris 1959, Munz and Keck 1968) also recognized varieties of *L. germanorum*. Currently *L. germanorum* is recognized as a distinct species (Lane 1993).

Lessingia germanorum is a slender annual of the aster family (Asteraceae) with diffusely branched stems 10 to 30 centimeters (cm) (4 to 12 inches (in)) high. The herbage and stems are glandless and covered with grayish, loosely interwoven hairs. Tubular lemon yellow disc flowers with a brownish or purplish band are clustered into heads that are solitary at the end of branchlets. The seeds, which are attached to a crown of hairlike bristles, are light and easily carried by the wind. *Lessingia germanorum* typically flowers between August and November.

Historically, *Lessingia germanorum* occurred within the coastal dune scrub community throughout the San Francisco peninsula. Currently *L. germanorum* is restricted to the Presidio area of the San Francisco peninsula, and one occurrence near the base of San Bruno Mountain. *L. germanorum* grows on remnant sand dunes and sand terraces in open areas with blowing sand (Susan Smith, Yerba Buena Chapter, California Native Plant Society, pers. comm., 1992), at an elevational range between 24 to 91 meters (m) (80 to 300 feet (ft)). It is associated with *Chorizanthe cuspidata, Lotus scoparius,* and *Lupinus arboreous* (or *Lupinus chamissonis*). Five small populations, four natural and one introduced, occur within the Presidio in San Francisco County. One of the populations on the Presidio was established after approximately 10 cubic yards of sand was removed from the site of another population for use on the base golf course. In 1989, an additional population was discovered on San Bruno Mountain in northern San Mateo County. Collectively, the populations inhabit less than 0.8 hectares (2 acres) (Terri Thomas, Golden Gate National Recreation Area, pers. comm., 1993; Paul Reeberg, National Park Service, pers. comm., 1993). Population numbers for *L. germanorum* vary from year to year, but from 1980 to 1989 the total on the Presidio was less than 1,500 individuals per year (California Department of Fish and Game (CDFG) 1989). The population on San Bruno Mountain is estimated to have 1,600 to 1,800 individuals (Paul Reeberg, pers. comm., 1993). The five small populations within the Presidio have been managed by the Department of Defense but will be transferred to the National Park Service effective October 1, 1994. The population on San Bruno Mountain is jointly owned by Daly City and a private landowner (Annemarie Quevedo, Assistant Planner for Daly City, *in litt.*, 1992).

The populations on the Presidio are threatened by competition with invasive alien vegetation, shading from native and introduced shrubs and trees, foot traffic, sand quarrying, bulldozing, and other anthropogenic activities (CDFG 1989; California Natural Diversity Database (CNDDB) 1992; Susan Smith, pers. comm., 1992; Paul Reeberg, pers. comm., 1993; Terri Thomas, pers. comm., 1993). The population located on San Bruno Mountain is threatened by urbanization, trampling, competition from invasive alien vegetation, and bulldozing (Thomas Reid Associates, *in litt,* 1991; Susan Smith, pers. comm., 1992; Paul Reeberg, pers comm., 1993). Both the Presidio and San Bruno Mountain populations are threatened by stochastic environmental events.

Alice Eastwood (1931) originally described *Arctostaphylos imbricata* in 1931, based on material collected from the San Bruno Hills in 1915. Until 1967, various authors either synonymized *A. imbricata* with *A. andersonii* (Jepson

1939), or considered it to be a variety of *A. andersonii* (Adams in McMinn 1935). James Roof followed Eastwood's treatment and acknowledged *A. imbricata* as a distinct species (Roof 1967). Philip Wells (1988) subsumed *A. montariensis* as a subspecies of *A. imbricata*, necessitating the creation of an autonym as discussed above (i.e., *A. imbricata* ssp. *imbricata*). He since has recognized *A. imbricata* as a distinct species in his 1993 treatment of California *Arctostaphylos* (Wells 1993).

Arctostaphylos imbricata is a low spreading evergreen shrub of the heath family (Ericaceae) that lacks a basal burl. Attaining a height of 20 cm (8 in), this highly branched shrub forms mats that are up to about 6 meters (m) (6 yards (yd)) in diameter. The bright green oblong to ovate leaves are hairless, except on the midrib, and densely overlapping. Small white urn-shaped flowers appearing from February to May are densely clustered at the end of branchlets. After fire, *A. imbricata* regenerates from seed instead of resprouting from a basal burl. *A. imbricata* can be distinguished from its congeners by its prostrate habit and its shorter, densely arranged leaves and compact flower clusters (Roof 1967).

Arctostaphylos imbricata is restricted to San Bruno Mountain in northern San Mateo County. On San Bruno Mountain, five small occurrences cover approximately 80 hectares (33 acres) (Paul Reeberg, *in litt.*, 1993). The most abundant population has 400 to 500 plants; other populations have as few as 15 plants (Roman Gankin, San Mateo County Planning Department, pers. comm., 1993). The plant grows in rocky exposed areas such as open ridges within coastal scrub or manzanita scrub at an elevation range of 275 to 365 m (900 to 1,200 ft). Where it occurs, it is the dominant plant species, and may be associated with *Baccharis pilularis* (coyote brush), *Vaccinium ovatum* (huckleberry), *Rhamnus californica* (coffeeberry), and *Arctostaphylos uva-ursi* var. *suborbiculata* (bearberry). *A. imbricata* has never been known from more than the five populations that occur today. Four of the five populations occur on land owned by San Mateo County Parks and Recreation; the fifth population is privately owned (Thomas Reid Associates 1991). The proximity of this plant on San Bruno Mountain to human population centers and intensive development activities renders *A. imbricata* vulnerable to change in the frequency of fires (i.e., as a result of a fire suppression policy), which are needed for the plants to reproduce sexually. Its highly restricted distribution increases its susceptibility to catastrophic events such as disease or pest outbreak, severe drought, or other natural or human-caused disasters.

Previous Federal Action

Federal government actions on the two plants began on June 16, 1976, when the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Arctostaphylos imbricata* was included in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Arctostaphylos imbricata* and *Lessingia germanorum* (as *Lessingia germanorum* var. *germanorum*) as category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640). This supplement changed *L. germanorum* var. *germanorum* from a category 1 to a category 2 candidate. Category 2 taxa are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules.

The plant notice was revised again on September 27, 1985 (50 FR 39526). *Arctostaphylos imbricata* and *Lessingia germanorum* var. *germanorum* were included as category 1 candidates. Both species retained category 1 status in the most recent revision of the plant notice published on February 21, 1990 (55 FR 6184).

Mr. Brian O'Neill, General Superintendent of the Golden Gate National Recreation Area, petitioned the Service to emergency list *Lessingia germanorum* as an endangered species on May 28, 1991.

Although the Service did not emergency list *Lessingia germanorum*, it did publish a 90-day finding in the **Federal Register** on August 19, 1992 (57 FR 37513) that substantial information had been presented indicating that listing may be warranted. Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions found to present substantial information indicating that the petitioned action may be warranted within 12 months of their receipt. The Service has conducted a status review and determined that the petitioned action is warranted. Publication of this proposed rule constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists of threatened and endangered species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lessingia germanorum* Cham. (San Francisco lessingia) and *Arctostaphylos imbricata* Eastw. (San Bruno Mountain manzanita) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Threats facing the habitat of these plants include being threatened, eliminated, or adversely modified by one or more of the following: urbanization, change in fire frequency, competition with invasive alien vegetation, sand quarrying, off-road vehicles, bulldozing, foot traffic, and bicycle use.

The natural habitat of the San Francisco peninsula already has been severely curtailed due to urbanization. Historically, suitable *Lessingia germanorum* habitat has decreased by 90 percent since European settlement (CDFG 1990). Urban development extirpated populations of *L. germanorum* at Lone Mountain and Lake Merced (both in the City of San Francisco) (CNDDB 1992). Historical populations of *L. germanorum* at Mountain View Lake and Ocean View Downs also have been extirpated, presumably due to urban development and competition with invasive alien

vegetation (CDFG 1989). On San Bruno Mountain, approximately 4 hectares (10 acres) of potential habitat remains for *L. germanorum* (Paul Reeberg, pers. comm., 1993). Although it is unlikely that any additional significant populations will be located in this area, the area may be important for reintroduction efforts. Most of the central dune scrub on San Bruno Mountain has been covered by "homes, cemeteries, a flower farm, and the Colma Dump" (McClintock *et al.* 1990).

Urban development potentially threatens the population of *Lessingia germanorum* that occurs on San Bruno Mountain in San Mateo County outside the boundary for the San Bruno Mountain HCP (Paul Reeberg, pers. comm., 1993) (for a discussion of the HCP, see Factor D). A project has been approved for the construction of seven additional dwellings within a few hundred yards of the San Bruno population (Annemarie Quevedo, pers. comm., 1993). Activities associated with this development, such as trampling, would adversely affect this population.

Fragmentation of the coastal scrub dune community caused by past urban development also threatens this species. Habitat fragmentation has two primary effects. First, habitat fragmentation may alter the physical environment, changing the amount of incoming solar radiation, water, wind, or nutrients where the remnant vegetation occurs (Saunders *et al.* 1991). Second, when populations are fragmented into smaller, isolated units, risks of extinction due to chance events increases (see Factor E).

The habitat of *Lessingia germanorum* has been altered by the introduction of non-native vegetation. *L. germanorum* requires blowing sand and non-compacted soils. Off-road vehicle use, foot and bicycle traffic, and trampling by joggers compacts the soil and promotes the establishment of invasive alien vegetation (CDFG 1989; Susan Smith, pers. comm., 1992). All populations of *L. germanorum* are threatened by competition with aggressive alien plant species. *Carpobrotus* sp. (ice plant) covers extensive dune areas on the Presidio, stabilizing the dune system where it occurs. *L. germanorum* in contrast, requires some dune movement, which results in areas of exposed sand (CDFG 1989). Ice plant competes with *L. germanorum* at all five occurrences on the Presidio. In addition to ice plant, other alien plants competing with *L. germanorum*, include *Bromus diandrus, Avena barbata, Rumex* sp., *Raphanus* sp., and *Sonchus* sp. (Susan Smith, pers. comm., 1992). On San Bruno Mountain *Cortaderia* sp. (pampas grass) encroachment is a severe threat. CDFG reported that "without special protection and management, San Francisco lessingia will continue its declining trend" (CDFG 1992). Currently the populations of *L. germanorum* are being weeded by volunteers from the California Native Plant Society (CNPS). Without their assistance, *L. germanorum* would be outcompeted by the invasive alien vegetation.

The habitat of *Lessingia germanorum* also has been modified at one site by tree planting. Native and introduced shrubs and trees, including *Pinus radiata*, were planted at the Presidio in the late 1800's. These trees alter the habitat of *L. germanorum* by increasing the amount of shade (CDFG 1989; CNDDB 1992; Susan Smith, pers. comm., 1992), which adversely affects *L. germanorum*.

Bulldozing and sand quarrying activities have adversely affected *Lessingia germanorum*. Bulldozing to stabilize a slope on San Bruno Mountain destroyed about one-eighth of the *L. germanorum* population (Paul Reeberg, pers. comm., 1993; Thomas Reid Associates, *in litt.*, 1991). In January 1989, most of the habitat for one population of *L. germanorum* on the Presidio was destroyed when sand was removed to repair a tee on the base golf course (CDFG 1990). Sand quarrying is an on-going threat at this site; any sand quarrying activities that may occur in the future would negatively impact this species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization currently is not known to be a factor for *Lessingia germanorum*. Overutilization is potentially a threat to *Arctostaphylos imbricata*, which is used horticulturally as an ornamental plant. Two years ago, cuttings were made from plants located at Kamchatka Point on San Bruno Mountain. The remnant portions of the plants indicated that the clippings were performed with horticultural expertise (Doug Heisinger, Park Ranger, San Mateo County Park, pers. comm., 1993). Some *A. imbricata* being sold at local plant sales may originate from clippings from the natural populations (Paul Reeberg, pers. comm., 1993). Unrestricted collecting for scientific or horticultural purposes or excessive visits by groups or individuals interested in seeing rare plants could potentially result from increased publicity following publication of a proposed rule to list these species.

C. *Disease or predation.* There are no known disease or predation threats to *Lessingia germanorum* or *Arctostaphylos imbricata* at this time.

D. *The inadequacy of existing regulatory mechanisms.* The State of California Fish and Game Commission has listed *Arctostaphylos imbricata* and *Lessingia germanorum* as endangered species under the California Endangered Species Act (Chapter 1.5 § 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). Listing by the State of California requires individuals to obtain a memorandum of understanding with the CDFG to possess or "take" a listed species. Though both the California Endangered Species Act and the California Native Plant Protection Act prohibit the "take" of State-listed plants (California Native Plant Protection Act, Chapter 10 § 1908 and California Endangered Species Act, Chapter 1.5 § 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law only requires that the land owner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (Native Plant Protection Act, Chapter 10 § 1913).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, dependant upon the discretion of the lead agency.

CEQA pertains to projects that occur on lands other than Federal land. The National Environmental Policy Act

(NEPA) requires disclosure of the environmental effects of projects on Federal lands. Certain actions can be categorically excluded from the NEPA process when (a) the action or group of actions would have no significant effect on the quality of the human environment, and (b) the actions or group of actions would not involve unresolved conflicts concerning alternative uses of available resources. Exceptions to the categorical exclusions exist. One of these exceptions is when the action would affect a species listed or proposed to be listed on the List of Endangered or Threatened Species. Until a species is federally listed or proposed, this exception to the categorical exclusion would not be applied regardless of the State listing status.

A Memorandum of Understanding was established in 1987 between the Service, the National Park Service, Department of Defense, and CDFG for the purposes of mutual cooperation for management of sensitive native plant communities on the Presidio. However, *Lessingia germanorum* is not specifically addressed in the document (CDFG 1989). Sand quarrying and other activities that were endangering it have not been prevented and continue to threaten the species with extinction.

Arctostaphylos imbricata currently derives limited protection from the San Bruno Mountain Habitat Conservation Plan (HCP). An HCP, pursuant to sections 10(a)(1)(B) and 10(a)(2)(A) of the Act, is required for the Service to issue a permit for incidental take of a federally listed species of wildlife when such taking is incidental to, and not the primary purpose of, an otherwise lawful activity. HCPs are the mechanism through which incidental take of federally listed animals can be permitted for non-Federal actions. Future actions that are part of the permit are subject to review under section 7 of the Act.

The San Bruno Mountain HCP, developed in 1983 for three listed animals, also identified several candidate species in the area of concern, including *Arctostaphylos imbricata*. However, no species-specific management actions for *A. imbricata* are identified in the HCP, and none have been implemented. The protection to this plant afforded by the HCP may, therefore, be inadequate to insure its long-term survival.

E. *Other natural or manmade factors affecting its continued existence.* As discussed in Factor A, off-road vehicle use, foot and bicycle traffic, and trampling by joggers degrade the habitat of *Lessingia germanorum*. These activities also directly destroy individual plants. A bike path runs through the middle of one of the populations of *L. germanorum* (CNDDB 1992). Hiking trails occur adjacent to three populations (Terri Thomas, pers. comm., 1993).

All Presidio populations of *Lessingia germanorum* are subject to occasional unauthorized vehicle use. This disturbance directly destroys the plants and encourages establishment of invasive alien vegetation. Weedy species tend to colonize the tracks left by the vehicles (Susan Smith, pers. comm., 1992). An environmental education camp exists near the location of one population of *L. germanorum*. No signs or fences currently protect this site. These plants are vulnerable to habitat degradation from trampling due to their proximity to the camp.

When the ownership of the Presidio is transferred from the Department of the Army to the National Park Service, a marked increase in visitation by the public is expected (Terri Thomas, pers. comm., 1992, 1993). Increased foot traffic and other recreational activities are likely to negatively impact *Lessingia germanorum* because the populations are close to trails. In addition, the park is patrolled by police on horseback. Horses can trample the plants directly and compact the soil. The potential is high for populations of *L. germanorum* on the Presidio to be adversely impacted by these activities.

Garbage dumping has degraded the habitat at one site on the Presidio where *Lessingia germanorum* occurs (CNDDB 1992). Digging by pets also adversely affects *L. germanorum* at all sites on the Presidio by destroying individual plants (Laura Nelson, Golden Gate National Recreation Area, pers. comm., 1993; Peter Lacivita, San Francisco Corps of Engineers, pers comm., 1993).

On San Bruno Mountain, fertilizer run-off from a housing development above the slope supporting the largest population of *Lessingia germanorum* (Paul Reeberg, pers. comm., 1993) threatens this site. The nitrogen in these fertilizers promotes invasion by weed species that compete with *L. germanorum*.

Change in fire frequency threatens *Arctostaphylos imbricata*. Fire suppression policies have altered natural processes occurring on San Bruno Mountain. If a fire were to break out on San Bruno Mountain, attempts would be made by the County to extinguish the fire (Doug Heisinger, San Mateo County Park Department, pers. comm., 1993), to protect the surrounding homes and commercial buildings. *A. imbricata* is a fire-adapted plant that regenerates from seed rather than resprouting from a basal burl. After a fire, seeds that have accumulated in the soil (i.e. seed bank) sprout, which reestablishes the population. Between fires *A. imbricata* spreads vegetatively. Reproduction by seed is important to maintain the genetic diversity within the species. No significant seedling establishment occurs until fire eliminates competing vegetation, as with a recent fire at Kamchatka Point that killed the mature plants yet subsequently induced regeneration from seed (Roman Gankin, pers. comm., 1993). Fire replenishes soil nutrients, and facilitates seed germination and seedling reestablishment by eliminating competition and shading. If the time between fires is too long, *A. imbricata* has little opportunity to reproduce sexually and individuals may become senescent. Conversely, fire occurring too frequently also poses a threat. If consecutive fires occurred within a short period (5 years), a non-sprouting species could be eliminated (Paul Zedler, San Diego State University, pers. comm., 1993; Michael Vasey, San Francisco State University, pers. comm., 1993). The plants either would not reach flowering age or not retain enough seed in the soil during the interval between fires to ensure the persistence of the species.

As discussed in Factor A, habitat fragmentation may adversely alter the physical environment. In addition, habitat fragmentation increases the risks of extinction by leaving the species vulnerable to chance events such as pest or disease outbreaks, reproductive failure (which can be devastating to annual plants), or other natural or human-caused disasters. The small isolated nature of the remaining populations and restricted distribution of both *Lessingia germanorum* and *Arctostaphylos imbricata* make extinction due to stochastic events more likely. A local catastrophe, such as a flood, disease outbreak, extended drought, landslide, or combination of several such events, could destroy part of a single population or entire populations. A local catastrophe also could decrease a population to so few individuals that the risk of extirpation due to genetic problems associated with small populations would increase.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. *Lessingia germanorum* has been reduced to five small populations on the Presidio in San Francisco County and one site on San Bruno Mountain in

San Mateo County; collectively, the populations inhabit less than 0.8 hectares (2 acres). This taxon has been adversely affected and is endangered by competition with invasive alien vegetation, sand quarrying, increased traffic and recreational activities, inadequate regulatory mechanisms, shading by alien and native vegetation, incidental use of fertilizers, bulldozing, residential and commercial development, other anthropogenic activities, and stochastic events. *Lessingia germanorum* is in danger of extinction throughout all or a significant part of its range, and the preferred action is, therefore, to list it as endangered. *Arctostaphylos imbricata* has always been rare, and is restricted to five small populations on San Bruno Mountain in San Mateo County. This species is vulnerable to alterations of the natural fire regime and stochastic events. Because the threats facing *Arctostaphylos imbricata* are long-term rather than imminent, the species is not now in immediate danger of extinction throughout all or a significant portion of its range. However, with continued alteration of the natural fire cycle, the plant is likely to become endangered within the foreseeable future. As a result, the preferred action is to list *A. imbricata* as threatened.

Critical Habitat

Critical habitat, as defined by section 3 of the Act and 50 CFR 424.02 (d) is: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat at the time the species is listed as endangered or threatened.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Arctostaphylos imbricata* and *Lessingia germanorum*, at this time. Because *A. imbricata* and *L. germanorum* face the threat of collection, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of collection and, therefore, could contribute to the decline of this species and increase enforcement problems. The listing of *A. imbricata* and *L. germanorum* also publicizes their rarity and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. *A. imbricata* occurs at very few locations entirely on San Bruno Mountain. Any activity that would adversely modify critical habitat would likely jeopardize the continued existence of the species as well. The designation of critical habitat therefore would not provide additional benefit for this species beyond the protection afforded by listing. Designation of critical habitat therefore would not be prudent for *A. imbricata* or *L. germanorum*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Five populations of *Lessingia germanorum* occur on Federal land managed by the Department of Defense. *Arctostaphylos imbricata* occurs within the San Bruno Mountain Habitat Conservation Plan area.

Listing these two plants would provide for development of a recovery plan(s) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts.

The plans would set recovery priorities and estimate costs of various tasks necessary to accomplish them. They also would describe site-specific management actions necessary to achieve conservation and survival of the two plants. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to affected States for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants and 50 CFR 17.71 and 17.72 for threatened plants set forth a series of general prohibitions and exceptions. With respect to *Lessingia germanorum*, proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale this species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law.

Arctostaphylos imbricata, proposed to be listed as threatened, would be subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E); 50 CFR 17.61, 17.71). Seeds from cultivated specimens of threatened plant taxa are exempt from these prohibitions provided that a statement "of cultivated origin" appears on the shipping containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. The Service anticipates few trade

permits would ever be sought or issued for the two species because the plants are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241) (FAX:503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lessingia germanorum* and *Arctostaphylos imbricata*;

(2) the location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) additional information concerning the range, distribution, and population size of *Lessingia germanorum* and *Arctostaphylos imbricata*;

(4) current or planned activities in the subject area and their possible impacts on *Lessingia germanorum* and *Arctostaphylos imbricata*, or their possible impacts on a proposal to designate critical habitat for *L. germanorum*;

(5) specific information on the amount and distribution of suitable occupied or unoccupied habitat in the area of *Lessingia germanorum*, including updated information and maps on land ownership and land designation;

(6) specific information on the biological value of areas that could be proposed as critical habitat, to other listed, proposed, or candidate species, and the relation of a proposal to designate critical habitat to maintaining biodiversity and ecosystem integrity;

(7) any foreseeable economic and other impacts resulting from a proposed designation of critical habitat for *Lessingia germanorum*;

(8) specific examples of acts of taking or vandalism that have destroyed or damaged individuals or populations of *Lessingia germanorum* or *Arctostaphylos imbricata*; and

(9) the methodology the Service might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat;

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Kirsten Tarp (see **ADDRESSES** section); telephone 916/978–4866.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Asteraceae—Aster family:						
*	*	*	*	*	*	*
Lessingia germanorum (=*Lessingia germanorum* var. *germanorum*).	San Francisco lessingia	U.S.A. (CA)	E		NA	NA
*	*	*	*	*	*	*
Ericaceae—Heath family:						
*	*	*	*	*	*	*
Arctostaphylos imbricata (=*Arctostaphylos imbricata* ssp. *imbricata*).	San Bruno Mountain manzanita	U.S.A. (CA)	T		NA	NA
*	*	*	*	*	*	*

Dated: September 23, 1994.

Mollie M. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–24492 Filed 9–30–94; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition and Initiation of Status Review for Koala

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service announces the 90-day finding that a petition to add the Australian koala to the List of Endangered and Threatened Wildlife has presented substantial information indicating that the action may be warranted. A status review of this species is initiated.

DATES: The finding announced herein was made on September 26, 1994. Comments and information may be submitted until February 1, 1995.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, D.C. 20240 (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. The petition finding, supporting data, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act of 1973, as amended, requires that within 90 days of receipt of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, a finding be made on whether the petition has presented substantial information indicating that the requested action may be warranted, and that such finding be published promptly in the **Federal Register**

If the finding is positive, Section 4(b)(3) also requires commencement of a review of the status of the involved species. The U.S. Fish and Wildlife Service (Service) now announces a 90-day finding on a recently received petition.

The petition was submitted by Australians for Animals (in Australia) and the Fund for Animals (in the United States); about 40 additional organizations in the United States and Australia were named as supporting the petition. It was dated May 3, 1994, and was received by the Service on May 5, 1994. It requests that the koala *(Phascolarctos cinereus)*, a bearlike Australian marsupial, be classified as endangered in New South Wales and Victoria, and as threatened in Queensland.

The koala once occurred over much of the three indicated states, as well as in part of South Australia, and numbered in the millions. The petition presents an extensive compilation of data, including recent direct testimony from authorities on the species, suggesting that the koala has declined greatly in distribution and numbers, and that its status is likely to continue to deteriorate. Reportedly, there are practically none left in South Australia and only a few thousand in New South Wales and Victoria; the Queensland population may be less than 10 percent of what it was in the 1920s.

The species was drastically reduced by excessive killing for its fur up through the 1920s. It subsequently was provided legal protection from such killing, but, according to the petition, remnant populations are relatively small and badly fragmented. Logging, agriculture, and other problems have eliminated at least two-thirds of the original forest and woodland habitat, further declines are occurring, and little of the remaining habitat is well protected. The species is totally dependent for food and shelter on certain types of trees within forests and woodlands. The destruction or degradation of this habitat will reduce the viability of populations, even if the animals are otherwise protected, and

many local populations are said to have disappeared in recent years. Other reported problems include fires, diseases, droughts, harassment by dogs, interference with normal gene flow, and killing along the roads now penetrating habitat. The largest population remaining in Queensland is now said to be immediately threatened by a major highway project that would bisect its habitat.

The Service is aware that the koala is generally protected by federal and procincial laws in Australia, and that there have been intensive government efforts to conserve and reintroduce some populations. However, the information presented by the petition gives cause for concern about the over-all prospects for the species and its natural ecosystems, and suggests that further review of the situation is advisable. The Service therefore has found that the petition presents substantial information indicating that the requested action may be warranted. Also, pursuant to Section 4(b)(3), the Service hereby commences a review of the status of the involved species. Submission of appropriate data, opinions, and publications regarding this petition is encouraged. In accordance with Section 4(b)(3), within 12 months of receipt of the petition, the Service will make another finding as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing measures.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: September 26, 1994.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94–24512 Filed 10–3–94; 8:45 am]

BILLING CODE 4310–65–M

Notices

Federal Register
Vol. 59, No. 191
Tuesday, October 4, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Small Grains, Nursery, Potatoes, and Sugarcane Crop Insurance Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of Extension of Sales Closing Date (Acceptance of Applications).

SUMMARY: Effective for the 1995 crop year only, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination to extend the date for acceptance of applications for small grains (wheat, oats, rye, and barley), sugarcane, potatoes, and nursery crop insurance for all policies having a September 30 sales closing date.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Regulatory Specialist, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: Under its regulations for insuring crops, FCIC requires that applications for crop insurance protection must be filed on or before the policy sales closing date. The small grains, potatoes, surgarcane, and nursery crop insurance policies have a sales closing date in some areas of September 30. Due to the uncertain nature of improvements being made to agricultural risk management policies, producers have requested that FCIC extend the sales closing dates to allow producers opportunity to assess their risk management needs and make an informed decision as to the purchase of crop insurance. Therefore, to assist those producers who have requested an extension of sales closing date, the Manager of FCIC has determined that the September 30 sales closing date shall be extended to October 31.

Under the provisions of the General Crop Insurance Regulations (§ 401.8 and § 457.8), the sales closing date for accepting applications may be extended by notice in the **Federal Register** upon determination that no adverse selection will result from such extension. FCIC has determined that no adverse selection will result from this extension.

FCIC will discontinue the acceptance of applications if it determines that the insurance risk because excessive and adverse conditions develop.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith gives notice that, effective for the 1995 crop year only, applications for wheat, barley, oats, rye, nursery, potatoes, and surgarcane crop insurance with sales closing prior to October 31, 1994, will be accepted up to the *close of business on October 31, 1994*, for producers requesting multiple peril crop insurance coverage. This sales closing may be terminated by the Corporation prior to October 31, 1994 if the insurance risk becomes excessive and adverse conditions develop.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, D.C. on September 29, 1994.

Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–24469 Filed 10–3–94; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–807]

Postponement of Preliminary Antidumping Duty Determination: Ferrovanadium and Nitrided Vanadium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger (202–482–4136) or Karla Whalen (202–482–6309), Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

Postponement of Preliminary Determination

The Department of Commerce ("the Department") is postponing its preliminary determination in the antidumping duty investigation of ferrovanadium and nitrided vanadium from the Russian Federation ("Russia"). The deadline for issuing this preliminary determination is now no later than December 27, 1994.

On June 20, 1994, the Department initiated an antidumping duty investigation of ferrovanadium and nitrided vanadium from Russia (59 FR 3952, June 27, 1994). The preliminary determination was scheduled for November 7, 1994.

On July 15, 1994, the U.S. International Trade Commission determined that there was a likelihood that a U.S. domestic industry was materially injured, or threatened with material injury, by reason of imports of ferrovanadium and nitrided vanadium from Russia.

This investigation involves unusually complex foreign trading channels and, therefore, we have determined that this investigation is extraordinarily complicated within the meaning of section 733(c)(1)(B)(i) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 353.15(b)(2). Furthermore, we have determined that the parties concerned are cooperating, as required by section 733(c)(1)(B) of the Act and 19 CFR 353.15(b)(1), and that additional time is necessary to make this preliminary determination in accordance with section 733(c)(1)(B)(ii) of the Act and 19 CFR 353.15(b)(3).

For these reasons, the deadline, for issuing this determination is now no later than December 27, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24534 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A-557-808]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty or Peter Wilkniss, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-5055 and (202) 482-0588, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain carbon steel butt-weld pipe fittings ("pipe fittings") from Malaysia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994, (59 FR 14148, March 25, 1994), the following events have occurred.

On April 14, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination (see, ITC Investigation No. 731-TA-691).

In accordance with 19 CFR 353.42(b) (1994), on April 29, 1994, the Department of Commerce (the Department) issued its antidumping duty questionnaire to Malaysia Mining Corporation Pipe & Fitting Sdn Bhd (MMCPNF), the Malaysian company identified by both petitioner and the U.S. Embassy in Malaysia (by cable to the Department) as the primary exporter of the subject merchandise to the U.S. during the POI.

On May 27, 1994, the Department received a letter from the Government of Malaysia stating that MMCPNF was placed in receivership in October 1993, ceased production at that time, and is currently in the process of selling its assets. Therefore, MMCPNF would not be responding to the Department's antidumping duty questionnaire.

On June 3, 1994, the Department received a letter from petitioner in which the petitioner named another Malaysian producer of pipe fittings, Taiyo Steel Corporation (Taiyo). In order to ensure that all potential respondents were identified, we then cabled the U.S. Embassy in Malaysia a second time requesting information on Taiyo and any other Malaysian producers of pipe fittings. The U.S. Embassy responded that no company by that name could be found and identified no other Malaysian producers of pipe fittings.

On June 30, 1994, petitioner requested a 50-day postponement of the preliminary determination. The request was granted by the Department on July 19, 1994 (59 FR 37961, July 26, 1994).

On August 4, 1994, the Department received an amendment to the petition alleging that critical circumstances exist with respect to imports of pipe fittings from Malaysia. In accordance with section 735(a)(3) of the Act, on August 12, 1994, the Department issued a letter to MMCPNF requesting monthly volume and value shipment data for the period January 1, 1992, through September 27, 1994. The Department has received no reply to this request.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is September 1, 1993, through February 28, 1994.

Best Information Available

MMCPNF did not respond to our questionnaire. Therefore, we have based our preliminary determination on best information available (BIA) pursuant to section 776(c) of the Act, which provides that the Department shall use BIA when a company identified by the Department as a respondent refuses to provide requested information.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to this methodology, as outline in the Final Determination of Sales at Less Than Fair Value: Antifriction Bearings, Other Than Tapered Roller Bearings, from Germany, 54 FR 18992, 19033 (May 3, 1989), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of 1) the highest margin alleged in the petition, or 2) the highest calculated rate of any respondent in the investigation. (*See Allied Signal Aerospace Co.* v. *United States*, 996 F. 2d 1185,1191-92 (Fed. Cir. 1993).) Because there were no cooperative respondents in this investigation, we are assigning to all exporters, as BIA, the highest margin calculated in the petition, adjusted for methodological errors as explained in the Department's initiation notice. The adjusted rate is 194.7 percent.

Critical Circumstances

Petitioner has alleged that critical circumstances exist with respect to imports of the subject merchandise from Malaysia. Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if:

(A)(i) There is a history of dumping in the U.S. or elsewhere of the class or kind of merchandise which is the subject of this investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of this investigation over a relatively short period.

Since MMCPNF did not respond to our letter of August 12, 1994, we preliminarily determine, as BIA, pursuant to section 776(c) of the Act, that critical circumstances exist with respect to imports of pipe fittings from Malaysia.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act and 19 CFR 353.16(c), we are directing the Customs Service to suspend liquidation of all entries of pipe fittings from Malaysia that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
All companies	194.70

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to request a hearing, or to participate in one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Tentatively, this hearing will be held on November 28, 1994, at 1:00 p.m. at the U.S. Department of Commerce, room 1414, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38, case briefs or other written comments in at least five copies must be submitted to the Assistant Secretary for Import Administration no later than November 16, 1994, and rebuttal briefs, no later than November 23, 1994. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination within 75 days of the signing of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24542 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–307–812]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Strumbel, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–1442.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain carbon steel butt-weld pipe fittings ("pipe fittings") from Venezuela are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994, (59 FR 141148, March 25, 1994), the following events have occurred.

On April 14, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On May 2, 1994, counsel for COVECO C.A. (Coveco) and Petroltubos S.A. (Petroltubos), the only two producers of the subject merchandise in Venezuela, notified the Department of Commerce ("the Department") that due to the insignificant quantity and value of exports to the United States, these companies would not be responding to the Department's questionnaire in this investigation.

The petitioner requested a 50-day postponement of the preliminary determination on June 30, 1994. The request was granted by the Department of Commerce on July 19, 1994 (59 FR 37961, July 26, 1994).

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written descriptions of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is September 1, 1993, through February 28, 1994.

Best Information Available

Because neither Coveco nor Petroltubos responded to our questionnaire, we are basing our determination on best information available (BIA) pursuant to section 776(c) of the Act which provides that the Department shall use BIA when a company identified by the Department as a respondent refuses to provide requested information.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to this methodology, as outlined in the *Final Determination of Sales at Less Than Fair Value:*

Antifriction Bearings, Other Than Tapered Roller Bearings from Germany, 54 FR 18992, 19033 (May 3, 1989), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of 1) the highest margin alleged in the petition, or 2) the highest calculated rate of any respondent in the investigation. (*See Allied Signal Aerospace Co. v. United States*, 996 F. 2d 1185, 1191–92 (Fed. Cir. 1993).) Because there were no cooperative respondents in this investigation, we are assigning to all exporters, as BIA, a margin of 595.66 percent, the highest margin calculated in the petition, adjusted for methodological errors as explained in the Department's initiation notice.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pipe fittings from Venezuela that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
All companies	595.66

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Tentatively, the hearing will be held on November 28, 1994, at 1 p.m. at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38, case briefs or other written comments in at least five copies must be submitted to the Assistant Secretary for Import Administration no later than November 16, 1994, and rebuttal briefs, no later than November 23, 1994. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination within 75 days of the signing of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24538 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–533–811]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Strumbel, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1442.

PRELIMINARY DETERMINATION: We preliminarily determine that certain carbon steel butt-weld pipe fittings from India are being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994, (59 FR 14148) the following events have occurred.

On April 14, 1994, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination (*see* ITC Investigation No. 731–TA–689).

In accordance with 19 CFR 353.42(b)(1994), antidumping duty questionnaires were presented to two Indian producers which account for over 60 percent of all Indian exports of certain carbon steel butt-weld pipe fittings to the United States during the POI. These companies are Karmen Steels of India (Karmen) and Sivanandha Pipe Fittings Limited (Sivanandha).

The petitioner requested a 50-day postponement of the preliminary determination on June 30, 1994. The request was granted by the Department of Commerce on July 19, 1994 (59 FR 37961, July 26, 1994).

Scope of the Investigation

The products covered by these investigations are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished form fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994 for Sivanandha and August 1, 1993, through February 28, 1994 for Karmen. Although we originally established the same POI for both

companies, Karmen was not able to provide foreign market values (FMV) for sales during that period because it had no home market or third country sales and its U.S. sale(s) involved merchandise which had not yet been produced. Therefore, in accordance with section 353.42(b)(1) of our regulations, we extended Karmen's POI by one month in order to capture sales of merchandise that had been produced.

Product Comparisons

For Sivanandha, we first compared merchandise identical in all respects. If no identical merchandise was sold, we compared the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire ("Appendix V") (on file in room B–099 of the main building of the Department of Commerce ("Public File")). For the U.S. sales compared to sales of similar merchandise, we made an adjustment, pursuant to 19 CFR 353.57, for physical differences in merchandise.

Karmen, did not make home market or third country sales of the subject merchandise. Therefore, we based FMV on constructed value (CV), in accordance with section 773(a)(2) of the Act.

Additionally, Karmen reported that it has an arrangement with a Singaporean company, under which the Singaporean company supplies Karmen with rusty pipe fittings. Karmen reconditions and refurbishes these pipe fittings and exports them to the Singaporean company's U.S. customer. Karmen claims that since the Singaporean company only pays Karmen for the refurbishing, and Karmen does not take title to this merchandise, these sales should not be treated as Karmen sales. For purposes of the preliminary determination, we are not treating these refurbished pipe fittings as sales subject to this investigation. We will further examine this issue for purposes of the final determination.

Fair Value Comparisons

To determine whether Sivanandha's or Karmen's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Because Sivanandha's and Karmen's U.S. sales of subject merchandise were made to unrelated purchasers prior to importation into the United States, and the exporter's sales price methodology was not indicated by other circumstances, in accordance with section 772(b) of the Act, we based USP on the purchase price ("PP") sales methodology.

We calculated Sivanandha's PP sales based on packed, CIF prices to unrelated customers in the United States. We made deductions to the USP, where appropriate, for foreign inland freight, containerization, ocean freight, and marine insurance.

In accordance with Section 772(d)(1)(B) of the Act, we added to Sivanandha's USP the amount of import duties imposed on inputs which were subsequently rebated upon exportation of the finished merchandise to the United States.

We made an adjustment to U.S. price for excise and sales taxes paid on the comparison sales in India, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in *Federal-Mogul, et al.* v. *United States*, 834 F. Supp. 1993. See *Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan*, 59 FR 16177, 16179, April 6, 1994, for an explanation of this tax methodology.

We calculated Karmen's PP sales based on packed, CIF prices to unrelated customers in the United States. We made deductions to the USP, where appropriate, for foreign inland freight, containerization, ocean freight and marine insurance. In calculating U.S. credit expense, we used the borrowing rate in the United States on short-term dollar-denominated loans. For a further discussion of the Department's treatment of credit in this investigation, please see *Memorandum from Barbara R. Stafford to Susan G. Esserman* (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce.

Foreign Market Value

For Sivanandha, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As a result, we determined that Sivanandha's home market was viable.

We adjusted for a excise and sales tax collected in the Indian home market. (*See* the United States Price section of this notice, above.)

For Karmen, because it sells the subject merchandise only in the U.S. market, we used CV, pursuant to section 773(e) of the Act. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. imputed credit costs, U.S. packing costs and profit. In accordance with section 773(e)(1)(B) (i) and (ii) of the Act, we: (1) Included the greater of either Karmen's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM), as appropriate and; (2) used the statutory minimum of eight percent of the sum of COM and general expenses for profit. In reporting its CVs, Karmen allocated labor costs and variable manufacturing overhead in such a way as to assign equal amounts for new pipe fittings and refurbished pipe fittings. We believe that the allocation method Karmen used to report CVs results in understating the costs of producing new fittings, because based on our experience in past cases, we would expect that costs incurred in the early production stages would not be incurred in refurbishing fittings. Therefore, we have recalculated these costs by assigning all labor and variable manufacturing overhead costs to the production of new pipe fittings. We will seek additional information on the actual costs for purposes of the final determination.

Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance-of-sale (COS) adjustments for differences in movement charges between shipments to the United States and shipments to India. For Sivanandha, we also made COS adjustments for differences in quality inspection charges, credit and advertising expenses. In accordance with 19 CFR 353.56(b)(1), we added U.S. indirect selling expenses as an offset to the home market commission, but capped this addition by the amount of the home market commission. Finally, we deducted home market packing expenses and added U.S. packing expenses to Sivanandha's FMV, in accordance with section 773(a)(1) of the Act.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs

Service to suspend liquidation of all entries of certain carbon steel butt-weld pipe fittings from India, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturers/producers/exporters	Margin percent
Sivanandha	10.16
Karmen	37.04
All others	15.85

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "(no) product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly in this investigation, Sivanandha's FMV is based on home market sales and hence, the antidumping margin must be adjusted. In the *Preliminary Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from India*, (59 FR 28337, published June 1, 1994), Sivanandha's export subsidy was 3.53 percent ad valorem, which will be subtracted from the margins for cash deposit or bonding purposes. The rate listed above reflects this adjustment. Since Karmen only has U.S. sales, its FMV is based on CV which reflects export subsidies. Because the export subsidies were reflected in both USP and FMV, the subsidies did not affect the margin calculations using CV.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown above. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than November 16, 1994, and rebuttal briefs no later than November 23, 1994. A hearing, if requested, will be held on November 28, 1994, at 1 p.m. at the U.S. Department of Commerce in Room 1414. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after the date of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24537 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–813]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Penelope Naas, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2239 or 482–3534, respectively.

PRELIMINARY DETERMINATION: We have preliminarily determined that certain carbon steel butt-weld pipe fittings from France are being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 ("the Act"), as amended. The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994 (59 FR 14148, March 25, 1994), the following events have occurred:

On April 11, 1994, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination (*see*, ITC Investigation No. 731–TA–688, 59 FR 18825 (April 20, 1994)).

In accordance with 19 CFR 353.42(b), the Department of Commerce ("the Department") issued its antidumping duty questionnaire to Interfit, S.A. ("interfit") and its related U.S. company, Vallourec, Inc. ("Vallourec"), on April 29, 1994. Interfit is the only company named in the petition as a producer and exporter to the United States of the subject merchandise.

On June 14, 1994, petitioner alleged that Interfit was selling the subject merchandise in France at less than its cost of production ("COP"). We found reasonable grounds to believe or suspect that sales in the home market were being made at less than COP and thus initiated a COP investigation.

On June 30, 1994, petitioner requested a 50-day postponement of the preliminary determination. The request was granted by the Department on July 19, 1994 (59 FR 37961, July 26, 1994).

On August 4, 1994, petitioner alleged critical circumstances with regard to imports of certain carbon steel butt-weld pipe fittings from France.

On September 6, 1994, Interfit submitted constructed value ("CV") data for models reflecting a large percentage of sales made in the United States during the period of investigation ("POI"). On September 23, 1994, Interfit provided CV information for the remaining models sold in the United States.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.* threaded, grooved, or bolted fittings).

Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is September 1, 1993, through February 28, 1994.

Fair Value Comparisons

To determine whether Interfit's sales for export to the Untied States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Because Interfit's U.S. sales of certain carbon steel butt-weld pipe fittings were made to an unrelated distributor in the United States prior to importation, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated Interfit's PP sales based on packed, c.i.f., duty paid, landed prices to unrelated customers in the United States. We made deductions to the U.S. price, where appropriate, for foreign inland freight, foreign brokerage, marine insurance, ocean freight, U.S. brokerage, U.S. duties, and rebates.

No commissions were paid to unrelated distributors in the United States or home market, and we do not have an appropriate benchmark against which to test whether the commission arrangements between Interfit and its related party are at arm's length. Therefore, we did not make an adjustment for commissions claimed by Interfit that were paid to its U.S. subsidiary for various charges incurred in selling the subject merchandise. (*See Final Determination of Sales at Less than Fair Value: Coated Groundwood Paper from Belgium, Finland, France, Germany and the United Kingdom*, 56 FR 56359, November 4, 1992.)

Foreign Market Value

In order to determine whether Interfit had a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. On this basis, we determined that the home market was viable. For purposes of calculating FMV, we used reported CV for products sold by Interfit in the United States during the POI.

Cost of Production

Interfit provided incomplete and inappropriate cost data for home market sales. Specifically, Interfit did not provide COP information for all comparison models sold in France during the POI. Furthermore, Interfit provided transfer prices for the main input into its pipe fittings. As this input was purchased from related parties, it is the Department's practice to use the cost of producing the input, rather than the transfer price. See *Final Determination of Sales at Less than Fair Value: Ferrosilicon from Venezuela* (58 FR 27522; 1993). Finally, the costs reported by Interfit did not reflect the specific time period requested by the Department.

Accordingly, we do not have the information necessary to make a determination whether Interfit's home market sales are being sold below the COP. In accordance with section 776(c) of the Act as best information available ("BIA") we have determined that all sales in the home market were made at less than the COP and, in accordance with section 773(b) of the Act, we have based foreign market value on CV.

Constructed Value

We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. packing costs and profit. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act, we (1) included the greater of Interfit's reported general expenses or the statutory minimum of ten percent of the COM, as appropriate, and (2) used the statutory minimum of eight percent of the sum of COM and general expenses for profit.

For comparisons to CV, we made circumstance-of-sale adjustments for differences in credit expenses between the two markets, pursuant to 19 CFR 353.56(a)(2). In calculating U.S. credit expense, we used the rate respondent reported at which it could borrow in U.S. dollars during the POI. (For further discussions regarding the Department's treatment of credit in this investigation, please see September 26, 1994, Memorandum to Susan G. Esserman from Barbara R. Stafford on file in Room B–099 of the Department of Commerce.) We have not made a deduction for the direct selling expenses reported by respondent. We have determined that these expenses (product liability premiums and inventory carrying costs) are, in fact, indirect selling expenses.

Because of the deficiencies in the cost data described above, we are requesting further information from Interfit. We also intend to verify that the prices paid by Interfit to its related suppliers are, in fact, at arms-length.

The CV data originally provided by Interfit did not cover all of the models sold by the company in the United States during the POI. On September 23, 1994, Interfit supplied the CV data for the remaining models. Because this information was not received in time to be used in this preliminary determination, we have used BIA for sales involving these models. As BIA, we have imputed the highest non-aberrational margin calculated from the CV information that Interfit submitted on September 6, 1994. (*See Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 58 FR 37199; July 9, 1993). In our final determination, we intend to use all the CV data submitted by Interfit so long as it can be verified.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of the subject merchandise from France. Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of this investigation over a relatively short period.

Regarding A(i) above, in determining whether there has been a history of dumping, we normally consider whether there has been an antidumping order in the United States or elsewhere on such or similar merchandise. Regarding (A)(ii) above, we normally consider margins of 25 percent or more for purchase price sales sufficient to impute knowledge of dumping. (*See, Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy*, 52 FR 24198, June 29, 1987.)

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. If imports during the period immediately following the filing of the petition increase by at least fifteen percent over imports during a comparable period immediately preceding the filing of a petition, we normally consider them massive.

In order to determine whether imports have been massive over a relatively short period of time, we compared the reported shipments of butt-weld pipe fittings by Interfit to the United States in the seven months after the petition was filed to the seven months immediately before this period. Our analysis showed that the volume of imports of subject merchandise to the United States by Interfit had actually decreased over that period of time. (*See*, 19 CFR 353.16(f)(2).) Based on this analysis, we determine that imports of butt-weld pipe fittings from Interfit were not massive over a relatively short period of time. Accordingly, as one of the criteria enumerated in Section 733(A)(3) of the Act is not met, we preliminarily determine that critical circumstances does not exist for imports of butt-weld pipe fittings from France.

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain carbon steel butt-weld pipe fittings from France, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margin, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
Interfit	12.04
All others	12.04

ITC Notification

In accordance with section 733(f) of this Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than November 16, 1994, and rebuttal briefs no later than November 23, 1994. A hearing, if requested, will be held on November 28, 1994, at the Department of Commerce in Room 1414. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.3(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24535 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–508–807]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Jennifer Yeske, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–2239 or 482–0189, respectively.

PRELIMINARY DETERMINATION: We have preliminarily determined that certain carbon steel butt-weld pipe fittings from Israel are being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994 (59 FR 14148, March 25, 1994), the following events have occurred:

On April 14, 1994, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination (*See* ITC Investigation No. 731–TA–690, 59 FR 18825 (April 20, 1994)).

In accordance with 19 CFR 353.42(b) (1994), the Department issued its antidumping duty questionnaire to Pipe Fittings Carmiel, Ltd. ("Carmiel") on April 29, 1994, as it accounted for over 60 percent of the merchandise sold in the United States during the POI. Carmiel was the only exporter from Israel of the subject merchandise to the United States during the POI.

On June 30, 1994, the petitioner requested a 50-day postponement of the preliminary determination. The request was granted by the Department of Commerce on July 19, 1994 (59 FR 37961, July 26, 1994).

On August 4, 1994, petitioner alleged critical circumstances with regard to imports of certain carbon steel butt-weld pipe fittings from Israel.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either

finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that while a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Product Comparisons

Carmiel sold identical products in both Israel and the United States during the POI. Therefore, in making our fair value comparisons, we compared sales of merchandise identical in all respects.

Fair Value Comparisons

To determine whether Carmiel's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with 19 CFR 353.58, we made comparisons at the same level of trade.

United States Price

Because Carmiel's U.S. sales of certain carbon steel butt-weld pipe fittings were made to unrelated purchasers in the United States prior to importation, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated Carmiel's PP sales based on packed C.I.f. prices to unrelated customers in the United States. We made deductions to the U.S. price, where appropriate, for marine insurance, ocean freight, foreign inland freight, port fees, and customs agents fees and expenses.

We made an adjustment to U.S. price for the value-added tax ("VAT") assessed on comparison sales in Israel, in accordance with our practice, pursuant to the court of International Trade ("CIT") decision in *Federal-Mogul, et al v. United States*, 834 F.Supp. 1391 (CIT 1993). (*See Final determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136, March 25, 1994).

Foreign Market Value

Carmiel made sales only to the United States and Israel during the POI. Based on the substantial quantity of home market sales in relation to its U.S. sales, we determined that the home market was viable.

We have preliminarily determined that respondent's method for determining date of sale is not consistent with the Department's practice. According to the response, Carmiel makes most of its home market sales over the telephone and does not document these orders. Moreover, the company did not know the specific date of each sale, but claimed to know the month in which the sale was made. Therefore, Carmiel reported its home market sales as having occurred the first day of the month in which the sale was made.

Our practice with respect to the date of sale is to use the date of the first *written* document which sets the price and quantity for the sale (*see Certain Stainless Steel Butt-Weld Pipe and Tube fittings From Japan; Final Results of Antidumping Duty Administrative Review* (59 FR 12240, 12241; March 16, 1994) and *Antifriction Bearings (Other Than Tapered Rolling Bearings) and Parts Thereof From France, et al.*, (58 FR 39729,39783; July 26, 1993)). In Carmiel's case, the first written document with this information is the invoice. Thus, according to Commerce practice, Carmiel should have reported home market sales that were invoiced during the POI.

For purposes of our preliminary determination, however, we have used the sales reported by respondent. we will be requesting a better explanation of whether the date of sale used by respondent can be documented, or, in the absence of documentation, a new sales listing before verification.

We have calculated FMV using the delivered prices reported by Carmiel for its home market sales. We adjusted the prices for discounts offered to home market customers. Also, in light of the decision of the Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13 F.3d 398 (Fed. Cir., 1994), we deducted post-sale home market movement charges from the FMV under the circumstances-of-sale provision of 19 U.S.C 1677b(a)(4)(B). This adjustment included home market inland freight.

We also made circumstance-of-sale-adjustments for differences in credit expenses between the two markets, pursuant to 19 CFR 353.56(a)(2). In calculating U.S. credit expense, we used the borrowing rate in Israel on short-term New Israeli Shekel ("NIS") loans linked to the dollar. In calculating the home market credit expense, we used the borrowing rate on unliked short-term NIS loans. For a further discussion of the Department's treatment of credit in this investigation, please see *Memorandum from Barbara R. Stafford to Susan G. Esserman* (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce.

We adjusted for VAT in accordance with our practice. (*See* the "United States Price" Section of this notice, above.)

Currency Conversion

we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales, as published in the International Monetary Fund's International Financial Statistics.

Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of the subject merchandise from Israel. Section 733(e)(1) of the Act Provides that the Department will determine that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this Investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of this investigation over a relatively short period.

Regarding A(i) above, in determining whether there has been a history of dumping, we normally look to see whether there has been an antidumping order in the United States or elsewhere on such or similar merchandise. Regarding (A)(ii) above, we normally consider margins of 25 percent or more

for purchase price sales sufficient to impute knowledge of dumping. (*See Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy*, 52 FR 24198, June 29, 1987.)

Since the calculated preliminary margin for butt-weld pipe fittings from Israel is below 25 percent and there have been no antidumping orders in the United States or elsewhere pertaining to butt-weld pipe fittings from Israel, the requirements of section 733(e) have not been met. Therefore, we have determined that critical circumstances do not exist with respect to imports of butt-weld pipe fittings from Israel.

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain carbon steel butt-weld pipe fittings from Israel, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
Carmiel	7.33
All others	7.33

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) or the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the *Preliminary Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from Israel*, FR 59 28340, June 1, 1994) which was 0.25 percent ad valorem, will be subtracted from the respective margins for cash deposit or bonding purposes. This results in a deposit rate of 7.08 percent for Carmiel and all other exporters of carbon steel butt-weld pipe fittings from Israel.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than November 16, 1994, and rebuttal briefs no later than November 23, 1994. A hearing, if requested, will be held on November 28, 1994, at the U.S. Department of Commerce in Room 1414. Parties should confirm by telephone the time, date, and place of the hearing two days prior to the scheduled date. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24536 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–05–M

[A–549–809]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC. 20230; telephone (202) 482–2815 or 482–0167, respectively.

Preliminary Determination: We have preliminary determined that certain carbon steel butt-Weld pipe fittings from Thailand are being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994 (59 FR 14148, March 25, 1994), the following events have occurred:

On April 11, 1994, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination (*see*, ITC Investigation No. 731–TA–689, 59 FR 18825 (April 20, 1994)).

The Department issued its antidumping duty questionnaire to Asahi Sangyo (Thailand) Co., Ltd. (AST), on April 29, 1994. AST was the only Thai producer and exporter to be excluded from the antidumping duty order on butt-weld pipe fittings from Thailand published on July 6, 1992 (57 FR 29702). All other producers and exporters of the subject merchandise to the United States are subject to the antidumping duty order currently in effect. AST was excluded from the original order because we found its margin of sales at less than fair value at that time to be *de minimis*.

On June 18, 1994, petitioner alleged that AST was selling the subject merchandise in Thailand at less than its cost of production.

On August 12, 1994, we found, in accordance with section 773(b), that reasonable grounds exist to believe or suspect that sales in the home market were being made at less than the cost of production based on information contained in the record, including

petitioner's allegation. On August 15, 1994, we issued a cost of production and constructed value questionnaire to AST. We received a response from AST on September 9, 1994.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Such or Similar Comparisons

In making our fair value comparisons, in accordance with the Department's standard methodology, we first compared sales of merchandise identical in all respects. If no identical merchandise was sold, we compared sales of the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire ("Appendix V") (on file in room B–099 of the main building of the Department of Commerce ("Public File")).

Regarding level of trade, AST reported that it sells to an importer/distributor in the United States and directly to distributors, end users, and a commissionaire agent in Thailand. AST negotiates prices on a sale-by-sale basis and states that it is unable to discern any correlation between selling prices and customer categories. Further, AST states that its selling expenses do not vary by customer category. Therefore, in keeping with past practice (*see, e.g., Final Results of Administrative Review: Antifriction Bearings and Parts Thereof from the Federal Republic of Germany, et al.* (56 FR 31692, 31709–11; July 11, 1991) and Import Administration Policy Bulletin 92/1, Matching at Levels of Trade, issued on July 29, 1992)), and in accordance with 19 CFR 353.58, we have compared AST's U.S. sales to its home market sales to all customers.

Fair Value Comparisons

To determine whether AST's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Because AST's U.S. sales of certain carbon steel butt-weld pipe fittings were made to an unrelated distributor in the United States prior to importation, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated PP based on packed, c.i.f. port of import prices to an unrelated customer in the United States. We made deductions to the U.S. price for foreign brokerage, foreign inland freight, ocean freight and marine insurance.

We made an adjustment to U.S. price for the consumption tax paid on the comparison sales in Thailand, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in *Federal-Mogul, et al v. United States,* 834 F. Supp. 1291. See *Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan,* 59 FR 16177, 16179, April 6, 1994, for an explanation of this tax methodology.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. On this basis, we determined that the home market was viable. For purposes of calculating FMV, we used AST's sales to its home market customers and CV, as described below.

Cost of Production

In order to determine whether home market prices were below the COP within the meaning of section 773(b) of the Act, we calculated COP based on the sum of AST's cost of materials, fabrication, general expenses and home market packing costs. We compared individual home market prices net of inland freight and commission with model-specific COPs.

We performed a product-specific COP test, in which we examined whether each home market sale was priced below that product's COP. The Department defines COP as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packing. For each product, we compared this sum to the home market unit price, net of movement expenses and commission. In accordance with section 733(b) of the Act, we also examined whether the home market sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each product where less than ten percent, by quantity, of the home market sales during the POI were made at prices below the COP, we included all sales of that model for the computation of FMV. For each product where ten percent of more, but less than 90 percent, of the home market sales during the POI were prices below the COP, we excluded from the calculation of FMV those home market sales which were prices below the COP, provided that the below-cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, we disregarded all sales of that product and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in fewer than three months during the POI, we did not exclude sales unless there were below cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost

sales in at least three months during the POI.

If sales below cost occurred in three or more months of the POI, they are considered to be made over an extended period of time. When items are sold in just two or three months of the POI, we would consider below cost sales of these items to be over an extended period of time, if they occurred in at least two months of the three months. When items are sold in just one month of the POI, we would consider any below cost sales of these items to be over an extended period of time.

AST provided no indication that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. (*See*, Section 773(b)(2); 19 U.S.C. 1677b(b)(2)).

Constructed Value

We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. packing costs and profit. In accordance with section 773(e)(1)(B) (i) and (ii) of the Act we: 1) included the greater of AST's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM), as appropriate and; 2) for profit, we used the statutory minimum of eight percent of the sum of COM and general expenses.

Price-to-Price Comparisons

For price-to-price comparisons, we calculated FMV based on ex-factory or delivered prices, inclusive of packing to home market customers. From these prices, we deducted commission, where appropriate. We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. We also made adjustments, where appropriate, for differences in the physical characteristics of the merchandise in accordance with section 773(a)(1) of the Act.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F. 3d 398 (Fed. Cir., January 5, 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a) and the exporter's sales price offset provision of 19 CFR 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale home market movement charges from the FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). This adjustment included home market inland freight.

For both price-to-price comparisons and comparisons to CV, we also made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a)(2). For U.S. sales with unreported payment dates, we based AST's credit expense on the average number of days outstanding between shipment and payment for AST's U.S. sales with reported payment dates. For a discussion of the Department's treatment of credit in this investigation, please see *Memorandum from Barbara R. Stafford to Susan G. Esserman* (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce. In accordance with 19 CFR 353.56(b)(1), we added U.S. indirect selling expenses as an offset to the home market commission, but capped this addition by the amount of the home market commission.

We adjusted for a consumption tax collected in the Thai home market. (*See*, the United States Price section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of butt-weld pipe fittings from Thailand, as defined in the "Scope of Investigation" section of this notice, that are produced and sold by AST and that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percent
Asahi Sangyo (Thailand) Co., Ltd.	10.37

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[no] product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the most recent administrative review of the countervailing duty order, *Carbon Steel Butt-Weld Pipe Fittings From Thailand; Final Results of Countervailing Duty Administrative Review*, (57 FR 5248, February 13, 1992), which was 0.74 percent, will be subtracted from the margin for cash deposit or bonding purposes. This results in a deposit rate of 9.63 percent for AST. We did not determine an "all others" rate in this investigation, because all other producers and exporters of butt-weld pipe fittings from Thailand are already subject to an antidumpting duty order on this merchandise, which was published in the **Federal Register** on July 6, 1992 (57 FR 29702).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than November 16, 1994, and rebuttal briefs no later than November 23, 1994. A hearing, if requested, will be held on November 28, 1994, at the U.S. Department of Commerce in Room 1414. Parties should confirm by telephone the

time, date, and place of the hearing 48 hours prior to the scheduled day. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24539 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–412–816]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-weld Pipe Fittings From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–2815 or 482–0167, respectively.

Preliminary Determination: We have preliminarily determined that certain carbon steel butt-weld pipe fittings from the United Kingdom ("U.K.") are being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994 (59 FR 14148, March 25, 1994), the following events have occurred:

On April 11, 1994, the United State International Trade Commission ("ITC") issued an affirmative preliminary injury determination (*see* ITC Investigation No. 731–TA–694).

In accordance with 19 CFR 353.42(b), the Department of Commerce ("the Department") issued its antidumping duty questionnaire to B.K.L. Fittings Limited ("BKL"), on April 29, 1994. BKL is the only U.K. producer and exporter named in the petition.

Petitioner requested a 50-day postponement of the preliminary determination on June 30, 1994. The request was granted by the Department of Commerce on July 19, 1994 (59 FR 37961, July 26, 1994).

On June 16, 1994, petitioner alleged that BKL was selling the subject merchandise in the U.K. at less than its cost of production. After analyzing petitioner's allegation we found reasonable grounds to believe or suspect that sales in the home market were being made at less than the cost of production. On August 15, 1994, we issued a cost of production/constructed value questionnaire to BKL.

On August 4, 1994, petitioner alleged critical circumstances with regard to imports of certain carbon steel butt-weld pipe fittings from the U.K.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps,," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Product Comparisons

In making our fair value comparisons, in accordance with the Department's standard methodology, we first compared sales of merchandise identical in all respects. If no identical merchandise was sold, we compared sales of the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire ("Appendix V") (on file in Room B–099 of the main building of the Department of Commerce ("Public File")).

We were unable to compare United States sales to home market sales at the same level of trade in accordance with 19 CFR 353.58 (1994), because the computer tape submitted by respondent did not identify the level of trade for each sale. For purposes of our preliminary determination we compared sales without regard to level of trade. However, we will request that respondent submit the necessary data on level of trade to the Department within the regulatory deadlines (*see* 19 CFR 353.31) and we will take it into consideration in accordance with 19 CFR 353.58 in our final determination.

Fair Value Comparisons

To determine whether BKL's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. BKL's sales for export to the Untied States and in its home market involved both identical and similar merchandise. For those U.S. sales compared to a sale of similar merchandise in the home market, we made an adjustment, pursuant to 19 CFR 353.57, for physical differences in merchandise. For certain products, respondent did not provide the information necessary to make a comparison with the most similar merchandise based on the model-matching criteria contained in Appendix V. As those sales accounted for a very small percentage of total sales of subject merchandise, they have been disregarded in calculating our preliminary margin.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, where the subject merchandise was sold to an unrelated purchaser in the United States before importation and where the use of exporter's sales price ("ESP") methodology was not otherwise indicated.

We calculated purchase price based on packed, c.i.f. import prices to an unrelated customer in the United States. We made deductions to the U.S. price, where appropriate, for foreign brokerage, foreign inland freight, ocean freight and marine insurance, U.S. duty and brokerage.

Where sales to the first unrelated purchaser took place after importation

of the subject merchandise into the United States, we based USP on ESP, in accordance with section 772(c) of the Act. Almost all of the ESP sales of subject merchandise were reported as further manufactured in the United States.

For ESP sales we made deductions, where appropriate, for discounts, foreign brokerage, foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling. In addition, for ESP sales only, we deducted credit expense, indirect selling expense, inventory carrying costs, and commissions to an unrelated agent. For certain ESP sales where respondent did not provide paydates, we used the average number of credit days in calculating credit expense.

We made an adjustment to U.S. price for value-added tax ("VAT") assessed on comparison sales in the U.K. in accordance with our practice, pursuant to the Court of International Trade ("CIT") decision in *Federal-Mogul, et al.* v. *United States*, 834 F. Supp. 1391. See *Preliminary Antidumping Duty Determination: Color Negative Photographic Paper and Chemical Components from Japan* (59 FR 16177, 16179, April 6, 1994), for an explanation of this methodology.

For pipe fittings that were further manufactured in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the cost of fabrication and general expenses associated with the further manufacturing operations, as well as a proportional amount of profit or loss attributable to the further manufacture. We calculated profit or loss by deducting from the sales price of the further manufactured merchandise the related production costs and selling expense incurred by the company in both the U.K. and the United States. We then allocated total profit or loss proportionately to all components of cost. We included only the profit or loss allocated to the further manufacturing portion of total cost in our calculation of value added. Additionally, we adjusted general and administrative (G&A) expenses from an allocation based on weight to an allocation based on cost of sales.

Where respondent did not provide further manufacturing costs for certain products, we disregarded sales of those products in our preliminary margin calculation.

Foreign Market Value

In order to determine whether BKL had a sufficient volume of sales in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. On this basis, we determined that the home market was viable.

We calculated FMV based on both f.o.b. plant and delivered prices inclusive of packing, to customers in the U.K. In light of the decision of the Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F. 3d 398 (Fed. Cir., January 5, 1994), we deducted post-sale home market movement charges from the FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). This adjustment included home market inland freight.

We deducted rebates, where appropriate, on home market sales. We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. In addition, we made circumstance-of-sale adjustments for differences in credit charges between the two markets, pursuant to CFR 353.56(a)(2). In calculating home market credit expense, we used the weighted-average interest rate paid by respondent on short-term borrowings denominated in British pounds. In calculating U.S. credit expense, we used the weighted-average interest rate paid by respondent on short-term dollar borrowings. For a further discussion of the Department's treatment of credit in this investigation, please see *Memorandum from Barbara R. Stafford to Susan G. Esserman* (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce.

In accordance with 19 CFR 353.56(b)(1), we deducted home market indirect selling expenses as an offset to the U.S. commissions, but capped this deduction by the amount of the ESP commissions and indirect selling expenses. We adjusted for VAT in accordance with our practice (*see* "United States Price" section of this notice.)

Cost of Production

Petitioner alleged that BKL made home market sales during the POI at prices below its cost of production ("COP"). Based on petitioner's allegations and after examining the evidence on the record, we concluded that we had reasonable grounds to "believe or suspect" that sales were made below COP. Thus, we initiated a COP investigation pursuant to section 773(b) of the Act.

We performed a product-specific COP test, in which we examined whether each home market sale was priced below that product's COP. The Department defines COP as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packing expense, in accordance with 19 CFR 353.51(c). (*See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea* (59 FR 35098, 35099, July 8, 1994).) We compared the COP for each product to the home market unit price, net of rebates, movement expenses, and indirect expenses. We relied on submitted COP information except for the calculation of financing expense. The submitted calculation was based on the combination of the financial statements of BKL and its parent company without taking into account elimination of intercompany transactions. Therefore, we recalculated financing expense using the parent company financial statements only.

In accordance with section 773(b) of the Act, we also examined whether the home market sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of 773(b)(1) that below cost sales be disregarded only if made in substantial quantities, the following methodology was used. For each product where less than ten percent, by quantity, of the home market sales during the POI were made at prices below the COP, we included all sales of that model for the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales during the POI were priced below the COP, we excluded from the calculation of FMV those home market sales which were priced below the COP, provided that the below-cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, we disregarded all sales of that product and calculated FMV based on CV.

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a

product was sold in fewer than three months during the POI, we did not exclude sales unless there were below cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three months during the POI. (*See Preliminary Results and Partial Termination of Antidumping Duty Administrative Reviews: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan* (58 FR 69336, 69338, December 30, 1993).)

Constructed Value

For those products without an adequate number of sales at prices equal to or greater than the COP, we based FMV on constructed value ("CV"), pursuant to section 773(b)(2) of the Act. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. packing costs and profit, in accordance with section 773(e)(1)(B)(i) and (ii) of the Act. We relied on submitted CV information except for the calculation of financing expense, which we recalculated as described in the "Cost of Production" section of this notice. We included in our calculation of CV: (1) the greater of BKL's general expenses or the statutory minimum of ten percent of the cost of manufacture ("COM"), as appropriate, and; (2) for profit, the greater of BKL's profit or the statutory minimum of eight percent of the sum of COM and general expenses.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of the subject merchandise from the U.K. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding (A)(ii) above, we normally consider margins of 15 percent or more for exporter's sales price sales, and margins of 25 percent or more for purchase price sales sufficient to input knowledge of dumping. If the U.S. price is based on both PP and ESP, we normally weight-average the 25 percent and 15 percent benchmarks by the volume of PP and ESP sales to arrive at a weighted-average benchmark percentage for imputing the knowledge of dumping (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina* (58 FR 37078, July 9, 1993)).

The calculated preliminary margin in this investigation indicates that importers of pipe fittings should have known that the merchandise was being sold at less than fair value.

Pursuant to 19 CFR 353.16 (f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

If imports during the period immediately following the filing of the petition increase by at least 15 percent over imports during a comparable period immediately proceeding the filing of a petition, we normally consider them massive pursuant to section 353.16(f)(2) of the Department's regulations.

In order to determine whether imports have been massive over a relatively short period of time, we compared BKL's reported shipments of butt-weld pipe fittings to the United States in the seven months after the petition was filed to the seven months immediately before this period. Our analysis showed that the volume of imports of subject merchandise to the United States by BKL had increased by more than 15 percent. (*See* 19 CFR 353.16(f)(2).) Based on this analysis, we determine that imports of butt-weld pipe fittings from the U.K. were massive over a relatively short period of time. Accordingly, as the criteria enumerated in section 733(e)(1) of the Act are met, we preliminarily determine that critical circumstances exist for imports of butt-weld pipe fittings from the U.K.

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of butt-weld pipe fittings from the U.K., as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after the date 90 days prior to publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins shown below. This suspension of liquidation will remain in effect until further notice. The estimated preliminary weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentages
BKL	73.38
All others	75.38

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in a least six copies must be submitted to the Assistant Secretary no later than November 16, 1994, and rebuttal briefs no later than November 23, 1994. A hearing, if requested, will be held on November 28, 1994, at the U.S. Department of Commerce in room 1414. Parties should confirm by telephone the time, date, and place of the hearing two days prior to the scheduled date. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after the date of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24540 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–824]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty or Peter Wilkniss, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5055 and (202) 482–0588, respectively.

Preliminary Determination: We preliminarily determine that imports of certain carbon steel butt-weld pipe fittings ("pipe fittings") from South Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994, (59 FR 14148, March 25, 1994), the following events have occurred.

On April 14, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination (*see*, ITC Investigation No. 731–TA–692).

In accordance with 19 CFR 353.42(b)(1994), on April 29, 1994, the Department of Commerce (the Department) issued its antidumping duty questionnaire to Taekwang Bend Ind. Co., Inc. (Taekwang), the South Korean company which accounts for more than 60 percent of all exports of the subject merchandise to the U.S. during the POI. The Department has received no response to this questionnaire.

On June 30, 1994, petitioner requested a 50-day postponement of the preliminary determination. The request was granted by the Department on July 19, 1994 (59 FR 37961, July 26, 1994).

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems were conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is September 1, 1993, through February 28, 1994.

Best Information Available

Taekwang did not respond to our questionnaire. Therefore, we have based our preliminary determination on best information available (BIA) pursuant to section 776(c) of the Act, which provides that the Department shall use BIA when a company identified by the Department as a respondent refuses to provide requested information.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to this methodology, as outlined in the *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings, Other than Tapered Roller Bearings, from Germany*, 54 FR 18992w, 19033 (May 3, 1989), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the highest margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation. (*See Allied Signal Aerospace Co. v. United States*, 996 F. 2d 1185, 1191–92 (Fed. Cir. 1993).) Because there were no cooperative respondents in this investigation, we are assigning to all exporters, as BIA, the highest margin calculated in the petition, as adjusted for methodological errors as explained in the Department's initiation notice, 207.89 percent.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pipe fittings from South Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Margin percentage
All companies	207.89

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Tentatively, the hearing will be held on November 28, 1994, at 1:00 p.m. at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38, case briefs or other written comments of at least five copies must be submitted to the Assistant Secretary for Import Administration no later than November 16, 1994, and rebuttal briefs, no later than November 23, 1994. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination within 75 days of the signing of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24541 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration, Commerce.

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 89–5A016.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Geothermal Energy Association ("GEA") on February 5, 1990. Notice of issuance of the Certificate was published in the **Federal Register** on February 9, 1990 (55 FR 4647).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR ch. III, part 325 (1994).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 89–00016 was issued to the Geothermal Energy Association ("GEA") on February 5, 1990 (55 FR 4647, February 9, 1990), and previously amended on November 7, 1990 (55 FR 47784, November 15, 1990); April 17, 1991 (56 FR 16328, April 22, 1991); September 11, 1991 (56 FR 47068, September 17, 1991); and on October 25, 1993 (58 FR 58325, November 1, 1993).

GEA's Export Trade Certificate of Review has been amended to—

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): M–I Drilling Fluids L.L.C., Houston, Texas (controlling entity: Smith International Acquisition Corp., Houston, Texas); Smith International Acquisition Corp., Houston, Texas, (controlling entity: Smith International, Inc., Houston, Texas); and Smith International, Inc., Houston, Texas.

2. Delete each of the following companies as a "Member" of the Certificate: Energylog Corp.; Grace Drilling Company, Inc.; Mesquite Group, Inc.; M–I Drilling Fluids Company and its controlling entity, Dresser Industries, Inc.; Technology Export Company and its controlling entity, Masco Industries, Inc.; USGIC Dominica, L.P.; and Williams Tool Company, Inc.; and

3. Change the listing of the company name for each current "Member" cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Baker Hughes INTEQ, Inc., a wholly owned subsidiary of Baker Hughes Incorporated (Baker Hughes Oilfield Operations, Inc.); Maxwell Laboratories, S-CUBED Division, and its controlling entity, Maxwell Laboratories, Inc. (S-Cubed, a Division of Maxwell Labs, and its controlling entity, Maxwell Laboratories, Inc.); Nabors Loffland Drilling Company (Nabors Drilling USA, Inc.); and Foster Valve Corporation and its controlling entity, Masco Industries, Inc. (Foster Valve Corporation and its controlling entity, Mascotech, Inc.).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Effective Date: June 28, 1994.

Dated: September 29, 1994.

W. Dawn Busby

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–24533 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DR–P

National Institute of Standards and Technology

[Docket No. 940967–4267]

National Voluntary Conformity Assessment System Evaluation (NVCASE) Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice, Request for public comments.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology (NIST) has received a request from the National Marine Manufacturers Association (NMMA) to have its recreational craft certification program recognized under the NIST National Voluntary Conformity Assessment System Evaluation (NVCASE) Program.

DATES: Comments on this request must be received by November 3, 1994.

ADDRESSES: Comments should be submitted in writing to Mr. Robert L. Gladhill, Program Manager, NVCASE, National Institute of Standards and Technology, Administration Building, room A–629, Gaithersburg, MD 20899 or by telefax at 301–963–2871.

FOR FURTHER INFORMATION CONTACT: Either Mr. John L. Donaldson, Chief, Standards Code and Information, or Robert L. Gladhill, NVCASE Program Manager, in writing at NIST, Admin A629, Gaithersburg, MD 20899, by telephone at 301–975–4029 or by telefax at 301–963–2871.

SUPPLEMENTARY INFORMATION: The U.S. boating industry manufactures more than 50% of all recreational boats sold throughout the world, a considerable portion of which are sold in the European market. In order to continue to sell in the European Union (EU) market, the U.S. recreational boat manufacturing industry will soon be required to satisfy new regulatory requirements established under EU Directive 94/25/EEC relating to recreation craft. Manufactures will also be required to attest to the conformity of their products with the requirements. The NMMA operates a program to certify that recreational boats, boating accessories and components meet specified requirements. If its certification operations are accredited

by NIST under the NVCASE program, NMMA will be able to provide the required certifications and thereby facilities exports of U.S. products to the EU market.

the NVCASE procedures at 15 CFR Part 286 require NIST to seek public consultation when it receives requests for evaluation. This notice therefore is a solicitation for comments on the NMMA request. Contingent upon the comments received, NIST will schedule a public workshop to define general and specific criteria for conducting the requested evaluation.

The letter from the NMMA follows:

July 14, 1994.

Mr. Robert L. Gladhill,

Manager, NVCASE Program, Admin A629, NIST Gaithersburg, MD 20899

Dear Bob: We hereby submit to you our formal request to have the NMMA certification program recognized by your NVCASE program. As you know we have been one of your earliest supporters and as early as 1991 the U.S. Coast Guard supported our efforts in a letter to NIST.

This has become especially urgent now because a Directive related to recreational craft has been adopted by the EC in Europe with an implementation date of June 1996. This Directive refers to both the completed boat and components, which the boat manufacturer usually orders a year before his next model year. Thus a boat manufacturer would place his orders for engines and other components at the trade shows in October of 1994. He would then commence building the boats during 1995 for the 1996 models which must comply with the Directive.

The NMMA certification is for recreational craft, the Directive is specifically for craft from 2.5 to 24 meters length. The US Coast Guard has the responsibility for the safety aspect of these products. This certification would be limited to product certification, in the Directive referred to as modules Aa and B+C, and thus would entail conformity assessment. At this time we do not plan on getting involved in the quality assessment. NMMA is a member of the Recreational Marine Agreement Group recently recognized by the EOTC, whose members follow the same procedures for product certification.

There are some 30 ISO standards related to small craft that will be used for this certification. These ISO standards are in various stages of becoming adopted by CEN in Europe.

Recreational craft has been established as a top priority item for the Mutual Recognition Agreement discussion between US and EC. These discussions have been conducted with the anticipation of NMMA being accredited by NVCASE. Further, the USCG communication of 1991 suggested that NMMA become accredited by your program. Of additional importance is the short time schedule for accreditation so components can be certificated by the end of this year.

If we were to go via any other organization, it is highly unlikely NMMA would get the needed accreditation in time. The US presently has a positive balance of trade in this industry, but if we do not have our products in place, when this Directive goes into effect, we will have a severe setback, which may affect the US boat manufacturer's profitability and possibly employment.

The NMMA certificates 75–80% of all boats sold in the US. Many of the manufacturers of these boats rely on export to be profitable. The participating manufacturers would probably be over 200 initially.

We request that you proceed with the accreditation level for NMMA as a product certification body as soon as possible. Please let us know if there is any help we can provide.

Sincerely,

G. Medford Smith,

Technical Director.

Interested persons should submit comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Commerce Department Records and Inspection facility, room 6020, Hoover Building, Washington, DC 20230.

Dated: September 28, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–24465 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 092794D]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of its Law Enforcement Advisory Panel on October 19, 1994, from 1:00 p.m. until 5:00 p.m.

The purpose of the meeting is to review and discuss Alabama's request for special management zones, state-Federal cooperative enforcement issues, recommendations to address reef fish enforcement issues, and briefings on the structure of NOAA General Counsel's enforcement office and status of sea turtle litigation.

ADDRESSES: The meeting will be held at the Clarion Hotel, 1500 Canal Street, New Orleans, LA.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by October 12, 1994.

Dated: September 28, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–24496 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Transshipment Charges for Certain Cotton Textile Products Produced or Manufactured in Pakistan

September 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging illegal transshipments to a 1994 limit.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based on investigations conducted by the Government of the United States, CITA has determined that cotton sheets in Category 361 were transshipped in circumvention of the U.S.-Pakistan Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended.

The United States Government requested consultations in writing with the Government of Pakistan on April 19. The U.S. Government and the Government of Pakistan met on June 16, 17 and 20 and August 1, 2, 10 and 11 in Washington to discuss the charges. The U.S. Government provided the Government of Pakistan with clear evidence of transshipment during these meeting. The U.S. Government informed the Government of Pakistan of the charges to be made to the 1994 quota for

Category 361. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge 63,912 numbers to the 1994 quota level for Category 361.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in Pakistan and exported to the United States. The charges resulting from these investigations will be published in the Federal Register.

The U.S. Government is taking this action pursuant a Memorandum of Understanding dated January 21, 1994 between the Governments of the United States and Pakistan and the current bilateral U.S.-Pakistan bilateral textile agreement, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986, July 31, 1991, December 9, 1992 and December 9, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 5756, published on February 8, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 28, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, and the Memorandum of Understanding dated January 21, 1994 between the Governments of the United States and Pakistan, I request that, effective on October 4, 1994, you charge 63,912 numbers to the limit established in the directive dated February 1, 1994 for Category 361 for the period beginning on January 1, 1994 and extending through December 31, 1994.

This letter will be published in the Federal Register.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–24409 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Roles and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: The Commission on Roles and Missions of the Armed Forces will meet in closed session on October 11 and 12, 1994.

The Commission is charged with providing an independent review of the roles and missions of the armed services to Congress, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. The year-long review will identify changes that can be made to improve military effectiveness and eliminate unnecessary duplication among the services. At this meeting, the Commission will review the national security strategy and discuss long-range national security planning. Material to be presented and discussed will consist of both classified and unclassified information in a format that makes it impractical to separate the two.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II), it has been determined that this Commission on Roles and Missions meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, this meeting will be closed to the public.

Extraordinary circumstances created by coordination difficulties compel notice of this meeting to be posted in less than the 15-day requirement.

Dated: September 29, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 94–2447 Filed 10–3–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: DoD FAR Supplement, Subparts 209.1, "Responsible Prospective Contractors," and 252.2, "Texts of Provisions and Clauses."

Type of request: Emergency Processing—Approval Date Requested: September 30, 1994

Number of Respondents: 496

Responses Per Respondent: 1

Annual Responses: 496

Average Burden Per Response: 1 hour

Annual Burden Hours: 496

Needs and Uses: Section 843 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103–160) requires offerors and contractors under DoD solicitations and contracts exceeding $5,000,000 to report commercial transactions conducted with the government of a terrorist country. The guidance at DFARS 209.104–1(g)(iii), the solicitation provisions at DFARS 252.209–7003, and the contract clause at DFARS 252.209–7004 implement these requirements. The collected information will be used in annual reports to Congress, additionally required by Section 843(c) of the Act.

Affected Public: Businesses or other for-profit; Small businesses or organizations

Frequency: On occasion and annually

Respondent's Obligation: Mandatory

OMB Desk Officer: Mr. Peter N. Weiss

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–24470 Filed 10–3–94; 8:45 am]

BILLING CODE 5000–04–M

Department of The Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Test Center Advisory Group will meet from 8:00 a.m. to 5:00 p.m. on 24–28 October 1994 at Eglin Air Force Base, FL and Edwards Air Force Base, CA.

The purposes of these meetings are to receive briefings and to have discussions concerning the Air Force

Test Centers. These meetings will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94-24477 Filed 10-3-94; 8:45 am]

BILLING CODE 3910-01-P

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Aircraft Self Defense Against IR Missiles Panel will meet from 8:00 a.m. to 5:00 p.m. on 18-20 October 1994 at the ANSER Corporation, Arlington, VA.

The purposes of these meetings are to receive briefings and to have discussions concerning IR missiles. These meetings will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94-24478 Filed 10-3-94; 8:45 am]

BILLING CODE 3910-01-P

Department of the Army

ARMS Initiative Implementation

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF), DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF). The PPTF is chartered to develop new and innovative methods to maintain the government-owned, contractor-operated ammunition industrial base and retain critical skills for a national industrial emergency. Focus of this meeting will be on progress report on policy and procedures of property and equipment management. This session is open to the public. An Office of the Secretary of Defense (OSD) Army Ammunition Plant (AAP) Conference sponsored by the Office of Economic Adjustment has been coordinated to directly follow this PPTF Meeting. This conference is scheduled for 1-2 December 1994 at the same location given below.

DATES OF MEETING: November 29-30, 1994.

PLACE OF MEETING: Frontenac Hilton, 1335 S. Lindbergh, St. Louis, MO 63131.

TIME OF MEETING: 8:00 AM-5:00 PM.

FOR FURTHER INFORMATION CONTACT: ARMS PPTF Meeting—Mr. Richard Auger, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, Virginia 22333; Phone (703) 274-9838. OSD AAP Conference—COL Ronald Adkins, Office of Economic Adjustment, 400 Army Navy Drive, Arlington, Virginia 22202-2884; Phone (703) 604-5844.

SUPPLEMENTARY INFORMATION: Reservations should be made directly with the Frontenac Hilton; telephone (314) 993-1100. Please be sure to mention that you will be attending the ARMS meeting to assure occupancy in the block of rooms set aside for this meeting. Request you contact Debra Yeager in the ARMS Team Office at Rock Island Arsenal; telephone (309) 782-4040, if you will be attending the meeting, so that our roster of attendees is accurate. This number may also be used if other assistance regarding the ARMS meeting is required.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-24395 Filed 10-3-94; 8:45 am]

BILLING CODE 3710-08-M

Advisory Committee Meeting Notice, Department of Defense Historical Advisory Committee

AGENCY: U.S. Army Center of Military History, DOD.

ACTION: Notice of Meeting.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Historical Advisory Committee.

Date of Meeting: October 22, 1994.

Place of Meeting: Franklin Court Building, U.S. Army Center of Military History, 1099 14th Street, N.W., 2nd Floor, Washington, D.C. 20005-3402.

Time of Meeting: 0900-1500.

Proposed Agenda: Review and discussion of the status of historical activities in the U.S. Army.

1. Purpose of meeting: The Committee will review the Army's historical activities for FY94 and those projected for FY95 based on reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the 22 October meeting.

3. Any members of the public may file a written statement with the Committee before, during, or after the meeting. To the extent that time permits the Committee Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, Franklin Court Building, 1099 14th Street, N.W. Washington, D.C. 20005-3402. Telephone: (202) 504-5402.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-24396 Filed 10-3-94; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers

Intent to Prepare a Draft Supplement to the Columbia and Lower Willamette River Environmental Impact Statement, July 1975

AGENCY: U.S. Army Corps of Engineers, Portland District, DOD.

ACTION: Notice of intent.

SUMMARY: Notice of Intent to Prepare a Draft Supplement to the Columbia and Lower Willamette River Environmental Impact Statement (EIS), July 1975. The original EIS addressed impacts of operational and maintenance dredging, and completion of the 40-foot navigation channel downstream from Vancouver, Washington, and Portland, Oregon. This Supplement is being prepared to address the impacts to physical, biological, and cultural elements of the environment as a result of current dredging practices and the potential effects of management alternatives that will be developed in the Dredged Material Management Study (DMMS) for the Columbia and Lower Willamette Rivers.

The proposed action is to perform a management study (DMMS) that will identify and recommend alternatives for modifications to the existing Operations and Maintenance dredging program and potential new proposals, such as pile dike construction and other measures that are directed at reducing the frequency or quality of dredging.

ADDRESSES: U.S. Army Corps of Engineers, Portland District, Regulatory and Environmental Resource Branch, P.O. Box 2946, Portland, Oregon 97208-2946.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Anderson, (503) 326-6998.

SUPPLEMENTARY INFORMATION: The Columbia and Lower Willamette River (C&LW) 40-foot navigation project is

maintained by the Corps of Engineers. Between four and seven million cubic yards of sand are dredged from the Columbia River portion of the project annually. In addition, 500–750 thousand cubic yards of silty sand and sandy silts are dredged from the Lower Willamette River on a three to five-year interval.

Between 1988 and 1991, the Corps of Engineers completed development of a Long-Term Management Strategy (LTMS) for the portion of the channel that traverses the Columbia River Estuary, River Miles 3–28. A series of 50-year plan scenarios were developed.

In October 1993, the Corps of Engineers was directed to undertake a dredged material management study (DMMS) for the entire C&LW project. The DMMS study will also be coordinated with the Columbia River Channel Deepening Feasibility Study effort. While intended to produce a stand alone document, the DMMS will, in part, also fulfill the requirements to define the without project condition for the Feasibility Study. The study will be similar to the lower estuary LTMS, in terms of process, but will follow the newer guidance for planning horizon, scope of study, etc. Dredged material management issues on the Columbia River that are new since completion of the LTMS will be fully developed in the DMMS for both the estuary and the remainder of the project. Most notable among new issues is the listing of three salmon stocks which migrate through the project area as endangered under the Endangered Species Act.

The scoping process commenced in July 1994 with the issuance of a scoping letter. Federal, state and local agencies, Indian tribes, and interested organizations and individuals were asked to comment on the scope of the SEIS. Potentially significant issues to be addressed in the SEIS will be based on effects of management alternatives and subsequent actions thereof.

Potential effects on: wetlands and vegetation, wildlife habitat and populations, fisheries in the Columbia and Willamette Rivers (including Snake River salmon), and cultural resources, will be studied.

Other environmental review and consultation requirements which will be addressed in conjunction with the DSEIS include:

a. Clean Water Act of 1977, as amended.

b. Fish and Wildlife Coordination Act.

c. Coastal Zone Management Act of 1972, as amended.

d. Endangered Species Act of 1973, as amended.

e. Cultural Resources Act.

f. Marine Projection, Research and Sanctuaries Act of 1972.

g. Executive Order 11988, Floodplain Management.

h. Executive Order 11990, Protection of Wetlands.

i. Analysis of Prime or Unique Farmlands.

A formal scoping meeting has not been scheduled, however, comments are currently being received and the DSEIS is scheduled to be made available to the public in July 1997.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–24397 Filed 10-3–94; 8:45 am]

BILLING CODE 3710–AR–M

Defense Logistics Agency

Privacy Act of 1974; Alteration of a Record System

AGENCY: Defense Logistics Agency, DoD.

ACTION: Alteration of a record system.

SUMMARY: The Defense Logistics Agency proposes to alter an existing system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration consists of adding a routine use to the system of records notice S431.15 DLA-C, entitled Travel Record. This alteration also changes the system identifier from S431.15 DLA-C to S700.10 FO.

DLA is also making an administrative change to all its systems with this notice. Under the Contesting record procedures category, all entries should read 'The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.'

DATES: The alteration will be effective without further notice on November 3, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Privacy Act Officer, Programs and Analysis Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Sales at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and may be obtained from the address above.

An altered system report, as required by 5 U.S.C. 552a(5) of the Privacy Act was submitted on September 21, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The specific changes to the record system are set forth below followed by the system notice as altered in its entirety.

Dated: September 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S431.15 DLA-C

SYSTEM NAME:

Travel Record *(February 22, 1993, 58 FR 10893).*

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with 'S700.10 FO.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Records are maintained at all Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All DLA military members and civilian employees who perform travel, Temporary Duty (TDY) or Permanent Change of Station (PCS); individuals of other DoD agencies serviced by DLA under an interservice support agreement; and public and private sector individuals traveling under invitational travel orders.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Consists of name, Social Security Number, security clearance level, order number, travel itinerary, claim data, and financial details of real estate transactions.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Chapter 57, Title 5, United States Code

(Travel, Transportation and Subsistence).'

PURPOSE(S):

Delete entry and replace with 'Records are used in administering the travel program, managing and tracking funds, and accounting for employee status for pay and leave tracking purposes.

Data is also used by offices of counsel to determine that expenses relating to the sale or purchase of a residence for a PCS are reasonable and customary for the locality of the transaction.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Insert as the second paragraph 'Federal agency or private sector organization employing the traveler for funds control, personnel administration, or program management purposes.'

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with 'Records are maintained in both paper and electronic form.'

RETRIEVABILITY:

Delete entry and replace with 'By name, Social Security Number, or order number.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas that are accessible only to individuals who must service the record in the performance of their official duties. Electronic records are password protected with access restricted to authorized users.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are retained for three years and then destroyed. Supervisory level records are retained until the individual separates or transfers at which time the records are destroyed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Finance Officers of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

NOTIFICATION PROCEDURES:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to the Privacy Act Officer of the DLA PLFA. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer of the DLA PLFA. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.'

CONTESTING RECORD PROCEDURES:

Delete entry and replace with 'The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.'

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information is collected from the individual, from the hiring activity's personnel office, and from travel and expense forms.'

* * * * *

S700.10 FO

SYSTEM NAME:

Travel Record.

SYSTEM LOCATION:

Records are maintained at all Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DLA military members and civilian employees who perform travel, Temporary Duty (TDY) or Permanent Change of Station (PCS); individuals of other DoD agencies serviced by DLA under an interservice support agreement; and public and private sector individuals traveling under invitational travel orders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of name, Social Security Number, security clearance level, order number, travel itinerary, claim data, and financial details of real estate transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 57, Title 5, United States Code (Travel, Transportation and Subsistence).

PURPOSE(S):

Records are used in administering the travel program, managing and tracking funds, and accounting for employee status for pay and leave tracking purposes.

Data is also used by offices of counsel to determine that expenses relating to the sale or purchase of a residence for a PCS are reasonable and customary for the locality of the transaction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Federal agency or private sector organization employing the traveler for funds control, personnel administration, or program management purposes.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in both paper and electronic form.

RETRIEVABILITY:

By name, social security number or order number.

SAFEGUARDS:

Records are maintained in areas that are accessible only to individuals who must service the record in the performance of their official duties. Electronic records are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Records are retained for three years and then destroyed. Supervisory level records are retained until the individual separates or transfers at which time the records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officers of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to the Privacy

Act Officer of the DLA PLFA. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer of the DLA PLFA. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.

RECORD SOURCE CATEGORIES:

Information is collected from the individual, from the hiring activity's personnel office, and from travel and expense forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–24472 Filed 10–3–94; 8:45 am]

BILLING CODE 5000–04–F

Department of the Navy

Patent Licenses; Non-Exclusive, Exclusive, or Partially Exclusive; Serotech, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to Grant Partially Exclusive Patent License; Serotech, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Serotech, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patents Nos. 5,264,693, "Microelectronic Photomultiplier Device with Integrated Circuitry", issued November 23, 1993; 5,306,904, "Multilayer Microelectronic Photomultiplier Device with a Stacked Series of Dynode and Insulating Layers", issued April 26, 1994; and 5,307,358, "Wavelength Dispensive Gain Element for a Tunable Laser", issued April 26, 1994.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR OOCC), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR OOCC), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: September 23, 1994.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–24398 Filed 10–3–94; 8:45 am]

BILLING CODE 3810–AE–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 94–3]

Rocky Flats Seismic and Systems Safety

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning Rocky Flats seismic and systems safety. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before November 3, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole C. Morgan, at the address above or telephone (202) 208–6400.

Dated: September 28, 1994.

John T. Conway,

Chairman.

[Recommendation 94–3]

Rocky Flats Seismic and Systems Safety

Dated: September 26, 1994.

In its Recommendation 90–5, the Defense Nuclear Facilities Safety Board (Board) recommended that a site-wide Systematic Evaluation Program be conducted at the Rocky Flats Plant (now the Rocky Flats Environmental Technology Site), to determine if safety upgrades should be instituted to enable the defense nuclear buildings and facilities to meet current safety requirements. The mission of the Rocky Flats Environmental Technology Site has changed since the issuance of Recommendation 90–5, and the Implementation Plan for the Recommendation has been revised to more directly address the current mission of the Site.

The Board has been informed in briefings by the Department of Energy (DOE) that Building 371 is considered to be structurally the best on-site facility for the storage of plutonium, and that steps are therefore scheduled that in time will move the major part of the Site's plutonium inventory into storage in this building. As a result, Building 371 will assume a unique role as the storehouse which contains the largest single accumulation of plutonium in the DOE complex. It follows that potential health and safety issues associated with this proposed use of the building also assume very high importance.

Accordingly, the Board has been reviewing potential public health and safety issues at Building 371, and in particular, the building's capacity to provide reasonable assurance of protection of public health and safety should it be subjected to external forces from natural phenomena (earthquakes, extreme winds, and floods). The Board has observed that DOE's ongoing studies in the Systematic Evaluation Program to better identify the potential hazards from natural phenomena at Building 371 and to establish means of protecting against them are not well integrated. An effective systematic Evaluation Program requires a more thorough application of the systems engineering process. The Board has concluded that activities currently underway in this respect, to prepare Building 371 for its extended role in storage of plutonium, are not logically structured and are not sufficiently encompassing in either detail or scope to assure that the health and safety of the public will be adequately protected.

Therefore, the Board recommends:

1. That an Integrated Program Plan be formulated to address the civil-structural-seismic safety issues and evaluations related to the planned use of Building 371 for storage of plutonium and related functions. This plan needs to be founded on the principles of systems engineering and realistic schedules. Several studies, pertinent to such a plan, are geologic fault investigations, groundmotion studies, dynamic building analyses, and soil-structure interaction analyses. These studies and other elements need to be

combined with the building mission and any other functional criteria using systems engineering principles to develop the Integrated Program Plan.

2. That the above plan address and explain any requirements for changes to the current Safety Analysis Report and how such changes will be accomplished. This includes effects from earthquakes, extreme winds, and floods.

3. That a comprehensive document be completed describing in detail the structural analysis methodology and standards for the building analysis. This includes explaining analytical methods used and their applicability to the configuration of Building 371.

4. That the integrated program plan use both deterministic and probabilistic methods to establish the vibratory groundmotion criteria that will be used in the structural evaluation of Building 371. This includes a rationale for reconciling differences between the two methods. Moreover, these criteria should incorporate the results of a carefully planned and executed site geological faulting investigations.

5. That a hazard classification be selected for Building 371 which is supported by rational analysis. This requires consideration of the mission, period of intended use, and importance of the building.

6. That the Integrated Program Plan, consistent with the hazard classification, include the plan for classification of safety systems on a rational basis consistent with the mission, life, and importance of Building 371. Issues associated with hazard classification and classification of safety systems are discussed in the Board's April 29, 1994, letter to Under Secretary Curtis.

7. That any standards used in evaluating hazards from natural and man-made phenomena be comparable to those used in commercial nuclear practice.

8. That the Program Plan and the results of its activities be used to specify building upgrade and improvements consistent with the mission of Building 371.

John T. Conway,

Chairman.

September 26, 1994.

The Honorable Hazel R. O'Leary,
Secretary of Energy,
Washington, DC 20585.

Dear Secretary O'Leary: On September 26, 1994, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. § 2286a(5), unanimously approved Recommendation 94–3 which is enclosed for your consideration. Recommendation 94–3 deals with Rocky Flats Seismic and Systems Safety.

42 U.S.C. § 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 94–24412 Filed 10–3–94; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming emergency teleconference meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: Thursday October 6, 1994 from 12:00 noon eastern standard time until the conclusion of business.

ADDRESSES: The teleconference call will be held at the office of the National Advisory Council on Indian Education, 330 C St. SW., Rm. 4072, Washington, DC 20202–7556.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street, S.W., Room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: (202) 205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit and submit a list of nominees for the position of Director, Office of Indian Education.

The Chairman of the National Advisory Council on Indian Education has called for a teleconference meeting of the full Council on Thursday, October 6, 1994 at 12:00 noon eastern standard time. The purpose of the meeting is to finalize recommendations for submission to the Secretary of Education regarding the selection of a Director for the Office of Indian Education. This is an open teleconference call and the public may attend.

The public is being given less than fifteen days notice for this teleconference call due to the urgency of submitting recommendations to the Secretary regarding the selection of a director for the Office of Indian Education. During its meeting the week of September 19, NACIE was unable to conclude the agenda item concerning the selection of a director for the Office of Indian Education. It is necessary for NACIE to submit its recommendations to the Secretary of Education as soon as possible in order to fill the position promptly.

Records shall be kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street S.W., Room 4072, Washington, DC 20202–7556 from the hours of 9:00 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dated: September 29, 1994.

Eddie L. Tullis,

Chairman, National Advisory Council on Indian Education.

[FR Doc. 94–24563 Filed 10–3–94; 8:45 am]

BILLING CODE 4000–01–M

National Workplace Literacy Program

AGENCY: Department of Education.

ACTION: Withdrawal of notice of proposed priority.

SUMMARY: The Secretary withdraws the notice of proposed priority for the National Workplace Literacy Program: Workplace literacy services for empowerment zones or enterprise communities published on June 16, 1994 (59 FR 31032). The Secretary withdraws this proposed priority because no funds are available for fiscal year 1995 to support awards under this priority.

FOR FURTHER INFORMATION CONTACT: Sarah Newcomb, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue,

SW., room 4417–MES, Washington, DC 20202–7240, Telephone (202) 205–9872; or Jeanne Williams, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 4513–MES, Washington, DC 20202–7327; Telephone (202) 205–5977. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Catalog of Federal Domestic Assistance Number 84.198B National Workplace Literacy Program)

Dated: September 27, 1994.

Augusta Souza Kappner,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 94–24411 Filed 10–3–94; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF83–333–002 and QF83–333–003]

Cal Ban Corp.; Amendment to Filing

September 28, 1994.

On September 21, 1994, Cal Ban Corp. tendered for filing a supplement to its filing in these dockets.

The supplement pertains to the technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by October 18, 1994, and must be served on the Applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24429 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–135–000, et al.]

Wisconsin Power & Light Company, et al. Electric Rate and Corporate Regulation Filings

September 27, 1994.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power and Light Company

[Docket Nos. ER94–135–000 and ER94–320–000]

Take notice that on September 20, 1994, Wisconsin Power and Light Company (WP&L) tendered for filing an amendment in the above referenced Dockets. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 15, 1994.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power and Light Company

[Docket No. ER94–1563–000]

Take notice that on September 20, 1994, Wisconsin Power and Light Company (WP&L) tendered for filing an amendment in the above referenced Docket. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of August 13, 1994.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. CNG Power Services Corporation

[Docket No. ER94–1554–000]

Take notice that on September 13, 1994, CNG Power Services Corporation filed an amendment to its application for approval to market capacity and energy at market-based rates.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Electric Company

[Docket No. ER94–1600–000]

Take notice that on August 26, 1994, Commonwealth Electric Company (Commonwealth) tendered for filing pursuant to § 35.12 of the Commission's regulations a Dispatchable System Power Sale Agreement governing the sale by Commonwealth of Dispatchable System(Power (as defined herein) to Fitchburg Gas & Electric Company ("FG&E"). By the provisions of this agreement, Commonwealth proposes to sell to the Buyer electric power upon terms and conditions and in amounts mutually acceptable to each party.

A copy of this filing has been served upon the Buyer and upon the Massachusetts Department of Public Utilities.

Comment date: October 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas & Electric Corp.

[Docket No. ER94–1662–000]

Take notice that on September 19, 1994, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's Regulations in 18 CFR, as an Initial Rate Schedule, a Power Sales Tariff whereby Central Hudson may sell capacity and/or energy to electric utilities, as the parties may mutually agree from time to time. The proposed Tariff requires interested purchasers to enter into a Service Agreement with Central Hudson before transactions may commence under this Tariff. Service under this agreement is requested to commence on November 15, 1994.

Central Hudson requests that its Tariff be accepted for filing and allowed to become effective in accordance with its terms as specified. CHG&E has served a copy of the filing upon the New York State Public Service Commission.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER94–1663–000]

Take notice that on September 19, 1994, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Coordination Sales Tariff Service Agreement between itself and Consolidated Water Power Company (Consolidated). This power sales tariff was accepted by FERC by letter order dated June 14, 1994 (Docket No. ER94–1179–000).

Wisconsin Electric requests an effective date of September 14, 1994, in order to take advantage of power supply economies in the bulk power market. Wisconsin Electric is authorized to state that Consolidated joins in the requested effective date.

Copies of the filing have been served on the Public Service Commission of Wisconsin.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER94–1664–000]

Take notice that on September 19, 1994, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an Electric Service Agreement between itself and Heartland Energy

Services (HES). The Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff which was accepted by FERC by letter order dated June 14, 1994 (Docket No. ER94–1179–000).

Wisconsin Electric requests an effective date coincident with the filing date in order for HES to take advantage of power supply economies in the bulk power market. Wisconsin Electric is authorized to state that HES joins in the requested effective date.

Copies of the filing have been served on the Public Service Commission of Wisconsin.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1666–000]

Take notice that on September 20, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for Rainbow Energy Marketing Corporation (Rainbow).

Con Edison states that a copy of this filing has been served by mail upon Rainbow.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Great Bay Power Corporation

[Docket No. ER94–1667–000]

Take notice that on September 20, 1994, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Reading Municipal Light Department and Great Bay for service under Great Bay's Tariff for Short Term Sales. This tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. The service agreement is proposed to be effective October 1, 1994.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER94–1668–000]

Take notice that on September 21, 1994, Wisconsin Public Service Corporation tendered for filing four executed service agreements with the City of Wisconsin Rapids, Upper Peninsula Power Company, Consolidated Water Power Company and Rainbow Energy Marketing Corp. under its CS–1 Coordination Sales Tariff. Wisconsin Public Service requests waiver of the Commission's regulations to permit the Service Agreements to become effective in accordance with their terms. Wisconsin Public Service also tendered for filing an amendment that adds Rainbow to its list of potential purchasers under the tariff.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Central Maine Power Company

[Docket No. ER94–1669–000]

Take notice that on September 21, 1994, Central Maine Power Company (CMP), tendered for filing a Power Purchase Agreement between CMP and Unnamed Subsidiary, dated as of October 12, 1994 (Agreement). CMP will purchase and Subsidiary will sell all of the energy and capacity from a 32 MW biomass-fueled generating facility located in the Town of Fort Fairfield, Maine.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. American Electric Power Service Corporation

[Docket No. ER94–1670–000]

Take notice that on September 21, 1994, American Electric Power Service Corporation, on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company and Ohio Power Company, (the AEP Companies) tendered for filing an AEP System Interim Allowance Agreement. The purpose of the Agreement is to establish, on an interim basis, a methodology and transfer price for the transfer of SO_2 emission allowances among the AEP Companies.

The AEP Companies request an effective date of January 1, 1995.

Copies have been served upon the state regulatory commissions in Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Old Dominion Electric Cooperative

[Docket No. ES94–40–000]

Take notice that on September 21, 1994, Old Dominion Electric Cooperative filed an application under § 204 of the Federal Power Act seeking authorization to issue and renew short-term debt in an amount not to exceed $125 million outstanding at any one time, including, without limitation, commercial paper, notes or other obligations, with a maturity of one year or less, to be issued from time to time during the period from November 30, 1994 through November 30, 1996, with a final maturity date no later than November 30, 1997.

Comment date: October 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24430 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 10854–002–ME, Cataract Hydroelectric Project]

Upper Peninsula Power Company; Amended Notice of Site Visit

September 28, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for initial license of the Cataract Hydroelectric Project, FERC No. 10854–002. The project is located on the Escanaba River Basin in Marquette, CO, near Gwinn, Michigan.

As part of the licensing proceedings for the Cataract Hydroelectric Project, the Commission issued on September 20, 1994, a Notice of Site Visit. The staff was informed that there was an error in the day the site visit was to be held.

Due to the above error, the project site visit will be held on *Thursday*, October 6, 1994.

If you would like to attend the site visit, we will meet at 10:00 p.m. on Thursday, October 6, at Jerry's Restaurant Parking Lot, Highway M–35 across from the Gwinn High School. The Cataract Hydro Project address and directions to the meeting location are as follows:

From Marquette, MI, travel approximately 8 miles west on US 41. Turn south on Highway M–35, travel approximately 25 miles to the City of Gwinn. Highway M–35 is the main road through Gwinn.

We will conclude the site visit at the Hydroelectric Project location. Please be aware that you will be responsible for your own lodging, transportation, and meals.

Please notify Mr. Max Curtis, Upper Peninsula Power Company (UPPCo), at (906) 487–5063, if you plan to attend the site visit. All those attending the site visit are urged to refrain from any communication concerning the merits of the license application to any member of the Commission staff or Commission's Contractor, CH2M HILL, outside of the established process for developing the licensing record.

For further information, please contact Ms. Angela Oliver at (202) 219–2998.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24431 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–792–000, et al.]

NorAm Gas Transmission Company, et al.; Natural Gas Certificate Filings

September 27, 1994.

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP94–792–000]

Take notice that on September 22, 1994, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–792–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain facilities in Louisiana under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 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.

Specifically NGT proposes to abandon Line AM–164, which consists of 939 feet of 4-inch pipe, a 1-inch tap and a 2-inch U-shaped meter. NGT states that these facilities, located in Caddo Parish, were constructed to provide service to a pipeline yard by Arkla, a division of NorAm Energy Corp. (Arkla). NGT mentions that Arkla no longer operates this pipeline yard and has consented in writing to the abandonment. NGT asserts that the pipe would be abandoned in place and the above ground facilities would be removed.

Comment date: November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Empire State Pipeline

[Docket No. CP94–794–000]

Take notice that on September 22, 1994, Empire State Pipeline (Empire), 2000 M Street, N.W., Washington, D.C. 20036, filed in Docket No. CP94–794–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity authorizing Empire to transport natural gas under Section 284.224 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Empire is a Hinshaw pipeline within the meaning of the NGA and as determined by the Commission in Docket No. CP90–316–002 and CP90–317–002, *et al.* It is explained that Empire commenced operations November 1, 1993, and that, for the period November 1, 1993, through August 31, 1993, Empire received 30.8 Bcf of natural gas at its interconnection with TransCanada Pipelines Limited, located at the international border between Canada and New York. It is further explained that this is Empire's only receipt point and that the volume received there was the total volume received by Empire for the year. Empire states that it will raise its rates and tariffs on file with the Public Service Commission of New York for the transportation services rendered under the blanket certificate requested in the subject application. Empire further states that it will comply with all applicable conditions contained in paragraph (e) of § 284.224 of the Commission's Regulations.

Comment date: October 18, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP94–796–000]

Take notice that on September 22, 1994, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94–796–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add a new delivery point in Breckinridge County, Kentucky, to serve an existing customer, Western Kentucky Gas Company (Western), under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The proposed delivery point will be located on Texas Gas's Herbert-Cannellton 8-inch pipeline at Mile Post 3+1662 near Weberstown in Breckinridge County, Kentucky, and will be known as the Weberstown Delivery Point.

Texas Gas states that the Weberstown Delivery Point will enable Western to render natural gas service for residential heating in the community of Weberstown.

Texas Gas states that the Weberstown Delivery Point is actually a "reclassification" of an existing "farm tap". Texas Gas states that it will not be necessary for Texas Gas to construct any new facilities or modify any existing facilities at this location. Texas Gas states that Western will replace the two meters it currently owns and operates at this location with a single larger meter to accommodate both the existing service rendered at this "farm tap" and the projected requirements for the Weberstown community.

Texas Gas states that service to this new delivery point will be accomplished within Western's existing contract quantities as set forth in Western's Firm Transportation Agreement-Zone 3 with Texas Gas and its Firm No Notice Transportation Agreement with Texas Gas. Texas Gas further states that since no increase in contract quantities has been requested by Western, the above proposal can be accomplished without detriment to Texas Gas's other customers.

The estimated maximum annual quantity of natural gas to be delivered to Western at this point will be 2,500 MMBtu, with a proposed maximum daily quantity of 10.5 MMBtu.

Comment date: November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP94–798–000]

Take notice that on September 23, 1994, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–798–000 a request pursuant to Sections 157.205, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.212) for approval to construct and operate a delivery tap

located in Titus County, Texas for delivery of natural gas to ARKLA, a division of NorAm Energy Corporation, for redelivery to its customer, Exxon Company, U.S.A. (Exxon), pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT proposes to construct and operate a one-inch delivery tap on its Line AM–74 for ultimate redelivery to Exxon. NGT states that the estimated volumes to be delivered through this tap are approximately 2,000 Mcf annually and 48 Mcf on a peak day. NGT indicates that the volumes delivered are within ARKLA's certificated entitlement and NGT's tariff does not prohibit the addition of new delivery points. NGT further indicates that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers. NGT further states that it will transport gas to ARKLA and provide service under NGT's Order No. 636 rate schedules. It is indicated that the estimated cost of construction is $1930, and that ARKLA will reimburse NGT for all construction costs.

Comment date: November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation Columbia Gulf Transmission Company

[Docket No. CP94–800–000]

Take notice that on September 23, 1994, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky, 42302 and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas, 77001, filed a joint application pursuant to Section 7(b) of the Natural Gas Act requesting authority to abandon a transportation service provided by Texas Gas and Columbia Gulf for ANR Pipeline Company performed under Texas Gas' Rate Schedule X–37 and Columbia Gulf's Rate Schedule X–5, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The transportation service was authorized in Docket No. CP71–156–000 which approved the transportation on a firm basis of up to 20,548 Mcf/. The transportation agreement between Texas Gas, Columbia Gulf, and ANR provided for a twenty-year primary term continuing from year-to-year thereafter, unless canceled by either party by at least six months written notice. ANR offered the transportation agreement for assignment to its converting sales customers consistent with the Commission's restructuring policy with regard to upstream transportation agreements. ANR, Texas Gas, and Columbia Gulf, have agreed to cancel the transportation agreement effective December 1, 1993, since none of ANR's customers chose to accept assignment of the transportation agreement.

Comment date: October 18, 1994, in accordance with Standard Paragraph F at the end of this notice.

6. PetroCorp Incorporated

[Docket No. CP94–804–000]

Take notice that on September 26, 1994, PetroCorp Incorporated (PetroCorp), 16800 Greenspoint Park Drive, Suite 300, North Atrium, Houston, Texas 77060–2391, filed a petition for declaratory order in Docket No. CP94–804–000, requesting that the Commission declare that facilities to be constructed in Montezuma County, Colorado to be called the Anasazi Gathering System (Anasazi) would have the primary function of gathering natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

PetroCorp states that it and other operators have discovered a new gas producing area in the Paradox Basin, Montezuma County, Colorado. PetroCorp indicates that it has proposed the construction of a gathering system from three existing wells in this area, plus other wells which are expected to be drilled, to connect with the gathering system of Western Gas Resources, Inc. (Western) in San Juan County, New Mexico. It is stated that the gas would be transported through Western's system to connect with the transmission facilities of El Paso Natural Gas Company.

In support of its request, PetroCorp points out how the facilities meet the primary function test set out in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983), as later modified.

Length and Diameter of the Line

PetroCorp points out that the Anasazi Gathering System will consist of 22.2 miles of 4½ inch pipe. It is also indicated that, as additional wells are completed, additional lateral 4½ inch pipelines will be built.

Central Point in the Field and Geographic Configuration

PetroCorp states that the boundaries of the field are not yet defined. PetroCorp indicates that it plans to build a trunkline or spine across the producing area, constructing lateral pipelines as necessary to connect new producing wells as they are drilled. PetroCorp states that the field has no central point, but is configured similarly to the system in Amerada Hess Corporation, Docket No. CP91–1314–003, which it indicates the Commission determined to be gathering in an order issued on May 27, 1994.

Location of Compressors and Processing Plants

PetroCorp states that temporary portable compressor facilities will be installed at each well until the total number of wells to be served by the system is determined. It is indicated that at that time an appropriate permanent compression unit would be located on the gathering system at an appropriate downstream point. PetroCorp states that no processing plant is contemplated. PetroCorp points out, however, that, if sufficient liquid and liquefiable hydrocarbons are contained in the gas stream to make their extraction economically attractive, a processing plant may be constructed at a downstream point.

Location of Wells and Operating Pressure of the Line

PetroCorp states that a number of wells are located along the proposed spine. It is also indicated that the operating pressure of the proposed system will be approximately 100 psig at the wellhead and approximately 400 psig at the delivery point to Western.

Comment date: October 18, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24432 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-P

Federal Energy Regulatory Commission

[Docket No. CP93-618-002, et al.]

Pacific Gas Transmission Company, et al.; Natural Gas Certificate Filings

September 28, 1994.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas Transmission Company

[Docket No. CP93-618-002]

Take notice that on September 26, 1994, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California, 94105-1570, filed an Amendment to its Application in Docket Nos. CP93-618-000 and 001. In this proceeding, PGT is requesting a Certificate of Public Convenience and Necessity under Section 7(c) of the Natural Gas Act, and Part 157, Subpart A of the Commission's Regulations. PGT seeks to construct and operate two extensions of its mainline facilities—the Coyote Springs Extension and the Medford Extension. These extensions would be used to provide firm transportation service to Portland General Electric Company (Portland General) and WP Natural Gas, a division of The Washington Water Power Company (Wash. Water), respectively. PGT proposes to recover the incremental cost-of-service of the respective extensions through surcharges to its existing FTS-1 Rate Schedule. In this amendment, PGT details the specific surcharge rate treatment for the volumes to be shipped by Portland General and Wash. Water over the two proposed extensions. PGT's proposal is more fully set forth in the application and amendments which are on file with the Commission and open to public inspection.

Specifically, PGT requests approval of a deferred cost recovery mechanism for part of Wash. Water's service on the Medford Extension. PGT states that the deferred mechanism does not alter the proposed incremental rate structure for service on the proposed extensions. PGT also states that the deferred mechanism is designed to permit Wash. Water to remain competitive with competing electric rates in its service area, and afford PGT an opportunity to recover the life cycle cost-of-service for the service for Wash. Water's on a deferred basis. PGT proposes to file annual reports containing the adjusted Wash. Water rate and related information on any deferred balance.

Lastly, PGT proposes to recover the cost of extensions based upon a straight-line depreciation schedule which is equal to the length of the transportation agreements for each extension. For service to Portland General over the Coyote Springs Extension, the term of the contract is 20 years. For service to Wash. Water over the Medford Extension the, the term of the contracts is 30 years, (there are two contracts between PGT and Wash. Water).

Comment date: October 14, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice. *However,* any person who has already filed an intervention(s) in Docket No. CP93-618, *et al.*, need not file again.

2. Southern Natural Gas Company

[Docket No. CP94-793-000]

Take notice that on September 22, 1994, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP94-793-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a delivery point for service to International Paper under Southern's blanket certificate issued in Docket No. CP82-406-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to International Paper at a delivery point for service to International Paper's Riverdale Plant in Dallas County, Alabama. Southern states that International Paper is presently in the process of expanding its facilities at the Plant that will require additional gas requirements. Southern also indicates that it proposes to locate the facilities at or near Mile Post 185.2 on its 24 and 26-inch South Main Lines in Dallas County, Alabama.

Southern states that International Paper has complied with all the requirements under Section 36 of the General Terms and Conditions of Southern's FERC Gas Tariff for the installation of the direct delivery connection by Southern. Southern states that it will transport gas on behalf of International Paper pursuant to its Rate Schedule IT. Southern states that the installation of the proposed delivery point facilities and the transportation provided thereunder will have no adverse effect on its peak day or annual requirements.

Southern states that the estimated cost of the construction and installation of the measurement interconnection facilities is approximately $334,000.

Comment date: November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. El Paso Natural Gas Company

[Docket No. CP94-801-000]

Take notice that on September 23, 1994, El Paso Natural Gas Company (El Paso), P. O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94-801-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for

authorization to construct and operate a delivery point in Castro County, Texas in order to permit the interruptible transportation and delivery of natural gas to American Maize—Products Dimmitt Inc. (American), under El Paso's blanket certificate issued to El Paso in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that the total estimated cost of the proposed facility is $39,600, and that American has agreed to reimburse El Paso for those costs related to the construction of the proposed delivery point. The proposed quantity of natural gas to be transported on an interruptible basis to American is estimated to be 1,387,000 Mcf annually. The estimated maximum peak day requirement at the proposed delivery point is 4,000 Mcf. El Paso states that American will use the natural gas to satisfy the fuel requirements for its corn processing plant. El Paso states that it has sufficient capacity to accomplish the deliveries agreed to with American without detriment or disadvantage to El Paso's other customers.

Comment date: November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP94–803–000]

Take notice that on September 26, 1994, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–803–000 a request pursuant to §§ 157.205, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212) for authorization to construct and operate a new delivery point under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, 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.

NGT proposes to install a new 1-inch sales tap on its Line AD-East (Station 2904+61) in Section 35, Township 5 North, Range 9 East, Hughes County, Oklahoma, for delivery of natural gas to ARKLA, a division of NorAm Energy Corp. (ARKLA), for redelivery to its commercial customer, Tyson Hog Operation. NGT estimates that the average day and annual volumes would be 13 Mcf and 4,745 Mcf, respectively. NGT further estimates that the cost of construction would be $3,853 which would be reimbursed by ARKLA.

Comment date: November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. 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 § 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24473 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP91–80–004, RP91–86–002, TM91–8–20–001, TM91–9–20–001, TM92–12–20–002, TM92–4–20–001, TM92–13–20–001, TM93–6–20–001, TM93–16–20–001, and TM94–4–20–001]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 21, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fouth Revised Volume No. 1, the following revised tariff sheets, with an effective date of October 1, 1994:

First Revised Sheet No. 91
Third Revised Sheet No. 92
Second Revised Sheet No. 692
Second Revised Sheet No. 693
First Revised Sheet No. 694
First Revised Sheet No. 695
Second Revised Sheet No. 696
First Revised Sheet No. 697
First Revised Sheet No. 698
First Revised Sheet No. 699
Second Revised Sheet No. 700
Second Revised Sheet No. 703

Algonquin states that the purpose of this filing is to implement the May 3, 1994, Stipulation and Agreement (S&A) in the above-captioned dockets that was approved by the Commission on August 4, 1994. Algonquin states that the effective date of the S&A is September 6, 1994.

Algonquin states that copies of its filing were mailed to all affected customers, interested state commissioners, and all parties to the above captioned dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 5, 1994.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protrestants parties to the proceeding. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24434 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–63–000]

Carnegie Natural Gas Company; Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 22, 1994, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Sixth Revised Sheet No. 7

Carnegie states that the purpose of this filing is to permit the tracking of the ACA Unit Surcharge authorized by the Commission for fiscal year 1995. The ACA Unit Surcharge authorized by the Commission for fiscal years 1995 is $0.0024 per Mcf, $0.0023 per Dth converted to Carnegie's measurement basis.

The proposed effective date of the tariff sheet listed above is October 1, 1994.

Carnegie states that copies of the filing were served on Carnegie'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 protest with the Federal Energy Regulatory Commission, 824 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedure. All such motions or protests should be filed on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24435 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–332–002]

Florida Gas Transmission Company; Compliance Filing

September 28, 1994.

Take notice that on September 22, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Substitute Original Sheet No. 8D

On July 29, 1994, FGT filed tariff sheets proposing to clarify that the Fuel Reimbursement Charge (FRC) retained by FGT does not apply to volumes transported through non-contiguous laterals without compression nor through laterals without compression behind processing plants where volumes transported are consumed within the plant. On August 31, 1994, the Commission issued an order (August 31 Order) accepting, subject to revision, the provisions in FGT's filing concerning the application of the Fuel Reimbursement Charge. Specifically, the August 31 Order accepted FGT's filing to be effective September 1, 1994, subject to FGT refiling revised tariff sheets within 15 days of the August 31 Order to specify which laterals on FGT's system will not be subject to the Fuel Reimbursement.

FGT states that on September 14, 1994, FGT made a filing in compliance with the August 31 Order. FGT further states that included in that filing was a new tariff sheet, Original Sheet No. 8D, which identifies specific laterals on FGT's system where the FRC would not apply.

FGT states that it has discovered that it inadvertently omitted one lateral behind a processing plant in Louisiana from the tariff sheet. FGT states that it is filing herein to include this lateral.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol 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 on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate actions 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24437 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1546–000]

Carolina Power & Light Company; Filing

September 28, 1994.

Take notice that on August 3, 1994, Carolina Power & Light Company (CP&L) tendered for filing a letter advising the Commission that service will commence under the power coordination agreement between CP&L and North Carolina Electric Membership Corporation. In addition, on August 31, 1994, CP&L tendered for filing a letter requesting that "Exhibit A's" for the Chadbourn Peacock and Edwards Delivery Points be made supplements to Rate Schedule No. 128 and included as a part of the August 3, 1994, filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24436 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–159–003]

Michigan Gas Storage Company; Report of Refunds

September 28, 1994.

Take notice that on August 26, 1994, Michigan Gas Storage Company (Michigan Gas) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made to comply with the Commission's order dated June 6, 1994.

Michigan states that the report shows that on June 29, 1994, it refunded $920,925.65, including interest, to its CPCO customers on behalf of various utilities and end users, for the refund period February 1, 1994, through May 31, 1994.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE.,

Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such motions or protests should be filed on or before October 5, 1994. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24438 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-405-000]

Mississippi River Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 23, 1994, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Volume No. 1, the following tariff sheets:

	Proposed Effective Date
Original Sheet No. 9A.	October 24, 1994.
First Revised Sheet No. 189.	August 1, 1994.
First Revised Sheet No. 190.	August 1, 1994.

MRT states that the purpose of the filing is to provide for the disposition of additional unrecovered Account Nos. 191 and 858 amounts as a result of prior period billing adjustments incurred by MRT during the nine-month period November, 1993, through July, 1994, and to flow-through an Account No. 858 refund received in August, 1994, relating to Trunkline Gas Company's Docket No. RP89-160, pursuant to Section 16.2(b) of MRT's tariff.

MRT requested an extension of the nine-month adjustment period by an additional period equal to the later of 15 months or ninety days after a final non-appealable order, decision or settlement resolving any matters in litigation.

MRT stated that copies of its filing have been mailed to all of its former jurisdictional sales customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 5, 1994. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24439 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-404-000]

Northern Border Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 23, 1994, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet Number 155
First Revised Sheet Number 159
First Revised Sheet Number 160
First Revised Sheet Number 239
First Revised Sheet Number 250
First Revised Sheet Number 251
First Revised Sheet Number 252
First Revised Sheet Number 253
First Revised Sheet Number 254
First Revised Sheet Number 255
First Revised Sheet Number 256
Second Revised Sheet Number 287
First Revised Sheet Number 288
Second Revised Sheet Number 289
Second Revised Sheet Number 290
Second Revised Sheet Number 291
Second Revised Sheet Number 292
Second Revised Sheet Number 293
First Revised Sheet Number 294
Second Revised Sheet Number 296
First Revised Sheet Number 430
Second Revised Sheet Number 431
Second Revised Sheet Number 500
Fourth Revised Sheet Number 501
Second Revised Sheet Number 502

Northern Border states that the purpose of this filing is to (i) revise the method by which Rate Schedule IT-1 service is allocated; (ii) delete the primary and secondary queue used in scheduling Rate Schedule IT-1 service; (iii) revise the method by which flowing gas priority is retained by IT-1 Shippers; (iv) allow a shipper to transfer Receipt Deficiencies between Service Agreements and to remove the option that Receipt Deficiencies can be transferred back to the Releasing Shipper; and (v) reflect housekeeping changes.

Northern states that none of the herein proposed changes result in a change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border requests that the above listed tariff sheets be made effective November 1, 1994. Copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 5, 1994. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24440 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP94-274-000, RP94-275-000, and RP94-385-000]

Northern Natural Gas Co., Notice of Technical Conference

September 28, 1994.

Take notice that on Tuesday, October 25, 1994, at 1 p.m., the Commission's Staff will convene a technical conference to allow parties to address the issues outlined in the Commission's July 1, 1994, order in Docket Nos. RP94-274-000, and RP94-275-000.[1] The parties may also address issues related to Northern's September 1, 1994, filing in Docket No. RP94-385-000.

The technical conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24441 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

[1] Northern Natural Gas Co., 68 FERC ¶ 61,010 (1994).

[Docket No. MT94–20–001]

Southwest Gas Storage Co.; Notice of Filing

September 28, 1994.

Take notice that on September 22, 1994, Southwest Gas Storage Company (Southwest Gas) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet:

Second Revised Sheet No. 65

Southwest Gas states the filing made in the above referenced docket on August 31, 1994, included an error in the submission of Sheet No. 65 to original Volume No. 1. The corrected Sheet No. 65: (a) correctly identifies the tariff sheet as Second Revised Sheet No. 65, Superseding First Revised Sheet No. 65; and (b) reflects the fact that firm requests must be accompanied by one (1) month's payment of the applicable Capacity Charge and Deliverability Charge.

Southwest Gas states that copies have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 5, 1994. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24442 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

Superior Offshore Pipeline Co. Notice of Proposed Changes in FERC Gas Tariff

[Docket No. TM95–1–66–000]

September 28, 1994.

Take notice that on September 23, 1994, Superior Offshore Pipeline Company (SOPCO) tendered for filing under protest as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of October 1, 1994:

Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 6

SOPCO states that the revised tariff sheets are being filed to amend SOPCO'S FERC Annual Charge Adjustment (ACA) related tariff sheet to reflect the change in the FERC ACA Unit Charge. SOPCO has received an Annual Charges Billing from the Commission for the fiscal year 1994 and has already remitted to the Commission SOPCO's portion of the Commission deficit. SOPCO states that for the purpose of recovering this payment, SOPCO has elected, pursuant to the authority outlined in Order No. 472, to institute the ACA Unit Charge. As set forth by the Commission on SOPCO's Annual Charges Bill, SOPCO's ACA Unit Charge will change from $0.0026/MMBtu to $0.0023/MMBtu.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 5, 1994. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24443 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–302–003]

Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 22, 1994, 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:

Second Substitute Original Sheet No. 231A
Second Substitute Original Sheet No. 231C

Texas Gas states that the tariff sheets are being filed to comply with a Commission Order issued on September 16, 1994. The Order directed Texas Gas to make modifications to the guidelines in reconciling and resolving the pre-Order No. 636 historical imbalances on the Texas Gas system and to supply workpapers to substantiate Texas Gas's unit book value of historical imbalances.

Texas Gas requests an effective date of August 1, 1994, for the proposed tariff sheets.

Texas Gas states that copies of the tariff sheets are being mailed to Texas Gas's affected customers, interested state commissions, and those names appearing on the service list in Docket No. RP94–302–000.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 5, 1994. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24444 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–25–000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 26, 1994, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets proposed to become effective October 1, 1994:

First Revised Sheet No. 158
First Revised Sheet No. 159
First Revised Sheet No. 160
First Revised Sheet No. 161
Second Revised Sheet No. 162
Second Revised Sheet No. 163
First Revised Sheet No. 214

Trunkline states that this filing is being made in response to the Commission's Order No. 566 issued on June 17, 1994, in Docket No. RM94–6–000, which among other things eliminates the requirement that pipelines (1) include in their tariffs information required for a valid request for transportation service and (2) file tariff provisions stating the procedures used to inform affiliated and non-affiliated shippers of the availability and pricing of transportation service and of the capacity available for transportation.

Trunkline respectfully requests that the Commission grant any waivers of

the Regulations as may be necessary to place these tariff sheets into effect on October 1, 1994, in accordance with the Commission's Letter Order dated July 29, 1994, granting Trunkline an extension of time to implement the Commission's Regulations as they relate to Order No. 566.

Trunkline states that copies of this filing are being mailed to all shippers subject to these tariff sheets and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24445 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT94-26-000]

Trunkline LNG Co.; Notice of Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 26, 1994, Trunkline LNG Company (TLC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets proposed to become effective August 1, 1994:

Second Revised Sheet No. 79.1
Second Revised Sheet No. 79.2

TLC states that this filing is being made in response to the Commission's Order No. 566 issued on June 17, 1994, in Docket No. RM94-6-000 which, among other things, eliminates the requirement that pipelines include in their tariffs information required for a valid request for service.

TLC respectfully requests that the Commission grant any waivers of the Regulations as may be necessary to place these tariff sheets into effect on August 1, 1994, the effective date of the Commission's Order No. 566.

TLC states that copies of this filing are being mailed to all shippers subject to these tariff sheets and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24446 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5084-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 3, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202-260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Nitric Acid Plants (Subpart G)—Information Requirements. (EPA ICR No. 1056.05; OMB Control No. 2060-0019). This is a renewal of a currently approved collection.

Abstract: Owners or operators of nitric acid plants must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this subpart must install, calibrate, maintain, and operate a continuous monitoring system (CMS) for the measurement and recording of nitrogen oxides emissions, and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS' performance commences. Owners or operators must submit semiannual reports of excess nitrogen oxides emissions and of monitoring system performance. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 9 hours per response for reporting, and 175 hours per recordkeeper annually. The estimated reporting burden includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners and operators of nitric acid plants.

Estimated No. of Respondents: 30.

Estimated No. of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 5,800 hours.

Frequency of Collection: Once and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460. and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: September 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94-24415 Filed 10-3-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5084-1]

Acid Rain Program: Draft Compliance Plans and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Draft Compliance Plans and Public Comment Period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for commnent 5-year nitrogen oxides (NO_X) compliance plans for 19 units at 9 utility plants that amend previously-issued Phase I Acid Rain Permits in accordance with the Acid Rain Program regulations (40 CFR part 76).

DATES: Comments on draft NO_X compliance plans must be received no later than 30 days after the date of this notice or the publication date of a similar notice in local newspapers.

ADDRESSES: *Administrative Records.* The administrative record for draft NO_X compliance plans, except information protected as confidential, may be viewed during normal operating hours at EPA Region 3, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9800.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft NO_X compliance plan to EPA Region 3, Air, Radiation, and Toxics Division, Attn: Thomas Maslany, Director (address above).

Submit all comments in duplicate and identify the NO_X compliance plan to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the plan. All timely comments will be considered, except comments on aspects of the permit other than the NO_X compliance plan and other comments not relevant to the plan.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the NO_X compliance plan.

FOR FURTHER INFORMATION: Contact Richard Killian, (215) 597–7547, (address above).

SUPPLEMENTARY INFORMATION: EPA proposes to approve NO_X compliance plans under which units will comply with the applicable emission limitations for NO_X under 40 CFR 76.5 (referred to as "standard emission limit") or other indicated compliance options for NO_X for the following:

Armstrong in Pennsylvania: standard emission limitation of 0.50 lbs/MMBtu for units 1 and 2. Unit 1 is not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is David C. Benson.

Bruce Mansfield in Pennsylvania: averaging plan for 1995 for units 1 and 2; the actual annual average emission rate for NO_X for each unit shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu. The other units designated in the plan are Edgewater unit 13, Gorge units 25 and 26, New Castle units 1 and 2, Toronto units 10 and 11, and W H Sammis units 5 and 6. For 1996–1999, standard emission limitation of 0.50 lbs/MMBtu for each unit. The designated representative is Howard C. Couch, Jr.

Conemaugh in Pennsylvania: standard emission limitation of 0.45 lbs/MMBtu for units 1 and 2. These units are not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is Ronald P. Lantzy.

New Castle in Pennsylvania: averaging plan for 1995 for units 1 and 2; the actual annual average emission rate for NO_X for each unit shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu. The other units designated in the plan are Bruce Mansfield units 1 and 2, Edgewater unit 13, Gorge units 25 and 26, Toronto units 10 and 11, and W H Sammis units 5 and 6. For 1996–1999, standard emission limitation of 0.50 lbs/MMBtu for each unit. The designated representative is Howard C. Couch, Jr.

Portland in Pennsylvania: standard emission limitation of 0.45 lbs/MMBtu for units 1 and 2. These units are not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is Charles S. Mowbray.

Shawville in Pennsylvania: standard emission limitations of 0.50 lbs/MMBtu for units 1 and 2 and 0.45 lbs/MMBtu for units 3 and 4. The designated representative is Ronald P. Lantzy.

Albright in West Virginia: standard emission limitation of 0.45 lbs/MMBtu for unit 3. The designated representative is David C. Benson.

Fort Martin in West Virginia: standard emission limitation of 0.45 lbs/MMBtu for unit 1; Unit 1 is not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is David C. Benson.

Harrison in West Virginia: standard emission limitation of 0.50 lbs/MMBtu for units 1, 2, and 3. These units are not required to meet the emission limits until 1997 pursuant to 40 CFR 72.42. The designated representative is David C. Benson.

Dated: September 27, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–24416 Filed 10–03–94; 8:45 am]

BILLING CODE 6560–50–P

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Labat-Anderson, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose to its contractor, Labat-Anderson, Inc. (hereinafter "Labat-Anderson"), of Arlington, Virginia, Superfund confidential business information ("CBI") which has been submitted to EPA Region 9, Hazardous Waste Management Division, Office of Superfund Programs. Labat-Anderson's principal offices are located at 2200 Clarendon Boulevard, suite 900, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Elaine Chan, Office of Superfund Programs, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–2380.

NOTICE OF REQUIRED DETERMINATIONS, CONTRACT PROVISIONS AND OPPORTUNITY TO COMMENT: The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as Superfund) requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery. EPA has entered into a contract, No. 68–W4–0028, with Labat-Anderson, for management of these records. EPA Region 9 has determined that disclosure of CBI to Labat-Anderson employees is necessary in order that Labat-Anderson may carry out the work required by that contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii) incorporated by reference into 40 CFR 2.310(h)(2). The Labat-Anderson employees working for the Superfund Program in EPA Region 9 have each signed a written agreement that he or she; (1) Will use the information only for the purpose of carrying out the work required by the

contract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office; and (3) shall return to EPA all copies of information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by Labat-Anderson for performance of the work required by the contract, or upon completion of the contract. These non-disclosure statements shall be maintained on file with the Region 9 Delivery Order Project Officer. Labat-Anderson employees have been trained on Superfund CBI requirements.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii) incorporated by reference into 40 CFR 2.310(h)(2). Comments should be sent to: Environmental Protection Agency, Region 9, Elaine Chan (H–7–4), 75 Hawthorne Street, San Francisco, California 94105.

Dated: September 19, 1994.

Jeff Zelikson,

Director, Hazardous Waste Management Division, EPA Region 9.

[FR Doc. 94–24505 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5084–6]

Underground Injection Control Program—Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; EMPAK, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on exemption reissuance.

SUMMARY: Notice is hereby given that a request for reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to EMPAK, Inc., for the Class I injection well located at Deer Park, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by EMPAK, Inc., of the specific restricted hazardous waste identified in the reissued petition, into the Class I hazardous waste injection well at the Deer Park, Texas facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued on July 27, 1994. The public comment period ended on September 12, 1994. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of September 22, 1994.

ADDRESSES: Copies of the petition for reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mac A. Weaver, P.E., Chief, UIC State Programs, EPA—Region 6, telephone (214) 665–7160.

Myron O. Knudson, P.E.,

Director, Water Management Division (6W).

[FR Doc. 94–24510 Filed 10–3–94; 8:45 am]

BILLING CODE 6565–50–P

[FRL–5084–5]

Underground Injection Control Program Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Monsanto Chemical Company

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on exemption reissuance.

SUMMARY: Notice is hereby given that a request for reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Monsanto Chemical Company, for the Class I injection wells located at Alvin, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Monsanto Chemical Company of the specific restricted hazardous waste identified in the reissued petition, into the Class I hazardous waste injection wells at the Alvin, Texas facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued on June 28, 1994. The public comment period ended on August 12, 1994. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of August 31, 1994.

ADDRESSES: Copies of the petition for reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mac A. Weaver, P.E., Chief, UIC State Programs, EPA—Region 6, telephone (214) 665–7160.

Kenton Kirkpatrick,

Acting Director, Water Management Division (6W).

[FR Doc. 94–24511 Filed 10–3–94; 8:45 am]

BILLING CODE 6565–50–P

[IL–64–2–5807; FRL–5084–9]

Availability of Model State Training and Certification Programs for High Capacity Fossil Fuel-Fired Plant Operators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the model State programs for the training and certification of operators of high capacity fossil fuel-fired plants as required under section 129 of the Clean Air Act (Act).

SUMMARY: This action announces the availability of training materials which constitute the model State training program for operators of high capacity fossil fuel-fired plants, and the model State certification program for these operators, as required under section 129 of the Act.

ADDRESSES: The final student handbook (specify "High Capacity Fossil Fuel-Fired Plant Operator Training Program—Student Handbook," EPA–453/B–94–056) may be obtained from the U.S. EPA Air Pollution Training Institute (MD–17), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2498, FAX number (919) 541–5598.

For qualified instructors interested in conducting the training course, single copies of the instructor's guide (specify "High Capacity Fossil Fuel-Fired Plant Operator Training Program—Instructor's Guide," EPA–453/B–94–057) can be requested by contacting the U.S. EPA Air Pollution Training Institute (MD–17), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2498, FAX number (919) 541–5598 at the above address.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this notice, contact Mr. James Eddinger, Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5426.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this notice.

I. Background
II. Comments and Responses
III. Model State Training Program
IV. Model State Certification Program
V. Authority

I. Background

Section 129(d) of the Act requires the EPA to develop and promote a model State program for the training and certification of solid waste incineration unit operators and high-capacity fossil fuel-fired plant operators. In August 1993, the EPA submitted to all State air pollution control agencies the model State training programs that the EPA developed for operators of municipal waste combustors (MWC's) and medical waste incinerators (MWI's) pursuant to this requirement. To ensure the availability of at least one appropriate national certification program for these solid waste incineration units, the EPA requested the American Society of Mechanical Engineers (ASME) to develop and manage a nationwide certification program for MWC and MWI operators. As a result, the ASME developed an ASME certification program for each of these solid waste incineration industry categories.

The model State training programs for MWC's and MWI's were developed by the EPA to provide a level of understanding that is adequate to successfully complete the requirements of the ASME program or an equivalent State-approved program for certification of operators of such facilities. The emission standards (40 CFR 60.50a) promulgated under section 129 for MWC's require certification of the operator by the ASME or an equivalent State-approved certification program.

In October 1992, the EPA initiated development of a training program for operators of high capacity fossil fuel-fired plants. The EPA considers the term high-capacity fossil fuel-fired plants to mean boilers (i.e., devices that combust fossil fuel to produce steam or hot water) greater than 10 million BTU's per hour heat input. The group of high capacity fossil fuel-fired plants (boilers) covered in this training course includes the size range from small industrial, commercial, and institutional steam generating units (greater than 10 million BTU's per hour heat input) to large utility boilers.

On October 6, 1993 (58 FR 52106), EPA announced the availability of a draft student handbook, prepared as part of a training course for operators of high capacity fossil fuel-fired plants, and EPA's intention to develop a model State certification program for these operators; and invited public comments on both the contents of the student handbook and the EPA's intention to develop the model State certification program.

II. Comments and Responses

Thirty-eight comment letters were received in response to the notice of availability of the draft student handbook and EPA's intention to develop model State training and certification programs: twenty-three from utility companies, seven from industrial boiler facilities, six from trade or technical associations, and two from government agencies. The comments pertained to either specific items or statements in the draft student handbook, the need for the model State training and certification programs, or the coverage of these programs. The comments specific to the draft student handbook have been incorporated into the revised student handbook. The more significant issues raised by commenters relating to the overall model training and certification programs along with clarification of the EPA's intention for these model State programs are discussed below:

1. Draft Student Handbook

A general comment on the draft student handbook was that it covers a wide range of facilities (i.e., fuel types, sizes and applications) and that even though the handbook is a relatively comprehensive treatment of basic combustion theory, technology and emission control, the level of understanding of each of these areas required by a plant operator will vary with the size, type and fuel requirements of a facility. The commenters suggested that a modular handbook be developed so training programs could reflect the specific equipment and fuel used at a facility. They further commented that emphasis on the specific areas of training to reflect the organizational structure of the facility should be allowed.

In response, the training course developed by the EPA is modular in design. It is divided into 30 learning sessions. Each session covers a specific area of knowledge, such as, pulverized coal-fired boilers, NO_X control technology, continuous emissions monitoring, etc * * *. The training course was designed in this manner so that it may fulfill requirements leading to boiler operator certification. The information presented in the training materials covers areas which may be addressed in a potential certification examination. Depending on the different classes/levels of certification available, the appropriate training sessions for that particular level of certification could be selected from the training materials to address the topics covered in that particular certification examination.

2. Requirement for Operator Training and Certification

Based on the comments received, there appears to be a general misunderstanding that, in the October 6, 1993 **Federal Register** notice, the EPA was proposing to require the training and certification of operators of high capacity fossil fuel-fired plants. Some commenters stated that the October 6 **Federal Register** notice failed to clearly state that the draft training program being presented in the form of the draft student handbook was not being required for boiler operators under EPA regulations.

For clarification purposes, section 129 (d) of the Act requires that the EPA develop a model State training and certification program for both operators of solid waste incineration units and high capacity fossil fuel-fired plant operators but mandates training only for operators of solid waste incineration units. This notice announces the availability of the model State programs for the training and certification of operators, as required by section 129 of the Act. This notice is not a rulemaking action to require anyone to implement any training program. The individual States may make determinations whether or not to require operator training and certification and may also decide whether the EPA's model training program or another training program is appropriate.

3. Need for Training and Certification Programs

Both utility and industrial facility commenters questioned the need for training and certification requirements since their operators already undergo extensive site specific training programs that cover all of the topics listed as chapters in the draft student handbook. The utility industry commented that because of the high skill levels required for safe, efficient and reliable operation, extensive and comprehensive internal training programs have been implemented. Both groups commented that their training programs should be allowed to satisfy the obligation for training and that the EPA should allow any company to conduct a training course/program in lieu of the EPA or equivalent State program, provided it meets the fundamental EPA requirements. Also, the utility industry commented that utility facilities are subject to the Title V Operating Permit program under 40 CFR Part 70 and the Continuous Emission Monitoring rules under 40 CFR Part 75 and therefore the utility industry believes that compliance with these regulations encompasses all the objectives outlined by the EPA for training and certifying operators of high capacity fossil fuel-fired plants. They recommended that EPA include in its final model State program a provision for allowing compliance with the above regulations to be considered equivalent to meeting the requirements of an operator training and certification program and allowing the substitution of existing utility or industrial boiler training programs for the EPA model training program to avoid unnecessary duplication of effort.

In response and as stated above, under section 129 of the Act, the EPA is mandated only to develop model State training and certification programs for operators of high capacity fossil fuel-fired plants. These model programs will be made available to the States for their use. The EPA agrees that a mechanism should be included in any State rules regarding training and certification to allow facilities to satisfactorily demonstrate the equivalency of their program. With regard to certification, this is similar to the provision included in the EPA regulations for MWC units where EPA allows certification by ASME or an equivalent State-approved certification program.

4. Applicability

Many comments dealt with the coverage of the training and certification programs. These comments included:

a. They questioned the EPA's interpretation of high capacity fossil fuel-fired plants as inclusive of boilers with relatively small capacity (i.e., as low as 10 million Btu per hour heat input). These commenters suggested that the EPA target training for operators of boilers with 100 million Btu per hour heat input or greater. They commented that many of the boilers in the 10 to 100 million Btu per hour range operate automatically with little attention, without air pollution control equipment and do not incorporate operator adjustment features that could adversely affect air pollution, and are mostly fueled by gas or light oil. Adjustments to these boilers are made on an annual or twice per year basis by qualified outside contractors that specialize in boiler controls and adjustments. The commenters further indicated that the narrow range of adjustments that an operator could make on a gas-fired boiler less than 100 million Btu per hour has a minor influence on emissions and that NO_x emissions are determined primarily by design factors such as configuration of the combustion chamber and the burner design. Neither of these are under control of the operator.

b. A provision should be included in the final model State program to allow for acceptance of alternative training and certification programs for facilities with low capacity factors. The EPA should include an exemption for training for those units with annual capacity factors less than 15%. The required definition of high capacity fossil fuel-fired plants would not be altered if such an exemption were provided for these units.

c. Many commenters believe that the training and certification requirement was intended to apply only to units subject to Subparts Da, Db, and Dc.

* * * * *

In response to the above, the range of boiler sizes selected by the EPA for inclusion in the model State training program was based on the range of boiler sizes covered by the various existing EPA emission regulations for steam generating units. These emission regulations cover the size range from 10 million Btu per hour heat input and greater.

Potential air pollution problems can result from poor operation and maintenance of a boiler and associated air pollution control system when operators do not understand the combustion and air pollution control processes and are inadequately trained. The EPA feels that the training of boiler operators, regardless of the size or capacity factor, would result in improved operation, be relatively inexpensive and would reduce emissions.

The reference made to Subparts Da, Db, and Dc in the October 6, 1993 **Federal Register** notice was intended only to give the reader an indication of the types and sizes of the boilers that were selected for discussion in the training course. Subparts Da, Db, and Dc list definitions for various aspects covered in the training materials, such as, fossil fuel, electric utility steam generating unit, heat input, fluidized bed combustion, etc. The reference to Subparts Da, Db, and Dc was not to suggest that the training course was only intended for operators of boilers subject to these subparts. The training course was designed to be appropriate for operators of any boiler with a capacity above 10 million Btu per hour heat input.

III. Model State Training Program

The training program developed for boiler operators is intended to provide the operator with a basic understanding of the principles of fuel combustion and air pollution control and to identify good operating practices. The program is intended to supplement rather than substitute for site-specific "hands-on" training of the operator. The objectives of the training program are: to instruct operators in the basic principles of proper operation and maintenance of boilers and air pollution control systems; to help assure that the boiler is continuously operated in a manner which complies with State and Federal regulations; to enhance the operators appreciation for their role in minimizing air pollution; and to increase the operators awareness of regulatory requirements.

The training materials consist of a student handbook which is not only intended for use during the course but also may be used as a reference by the operators after completion of the course, and an instructor guide which provides the basic materials for use by the instructor of the training course. The instructor's guide includes the course description and agenda, course goals, lesson plans, copies of an initial test and a final course examination, and audio-visual aids.

Activities for developing this training course performed since mailout of the draft student handbook include revision of the student handbook based on comments received from the mailout, development of the instructor's guide, a trial run of the course, revision of the training materials based on comments received from the trial run, and

publication of the final student handbook.

The trial run of the training materials was conducted in April 1994. The trial run presented the course materials and obtained comments from participants concerning areas that could be changed to improve the course materials. Among the twenty-eight attendees were operators, training specialists, and supervisors of utility and industrial facilities. Also in attendance were representatives from boiler insurance, inspection, and licensing organizations. Comments received from the trial course were incorporated into the final student handbook, as appropriate. The chapters which required the most significant revisions were those pertaining to the water and steam circuits, package boilers, and safety. Also, the materials presented in the chapters on combustion principles and air pollution fundamentals were simplified without compromising the material content. The instructor's guide was then modified to reflect changes to the student handbook.

The operator training materials include testing materials that indicate a student's satisfactory completion of the training course. The EPA will provide the final student and instructor manuals to the States so they can use them to implement an operator training program for high capacity fossil fuel-fired plant operators.

IV. Model State Certification Program

In the development of any operator certification program, several key factors must be addressed. Among these factors is which personnel should be required to be certified. The EPA believes certification should not be limited to only the operator with hands-on control of the boiler. These operators may lack the authority to request the assistance of a repairman when equipment needs maintenance or service. Also these operators may not be authorized to take corrective action in the event of equipment malfunction. Such authority may rest with the operator's supervisor. This may be a shift supervisor, chief engineer, plant manager, etc. It is the operator's supervisor who is usually responsible for making critical decisions regarding operation and maintenance of the equipment. Because decisions made by the operator's supervisor are key to proper operation of the boiler, the operator's supervisor must have a broader level of understanding than the operator. Thus, there is a need for separate levels of certification for operators and operator supervisors.

In addition, the level of knowledge needed by an operator or operator supervisor is dictated by the complexity of the equipment operated. For example, the knowledge required to operate a coal-fired boiler with an air pollution control system is greater than that required to operate a gas-fired boiler without an air pollution control system. It may not be reasonable to require an operator of a boiler without an air pollution control system to demonstrate knowledge of such equipment. Therefore, several classes of boiler operator certification should probably be developed for each operator certification level.

Furthermore, since, as the commenters have indicated, many boilers may operate with little or no operator attention, any certification program should consider including those individuals who perform the boiler tuning and maintenance.

Another key area concerns the qualifications that an applicant should possess for certification. An acceptable level of skill and operating ability should be demonstrated on a boiler system which is equivalent to (or higher than) the class of boiler for which certification is being sought. This "hands-on" ability could be demonstrated by an on-site examination by a qualified/certified examiner or demonstration of ability before other certified operators who verify the applicant's ability. Also a consideration is the prior experience needed before applying for certification. The certification program should require some prior experience under the direct supervision of a certified operator/operator supervisor who verifies the proficiency of the applicant. Finally, an applicant should be required to successfully pass a written examination covering the areas of knowledge deemed necessary for the particular class/level of certification being sought. The written examination could be administered by the State or some authorized certification organization.

The EPA's intention, announced in the October 6, 1993 **Federal Register** notice, for developing a model State certification program for high capacity fossil fuel-fired plants is to outline the scope and components that a State agency should include in a certification program. Components that should be considered for inclusion in any State developed or approved certification program are:

1. Coverage of the Certification Program.

Determination of the type and size of boilers for which operator certification is appropriate. Boilers for which environmental regulations apply are candidates for inclusion in any certification program.

2. Level of Operators To Be Certified

The duties and responsibilities of the positions of the operator and operator supervisor should be established for the purpose of identifying facility personnel to whom certification applies at fossil fuel-fired plants. Certification for all persons who have control over the process and can affect process emissions should be included. This may include operators, supervisors, maintenance personnel, and outside contractor personnel.

An operator is generally in direct control of the operation of a boiler system and is responsible for the startup, operation, and shutdown of equipment. Typical responsibilities may include the following:

a. Operating equipment in accordance with established practices and procedures;

b. Operating equipment consistent with applicable federal, state, and local government requirements;

c. Identifying and initiating responses to upsets and emergency conditions;

d. Identifying and communicating the need for equipment repairs and maintenance;

e. Communicating with management when system operation is in noncompliance with applicable regulations;

f. Operating in a safe manner;

g. Recording operational data as required.

An operator supervisor generally has direct responsibility for the operation of a boiler system and is responsible for overall on-site supervision, technical direction, management, and performance of the facility. Typical responsibilities may include the following:

a. Supervising, training, monitoring, and evaluating operators;

b. Assuring operation in accordance with established practices and procedures;

c. Assuring equipment is operated in accordance with applicable federal, state, and local government requirements;

d. Directing action to correct equipment upsets or emergency conditions;

e. Assuring operating and maintenance records are maintained and reports are prepared as required;

f. Assuring noncompliance incidents and corrective action items are reported to management or regulatory agencies;

g. Assuring a safe workplace.

The operator supervisor may also directly perform the duties and responsibilities of the operator.

3. Classes of Certification

This includes establishment of various classes for which operator certification is appropriate. The level of knowledge needed to properly operate and minimize emissions varies considerably depending on the type of facilities. Therefore, the level of knowledge will vary depending on job duties and responsibilities. Different classes of certification within each level developed under (2) should be considered.

A boiler system may have any combination of fuel type, boiler type and air pollution control system, and an operator should be certified in the class designation equivalent to or more comprehensive than the type of equipment operated.

Example operator class designations are:

Class A - certified to operate a coal-fired boiler with air pollution control systems
Class B - certified to operate a coal-fired boiler without air pollution control systems
Class C - certified to operate a gas or oil-fired boiler with air pollution control systems
Class D - certified to operate a gas or oil-fired boiler without air pollution control systems

4. Qualifications

The following are the recommended qualifications that should be met by an operator/operator supervisor to complete certification:

a. Minimum age requirement;
b. Training;
c. Minimum level of experience under the direct supervision of a certified operator or operator supervisor who must verify the proficiency of the applicant in all aspects of the job;
d. Pass a written examination, as discussed in item 5 below, administrated by the State or a State-approved certification organization.

The acceptable demonstration of skills and ability should be performed on a boiler system equivalent to, or higher than, the class of boiler equipment for which certification is being sought.

During the initial implementation of a certification program when there are not certified operators or operator supervisors available to certify the applicant's proficiency, the applicant's employer could be allowed to verify that the applicant has been continuously employed as either an operator or operator supervisor for a minimum period of time and that the applicant's job performance has been satisfactory. Further, the employer should verify that the hands-on experience was as an operator or operator supervisor for a boiler system equivalent to, or higher than, the class of boiler equipment for which certification is being sought.

5. Training Requirements

The training requirements should be established for boiler operators to provide the operator with a basic understanding of the principles of fuel combustion and air pollution control and to identify good operating practices. The training requirements should included both classroom and site-specific "hands-on" training of the operator. The objectives of the training program are: to instruct operators in the basic principles of proper operation and maintenance of boilers and air pollution control systems; to help assure that the boiler is continuously operated in a manner which complies with State and Federal regulations; to enhance the operators appreciation for their role in minimizing air pollution; and to increase the operators awareness of regulatory requirements.

6. Pass Written Examination

The final key element should be a requirement that the applicant demonstrate sufficient knowledge in specified areas by passing a written examination administered by the State or an approved certification organization. This element should also require a provision for a "bank" of questions to implement the written examination to assure that tests given at different times are not identical.

The examination should be structured as a closed book, multiple choice, and written examination. The examinations for operators should differ from those for operator supervisor consistent with the differences in duties. The examination could be modular in design and given in parts. Candidates successfully passing the appropriate parts can be deemed to have completed the written testing requirements for a particular certification class.

To successfully pass a test part, a candidate should correctly answer a minimum of 70 percent of the questions in that part.

Questions should be related to:

a. Water and Steam Circuit
b. Fuel, Air and Gas Circuit
c. Basic Combustion Principles
d. Air Pollution Fundamentals
e. Boiler equipment characteristics
f. Normal Boiler Operation
g. Automatic Control Systems
h. Instrumentation
i. Preventative Maintenance
j. Safety
k. Air Pollutants of Concern
l. Environmental Regulations
m. Continuous Emissions Monitoring
n. Particulate Control
o. NO_x Control
p. SO_x Control
q. Water Pollution and Control
r. Solids Waste and Control

7. Issuance of Certification

Each candidate who passes the written examination and whose proficiency has been verified should be issued a certificate valid for a specific time period (e.g., five years). Each certificate should contain the following minimum information:

a. Type of certification;
b. Certified individual's full name;
c. Photograph of certified individual;
d. Effective date and expiration date.
e. Signature of a duly authorized designee.

8. Provision for Recertification

Certification should be granted for a limited period of time. The procedure for recertification could be simply verification of satisfactory employment with the appropriate type of equipment for that certification level/classes since the time the previous certification was granted or it could entail additional refresher courses, "hands-on" demonstration, or passing of a written examination.

9. Revocation of Certification

There should be a procedure included in the certification program to revoke a certification for falsifying or providing inaccurate information in the certification process.

The components listed above as the model State certification program are modelled after the certification standards developed by the ASME for MWC and MWI operators. These ASME certification standards were developed by a committee balanced by interest classification (e.g., regulatory, operators, manufacturers, etc.) and underwent public review and comment. The EPA was a member of the ASME committee for the development of the MWI certification standard.

In August 1992, to ensure the availability of at least one appropriate national certification program, the EPA requested the ASME to develop and manage a nationwide certification program for boiler operators. As a result, the ASME Board of Safety Codes & Standards and the Council on Codes & Standards approved the formation of a committee in June 1994 to develop such a program. The ASME certification program is anticipated to be completed in late 1996.

As discussed above, the EPA will provide the final student handbook and instructor guide, developed by the EPA, to the States so they may implement operator training or certification programs prior to finalization of the ASME certification program. In addition, some States may already require that boiler operators obtain state boiler operator engineer licenses. If these licensing agencies demonstrate equivalency, a State air pollution control agency could accept this licensing as certification under this program. Licensing organizations, such as the National Institute for the Uniform Licensing of Power Engineers Incorporated, have commented that there are other licensing organizations that may be able to provide certification programs in a shorter timeframe than the ASME since they already have a licensing program developed for boiler operators along with a possible database of appropriate questions. They also indicated a willingness to modify their programs to meet whatever criteria a State sets for a certification program.

As stated in the October 6, 1993 **Federal Register**, the training materials developed by the EPA will be revised as necessary when the ASME certification program is sufficiently developed to ensure that the training course is coordinated with the certification requirements.

The ASME has previously developed certification programs for operators of MWC's and MWI's. In terms of the boiler operator certification, the EPA's intention is to continue to work with the ASME by serving on the various development committees and by providing technical assistance to develop a certification program. The ASME certification program is anticipated to be completed no earlier than late 1996.

V. Authority

This notice of availability of model State programs for the training and certification of operators of high capacity fossil fuel-fired plants is issued under the authority of section 129 of the Clean Air Act, as amended.

Dated: September 27, 1994.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–24506 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–00162; FRL–4914–8]

Forum on State and Tribal Toxics Action Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open Meetings.

SUMMARY: The four Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public at the time and place listed below.

DATES: The four Projects will meet October 24 from 8 a.m. to 5 p.m., with a plenary session from 1 p.m. until 2:15 p.m., and on October 25 from 8 a.m. to noon.

ADDRESSES: The meetings scheduled will be held at The Holiday Inn, 480 King St., Alexandria VA.

FOR FURTHER INFORMATION CONTACT: Bob Janney, Office of Pollution Prevention and Toxics (7408), U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260–1584.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states/tribes and between the states/tribes and U.S. EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS). FOSTTA currently consists of the Coordinating Committee and four issue-specific Projects. The Projects are: (1) The Toxics Release Inventory Project; (2) The State and Tribal Enhancement Project; (3) The Chemical Management Project; and (4) The Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: September 29, 1994.

James B. Willis,

Acting Director, Environmental Assistance Division Office of Pollution Prevention and Toxics.

[FR Doc. 94–24502 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5083–9]

Science Advisory Board Notification of Public Advisory Committee Meeting(s) Open Meeting(s)

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. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office.

(1) Clean Air Act Compliance Analysis Council (CAACAC) Physical Effects Review Subcommittee (CAACACPERS) Teleconference—October 18, 1994:

The Clean Air Act Compliance Analysis Council (CAACAC) Physical Effects Review Subcommittee (CAACACPERS) of the Science Advisory Board (SAB) will conduct a teleconference meeting on Tuesday, October 18, 1994 from 11:00 a.m. to 1:00 p.m. eastern time. In this teleconference meeting, the CAACACPERS intends to discuss six draft documents which have been prepared for review as required by Section 812 of the Clean Air Act (CAA), to be briefed by Agency staff on the overall Physical Effects review process, and to plan for an efficient review scheduled for November 15 and 16, 1994 to be held in the Washington, D.C. metropolitan area (See below for details on the November 15 and 16, 1994 meeting).

In the teleconference, the CAACACPERS will be discussing how the review will take place, provide initial observations regarding the first review drafts of the Physical Effects Documents pertaining Section 812 of the Clean Air Act (CAA), namely (1) Ozone, (2) Sulphur Oxides, (3) Particulate Matter, (4) Carbon Monoxide, (5) Nitrogen Oxides, and (6) Lead, and plan for an upcoming November two-day review meeting. The Agency is preparing a draft methodology document for review by the SAB's CAACACPERS, which outlines the overall strategy of this effort. This methodology document is still under preparation, and may be made available prior to the teleconference. Additional draft documents, such as the methodology used to aggregate the effect of hazardous air pollutants, up-to-date assessments of the significance of recent research, and possibly select methodology papers may be provided in the future for review as necessary and appropriate. The Agency has asked the SAB to answer the following questions in the proposed charge relating to this review:

(1) Are each of the elements of the methodology developed by EPA sufficiently valid and reliable from a scientific standpoint for purposes of the CAA Section 812 assessments?,

(2) The Congress and EPA intend that the CAA Section 812 retrospective analysis should provide the most comprehensive possible statement about

potential benefits of historical reductions in air pollution. This includes reporting on the potential significance of effects for which there may be no scientific consensus regarding the magnitude or even the existence of a specific effect. Given this statutory and administrative goal, is the methodology developed by EPA sufficiently comprehensive in terms of plausible health, welfare, and ecological consequences of exposure to the relevant air pollutant?,

(3) If the answer to question 2 is negative, what are the physical outcomes of pollutant exposure which the Agency has omitted?,

(4) For physical outcomes already included in the methodology paper, as well as those which should be considered for inclusion pursuant to question 2, are there potentially relevant data pertaining to quantitative or qualitative estimation of the effect which should be considered for inclusion in the methodology? What specifically are the sources of these data and how might they be best utilized?, and

(5) What is the strength of the scientific evidence underlying each of the physical effects functions or models already included in the methodology paper? What is the strength of each element of additional scientific evidence suggested for inclusion pursuant to question 3 and 4 above?

For copies of the Agency's draft Section 812 draft documents, please contact Ms. Eileen Pritchard, Secretary, U.S. Environmental Protection Agency, Office of Policy Planning and Evaluation (OPPE), Economic Analysis and Innovation Division (Mail Code 2127), 401 M Street SW., Washington, DC 20460. Tel. (202) 260–3354, and FAX (202) 260–5732. Any member of the public desiring to participate in the teleconference, desiring additional information about the meeting, or desiring to obtain copies of the agenda and other information about the conduct of the meeting, or to request time on the agenda for public comments, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Ms. Diana Pozun, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street SW., Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Pozun.Diana@EPAMAIL.EPA. GOV.

(2) Science Advisory Board, Executive Committee—October 25–26, 1994

The Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public meeting on Tuesday and Wednesday, October 25–26, 1994. The meeting will be held in the Administrator's Conference Room 1103 West Tower at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. On Tuesday, it will begin at 8:30 p.m. and adjourn not later than 5:00 p.m.; on Wednesday, it will begin at 8:30 a.m. and adjourn not later than 1:00 p.m. The meeting is open to the public and limited unreserved seating will be available.

The EC intends to review activities of and reports from its Committees, including the following: a) Radiation Advisory Committee (RAC)—Retrospective Analysis of RAC Activities and b) Environmental Engineering Committee (EEC)—Review of Environmental Technology Initiative. The group will also receive briefings on the Agency's combustion policy and the development of a new Regulatory Impact Analysis process.

Invited visitors include the Assistant Administrator for Research and Development, Dr. Robert Huggett, to discuss his views and plans for science at EPA; the Assistant Administrator for Prevention, Pesticides, and Toxic Substances, Dr. Lynn Goldman, to discuss a number of issues including the Agency's reassessment of "dioxin" and the charge to the SAB; Dr. Ray Wassell of the staff of the National Research Council to discuss the NRC study on combustion.

The Executive Committee will discuss the status of the Environmental Futures Project and the Report from the SAB Reinvention Committee. In addition, they will discuss the Board's agenda for FY95.

Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official, Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460, or by phone at (202) 260–4126; FAX (202) 260–9232; or via the Internet at barnes.don@epamail.epa.gov.

(3) Radiation Advisory Committee (RAC)—October 26, 1994

The Radiation Advisory Committee (RAC) plans to meet on Wednesday, October 26, 1994 at the Environmental Protection Agency (EPA) Headquarters, Conference Room Number 3, North, 401 M Street, SW., Washington, DC 20460, commencing at 9:00 a.m. and adjourning at 12:00 noon that day. The purpose of this meeting is to discuss proposed Fiscal Year 1995 projects, and to plan and organize for the upcoming review of the technical basis of the cleanup standards, which will begin on October 27, 1994. Other topics may be discussed as time permits.

Any member of the public desiring additional information about the meeting, desiring to obtain copies of the agenda and information about the conduct of the meeting, or to request time on the agenda for public comments, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official or Ms. Diana Pozun, Staff Secretary, Science Advisory Board (1400F), U.S EPA, 401 M Street. SW, Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Pozun.Diana@EPAMAIL.EPA.GOV

(4) Radionuclide Cleanup Standards Subcommittee (RCSS)—October 27 and 28, 1994

On Thursday, October 27, 1994, beginning at 9:00 a.m. and ending no later than 3:30 p.m. on Friday, October 28, 1994, the Radionuclide Cleanup Standards Subcommittee (RCSS) of the Radiation Advisory Committee (RAC) of the Science Advisory Board (SAB) will begin a formal review of the technical basis of the cleanup standards that are being proposed by the Agency. It is also planned, that on the afternoon of October 28, 1994 that the Environmental Protection Agency's (EPA's) Office of Radiation and Indoor Air (ORIA) staff will provide a briefing to the SAB's RCSS and RAC on model building standards.

The meeting will take place at the Courtyard Marriott Hotel, 2899 Jefferson Davis Highway, Arlington, VA 22202, tel. (703) 549–3434. The proposed charge to the SAB is as follows:

(1) Is the methodology used by the Office of Radiation and Indoor Air (ORIA) for evaluating source terms for radioactively contaminated sites, for modeling transport to people, and for estimating risk to individuals and populations acceptable for providing a technical basis for writing a cleanup standard?

(2a) Are the assumptions for the combined residential/agricultural land use scenario, and the pathways model, reasonable and suitable for assessing risk at radioactively contaminated sites?

(2b) Are the assumptions for the combined industrial/commercial land use scenario, and the pathways model, reasonable and suitable for assessing risk at radioactively contaminated sites?, and

(3) Is RESRAD version 5.01 (specific reference to RESRAD may be omitted) suitable for modeling radiation risk to individuals at radioactively contaminated sites?

The actual draft documents to be reviewed are entitled as follows: (1) "Radiation Site Cleanup Regulations: Technical Support Document for the Development of Radionuclide Cleanup Levels for Soil," Review Draft, September, 1994, (2) "Radiation Site Cleanup Regulations: Technical Support Document for the Development of Radionuclide Cleanup Levels for Soil," Appendices, September, 1994. To discuss technical aspects of the draft Agency documents, contact Dr. Anthony B. Wolbarst, Chief, Remedial Guidance Section, Radiation Studies Division, Office of Radiation and Indoor Air (ORIA) (Mail Code 6603J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. To simply obtain copies of the Agency draft documents please contact Ms. Virginia Stradford, Secretary, at (202) 233–9350, FAX (202) 233–9650. The background documents and review documents are being made available in the Agency's U.S. EPA Air and Radiation Docket. Please address written inquiries as follows: Attn: Air and Radiation Docket, Mail Stop 6102, Air Docket No. A–93–27, Room M1500, First Floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays, in Room M1500. A reasonable fee may be charged for copies of docket materials. Inquiries regarding access to the public information docket should be directed to Ms. Lynn Johnson, ORIA Staff (Mail Code 6603J) at (202) 233–9383.

Any member of the public desiring additional information about the meeting, desiring to obtain copies of the agenda, information about the conduct of the meeting, or to request time on the agenda for public comments, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official or Ms. Diana Pozun, Staff Secretary, Science Advisory Board (Mail Code 1400F), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Pozun.Diana@EPAMAIL.EPA.GOV.

(5) Ecological Processes and Effects Committee—October 27, 1994

The Ecological Processes and Effects Committee will meet on October 27, 1994, from 8:30am to 4:00pm at the Holiday Inn Capitol, 550 C Street SW., Washington, DC, telephone (202) 479–4000. The meeting will be open to the public, but seating is limited and will be on a first-come basis. The purpose of the meeting will be to hear briefings on proposed projects for Fiscal Year 1995 and to establish a calendar of meetings for the coming year. Any member of the public desiring additional information about the meeting or wishing to obtain an agenda should contact Robert Flaak, Assistant Director, Science Advisory Board (Mail Code 1400F), US EPA, 401 M Street SW., Washington, DC 20460, by telephone at (202) 260–6552, FAX at (202) 260–7118, or via the Internet at Flaak.Bob@EPAMAIL.EPA.GOV.

(6) Clean Air Act Compliance Analysis Council (CAACAC) Physical Effects Review Subcommittee (CAACACPERS)—November 15 and 16, 1994

The Clean Air Act Compliance Analysis Council (CAACAC) Physical Effects Review Subcommittee (CAACACPERS) of the Science Advisory Board (SAB) will conduct a review meeting on Tuesday, November 15, 1994 beginning 9:00 a.m. eastern time, and ending no later than 4:30 p.m. on Wednesday, November 16, 1994. The meeting will take place at the Courtyard Marriott Hotel, 2899 Jefferson Davis Highway, Arlington, VA 22202 (Tel. 703–549–3434). In this meeting, the CAACACPERS intends to discuss recently revised versions of six draft physical effects documents (See references and charge to the Subcommittee as outlined above in this **Federal Register** notice for the October 18, 1994 teleconference for the charge to the Subcommittee and listing of the six draft documents) and a recently prepared methodology document which should be prepared on time for this SAB/CAACAC review of the Clean Air Act (CAA) Section 812 review, to have presentations by Agency staff on the review, and to begin development of a draft SAB report which responds to the charge from the Agency.

For copies of the draft Agency Section 812 CAA documents, please contact Ms. Eileen Pritchard, Secretary, U.S. Environmental Protection Agency, Office of Policy Planning and Evaluation (OPPE), Economic Analysis and Innovation Division (Mail Code 2127), 401 M Street SW., Washington, DC 20460. Tel. (202) 260–3354, and FAX (202) 260–5732. Any member of the public desiring additional information about the meeting, desiring to obtain copies of the agenda and information about the conduct of the meeting, or to request time on the agenda for public comments, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official or Ms. Diana Pozun, Staff Secretary, Science Advisory Board (1400F), U.S. EPA, 401 M Street SW., Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Pozun.Diana@ EPAMAIL.EPA.GOV.

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, for teleconference call meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than fifteen minutes total. For meetings other than teleconference calls, opportunities for oral comment will be usually limited to five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

To Obtain More Information on or Participate in the SAB Meetings

These meetings are open to the public, but seating or telephone lines are limited and available on a first come basis. Any member of the public wishing further information concerning the meetings, such as a proposed agenda, or who wishes to submit oral or written comments (at least 35 copies) should contact the appropriate Designated Federal Official as listed above. Written inquiries can be sent to the following address: U.S. Environmental Protection Agency; 401 M Street SW., Washington, DC 20460, Phone: (202) 260–6552 or FAX (202) 260–7118.

Members of the public who wish to make a brief oral presentation at the teleconference or meetings should contact the listed Designated Federal Official no later than one week prior to the meeting or teleconference in order to have time reserved on the agenda. The Science Advisory Board expects that public statements presented at a teleconference or meeting will not be repetitive of previously submitted oral or written statements. Written comments received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the relevant SAB committee or subcommittee prior to its meeting;

comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: September 23, 1994.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 94–24417 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5085–3]

Meeting of the Small Town Environmental Planning Task Force

On October 19–20, 1994, the Small Town Environmental Planning Task Force (STTF) will conduct its third meeting. The purpose of the meeting is to discuss and act on their policy paper, and focus on how the group is accomplishing their legislative mandates.

The Task Force is charged with identifying regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns; identifying the means to improve the working relationship between the Environmental Protection Agency and small towns; reviewing proposed regulations for the protection of environmental and public health and suggesting revisions that could improve the ability of small towns to comply with such regulations; and identifying the means to promoting regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic conditions of such systems and infrastructure.

The meeting will be held at the Dupont Plaza Hotel, located at 1500 New Hampshire Avenue, NW., Washington, DC, 20036. The meeting will begin at 9 a.m. on October 19th and conclude at 5 p.m. on October 20th.

The Designated Federal Officer (DFO) for this Committee is Christine Zawlocki. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0244 or by writing to USEPA, 401 M Street SW., (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available within thirty days after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible.

Christine Zawlocki,

Acting Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 94–24507 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30347A; FRL–4913–7]

Becker Microbial Products Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Becker Microbial Products Inc., to conditionally register the pesticide products BMP 123 (48 LC), BMP 123 (2X WP), and BMP 123 (32 LC) containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–7690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 18, 1993 (58 FR 8945), which announced that Becker Microbial Products Inc., 9596 N.W. 11th St., Plantation, FL 33322, had submitted three applications to conditionally register the pesticide products BMP 123 (48 LC), BMP 123 (2X WP), and BMP 123 (32 LC) (File Symbols 62637–A, 62637–L, and 62637–U), containing the active ingredient *Bacillus thuringiensis* subspecies *kurstaki* at 2.15, 6.4, and 1.60 percent respectively, an active ingredient not included in any previously registered products. The company later amended the name of the active ingredient to read "*Bacillus thuringiensis* subspecies *kurstaki* strain BMP 123."

The applications were approved on August 5, 1993, which contain the active ingredient *Bacillus thuringiensis* subspecies *kurstaki* strain BMP 123 for terrestrial, forestry, and food use to control various insects, for the following products:

1. BMP 123 (48 LC) (EPA Registration Number 62637–6).

2. BMP 123 (2X WP) (EPA Registration Number 62637–5).

3. BMP 123 (32 LC) (EPA Registration Number 62637–4).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *Bacillus thuringiensis* subspecies *kurstaki* strain BMP 123, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Bacillus thuringiensis* subspecies *kurstaki* strain BMP 123 during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C) provided that the studies be submitted by December 21, 1994, as listed below:

1. Avain Oral (Guideline Reference Number 154A–16).

2. A 30–Day Freshwater Fish Toxicity/Pathogenicicty Testing (154A–19).

3. Freshwater Aquatic Invertebrate Toxicity/Pathogenicity Testing (154A–20).

4. Honey Bee Toxicity/Pathogenicity Test (154A–24).

5. Analysis of Samples (154A–13).

If these conditions are not complied with the registration will be subject to cancellation in accordance with FIFRA section 6(e); this registration will expire on May 21, 1996.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not

result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on *Bacillus thuringiensis* subspecies *kurstaki* strain BMP 123.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 26, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–24503 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30356B; FRL–4912–9]

Mauri Laboratories; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Victus, a Biological Control Agent, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard Cole, Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 22, 1993 (58 FR 67791), which announced that Mauri Laboratories, 9 Moorebank Ave., Moorebank, NSW 2170 Australia, had submitted an application to register the pesticide product Victus (EPA File Symbol 67186–R), containing the active ingredient *Pseudomonas fluorescens* strain NCIB 12089 at 1 percent, an active ingredient not included in any previously registered product.

The application was approved on August 5, 1994, as Victus for the control of bacterial blotch on cultivated mushrooms (EPA Registration Number 67186–1).

The Agency has considered all required data on risks associated with the proposed use of *Pseudomonas fluorescens* strain NCIB 12089, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of *Pseudomonas fluorescens* strain NCIB 12089 when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on *Pseudomonas fluorescens* strain NCIB 12089.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 26, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–24500 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5085–4]

42 U.S.C. Section 122(h); Proposed Administrative Agreement

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed settlement.

SUMMARY: USEPA is proposing to settle a claim under Section 107 of CERCLA for response costs incurred during removal activities at the MCI, Inc. site in Detroit, Michigan. Respondent has agreed to reimburse USEPA in the amount of $55,000. USEPA today is proposing to approve this settlement offer because it reimburses USEPA, in part, for costs incurred during USEPA's removal action.

DATES: Comments on this proposed settlement must be received on or before November 3, 1994.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Heidi Valetkevitch at (312) 886-1303 before visiting the Region V Office). U.S. Environmental Protection Agency, Region V, Office of Superfund, Remedial and Enforcement Response Branch, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Heidi Valetkevitch, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P-19J), Chicago, Illinois 60604, (312) 886-1303.

FOR FURTHER INFORMATION CONTACT: Heidi Valetkevitch, Office of Public Affairs, at (312) 886-1303.

SUPPLEMENTARY INFORMATION: The MCI, Inc. site is not on the National Priorities List. After receiving a request to perform a site assessment in October 1989, USEPA and contractor personnel undertook response actions designed to minimize the immediate threat, test the physical building, chemicals and materials involved, and properly dispose of the hazardous waste.

Respondent is a local business entity that arranged for the disposal of hazardous waste while having its manufactured parts stripped of paint or chemically treated at the site. A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement. Comments should be sent to the Office of Public Affairs (P-19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

Thomas P. Turner,

Assitant Regional Counsel, United States Environmental Protection Agency.

[FR Doc. 94-24504 Filed 10-3-94; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

Federal Communications Commission

OMB Control No.: 3060-0613
Title: Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Transport Phase II (Third Report and Order).
Expiration Date: 09/30/95
Estimated Annual Burden: 592 total hours; 37 hours per response; 16 respondents.
Description: In the Third Report and Order in the Expanded Interconnection proceeding, CC Docket No. 91-141, the Commission required Tier 1 local exchange carriers (LECs), except National Exchange Carrier Association (NECA) pool members, to offer certain signalling information to interested parties so that those parties could provide tandem switching services. The Commission ruled that LECs offering of the necessary signalling information will constitute a new service under price caps. LECs are required to make a cost-based showing under the price caps new services test. This will enable the Commission to ensure that the required signalling information is reasonably priced. In addition, LECs will be required to establish a rate element for the signalling information as a separate service category within the trunking basket. Tier 1 LECs are required to file tariffs for offering signalling information for traffic from their equal access end offices.

OMB Control No.: 3060-0150
Title: Public Mobile Service—Part 22
Expiration Date: 02/28/95
Estimated Annual Burden: 378,010 total hours; 10.5 hours per response (avg.); 35,828 respondents.
Description: Part 22 contains the technical and legal requirements for radio stations operating in the Public Mobile Services (PMS). General requirements under Part 22 are contained in subparts B, C, and D. Miscellaneous requirements are found in subpart E. Special requirements for each service are provided in subparts G, H, K, L, and M. Special requirements for developmental authorizations are provided in subpart F. The information requested under Part 22 is used by the Commission staff in carrying out its duties as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended, to determine the technical, legal and other qualifications of applicants to operate a station in the public mobile service. The information is also used to determine whether grant of an application will serve the public interest, convenience and necessity. The staff also uses this information to ensure that applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act.

OMB Control No.: 3060-0438
Title: Unserved Area Application Filing Requirements and Other Cellular Requirements
FCC Form No.: FCC Form 464
Expiration Date: 01/31/95
Estimated Annual Burden: 96,600 total hours; 4.83 hours per response, 20,000 respondents.
Description: In CC Docket No. 90-6, the Commission adopted rules for the processing, filing and selection of unserved applications in the Domestic Public Cellular Radio Telecommunications Service and other cellular rules. The information collected will be used by the Commission to determine whether the applicant is qualified legally, technically, and financially to be licensed as a cellular operator. Without such information the Commission could not determine whether to issue licenses to the applicants that provide telecommunication services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-24464 Filed 10-3-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names on the Performance Review Board.

DATES: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: James M. Cheskawich, Director, Personnel and EEO Division, Federal Labor Relations Authority (FLRA), 607 14th Street, NW., Washington, DC 20424-0001, (202) 482-6690, extension 440.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Solly Thomas, Office of the Executive Director, FLRA

Marjorie K. Thompson, Office of the General Counsel, FLRA

Godfrey D. Dudley, Equal Employment Opportunity Commission

Gloria Joseph, National Labor Relations Board

Mary L. Jennings, Merit Systems Protection Board

James M. Cheskawich,

Director, Personnel and EEO Division.

[FR Doc. 94–24456 Filed 10–3–94; 8:45 am]

BILLING CODE 6727–01–M

FEDERAL RESERVE SYSTEM

The Colonial BancGroup, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 28, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to acquire 100 percent of the voting shares of Brundidge Banking Company, Inc., Brundidge, Alabama.

Board of Governors of the Federal Reserve System, September 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-24460 Filed 10-3-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, October 20, 1994 from 9 a.m. to 4 p.m. in room 7C13 of the General Accounting Office, 441 G St. NW., Washington, DC.

The agenda for the meeting includes discussions on (1) Revenue Recognition issues, (2) a preliminary draft Exposure Draft on Property, Plant, and Equipment, (3) Human Capital and R&D draft Exposure Draft issues, and (4) an Exposure Draft outline on Land, Heritage, and Miscellaneous Property.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St. NE., room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: September 26, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–24394 Filed 10–3–94; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR) Cancellation of Medical Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the cut sheet version of the following Standard Form is cancelled:

SF 541, Medical Record—Gynecologic Cytology (NSN 7540–00–832–7973)

The 4-part set of the form is still available from the Federal Supply Service.

DATES: Effective on October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: September 22, 1994.

Theodore D. Freed,

Chief, Forms Management Branch.

[FR Doc. 94–24400 Filed 10–3–94; 8:45 am]

BILLING CODE 6820–34–M

Interagency Committee for Medical Records (ICMR) Cancellation of Medical Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the cut sheet version of the following Standard Form is cancelled:

SF 502, Medical Record—Narrative Summary (Clinical Resume) (NSN 7540–00–634–4114)

The two-part set of the SF 502 is still available from the Federal Supply Service.

DATES: Effective on October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: September 20, 1994.

Theodore D. Freed,

Chief, Forms Management Branch.

[FR Doc. 94–24401 Filed 10–3–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[GN# 2275]

Notice of Three Meetings of the Commission on Research Integrity

Pursuant to P.L. 92–463, notice is hereby given of three future meetings of the Commission on Research Integrity. Meetings are subject to availability of funds and interested parties are advised to call the Executive Secretary shortly before scheduled meetings to verify each date and place. The meetings are planned as follows:

• Wednesday, October 19th, from 9 a.m. to 5 p.m. at the Stouffer Concourse Hotel, James Room, 2399 Jefferson Davis Highway, Arlington, VA 22202. The Commission invites respondents in alleged misconduct cases and attorneys who have advised them to present their views in person or in writing on the strengths and weaknesses of the way institutions and the Public Health Service (PHS) pursue such allegations. The Commission will also continue to discuss definitions of research misconduct.

• Monday, November 7th, from 8:30 a.m. to 4:30 p.m. at the National Institutes of Health, 9500 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892. The Commission is planning a dialogue with the Director, NIH, and other intramural and extramural officials and employees on the strengths and weaknesses of the present PHS system of pursuing scientific misconduct.

• Thursday, December 1st, from 9 a.m. to 5 p.m. and on Friday, December 2nd, from 8 a.m. to 3 p.m. at the Stouffer Concourse Hotel, Potomac Room, 2399 Jefferson Davis Highway, Arlington, VA 22202. On the first day, the Commission invites whistleblowers and witnesses in alleged scientific misconduct cases and counsel who have advised them to present their views in person or in writing on the strengths and weaknesses of the way the PHS and institutions pursue such allegations. On the second day, the Commission will continue its discussion of specific issues in scientific misconduct and the responsible conduct of research.

The mandate of the Commission is to develop recommendations for the Secretary of Health and Human Services and the Congress on the administration of Section 493 of the PHS Act, as amended by and added to, by Section 161 of the NIH Revitalization Act of 1993. Discussion items may include but will not be limited to the issues noted above.

Henrietta D. Hyatt-Knorr, Executive Secretary, Commission on Research Integrity, at the Office of Research Integrity, Division of Policy and Education, Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852, (301) 443–5300, will furnish meeting agendas, the Committee charter, and a roster of the Committee members upon request. Persons wishing to make presentations should contact the Executive Secretary. Depending on the number of oral presentations and other considerations, the Executive Secretary will allocate a reasonable timeframe for each speaker.

Commission members will prepare questions to guide witnesses in their presentations. The questions should be obtained from the Executive Secretary. More detailed statements from witnesses on their individual experiences may be submitted in writing to the Executive Secretary before or at the meeting. Each statement will be reviewed by Commission Members. Witnesses and members of the public are advised that in both written or oral statements presented to the Commission, they should not reveal any confidential information from any open case under investigation by an institution or the Office of Research Integrity or from any closed case where there has not been a finding of scientific misconduct or which has not otherwise been made public.

Dated: September 27, 1994.

Lyle W. Bivens,

Director, Office of Research Integrity

[FR Doc. 94–24474 Filed 10–3–94; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with seciton 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Immunization Practices.

Times and Dates: 8:30 a.m.-6 p.m., October 19, 1994. 8:30 a.m.-2:45 p.m., October 20, 1994.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be Discussed: The committee will discuss immunization coverage in the United States; progress towards reaching the 1996 disease reduction goals; vaccine safety update; revision of ACIP recommendations based on findings of the Institute of Medicine report on vaccine safety; update on vaccine schedule simplification-accelerated schedules; review of draft recommendation on BCG; revision of polio vaccination recommendations; revised recommendations for hepatitis B vaccination; revision of the meningococcal vaccine recommendation; varicella vaccine recommendation; vaccination of health care workers; adolescent immunizations; ACIP policies on "catch-up" vaccinations; recommendations for prevention of hepatitis A: hepatitis A vaccine and immune globulin; the need for ACIP recommendations on immunization practices; status of development of new combination vaccines (manufacturers report); worldwide diphtheria outbreaks; an update on the Injury Compensation Program; and an update on the National Vaccine Program. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Committee Management Specialist, CDC (1–B72), 1600 Clifton Road, NE, Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: September 28, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–24450 Filed 10–3–94; 8:45 am]

BILLING CODE 4163–18–M

National Institutes of Health

National Institute on Aging; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Biological and Clinical Aging Review Subcommittee A, National Institute on Aging, October 3, 1994, from 8:30 a.m. to adjournment, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland, which was published in the **Federal Register** on September 21, 1994, Vol. 59, page 48441.

The meeting was cancelled because the majority of the members were not available to meet to conduct the committee's business.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: September 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–24410 Filed 10–3–94; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU–LAB, Inc., 405 Alderson St., Schofield, WI 54476, 800–627–8200, (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.)

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Ave., Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Center for Laboratory Services, a Division of LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535, (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert St., Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugProof, Division of Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672, (formerly: Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609, (moved 6/16/93)

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, Inside MI: 800–328–4142/Outside MI: 800–225–9414, (formerly: HealthCare/Preferred Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835

Med-Chek/Damon, 4900 Perry Hwy., Pittsburgh, PA 15229, 412–931–7200, (formerly: Med-Chek Laboratories, Inc.)

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000

Metropolitan Reference Laboratories, Inc., 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293

National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109; 800–749–3784, (formerly: Med Arts Lab)
National Health Laboratories Incorporated, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th St., Suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th St., Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, Inc., 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Ave., Raritan, NJ 08869, 800–437–4986
Roche CompuChem Laboratories, Inc., A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984, (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory)
Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263, (Formerly: CompuChem Laboratories, Inc.—Special Division)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 32748, 904–787–9006, (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340 404–934–9205, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283 602–438–8507,
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373, (formerly: Laboratory Specialists, Inc.; Abused Drug, Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191, (formerly: MetWest-BPL Toxicology Laboratory)
The following laboratory withdrew from the Program on September 16, 1994: Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400
The following laboratory withdrew from the Program on September 27, 1994: CPF MetPath Laboratories, 21007 Southgate Park Blvd., Cleveland, OH 44137–3054 (Outside OH) 800–338–0166/(Inside OH) 800–362–8913, (formerly: Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–24449 Filed 10–3–94; 8:45 am]
BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–4214–10; COC–28254]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

September 23, 1994.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw approximately 496.87 acres of public lands for 50 years to protect wildlife values and constructed facilities associated with the Horsethief Canyon State Wildlife Area. This notice closes this lands to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before January 3, 1995.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On September 21, 1994, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following described public lands from operation of the public land laws, including the mining laws, subject to valid existing rights:

Ute Principal Meridian

T. 1 N., R. 2 W.,

Sec. 18, Lots 7, 9, and 10.
T. 1 N., R. 3 W.,
Sec. 9, Lots 11 and 12;
Sec. 10, Lots 12 and 13;
Sec. 11, Lots 7 and 8;
Sec. 13, Lots 8, 9, and 10, and SE¼SE¼;
Sec. 14, Lots 5, 6, 7, 8, 11, 12, 13, 14, and 1.35 acres in the NE¼NE¼SW¼;
Sec. 15, 14.80 acres in the NW¼NE¼, and 1.70 acres in the NE¼SE¼NE¼.

The areas described aggregate approximately 496.87 acres of public lands in Mesa County.

The purpose of this withdrawal is to manage these lands for wildlife habitat mitigation as part of Horsethief Canyon State Wildlife Area managed by the Colorado Division of Wildlife under agreement with the Bureau of Reclamation.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management will continue to manage these lands.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 94–24403 Filed 10–3–94; 8:45 am]

BILLING CODE 4310–JB–P

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Ninth Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth summaries of the proposed United States negotiating positions on agenda items and resolutions for the ninth regular meeting of the Conference of the Parties (COP9) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Comments or other relevant information concerning these proposed negotiating positions are solicited. Public meetings to discuss these proposed negotiating positions also have been held.

DATES: The Fish and Wildlife Service (Service) will consider information and comments received by October 19, 1994, in formulating its final negotiating positions.

ADDRESSES: Comments should be sent to the Director, U.S. Fish and Wildlife Service, c/o Marshall P. Jones, Chief, Office of Management Authority, 4401 N. Fairfax Drive, Room 420–C, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones or Susan S. Lieberman, Office of Management Authority, at the above address; telephone 703/358-2093; fax 703/358–2280.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in Appendices to the treaty. Currently, 123 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties which review its implementation, make provisions enabling the CITES Secretariat (in Switzerland) to carry out its functions, consider amending the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of the Convention.

This is part of a series of notices which, together with public meetings, provide the public with an opportunity to participate in the development of the U.S. positions for the ninth regular meeting of the Conference of the Parties (COP9) to CITES. A **Federal Register** notice published on July 15, 1993 (58 FR 38112), requested information and comments from the public on animal or plant species the United States might consider as possible amendments to the Appendices. A **Federal Register** notice published on November 18, 1993 (58 FR 60873), requested public comments on possible revisions to the criteria for listing species in the CITES Appendices. A **Federal Register** notice published on January 27, 1994 (59 FR 3832), requested additional comments from the public on animal or plant species the United States was considering submitting as amendments to the Appendices. A **Federal Register** notice published on January 28, 1994 (59 FR 4096): (1) published the time and place for COP9; (2) announced a public meeting for February 22, 1994, to discuss the 31st meeting of the CITES Standing Committee; (3) detailed the provisional agenda of the COP; and (4) requested information and comments from the public on possible COP9 agenda items and resolutions that the United States might submit. A **Federal Register** notice published on September 1, 1994 (59 FR 45307), announced a public meeting to take place on September 14, 1994. A **Federal Register** notice published on September 6, 1994 (59 FR 46023), set forth summaries of proposed U.S. negotiating positions on species proposals that were submitted by other countries to amend the CITES Appendices and requested public comment on these proposals. A **Federal Register** notice published on September 7, 1994 (59 FR 46266), announced an additional public meeting to take place on September 16, 1994. The present notice complements the previous notices by setting forth proposed U.S. negotiating positions on other agenda items and resolutions for COP9, and requests public comments on these positions, which were also presented at the September 14 and 16 public meetings. Another **Federal Register** notice will also announce the proposed species amendments, resolutions, and agenda topics submitted by the United States. The Service's regulations governing this public process are found in Title 50 of the Code of Federal Regulations §§ 23.31–23.39.

Proposed Negotiating Positions

In this notice, the Service summarizes proposed negotiating positions on agenda items and resolutions for COP9 (other than proposals to amend the

Appendices, which are presented in the September 6, 1994, **Federal Register** notice discussed above). Numerals next to each agenda item correspond to the numbers used in the provisional agenda [COP9 Document 9.1 (revised)] received from the CITES Secretariat. However, documents for a number of the agenda items have not yet been received from the CITES Secretariat; they will be available on request from the Service after they have been received.

A list of documents received to date were made available at the public meetings of September 14 and 16, 1994, and copies will be made available to the public on request. When information and comments on the agenda items were submitted in writing to the Service or received at the February 22, 1994 public meeting, they are included with the proposed negotiating position. Each proposed position includes a brief rationale explaining the basis of the position. The Service will endeavor to publish a **Federal Register** notice in October 1994 that details final negotiating positions on all issues pertaining to COP9, with the understanding that new information that becomes available during discussions at a COP can often lead to modifications in these positions. At COP9, the U.S. delegation will fully disclose all position changes and rationale explaining them.

AGENDA (Provisional)

I. Opening Ceremony by the Authorities of the United States of America

The United States is arranging for a suitable ceremony in cooperation with the CITES Secretariat. Details of the ceremony will not be finalized until October, 1994.

II. Welcoming Addresses

The United States is arranging for welcoming addresses from appropriate officials in cooperation with the CITES Secretariat.

III. Adoption of the Rules of Procedure

See Doc. 9.1 (Rev)—Provisional Agenda for COP9

Oppose modifications to the Rules of Procedure; support retention of the Rules of Procedure from COP8 in Kyoto, Japan.

The Provisional Rules of Procedure have been circulated by the CITES Secretariat to the Parties. The Rules of Procedure must be adopted by the Plenary of the COP at the outset. The only difference between the Rules of Procedure for COP8 and the Provisional Rules circulated by the Secretariat are in Rule 15, paragraph 3, which was modified by the Standing Committee at its thirty-first meeting in Geneva, 21–25 March 1994. The modifications recommended by the Standing Committee, and indeed all of the Rules of Procedure, are not official until they are adopted by the COP. Rule 15, paragraph 3, refers to secret ballots. According to the Rules of Procedure adopted at COP8 (which did not differ from those at COP7), when a delegation proposes that a vote be taken by secret ballot, an open vote is required to approve this proposal; a majority of all Parties voting must approve a secret ballot before it is implemented. The revised Rules of Procedure recommended by the Standing Committee, amended at the suggestion of the observer from Zimbabwe at that meeting, require that only six parties (the proposer and five seconds) request a secret ballot for it to be implemented for a particular vote.

At the Standing Committee meeting, the United States delegation opposed modifying the Rules of Procedure. The proposed COP9 position of the United States remains in opposition to this modification of the Rules of Procedure, which operated effectively at both COP7 and COP8. In numerous international fora (e.g., GATT, UNCED), it has been the position of the United States to promote openness in the dealings of intergovernmental organizations. The United States believes that since a delegation at a COP is accountable to its government, it should not need to vote in secret.

The United States is also very concerned that making secret ballots too easy will unnecessarily delay the work of the COP. The United States also believes that it is inappropriate for the minority (possibly only six countries) to dictate to the majority how votes should proceed. The United States believes that a rule allowing a few countries to require use of the secret ballot could lead to excessive use of this option. Secret ballots are extremely slow and time consuming. For budgetary and other reasons, electronic voting cannot be provided at the COP, which would have minimized the time necessary to conduct a secret vote. Regardless of how few or many secret ballots are taken at the COP, however, all U.S. positions and votes on issues will be publicly disclosed.

IV. Election of Chair and Vice-Chair of the Meeting and of Committees I and II and of the Budget Committee

No documents will be prepared for this item. Support election of a Conference Chair from the United States, and highly qualified Committee and Vice Chairs representing the geographic diversity of CITES.

The Chair of the CITES Standing Committee (New Zealand) will serve as temporary Chair of the Conference until a permanent Conference Chair is elected. It is traditional for the host country to provide the Conference Chair, and the United States will propose a person with substantial executive skills and international negotiating experience to be nominated as Chair. This person, if elected by the parties, will serve as Presiding Officer of the Conference and also of the Conference Bureau, the executive body which manages the business of the Conference; other members of the Bureau include the Committee Chairs (discussed below), the nine members of the Standing Committee (see Agenda Item IX), and the Secretariat.

The major technical work of CITES is done in the Committees, and thus Committee chairs must have great technical knowledge and skill. In addition, CITES benefits from active participation and leadership of representatives of every region of the world. The United States will support election of Committee Chairs and Vice Chairs of the Conference having requisite technical knowledge and skills and also reflecting the geographic and cultural diversity of CITES. The United States is now consulting with the Secretariat and the Standing Committee regarding suitable candidates.

V. Adoption of the Agenda and Working Programme

See Doc. 9.1 (Rev)—Provisional Agenda for COP9; Doc. 9.2 (Rev)—Provisional Working Programme for COP9; Doc. 9.2.1 (Rev)—Provisional Working Program for COP9 Committee I; and Doc. 9.2.2 (Rev)—Provisional Working Program for COP9 Committee II. Support adoption of an agenda and working program that guarantees a smoothly operating meeting that addresses all species and implementation issues; the U.S. nominee to serve as Conference Chair, if accepted by the parties, will be responsible for management of the overall agenda, in consultation with the Bureau.

VI. Establishment of the Credentials Committee and Committees I and II

No document has been received from the CITES Secretariat yet.

Support the establishment of the Credentials Committee and Committees I and II.

Establishment of the Credentials Committee is a *pro forma* matter. The Credentials Committee approves the

credentials of delegates to the COP, by confirming that they are official representatives of their government, thereby affording them the right to vote in Committee and Plenary sessions. The United States supports the establishment of Committees I and II, provided most participating Parties have been able to send at least two delegates, or that the rules governing debate of the Committees ensure that most delegations will have an opportunity to debate recommendations before a final decision is made.

VII. Report of the Credentials Committee

No document has been received from the CITES Secretariat yet.

Support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries that are Parties to CITES. Representatives whose credentials are not in order should be afforded observer status as provided for under Article XI. If credentials have been delayed, representatives should be allowed to vote on a provisional basis. A liberal interpretation of the Rules of Procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate.

Adoption of the report is generally *pro forma*. Exclusion of Party representatives whose credentials are not in order could undermine essential cooperation among Parties.

VIII. Admission of Observers

No document has been received from the CITES Secretariat yet.

Support admission to the meeting of all technically qualified non-governmental organizations and oppose unreasonable limitations on their full participation at COP9.

Non-governmental organizations representing a broad range of viewpoints and perspectives play an important role in CITES activities and have much to offer to the debates and negotiations at a COP. Their participation is specifically provided by Article XI of CITES. The United States supports the opportunity for all technically qualified observers to fully participate at COPs.

IX. Matters Related to the Standing Committee

No documents have been received yet. This agenda item consists of three subitems:

1. *Report of the Chairman.* The United States strongly supports the active role which the current Standing Committee, under the leadership of New Zealand, has played in carrying out the many functions given to it by resolutions adopted by Conferences of the Parties. This includes the review of compliance with these resolutions by the Parties and making decisions for appropriate action when Parties are not in compliance.

2. *Regional representation on the Standing Committee:* Support an increase in Standing Committee membership if budgetary implications can be resolved. The Standing Committee is currently composed of six Regional voting representatives of North America (Canada), Central and South America and the Caribbean (Trinidad and Tobago, the Vice Chair), Asia (Thailand), Oceania (New Zealand, the Chair), Africa (Senegal), and Europe (Sweden). There are also three *ex officio*, nonvoting members: Switzerland (depositary country), Japan (past host country), and the United States (current host country). Each CITES Region currently has one representative on the Standing Committee, regardless of how large or small the number of Parties (Africa has 43 CITES parties, for example, while North America has only 3 and Oceania only 4). A proposal submitted by Malawi but not yet actually reviewed would increase the number of Regional representatives from Regions having larger numbers of Parties. The United States will consider support for such proposals depending on their exact nature and only after full consideration by the Budget Committee of their financial effects.

3. *Election of new members and alternate regional members:* Encourage membership which will continue the active role of the Standing Committee. The Regional representatives of North America, Europe, and Oceania are open for review by their respective Regions at COP9. The United States, as host of COP9, will continue on the Standing Committee as past host country until COP10. A new Chair will be selected by the new Standing Committee during a meeting to be held at the close of COP9; while the United States will not have a vote, the U.S. position is to encourage selection of a Chair with a strong commitment to a proactive Standing Committee role in the management of CITES affairs, as New Zealand has done during the past two years.

X. Report of the Secretariat

The Report of the Secretariat has not yet been received by the Service. When received, the Service will carefully review issues pertaining to: success of procedures for Parties to set budgetary and work priorities; setting of new short-term and long-term objectives for the Secretariat; evaluation of the performance of the Secretariat; and progress in assisting Parties to more forcefully implement the Convention.

The biennial report provides the major way for the Secretariat, and the Secretary General, to report priorities, accomplishments, and problems to the Parties. These are critical management issues facing CITES which need to be addressed in the Secretariat's report.

XI. Financing and budgeting of the Secretariat and of meetings of the Conference of the Parties

1. Financial Report for 1992–1993

No document has been received from the CITES Secretariat yet; no position is possible at this time. The United States continues to advocate fiscal responsibility and accountability.

2. Anticipated expenditures for 1994 and 1995

No document has been received from the CITES Secretariat yet; no position is possible at this time. The United States continues to advocate fiscal responsibility and accountability.

3. Budget for 1996–1998 and Medium-term Plan for 1996–2000

See Doc. 9.10—Budget Estimates for the CITES Trust Fund for 1996–1997 and for the Medium-term Plan for 1996–2000. This document was only received a short time ago by the Service, and is still undergoing review.

Oppose any substantial increase in the Secretariat's budget representing a significant increase in its work plan. Support budget increases requested by the Secretariat in cases where the growing membership is placing increasing burdens on staff, without any commitment to an increased U.S. contribution. Support an evaluation of priorities and possible reprogramming of budget items into underfunded or unfunded areas of higher priority.

The United States cannot at present commit to a larger contribution to the CITES budget. The United States is the largest single contributor; under the United Nations scale, the United States is asked to provide 25 percent of the annual operating budget. In Fiscal Year 1994, Congress appropriated approximately $1 million to the Department of State for this purpose. However, the United States recognizes the heavier workload being imposed on the Secretariat, Standing Committee, and both the Animals and Plants Committees.

4. External Funding

No document has been received from the CITES Secretariat yet; no position is possible at this time.

External funding refers to the financial support by Party governments and non-governmental organizations for projects that have been approved by the Standing Committee. The CITES Parties have established a process whereby the Standing Committee approves projects and approves donors, to avoid even the appearance of a conflict of interest. The Secretariat's report on this issue is expected to summarize approved donors, approved projects, projects that have been funded, and approved projects that are awaiting funding. The Service, the Department of State, and the National Marine Fisheries Service have made substantial contributions to externally funded projects, including travel of delegates from developing countries to COPs, support for committee meetings, facilitating a meeting of the Working Group on the Transport of Live Specimens, biological studies of significantly traded species, review of national laws for the implementation of the Convention, numerous enforcement-related projects, and other similar projects.

XII. Committee Reports and Recommendations

1. Animals Committee

No document has been received from the CITES Secretariat yet. This agenda item has two subitems in the provisional agenda:

(a) Report of the Chairman

(b) Regional representation on the Animals Committee

The United States supports the active role of the Animals Committee in scientific and management issues pertaining to animal species listed in the CITES Appendices. Encourage membership which will continue the active role of the Animals Committee, and selection of a Chair with a strong commitment to a proactive Animals Committee.

The Animals Committee report may contain information or recommendations dealing with Appendix II species subject to significant trade, marking techniques, crocodilian tagging, sea turtle ranching, care for and reintroduction of seized live animals, and various other issues. The United States has actively participated in the work of the Animals Committee since COP8, and will continue to be an active participant in Animals Committee functions.

The Animals Committee is currently composed of individuals representing the six CITES geographic regions: North America, Central and South America and the Caribbean, Asia, Oceania, Africa, and Europe. Each CITES Region currently has one representative on the Animals Committee. The Regional representatives are selected by their respective regional caucuses, at the COP. A new Chair will be selected by the new Animals Committee, most likely during a meeting to be held at the close of COP9.

2. Plants Committee

No document has been received from the CITES Secretariat yet. The United States supports the continued activities of the Plants Committee to improve the effectiveness of CITES for plants, with a focus on the following: publication of checklists and identification guides; significant trade in orchids, succulents, and other species; review of the timber trade; and trade in artificially propagated plants. Encourage membership which will continue the active role of the Plants Committee, and selection of a Chair with a strong commitment to a proactive Plants Committee.

The Plants Committee is currently composed of individuals representing the six CITES geographic regions: North America, Central and South America and the Caribbean, Asia, Oceania, Africa, and Europe. Each CITES Region currently has one representative on the Plants Committee. Dr. Bruce MacBryde of the Service's Office of Scientific Authority serves as Vice-Chair of the Plants Committee (representing North America). The Regional representatives are selected by their respective regional caucuses, at the COP. A Chair will be selected by the new Plants Committee, most likely during a meeting to be held at the close of COP9.

3. Identification Manual Committee

No document has been received from the CITES Secretariat yet.

Continue to support the Identification Manual Committee and development of animal and plant identification manuals for use by port and border enforcement officers, in providing a standard of reference for the identification of CITES species, within available resources and priorities.

The enforcement officers of the Parties must be equipped with guides which are accurate, realistic, and helpful in the identification of the many CITES species and products found in trade throughout the world.

4. Nomenclature Committee

No document has been received from the CITES Secretariat yet. This agenda item has two subitems in the provisional agenda:

(a) Report of the Chairman

(b) Recommendations of the Committee

Encourage the development and adoption of checklists for all taxa, within budgetary limits and priorities to be decided upon by the Parties. Support revisions of existing checklists for fauna prior to development of new ones. Because of the expense in developing checklists for taxa, the United States supports recognition of existing checklists for remaining taxa when suitable. Implementation of the Convention is strengthened by the use of uniform names of listed species.

The Service understands that the report of the Chair presents technical nomenclatural corrections and recommended revisions to names included in the Appendices at the Plenipotentiary Conference and at COP1. Those revisions will require adoption by the Parties at COP9.

XIII. Evolution of the Convention

1. Strategic Plan of the Secretariat

No document has been received from the CITES Secretariat yet; no position is possible at this time.

2. How To Improve the Effectiveness of the Convention

No document has been received from the CITES Secretariat yet; no position is possible at this time.

This agenda item was suggested by the delegate from Canada at the March 1994 Standing Committee meeting; the Standing Committee agreed that a review of the general evolution and implementation of CITES should by done by an independent body, and that a project proposal for this review should be developed by the Secretariat. The main concern of the United States is what funding will be available for such a project, and that it not impair the ability of other functions in the Secretariat budget to receive necessary funding.

XIV. Interpretation and Implementation of the Convention

1. Review of the Resolutions of the Conference of the Parties

Support the effort begun by the Secretariat immediately following COP8, at the direction of the Standing Committee, to review all of the resolutions of the Conference of the Parties with the goal of assisting Parties in the effective utilization of the resolutions, in order to more effectively implement the Convention, by: (1) Deleting resolutions that have been superseded or whose purpose has been accomplished; and (2) consolidating

resolutions that deal with the same subject.

At every Standing Committee meeting since COP8, the United States delegation has strongly urged (and the Committee has adopted this recommendation of the United States) that any consolidation of resolutions retain the text of the original, including the preamble, so as to: (1) assist the Parties, while retaining the original intent of the resolution; and (2) reduce unnecessary or unproductive debate at COP9 on "old" issues. Therefore, the United States supports deleting only out-of-date resolutions that are truly non-controversial, and retaining the text of the original for any consolidations. The Standing Committee reiterated its support for this approach at its March 1994 meeting. The United States supports an expedited approval of these consolidations in Plenary Session at COP9, which will only be possible if the original text of resolutions (preamble and operative paragraphs) are retained, so that any consolidations will be structural and not substantive.

(a) Deletion of Resolutions that are out of date. See Doc. 9.19.1—Deletion of Resolutions that are Out of Date.

Support the deletion of resolutions that are out of date, if they have been superseded by other resolutions or have been overtaken by events. Likely to support the deletion of all resolutions proposed by the Secretariat and circulated to the Parties, with the following exceptions: Conf. 2.8, 3.13, and those relating to certain parts and derivatives of plants—Conf. 2.18, 4.24, 6.18, and 8.17 (b) and (c). Certain other resolutions on plants remain pertinent unless they are superseded by new resolutions coming from COP9, e.g., Conf. 5.15 in relation to Doc. 9.30 on nursery registration.

Technical review of Doc. 9.19.1 will continue and the U.S. may offer further comment on the affected resolutions before or during the COP. The United States supports deletions of resolutions that are out of date or no longer relevant. However, recent discussions in the International Whaling Commission (IWC) highlight the fact that illegal trade in whale products continues, in spite of the IWC's moratorium on commercial whaling.

The United States has requested that this item be discussed at COP9 (see agenda item 15). The IWC has not yet completed an observation, inspection and enforcement program which would certify that the products of any commercial whaling which occurs in the future are taken in compliance with IWC regulations. Therefore, the admonitions contained in Resolutions Conf. 2.8 and 3.13 appear to the United States to be as pertinent today as when they were adopted by the Parties. These resolutions are neither out of date, nor have they been superseded. Therefore, the United States opposes deletion of these resolutions.

The United States opposes deletion of the aspects pertaining to plants in Conf. 2.18, 4.24, 6.18, and 8.17(b) and 8.17(c), which provide an important legal basis, which is different from using a limited departure from Conf. 5.9 on what is readily recognizable, to guide the standard exclusion or exemption from CITES provisions of certain specified parts and derivatives of certain plants, e.g., the cut flowers of artificially propagated Appendix I hybrids and the flasked seedlings of all artificially propagated orchids.

Future germane proposals on taxa for Appendix I simply can be directed by Conf. 8.17(b) and 8.17(c), without subsequent proposals on the standard exemptions. Future proposals to uplist orchid taxa thus would be routinely guided by Conf. 8.17(c) and their flasked seedlings would be exempt. A similar process has been in effect for the proposals on Appendix II plant taxa, where routinely certain parts or derivatives are standard exclusions, as specified through Conf. 4.24 (e.g., for tissue cultures) and Conf. 6.18 (e.g., for flasked seedling cultures).

(b) Consolidation of valid resolutions. No document has been received from the CITES Secretariat yet. However, documents have been received at several Standing Committee meetings. The United States essentially supports those consolidations prepared thus far by the Secretariat; a review finds them to be a diligent and accurate consolidation of a complex array of resolutions dealing with the same subject. Proposed consolidations have been discussed at Standing Committee meetings and approved for transmission to the Parties on the following issues (final text has not yet been received from the Secretariat, however): Transport of live specimens (consolidate Conf. 3.16, 4.20, 5.18, 7.13, and 8.12); Disposal of illegally traded specimens (consolidate Conf. 2.15, 3.9, 3.14, 4.17, 4.18, 5.14, and 7.6); Trade in elephant ivory (consolidate Conf. 3.12, 6.12, 6.14, 6.15, 6.16, and 7.8); Annual reports and trade monitoring (consolidate Conf. 2.16, 3.10, 5.5, 5.6, 5.14, and 8.7); Trade in readily recognizable parts and derivatives (consolidate Conf. 4.8, 5.9, 5.22, and 6.22); Permits and certificates (consolidate Conf. 3.6, 3.7, 4.9, 4.16, 5.7, 5.8, 5.15, 6.6, 8.5); Trade in plants (12 prior resolutions: consolidate Conf. 2.13, 5.14, 5.15, 8.17, propose to repeal all or part of Conf. 2.18, 4.24, 5.14, 6.18, and 6.20, and deal with Conf. 2.14, 4.16, and parts of 5.14, 8.18, 8.19 in a separate consolidation); Trade with non-Parties and reserving Parties (consolidate Conf. 3.8, 8.8); and Transit and transhipment (consolidate Conf. 4.10, 7.4).

2. Establishment of a List of the Other Decisions of the Conference of the Parties

No document has been received from the CITES Secretariat yet. Support ongoing Standing Committee and Secretariat efforts to differentiate between Resolutions of the Conference of the Parties which provide guidance and interpretation of the Convention, or call for continuing activities of indefinite duration, and decisions of the COP that direct the Secretariat or permanent committees to perform certain specific activities of limited duration.

The Standing Committee has recommended that decisions of the Parties at the COP be distributed in a manner similar to that for resolutions. The United States supports this procedure, utilizing guidelines to be adopted by the COP, that have been approved by the Standing Committee. Often, recommendations to the Secretariat or permanent committees are included in resolutions, when these recommendations are relevant for a particular committee only, or for a short time period between two COPs only. The United States supports separating these specific and/or short-term decisions from resolutions, wherein resolutions should refer to recommendations for implementation of the Convention, and interpretations of the Convention.

3. Report on National Reports Under Article VIII, Paragraph 7, of the Convention

No document has been received from the CITES Secretariat yet.

Support efforts to encourage all Parties to submit annual reports, for all species of flora and fauna, consistent with their domestic legislation. Support efforts whereby proposals for transfer of certain species from Appendix I to II with an export quota or pursuant to ranching only be considered for Parties that are current with their annual report submissions.

Each Party is required by the Convention to submit an annual report containing a summary of the permits it has granted, and the types and numbers of specimens of species in the CITES Appendices that it has imported and exported. Accurate report data are

essential to measure the impact of international trade on species, and can be a useful enforcement tool.

4. Review of Alleged Infractions and Other Problems of Implementation of the Convention

See Doc. 9.22—Draft Infractions Report for COP9.

Support the Secretariat's review of alleged infractions by the Parties, and necessary and appropriate recommendations to obtain wider compliance with the terms of the Convention. Support an open discussion at COP9 of major infractions, and a greater emphasis by the Parties on the enforcement of the laws and regulations implementing the Convention.

Article XIII of the Convention provides for COP review of alleged infractions. The Secretariat prepares an Infractions Report for each COP, which details instances that the Convention is not being effectively implemented, or where trade is adversely affecting a species. The first draft of the Infractions Report contains numerous such alleged infractions. The United States has commented on the draft Infractions Report. A cursory review of the alleged infractions indicates a great difference in the depth of the reporting on infractions over previous reports. The United States considers this to be an excellent, well-researched and well-prepared Secretariat document. A large number of infractions are caused by lack of training, lack of personnel, or lack of knowledge on the workings of CITES. The majority of the alleged infractions should be a major cause of concern to the Parties. When the final Infractions Report (incorporating the comments of Parties) is circulated by the Secretariat, it will be available to the public upon request.

5. Implementation of the Convention in the European Community

No document has been received from the CITES Secretariat yet; no position is possible at this time.

This issue was discussed extensively at COP8; absent any document, the United States cannot formulate a position at this time.

6. National Laws for Implementation of the Convention

No document has been received from the CITES Secretariat yet; no position is possible at this time.

The United States was strongly supportive at COP8 of a review of national laws for the implementation of the Convention; such laws are required by Article VIII of the Convention. The Service provided funding for this project, and has already received reviews of national legislation for several countries. The United States believes that the Convention's effectiveness is undermined when Party states do not have national laws implementing the Convention, including laws and regulations that authorize seizure and/or forfeiture of specimens imported or exported in contravention of the Convention, and laws and regulations that provide appropriate penalties for such violations.

7. Enforcement of the Convention

No document has been received from the CITES Secretariat yet; no complete position is possible at this time. Support establishment of a Law Enforcement Network.

Notification to the Parties number 776 asked the Parties for their comments on a proposal for establishment of a Law Enforcement Network. The United States supported establishment of such a network at that time, and continues to do so. The United States will continue its support for the provision of law enforcement training to assist Parties in implementing and enforcing the Convention.

Nine Parties responded to Notification 776, which asked the Parties for their comments on the proposed Law Enforcement Network, as follows: five countries (Australia, South Africa, Switzerland, the United Kingdom, and the United States) supported the proposal; three countries (Belgium, France and Uruguay) opposed the proposal; and one country (Spain) was neutral. Although it was not adopted by the Standing Committee, it was agreed that the Parties should discuss the issue at the COP. The United States considers effective enforcement of the Convention to be a critical element that is lacking for many countries, for a number of reasons, including: lack of training, inadequate legislation or regulations, lack of funding, lack of infrastructure, and inadequate communications and networking with other countries and entities. The United States believes that establishment of a Law Enforcement Network, comparable to other committees or working groups established by the Parties, will begin the process of alleviating these deficiencies.

8. Trade in Hunting Trophies of Species Listed in Appendix I

No document has been received from the CITES Secretariat. The United States continues to support implementation of Resolution Conf. 2.11 by all Parties.

9. Exports of Leopard Hunting Trophies and Skins

No document has been received from the CITES Secretariat yet.

However, the United States opposes any increases in quotas without adequate supporting data.

The Service does not know whether this document will involve only a report on exports, or whether it will be similar to Resolution Conf. 8.10, which refers to the trade in leopard skins, including hunting trophies, under a quota system approved by the COP. Trade in leopard skins for noncommercial purposes is allowed under CITES Resolution Conf. 8.10, which recognizes killing in defense of life and property and to enhance the survival of the species.

10. Interpretation and Application of Quotas

No document has been received from the CITES Secretariat yet; no position is possible at this time.

11. Trade in Specimens of Species Transferred to Appendix II Subject to Annual Export Quotas

No document has been received from the CITES Secretariat yet; no position is possible at this time. In the past, this agenda item has involved a report noting compliance with provisions of quota systems.

12. Trade in Rhinoceros Specimens

No document has been received from the CITES Secretariat yet; no position is possible at this time.

The United States continues to be an advocate for strong enforcement of the Convention, and use of all possible measures to encourage countries to effectively implement the Convention. The United States continues to support decisions of the Standing Committee that illegal trade in rhinoceros specimens undermines the effectiveness of CITES.

13. Conservation of Rhinoceros in Asia and Africa

No document has been received from the CITES Secretariat yet; no position is possible at this time.

The United States continues to be supportive of efforts to benefit the conservation of rhinoceros species in Asia and Africa, while realizing that such conservation efforts are seriously undermined by any trade in rhinoceros specimens in contravention of the Convention.

14. Trade in Tiger Specimens

No document has been received from the CITES Secretariat yet; no position is possible at this time.

The United States continues to be an advocate for strong enforcement of the Convention, and use of all possible measures to encourage countries to effectively implement the Convention. The United States continues to support decisions of the Standing Committee that illegal trade in tiger specimens undermines the effectiveness of CITES. The United States is also exploring the possibility of having a special evening program on tiger conservation during the Conference.

15. Illegal Trade in Whale Meat

The United States requested that this item be included on the agenda for COP9, and will submit a paper to the CITES Secretariat for transmission to the Parties prior to COP9.

There was extensive discussion at the May, 1994 meeting in Mexico of the International Whaling Commission (IWC) regarding illegal international trade in whale meat, including involvement by CITES Parties. All whales subject to the IWC moratorium on commercial harvest are listed in CITES Appendix I. A resolution was adopted by IWC (introduced by the United States and other Parties) on this topic, and the issue is discussed in the IWC Infractions Report. The Service submitted the information in the IWC Infractions Report on international trade in whale meat to the CITES Secretariat. The United States is concerned that illegal trade in whale meat undermines the effectiveness of CITES for whale species, and will submit a paper on this topic for discussion at COP9. Several IWC member countries raised concerns at the IWC meeting that it was inappropriate to discuss trade in whale specimens outside of CITES. While a CITES COP is the appropriate venue for such discussions, the U.S. paper will encourage IWC to continue to explore this issue, and to report on progress to both the CITES Standing Committee and COP10.

16. Trade in Shark Products

The United States requested that this item be included on the agenda for COP9, and will submit a paper to the CITES Secretariat for transmission to the Parties prior to COP9. The United States will request in that paper that this agenda item be renamed "Trade in Shark Parts and Products", in order to more accurately frame the debate. It is not the intent of that document to discuss shark management regimes, including catch quotas, minimum sizes, time and area closures, or gear restrictions.

As was discussed in the January 27, 1994 **Federal Register** notice, the United States considered whether or not to submit a proposal to COP9 to include several taxa (families or genera) of sharks in Appendix II. There is limited information about a recent increase in international trade in shark parts and products, particularly in fins for the food market. The United States considered there to be insufficient scientific and trade data on which to base a listing proposal. The United States believes that this is an important issue for the Parties to discuss. The United States is considering requesting that the Animals Committee be called upon to recommend methods and processes for assessing the biological and trade status of shark species in international trade. The paper that the United States will submit may request action by the Animals Committee.

The intent of the United States in asking that this issue be discussed by the Conference of the Parties is twofold: (1) To encourage discussion of how best to collect data on international trade in shark parts and products, particularly how to document catches by species; and (2) to collect data that will provide the best information about the impact of international trade (including introduction from the sea) in shark parts and products on both shark populations and the ecosystems on which they depend.

17. Trade in Plant Specimens

(a) Nursery registration for artificially propagated Appendix I species. See Doc. 9.30—Nursery Registration for Artificially Propagated Appendix I Species.

Tentatively oppose the resolution establishing a stipulated registration system within the CITES Secretariat for plant nurseries artificially propagating specimens of species included in Appendix I. The United States supports a system that would improve the credibility of the existing system for determining which plant specimens are artificially propagated.

The registration system proposed in this draft resolution is complex and would be costly to implement by many Parties. Furthermore, it may place too much of a burden with nurseries themselves in determining what constitutes artificially propagated specimens, and thereby be counterproductive. The current draft of this resolution is an improvement over previous versions, and the United States encourages the Secretariat to continue to make progress in this important area.

(b) Revision of the consolidated Resolution. No document has been received from the CITES Secretariat yet; no position is possible at this time.

(c) Standard reference for Orchidaceae. No document has been received from the CITES Secretariat yet. The United States supports continued work toward a standard reference for traded orchid species.

(d) Implementation of the Convention for timber species. No document has been received from the CITES Secretariat yet; no position is possible at this time.

However, the United States notes that the provisions of CITES apply to *all* species of wild fauna and flora, including tree species used as timber; some timber species are already listed in the CITES Appendices. CITES' purview is in addition to the fact that the trade in timber species may come under the competence of another international treaty, convention, or agreement.

(e) Ramin (Gonystylus bancanus). No document has been received from the CITES Secretariat yet; no position is possible at this time.

18. Significant Trade in Appendix II Species

No document has been received from the CITES Secretariat yet.

However, the United States continues its long-standing support for the continued focus of the Parties on Appendix II species identified as subject to significant trade and the proper implementation of Article IV, as critical to the implementation of the treaty and species conservation. Support the provision of funding for the coordination and implementation of significant trade study projects, with oversight by the Animals, Plants, and Standing Committees.

This topic refers to the trade in those Appendix II species identified as subject to significant trade, for which a review is necessary to determine if there exists sufficient biological information to warrant trade at current levels. Many of these species may have been traded at levels detrimental to their survival. The CITES Parties have provided funds to the World Conservation Union (IUCN) and the Conservation Monitoring Centre to assess priorities in studying these species. The United States has provided funds for field projects involving several of these species.

This process has worked effectively since COP8, with the implementation of Conf. 8.9. The Animals and Standing Committees have taken a very active role in this process, with net benefit for the conservation of some species and for improvements in the implementation of the Convention. The United States supports continuation of this process, for both animals and plants, with a high priority being placed on implementation

of studies by Parties, scientific assessments, implementation of scientifically-based quotas when appropriate, and effective implementation of Article IV.

19. Standardization of CITES Permits and Certificates

No document has been received from the CITES Secretariat yet; no position is possible at this time.

20. Non-commercial Samples of Skins

No document has been received from the CITES Secretariat yet; no position is possible at this time.

21. Marking of Crocodilian Specimens

No document has been received from the CITES Secretariat yet.

At COP8, the United States advocated adoption of a resolution that it submitted jointly with Australia, to require the skins of all crocodilian species to be tagged before being allowed to be traded by CITES Parties (whether or not a reservation has been entered by a Party).

Resolution Conf. 8.14, submitted by both the United States and Australia, established the framework for a system of universal marking for all crocodilian skins in trade, as a response to serious problems of illegal trade in crocodilian skins, parts, and products. The Animals Committee was charged with setting up the system for the Parties. The Animals Committee has prepared a revision of Resolution Conf. 8.14 on this topic, due to problems with implementation of portions of the resolution. The draft resolution of the Animals Committee has not yet been received from the CITES Secretariat.

22. Transport of Live Specimens

Support the adoption by the COP of the report of the Chair of the Working Group on the Transport of Live Specimens (TWG). The United States will remain an active participant in the TWG, and with all aspects of the transport of live wild animals.

Dr. Susan Lieberman of the Service's Office of Management Authority has served as Chair of the TWG since COP8. Copies of all reports of the Chair of the TWG to the Standing Committee are available on request, including the Terms of Reference of the TWG. The Chair submitted a report to the Standing Committee Chair and to the Secretariat, for transmission to the Parties and discussion at COP9. That report makes recommendations for the future of the TWG. The Service fully supports the report, and recommends its adoption, with the exception of reserving its position on adoption of budgetary and personal recommendations of the Chair contained therein. Those budgetary recommendations would facilitate increased training efforts and greater involvement of exporting Parties in TWG activities and deliberations, which the Service supports. The Service also supports the provision of time near the beginning of the first week of COP9 for those interested in the TWG to meet and discuss transport issues, prior to full discussion in Committee II. Several past participants in TWG activities have inquired as to whether such a meeting of the TWG would be possible; the Service believes that it would be in the best interest of CITES implementation and of the transport of live animals.

The humane transport of live wild animals remains a significant concern of the United States. The TWG's Terms of Reference with the Standing Committee include working to improve implementation of the Convention and relevant resolutions, training, improvement of international standards, coordination with the International Air Transport Association Live Animals Board, and the transport of live wild birds.

23. Implementation of Article XIV, Paragraphs 4 and 5

Support adoption of the resolution submitted by the United States, which deals with the implementation of Article XIV, paragraphs 4 and 5 of the Convention. The U.S. goal in submitting this resolution is to clarify how an Appendix II listing could be implemented expeditiously for a marine species whose management is under the competency of a pre-existing treaty.

The provisions of CITES apply to all species of wild fauna and flora, including marine species. The management of many marine species comes under the jurisdiction or competence of another international treaty, convention, or agreement. International trade in any species of marine fauna or flora is also within the purview and competence of CITES. Therefore, even if a marine species is subject to management under another international treaty, convention, or agreement, if it is listed in any CITES Appendix, international trade and introduction from the sea in the species is regulated by CITES.

CITES made preparation for such situations when the treaty was written. Article XIV, paragraph 4, of the Convention provides that a State party to CITES, which is also a party to any other treaty, convention, or international agreement which was in force at the time of the coming into force of CITES and under the provisions of which protection is afforded to marine species included in Appendix II, is relieved of the obligations imposed on it under CITES with respect to trade in specimens included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention, or international agreement.

This relief from CITES obligations does not apply to specimens of species included in Appendix I. For example, several whale species are managed under the competence of the International Convention for the Regulation of Whaling, but all those species are listed in Appendix I.

Currently no marine species whose management is under the competence of another treaty, convention, or agreement is listed in Appendix II. Therefore, this provision of the Convention in Article XIV has never been used, and standards for its implementation have not been developed. The United States has determined that it would be wise to plan for the need to implement Article XIV, by specifying requirements for certificates issued pursuant to Article XIV, paragraph 5, of the Convention, even if its use is not necessary at this time. The Service notes that Appendix II allows for international commercial trade. The resolution provides for the utilization as a valid certificate under Article XIV, paragraph 5, of a certificate of origin or statistical document issued on the authority of the other treaty, convention, or international agreement, with certain stipulations of minimum information and validation as required by CITES.

Such certificates are only an option for CITES Parties that are also parties to the other treaty, convention, or agreement.

24. Disposal of Confiscated Live Animals

No document has been received from the CITES Secretariat yet.

This issue was discussed at the Animals Committee, and the Service believes that the Animals Committee prepared a draft resolution that will be discussed at COP9. The Service has not yet received the final draft resolution prepared by the Animals Committee. However, the Service is supportive of uniform guidelines for the Parties on how to deal with confiscated live animals, that will benefit both the welfare of the individual animals and the conservation of their species in the wild. The Service is supportive of such guidelines, consistent with U.S. law. The Service is concerned about the risk of introduction of disease to wild populations from confiscated live

animals being considered for reintroduction programs. The Service believes that transport and handling concerns for live animals should be coordinated with the Working Group on the Transport of Live Animals.

Interest in what Parties should do with confiscated specimens, particularly live animals, goes back to the drafting of the Convention. The re-export of Appendix II specimens does not require a Scientific Authority finding. The Parties have spoken quite clearly on the issue of return of confiscated specimens to the country of origin, when feasible.

25. Disposal of Skins of Illegal Origin

No document has been received from the CITES Secretariat yet; no position is possible at this time.

26. New Criteria for Amendment of Appendices I and II

See Doc. 9.41—New Criteria for Amendment of Appendices I and II.

Support adoption of the alternative Annexes submitted by the United States on this issue, rather than those prepared by the Standing Committee (as pertain to Annexes 1 and 2 of the draft resolution). The United States basically supports the other annexes of the Standing Committee resolution.

The existing CITES listing criteria, known as the "Berne Criteria" (Resolutions Conf. 1.1 and 1.2) were developed at the first CITES Conference in 1976 in Berne, Switzerland. The United States agrees that the Convention will be strengthened by reevaluating the Berne Criteria for listing species in the Appendices, and that the Berne Criteria need to be reviewed and adapted to address a broader array of taxa and to be more descriptive and definitive, to the extent possible. At the same time, the United States notes that an inherent strength of CITES, which must be safeguarded, is its ability to seek balanced conservation-based solutions for a broad range of species and populations being considered. Thus, if any revision of the Berne Criteria is to be adopted at COP9, the United States is supportive of retaining maximal flexibility while firmly maintaining scientific credibility.

The move to revise the Berne Criteria originated at the 1992 CITES Conference, in Japan (COP8). At COP8 the Parties agreed to start a process, coordinated by the Standing Committee, to develop a scientifically sound revision for consideration at COP9 in 1994. The World Conservation Union (IUCN) was asked to do a first draft, which would first be reviewed at a joint meeting of the Standing, Animals and Plants Committees, and put into CITES resolution form. The United States participated in a joint meeting of the Standing, Animals, and Plants Committees in Brussels in August-September 1993, which reviewed the IUCN draft and produced a draft resolution that was circulated to the Parties.

The Service submitted comments to the Standing Committee, after consultation with other Federal agencies and reviewing extensive public comments received. The U.S. comments maintained that much of the draft resolution was not valid scientifically, and was not acceptable from management or practical perspectives. The United States believed that the criteria as proposed met neither the CITES treaty's requirements for the conservation of species in their ecosystems, nor the diverse needs of the CITES Parties. The U.S. comments and those of other Parties were discussed at the 31st meeting of the Standing Committee, in Geneva in March 1994. Some of the U.S. comments were taken into consideration in developing the final Standing Committee draft resolution. The Standing Committee resolution was not available to the United States or other CITES Parties until after the June 10 deadline for submission of resolutions and proposals to the CITES Secretariat. The Standing Committee resolution contains six annexes, several of which the United States looks forward to discussing further with the CITES Parties at COP9. In particular, the United States believes the Standing Committee draft is an improvement on the Berne Criteria as regards precautionary measures. However, the United States believes that Annex 1 (Biological criteria for Appendix I) and Annex 2 (Criteria for inclusion of species in Appendix II) are in need of major revision, particularly from a scientific perspective. The United States is particularly concerned about the utility and scientific validity of arbitrary numerical cutoffs for decision-making on which Appendix a species should be included in. After detailed review of the scientific literature and consultation with other Federal agencies, the United States has submitted alternatives to those Annexes to the Secretariat, along with some additional material for inclusion in the resolution. The U.S. intent is to urge the CITES Parties to substitute the Annexes 1 and 2 it submitted for those prepared by the Standing Committee.

The United States could have waited to present these alternative Annexes 1 and 2 at COP9. However, the United States preferred to provide ample time to Parties to review this proposed alternative to the document submitted to the Parties by the Standing Committee. The United States believes that increased flexibility must be included in any revised listing criteria.

The biological criteria submitted by the United States for inclusion of species in Appendix I (Annex 1) are grounded in the scientific literature, and are based on the concept that determination of whether a species is threatened with extinction should be risk averse, utilizing the best available scientific and trade information, and assessment of a series of biological factors and criteria. The proposed Annex 1 lists a series of interdependent factors to be included in an assessment of the status of a species, and thereby the determination that it is threatened with extinction. The criteria for inclusion of species in Annex 2 (in accordance with Article II paragraph 2(a)) of the Convention involve a determination of whether a species may become threatened with extinction, in order to avoid utilization incompatible with its survival.

The Service received numerous comments recommending that the United States submit an alternative to the Standing Committee draft resolution. Several comments provided detailed analyses of the IUCN submission to the Secretariat, and of the resolution submitted to the Parties prior to the 31st meeting of the Standing Committee. These comments were taken into consideration by the Service and other Federal agencies.

27. Inclusion of Species in Appendix III

No document has been received from the CITES Secretariat yet. However, the Service is aware that a resolution on this issue has been prepared by the Animals Committee. The Service is supportive of urging of more judicious use of Appendix III, including recommending direct consultation with the Animals or Plants Committee and a review of existing Appendix III listings.

The CITES Secretariat has been working to screen Appendix III proposals and consult with the submitting Party.

28. Guidelines for Evaluating Marine Turtle Ranching Proposals

No document has been received from the CITES Secretariat yet. However, the United States participated in a working group at the ninth meeting of the Animals Committee in Brussels in September, 1993 which developed draft guidelines for recommendation to the Animals Committee on this issue. The ninth meeting of the Animals Committee adopted a requirement for

"regional management on the basis of genetically defined populations". The United States strongly supported that element, which may have been removed by a subsequent meeting of the Animals Committee. The United States remains supportive of regional cooperation in the management of such widely migratory endangered species as marine turtles.

29. Proposals To Register the First Commercial Captive-breeding Operation for an Appendix I Animal Species

No document has been received from the CITES Secretariat yet.

30. Standard Nomenclature

Support adoption of the resolution submitted by the United States, which was submitted at the request of the Nomenclature Committee.

This resolution was submitted at the request of the CITES Nomenclature Committee, and deals with nomenclature and taxonomy of CITES species. The resolution submitted was discussed and agreed upon by the Nomenclature Committee at its May, 1994 meeting in Beijing, China. The names of the genera and species of several families are in need of standardization and the current lack of a standard reference with adequate information creates an implementation problem for some species. The United States also recognizes that the taxonomy used in the appendices to the Convention will be most useful to the Parties if standardized and correlated by nomenclatorial references.

This resolution makes several recommendations dealing with the inclusion of subspecies in the Appendices, use of references in proposals, synonyms, and the role of the Scientific Authorities in nomenclature issues. The resolution also recommends several standard references for species listed in the CITES Appendices, for mammals, birds, amphibians, cacti, cycads, tree ferns, and other plants.

XV. Consideration of Proposals for Amendment of Appendices I and II

See the **Federal Register** notice published on September 6, 1994 (59 FR 46023), which sets forth summaries of the proposed U.S. negotiating positions on the proposals for amendment to the CITES Appendices for COP9 and requests information and comments from the public on these proposed U.S. positions.

XVI. Conclusion of the meeting

1. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties

No documents have been received indicating requests from possible host governments. Favor holding COP10 in a country where all Parties will be admitted without political difficulties. Support the holding of COPs on a biennial basis, or, as in the case of COP9, after an interval of two and one half years.

COP meetings energize governmental and nongovernmental organizations concerned with CITES issues to examine its implementation, and the conservation of affected species. The United States recognizes that the financial burdens of hosting a Conference of the Parties may serve to discourage developing countries from offering to serve as host, unless innovative ways can be found to provide them with financial assistance.

Request for Information and Comments

The Service invites information and comments on the proposed negotiating positions on COP9 agenda items, excluding item XV, "Consideration of proposals for amendment of Appendices I and II," which is the subject of a separate **Federal Register** notice. Information and comments on this present notice should be submitted to the Service no later than October 19, 1994.

Observers

Article XI, paragraph 7 of the Convention provides that: "Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties object: (a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and (b) national non-governmental agencies or bodies which have been approved for this purposes by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote."

Persons wishing to be observers representing national non-governmental organizations in the United States must receive prior approval of the U.S. Fish and Wildlife Service. Requests for such approval should include evidence of technical qualification in protection, conservation or management of wild fauna or flora, on the part of both the organization and the individual representative. Such requests should be sent to the Office of Management Authority (see ADDRESSES, above). Copies of the letters of approval from the Office of Management Authority should be used by these organizations to inform the CITES Secretariat of their wish to send observers to the meeting. The Secretariat requires such information to be received at least one month prior to the meeting (October 6, 1994).

Approved observers should send copies of their letters of approval to the following address: CITES Secretariat, 15 chemin des Anemones, Case postale 456, CH–1219 Chatelaine-Geneve, Switzerland.

Authors: This notice was prepared by Susan S. Lieberman, Marshall P. Jones, and Mark Albert, Office of Management Authority, U.S. Fish and Wildlife Service (703/358–2093).

Dated: September 28, 1994.

Bruce Blanchard,

Acting Director.

[FR Doc. 94–24513 Filed 10–3–94; 8:45 am]

BILLING CODE 4310–55–P

Ruffe Control Committee Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ruffe Control Committee, a regional committee of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed including: recent ruffe collections in Wisconsin and Michigan water of Lake Superior, cost-benefit analysis of the proposed Ruffe Control Program, tactical planning for chemical treatments, and State and Provincial ruffe response planning.

DATES: The Ruffe Control Committee will meet from 8:30 a.m. to 5:00 p.m. on Wednesday, October 12, 1994, and 8:30 a.m. to 12:30 p.m. on Thursday, October 13, 1994. All meeting times are in Central Standard Time.

ADDRESSES: The meeting will be held at the Black River Lodge, N12390 Black River Road, Ironwood, Michigan. Minutes will be maintained by Thomas Busiahn, Chairman, Ruffe Control Committee, U.S. Fish and Wildlife Service, 2800 Lake Shore Drive East, Ashland, Wisconsin. The minutes will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Thomas Busiahn, Chairman, Ruffe

Control Committee, U.S. Fish and Wildlife Service (715) 682–6186 or Jay Troxel, Coordinator, Aquatic Nuisance Species Task Force, U.S. Fish and Wildlife Service (703) 358–1718.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Ruffe Control Committee, a regional committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 et seq., November 29, 1990).

Dated: September 23, 1994.

Conrad Fjetland,

Acting Assistant Director — Fisheries.

[FR Doc. 94–24427 Filed 10–3–94; 8:45 am]

BILLING CODE 4310–55–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0041), Washington, DC 20503, telephone 202–395–7340.

Title: Part 773—Requirements for Permits and Permit Processing.

OMB Number: 1029–0041.

Abstract: Ensures that applicants for permanent program permits or their associates, who are in violation of the Surface Mining Control and Reclamation Act do not receive or maintain surface coal mining permits.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: State Regulatory Authorities and Mining Company officials.

Annual Responses: 1,652.

Annual Burden Hours: 7,389.

Estimated Completion Time: 4.5 hours.

Bureau clearance officer: John A. Trelease (202) 343–1475.

Dated: March 3, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

Note: This document was received by the Office of the Federal Register on September 29, 1994.

[FR Doc. 94–24532 Filed 10–3–94; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32533]

Burlington Northern Railroad Company, Inc. and Protexa Burlington International—Joint Application Under 49 U.S.C. 11321

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of Proceeding.

SUMMARY: By notice filed September 20, 1994, Burlington Northern Railroad Company, Inc. (BN), on its own behalf and for Protexa Burlington International (PBI), informed the Commission that it wished to withdraw the joint application by BN and PBI, under the Panama Canal Act, 49 U.S.C. 11321. BN's withdrawal request is granted and this proceeding is discontinued.

EFFECTIVE DATE: This notice is effective on September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired (202) 927–5721]

SUPPLEMENTARY INFORMATION: In their application filed June 13, 1994, applicants sought a determination that BN's ownership and operation of PBI do not violate the provisions of the Panama Canal Act. The application also sought approval of BN's continued ownership of PBI in view of the anticipated expansion of PBI's water carrier operations in Mexico. Notice of the application, served and published September 16, 1994 (59 FR 47641), called for comments to the application by October 17, 1994 and replies by November 7, 1994. BN states that it is withdrawing the application in view of a number of intervening developments, including the proposed merger of Burlington Northern Inc. and Santa Fe Pacific Corporation.

Decided: September 28, 1994.

By the Commission, Vernon A. Williams, Acting Secretary.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–24494 Filed 10–3–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Criminal Alien Assistance Program.
(2) Office of Justice Programs, Bureau of Justice Assistance.
(3) Annually.
(4) State or local governments.

Information regarding numbers, names and status of illegal criminal

aliens and average annual cost of incarceration may be provided by the states for the reimbursement of cost of illegal criminal alien incarceration.
(5) 54 respondents @ 1 hour per response.
(6) 54 annual burden hours.
(7) Not applicable under Section 3504(h).

Public comment on, this item is encouraged.

Dated: September 28, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–24447 Filed 10–3–94; 8:45 am]

BILLING CODE 4410–18–M

Drug Enforcement Administration

[Docket No. 92–42]

Alra Laboratories, Inc., Denial of Application for Registration

On March 4, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Alra Laboratories, Inc. (Respondent), proposing to deny its application for registration as a manufacturer of controlled substances, on grounds that: (1) during an on-site inspection in July 1990 DEA investigators determined that although it was not registered to do so, Respondent continued to distribute and possess controlled substances in violation of 21 U.S.C. 841(a)(1) and 843(a)(2), had failed to comply with inventory and recordkeeping requirements regarding these controlled substances, and had improperly stored controlled substances together with non-controlled drugs and other materials; (2) in April 1987 Respondent was cited for failure to file periodic ARCOS reports for 1985, 1986, and the first quarter of 1987; (3) as the result of a November 1987 inspection, Respondent was issued a Letter of Admonition citing its failure to file ARCOS reports as required by 21 U.S.C. 827(d) and 21 CFR 1304.35, an accurate biennial inventory in violation of 21 U.S.C. 827(a) and 21 CFR 1304.11, and its failure to maintain effective controls against the diversion of controlled substances as required by 21 CFR 1301.71; (4) in 1986, 1988, and 1989 Respondent did not timely renew its registration; and (5) Respondent has a history of violating Food and Drug Administration [FDA] requirements pertaining to recordkeeping, documentation and good manufacturing practices.

Respondent, by counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Chicago, Illinois, on August 18 and 19, 1992.

On July 30, 1993, in her opinion and recommended ruling, findings of fact, conclusions of law and decision, the administrative law judge recommended that Respondent's application for registration be granted, contingent upon a satisfactory pre-registration investigation and upon Respondent arranging at its own expense for annual independent audits of its controlled substance handling for a period of five years after registration is granted. No exceptions were filed by either party, and on August 30, 1993, the administrative law judge transmitted the record to the Administrator. On October 13, 1993, the DEA Chief Counsel filed a request for remand with the Administrator, and on October 27, 1993, then-Administrator Robert C. Bonner remanded the case to the administrative law judge for further proceedings, noting that an indictment had been filed in the United States District Court for the Northern District of Illinois alleging that Respondent's owner had violated the Food, Drug, and Cosmetic Act (FD&C) with respect to the manufacture and distribution of prescription drugs.

On November 3, 1993, the administrative law judge rescinded her July 30, 1993 decision, reopened the record, and directed the parties to submit statements specifying the additional evidence that they wished to produce. A hearing on remand was scheduled, but canceled after the Government advised that it had no further evidence other than the indictment itself. Respondent submitted additional documents and both parties submitted argument on remand. On May 12, 1994, Judge Bittner issued her supplemental opinion and recommended ruling, findings of fact, conclusions of law and decision, in which she found that the Government had shown probable cause that Respondent's owners had committed the acts alleged, but that the Government had failed to show the criminal conduct alleged by a preponderance of the evidence. Accordingly, Judge Bittner found that there was no basis to modify her previous conclusions set forth in her July 1993 decision, and therefore she reissued that decision. No exceptions were filed by either party. On June 17, 1994, the administrative law judge transmitted the entire reord, including her original and supplemental opinions, to the Deputy Administrator.

The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

In her supplemental opinion issued on May 12, 1994, the administrative law judge found that there was nothing on the record from the 1992 hearing or upon remand tending to prove or disprove the allegations of the August 13, 1993 indictment or the January 26, 1994 superseding indictment. The Deputy Administrator adopts this finding of the administrative law judge. Accordingly, the Deputy Administrator has not considered any of the matters offered on remand and, in this decision, will refer solely to matters on the record from the 1992 hearing.

The administrative law judge found that Respondent is a pharmaceutical manufacturer founded by Baldev Raj Bhutani, Ph.D., in 1982. Respondent was registered as a manufacturer of controlled substances by DEA on July 30, 1982, and renewed this registration in June 1983 and July 1984. Respondent developed a generic form of clorazepate dipotassium, a Schedule IV controlled substance, and received FDA approval to market it in 1988. In 1991, Respondent subsequently received FDA approval to manufacture dosage forms of the Schedule IV controlled substances propoxyphene and meprobamate, and acquired Abbreviated New Drug Applications (ANDA) for the Schedule IV controlled substance chlordiazepoxide.

The administrative law judge found that in December 1984, DEA investigators conducted a regularly scheduled investigation and determined that Respondent was generally in compliance with DEA recordkeeping requirements, except that it had never filed required Automation of Reports and Consolidated Orders System (ARCOS) reports. Dr. Bhutani was advised by DEA investigators of the proper reporting procedure for a manufacturer, and the less stringent reporting requirements under a DEA researcher registration. No further action was taken. In his testimony, Dr. Bhutani disputed this version of the events, but Judge Bittner credited the investigator's testimony, while finding Dr. Bhutani's answers to be less than wholly responsive.

In November 1987, DEA investigators conducted another periodic investigation of Respondent.

Investigators determined that Respondent still had not been filing required ARCOS reports since the previous inspection in 1984. Dr. Bhutani attributed this problem to a lack of National Drug Code (NDC) numbers for his product, but Judge Bittner again found the investigator's testimony more credible. Investigators also determined that Respondent did not have a required accurate biennial inventory, and had stored controlled substance raw material in a filing cabinet located in an unsecured and unapproved storage area. As a result of this inspection, DEA issued Respondent a letter of admonition. Respondent represented, in a subsequent letter to DEA, that he had reviewed the inventory records and corrected any errors.

The administrative law judge found that in July 1982, an investigator from the FDA determined that Respondent was not complying with mandated good manufacturing practices (GMPs) and issued a Form 482 list of deficiencies to Respondent. Subsequently, after an inspection in March 1983, FDA issued a notice of adverse findings to Respondent citing non-compliance with tamper-resistant packaging requirements. In December 1983, FDA issued a regulatory letter to Respondent regarding combination over-the-counter drugs. FDA inspections in October 1984 and November 1985 indicated that Respondent was not complying with GMPs. Another regulatory letter was issued in February 1986. Another inspection in that same month disclosed GMP deviations which let the FDA to recommend against using Respondent as a government supplier. Follow-up inspections in May and June 1986 indicated that Respondent was still not in compliance. Afterwards, the FDA considered obtaining an injunction against Respondent, but follow-up inspections in September and October 1986 indicated that Respondent was then sufficiently in compliance. Respondent was found in compliance in December 1986 and January 1987, but at the next scheduled FDA inspection in September and October 1989, GMP deficiencies were again discovered. Another regulatory letter was issued on April 30, 1990. A follow-up inspection in January 1991 revealed deficiencies that resulted in a Complaint for Forfeiture being filed in the United States District Court for the Northern District of Illinois. As a result, Respondent's prescription drug inventory was seized on March 19, 1991. On July 9, 1991, the United States District Court for the Northern District of Illinois found Respondent's drugs to be adulterated. Respondent was permitted to recondition some of these drugs and was permitted to resume operations in November 1991.

An FDA official testified at the hearing in this matter that Respondent's history was one of "just being unable to bring themselves into compliance with GMPs. * * *" Respondent testified that he disagreed with this assessment and had hired a consultant who performed a GMP audit and found only minor problems.

DEA commenced another periodic inspection of Respondent in July 1990, and discovered that Respondent's DEA registration had expired on June 30, 1989. Accordingly, Respondent was illegally selling and in possession of approximately 178,000 dosage units of the Schedule IV controlled substance clorazepate dipotassium. On July 26, 1990, DEA placed Respondent's stock of controlled substances under seal. Additionally, investigators found that Respondent had not filed timely renewal applications from 1984 through 1988. Dr. Bhutani claimed that this was due to clerical oversight.

DEA returned to Respondent on July 31, 1990, and executed a search warrant. This search determined that Respondent was using his secure storage area and safe for the storage of items other than controlled substances in violation of the regulations, and had no documentation of the registration of his controlled substance customers.

On July 26, 1990, Respondent filed an application for a new DEA registration as a manufacturer of Schedule III through V controlled substances. That application is the subject of these proceedings.

The administrative law judge found that in June of 1991, DEA investigators returned to Respondent's facility as part of the evaluation of the pending application. Investigators noted that the facility had been enlarged, that "it was a pretty * * * good looking [plant]", and that there was no controlled substance activity underway. Dr. Bhutani testified that he had designed and completed an addition to his facility in order to meet DEA requirements.

On June 1, 1992, Respondent was registered as a researcher in Schedule III through V by the DEA. Respondent hired a consultant in May 1992 to make recommendations and do follow-up consulting if the application for a manufacturer's registration is approved. This consultant testified at the proceeding that he had made many recommendations and that Respondent appeared ready to adopt procedures which would bring it into compliance with DEA requirements. Dr. Bhutani testified that some of the consultant's recommendations had in fact been implemented as of the date of the hearing.

The administrative law judge found that the Government maintained that over a ten year period, Respondent's failure to comply with GMPs and past experience in handling controlled substances gave no assurance that Respondent could conduct itself consistent with the requirements of the Controlled Substances Act (CSA) in the future. The Government further maintained that Dr. Bhutani tended to minimize the severity of Respondent's violations and blame others for its regulatory difficulties. Respondent asserted that its past violations were de minimis or due to inadvertence, and that it had demonstrated itself capable of understanding and meeting DEA requirements.

The Deputy Administrator may deny an application to manufacture controlled substances in Schedules III through V if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(d), "[i]n determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in Schedule III, IV or V compounded therefrom into other than legitimate medical, scientific or industrial channels;

(2) Compliance with applicable State and local law;

(3) Promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) Prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) Past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and

(6) Such other factors as may be relevant to and consistent with the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. *Henry J. Schwarz, Jr., M.D.*, 54 FR 16422 (1989).

Of the stated factors, the administrative law judge found that

there is little if any evidence that the Respondent failed to comply with applicable State and local law, or was convicted under Federal or State law, or developed new substances or promoted technical advances. Accordingly, Judge Bittner determined that the first, fifth and sixth factors are relevant to the proceeding.

Under the first and fifth factors, the administrative law judge found that Respondent's past practices with respect to recordkeeping, reporting, and security are clearly relevant. With respect to the sixth factor, the administrative law judge found that Respondent's history of noncompliance with FDA regulations was relevant to the public health and safety. Judge Bittner found that for a number of years, Respondent's compliance with DEA and FDA regulations ranged from poor to abysmal, eventually culminating in seizure of its drug products by both the FDA and DEA. Furthermore, she found that Dr. Bhutani was less than responsive to the regulatory concerns, and tended to hold others responsible for Respondent's failures and to minimize the seriousness of the deficiencies. Judge Bittner concluded that there was a legitimate basis for the Deputy Administrator to find that the registration of the Respondent as a manufacturer of Schedule III through V controlled substances would be inconsistent with the public interest.

However, the administrative law judge recommended, "admittedly with some reservations", that the Respondent's application be granted because the Respondent has undertaken measures to improve its physical security, standard operating procedures, recordkeeping and reporting, and that Dr. Bhutani recognized that compliance with FDA and DEA requirements was mandatory for continued business operation.

The Deputy Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of administrative law judge, except as noted below.

The Deputy Administrator finds that with respect to the first and fifth factors, Respondent has failed to maintain proper records and submit reports, failed to ensure that its facility has proper security and that it was properly registered with the DEA as a manufacturer, and illegally possessed and distributed controlled substances.

The Deputy Administrator further finds with respect to the sixth factor that Respondent has a lengthy history of violations of the FD&C GMP regulations related to its activities as a manufacturer of controlled substances. A manufacturer is at the apex of the legitimate controlled substance distribution system, often producing large quantities of the most dangerous drugs of abuse, and making these controlled substances widely available to hundreds of thousands of registered controlled substance handlers for ultimate dispensing to patients. A registrant conducting the business activities of a manufacturer bears some of the heaviest responsibilities under the regulatory scheme of the CSA. Respondent, in its capacity as a manufacturer, has twice been the subject of seizures of its product: once by FDA for its adulteration of drugs, and once by DEA for illegal possession and distribution of controlled substances.

The Deputy Administrator finds that Respondent's President and founder, Dr. Bhutani, has not taken his controlled substance responsibilities seriously; has shown a history and pattern of noncompliance with Federal laws and regulations pertaining to controlled and non-controlled substances; has minimized the importance of compliance with these laws and regulations; and has, throughout the years and in the instant proceedings, been less than wholly responsive, candid, and forthright, thereby failing to evidence the type of direction and leadership to be expected of a manufacturer under the CSA.

The Deputy Administrator concludes that Respondent has not shown the commitment to compliance required of a DEA registrant, that its registration as a manufacturer of controlled substances would not be in the public interest, and that its application for registration should be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that the application for registration of Alra Laboratories, Inc., be, and it hereby is, denied. This order is effective on October 4, 1994.

Dated: September 27, 1994.

Stephen H. Green,

Deputy Administrator.

[FR Doc. 94-24405 Filed 10-3-94; 8:45 am]

BILLING CODE 4410-09-M

Foreign Claims Settlement Commission

Iran; Current Addresses of Claimants Requested

AGENCY: Foreign Claims Settlement Commission of the United States.

ACTION: Notice.

SUMMARY: The persons listed in the information section of this notice have claims pending against the Islamic Republic of Iran which are before the Foreign Claims Settlement Commission (FCSC) for adjudication as authorized under Title V of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Pub. L. 99-93, approved August 16, 1985, 99 Stat. 437 (50 U.S.C. 1701 note); the "Iran Claims Act"), and the *Settlement Agreement in Claims of Less than $250,000, Case No. 86 and Case No. B38,* Award No. 483 (1990); the "Settlement Agreement"). However, these persons have failed to inform the FCSC of their current addresses. The claims of the persons listed below will be dismissed by the FCSC, unless current addresses are provided to the FCSC by October 31, 1994.

DATES: The deadline for providing an updated address is October 31, 1994.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 600 E Street NW., Room 6002, Washington, DC 20579, (202) 616-6975 or FAX (202) 616-6993

David E. Bradley,

Chief Counsel.

Name and last known address	Claim No. IR–
Arman, Joan Y, 1025 Eagle Lake Trail, #907, Port Orange, FL 32019	2177
Black, W. Gail, Route 1, Box 203, Roxboro, NC 27573	2390
Boodey, Madeline P., 907 Acorn Oaks, Austin, TX 78745	1805
Boyadjian, Berge V., 1285 N. Sierra Bonita Avenue, Pasadena, CA 91104	1670
Boyce, Jr., John E., c/o K. Boyce, 4155 Gates Ford Circle, Troy, MI 48098	1716
Cecil, Robert, 2201 No. Moody, Fullerton, CA 92631	2796
Dixon, Pamela Y., 2020 N.E. 30th Street, Oklahoma City, OK 73111	2139
Furnco Construction Corp., c/o R. Emsley, P.O. Box 1545, King of Prussia, PA 19406-0945	2734
Haviland, Wayne E., c/o E. Haviland, 17681 N.W. 54th Ave., Miami, FL 33054	1765
Holmes, Marvin, 3312 Granberry Drive, Dothan, Al 36303	1584
Kinney, Robert W., c/o Parson/Daniel, J.V., P.O. Box 2597, Jeddah, Saudi Arabia	1669
Moschetti, Glenn S., 38/365 SOI 47, Ladpharo Road, Bangkok Thailand	3004
Smith, Jerry L., 547 West Colorado, Amerillo, TX 79108	2044

Name and last known address	Claim No. IR–
Stewart, Van Janet, 8045 Concord Blvd. West, Jacksonville, FL 32208	3078
Stewart, Gerald, P.O. Box 16184, Lake Charles, LA 70616	1140
Svensson, Van William, 112-5 Puwa Place, Kailua, HI 96734	0181
Svensson, Mai, 3106 Granada Avenue, El Monte, CA 91731	0182
Talley, James D., 2012 Marshy Swamp Place, Knoxille, TN 37922	2500
Taylor, Donn E., c/o McDonnell Douglas, P.O. Box 206R, APO New York, NY 09671	3213
Visual Education Consultants, Inc., P.O. Box 52, Madison, WI 53701	0924
Warren, Marjorie Lee, 14104 Panay Way #169, Marina Del Ray, CA 90292	3214
Wire, Miah H., 7276 Sayre Drive, Oakland, CA 94611	3009
Wood, Wilton L., 2320 S. Wood, Dallas, TX 75233	2113
Wood, Mark, 2840 S.W. 342nd Street, Federal Way, WA 98003	1929
Wood, Callie, 2840 S.W. 342nd Street, Federal Way, WA 98003	1929

[FR Doc. 94–24457 Filed 10–3–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation: Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of partially closed meeting.

SUMMARY: The Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation was established in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 82–463)). A Notice of Establishment for the Task Force was published in the June 9, 1994, **Federal Register.** Pursuant to Section 10(a) of FACA, this is to announce the first meeting of the Task Force which is to take place on October 19 and 20, 1994.

The purpose of the Task Force is to investigate worker-management relations in the public sector and identify trends in excellence in labor-management cooperation.

Specifically, the Task Force will be asked to address the following questions:

(1) What (if any) new methods or institutions should be encouraged to enhance the quality, productivity and cost-effectiveness of public sector services through labor-management cooperation and employee participation, recognizing the broad variety of functions performed by different levels of government and various other agencies and public organizations?

(2) What (if any) changes to legal frameworks which impact on labor-management relations, including collective bargaining and civil service legislation could be considered to enhance cooperative behaviors that would improve the delivery of services by reducing conflict, duplication and delays?

(3) What (if anything) should be done to increase the extent to which workplace problems are resolved directly by the parties themselves rather than through recourse to administrative bodies and the courts?

(4) What (if anything) can be done to improve the coordination between appropriate executive and legislative bodies to enhance labor-management relations in the public sector and to create a climate where productivity improvement, innovation and risk taking are encouraged and rewarded?

(5) What conditions are necessary to enable elected political leaders, public managers, public employees and labor organizations to work together to achieve excellence in state and local government? What (if any) are the obstacles, and how can they be overcome?

(6) What examples of successful cooperative efforts are appropriate to serve as public sector models? Why have some initially successful efforts failed, and what can be done to enhance prospects for success?

TIME AND PLACE: The meeting will be held on Wednesday, October 19 from 9 a.m. to 4 p.m., in the Great Hall and Thursday, October 20 from 9 a.m. to 3 p.m. in Conference Room N–3437 A–D in the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows:

(a) Introduction of Task Force Members
(b) Legal Guidance from the Solicitor
(c) Guidance to the Task Force by the Secretary of Labor
(d) Statements by experts regarding Excellence and Labor-Management Cooperation
(e) Inquiries by Task Force members of experts
(f) Comments by interested parties on Task Force objectives (time permitting)
(g) Discussion of Task Force objectives, including, to the extent practicable, delineation of specific tasks and projected time frames for achieving such objectives
(h) Ancillary items attendant to Task Force activities.

PUBLIC PARTICIPATION: The meeting will be open to the public from 9 a.m. to 12 noon and from 1:45 p.m. until 4 p.m. on Wednesday, October 19 and from 9 a.m. to 12 noon and from 1:45 p.m. until 3 p.m. on Thursday, October 20. Seating will be available to the public on a first-come, first-serve basis. Handicapped individuals wishing to attend should contact the Task Force to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 15 copies to Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, 200 Constitution Avenue, NW, room S–2203, Washington, DC 20210. These statements will be thoroughly reviewed and become part of the record. At this stage, the Task Force is primarily interested in statements that suggest ingredients or impediments to excellence in state and local government, or which suggest other closely related areas which the Task Force might usefully review.

CLOSED PORTION OF THE MEETING: From 12 noon until 1:45 p.m. on Wednesday, October 19, and Thursday, October 20, the Task Force will meet in closed session in order to discuss internal personnel rules and practices of the Task Force, as well as personal information. This closing of the meeting is authorized by section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(2) and (c)(6). Personnel matters and personal matters are protected from disclosure by exemptions 2 and 6, respectively, of section 552b(c) of Title 5 U.S.C.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, room S–2203, Washington, DC 20210, (202) 219–6231.

Signed at Washington, DC this 28th day of September 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–24487 Filed 10–3–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,107; Gordon County Farm, Bryan Foods Div., Calhoun, GA

TA–W–30,041,; Norris/O'Bannon—A Dover Resource Co., Tulsa, OK

TA–W–29,964; Chief Drilling Co., Inc., Wichita, KS

TA–W–29,864; Philip's Consumer Electronics Co., Williamsport, PA

TA–W–29,981; Pacer Industries, Inc., Echlin Engine System, Washington, PA

TA–W–29,999; PTI Technologies, Inc., Newbury Park, CA

TA–W–29,794; Endicott Forging & Manufacturing, Endicott, NY

TA–W–29,855; ICI Fiberite, Greenville, TX

TA–W–29,955; E.F.W., Inc., Fort Worth, TX

TA–W–30,123; Envirogas, Inc., Hamburg, NY

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,203; Turecamo Maritime, Philadelphia, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,131; Coltec Industries, Inc., Menasco Overhaul Div., Burbank, CA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,053; Laidlaw Corp., Stockton, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,075; Land O'Lakes, Inc., Dalbo, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,973; Avery Dennison Soabor System Div., Gastonia, NC

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,128; GenCorp Aerojet Electronic System, Azusa, CA

Layoffs at the subject firm are attributable to downsizing by the Defense Department.

TA–W–29,988; AT&T Communications, Operator Service, Pittsburgh, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,156; Kinney Shoe Corp., Carlisle, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,996; US Steel Mining Co., Inc., Maple Creek Mine, Washington, PA

The mining facility close down was due to severe geological conditions which made mining economically unfeasible. The decision to close down was not impacted by any level of imports or change in level of imports.

TA–W–29,960; Schlegel Corp., Montpelier, IN

Layoffs and production declines and the subsequent closing of the subject firm is attributable to a corporate decision to consolidate operation shifting production from subject firm to other domestic facilities.

TA–W–30,114; Pet Connection, Gun Barrel City, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,058; Cogniseis Development, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,997; The Seminole Co., Seminole, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,179; Powell Mountain Coal Co., Inc., Big Stone Gap, VA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,201; Union Pacific Resources Co., Fort Worth, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–29,931; Dresser Industries, Inc., Guiberson-AVA Div., Dallas, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–29,966; ARCO Alaska, Inc., Anchorage/North Slope/Cook Inlet, AK

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,073; Compressor Pump & Engine Machine, Inc., Casper, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,219; Atlas Ballistic Products, Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,142; Oliver Products Co., Grand Rapids, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–30,088 & TA–W–30,88A; Value Merchants, Inc., Everything a Dollar, Inc., Milwaukee, WI & Victoria, TX

The workers' firm does not produce an article as required for certification

under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-29, Saft Aerospace Batteries, Gainsville, FL

A certification was issued covering all workers separated on or after January 1, 1994.

TA-W-29,940; Dalex, Inc., Redmond, OR

A certification was issued covering all workers separated on or after March 1, 1994.

TA-W-30,161; D.P. Cajal's El Paso, TX

A certification was issued covering all workers separated on or after July 15, 1993.

TA-W-30,071; Elmer Manufacturing Co., Inc., Elmer, NJ

A certification was issued covering all workers separated on or after March 30, 1993.

TA-W-30,079; Gencorp Automotive, Ionia, MI

A certification was issued covering all workers separated on or after June 15, 1993.

TA-W-30,138; Carthage Shirt Co., Carthage, TN

A certification was issued covering all workers separated on or after July 10, 1993.

W-30,177; Warnaco Men's Apparel Div., Waterville, ME

A certification was issued covering all workers separated on or after July 25, 1993.

TA-W-29,614 & TA-W-29,615; Honeywell, Inc., Home & Building Control, Golden Valley, MN and Plymouth, MN

A certification was issued covering all workers separated on or after October 1, 1993.

TA-W-30,083; Adams Millis, High Point, NC

A certification was issued covering all workers separated on or after June 29, 1993.

TA-W-29,856; Vought Aircraft Co., Dallas, TX

A certification was issued covering all workers separated on or after April 19, 1993.

TA-W-29,878; Guardian Industries Corp., Falconer, NY

A certification was issued covering all workers separated on or after April 20, 1993.

TA-W-30,162; Champion Products, Inc., Norwich, NY

A certification was issued covering all workers separated on or after July 22, 1993.

TA-W-30,007; Alaska Safety, Inc., Anchorage, AK

A certification was issued covering all workers separated on or after March 15, 1993.

TA-W-29,897; Dimensional Products, Mobile, AL

A certification was issued covering all workers separated on or after August 1, 1993.

TA-W-30,084; Adams Millis, Kernersville, NC

A certification was issued covering all workers separated on or after June 29, 1993.

TA-W-30,048 and TA-W-30,054; Robinson Manufacturing Co., Oxford, ME and Kezar Falls Woolen, Kezar Falls, ME

A certification was issued covering all workers separated on or after June 14, 1993.

TA-W-30,172; Champion Products, Inc., Slocomb, AL

A certification was issued covering all workers separated on or after July 22, 1993.

TA-W-29,638 & TA-W-29,638A; Eddie Hagger Ltd, Mt. Vernon, GA and Hartwell, GA

A certification was issued covering all workers separated on or after March 8, 1993.

TA-W-30,056; D & I Sportswear, Linden, NJ

A certification was issued covering all workers separated on or after June 20, 1993.

TA-W-29,924; Breckenridge, Div. of Leslie Fay Co., Boston, MA

A certification was issued covering all workers separated on or after May 16, 1993.

TA-W-29,958; TMBR/Sharp Drilling, Inc., Midland, TX

A certification was issued covering all workers separated on or after May 6, 1994.

TA-W-30,195; Julie Fashions II, Tuscarora, PA

A certification was issued covering all workers separated on or after July 25, 1993.

TA-W-30,199; Normak International, International Fashions, Inc., Knoxville, TN

A certification was issued covering all workers separated on or after July 29, 1993.

TA-W-30,135; R.O.M. Apparel, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after July 11, 1993.

TA-W-30,089; TA-W-30,090; TA-W-30,091; TA-W-30,092; Sara Lee Knit Products, Cleveland Ave., Martinsville, VA, Midway Plant, Midway, GA, Cloverleaf Kniting, Martinsville, VA, Central Distribution, Martinsville, VA

A certification was issued covering all workers separated on or after June 27, 1993.

TA-W-29,953; Universal/Univis, Inc., Attleboro, MA

A certification was issued covering all workers separated on or after May 24, 1993.

TA-W-30,208; R & S Tong Service, Odessa, TX

A certification was issued covering all workers separated on or after July 9, 1994.

TA-W-30,068; Thorsby Associates Corp., Thorsby, AL

A certification was issued covering all workers separated on or after June 24, 1993.

TA-W-30,152; Williamson-Dickie Manufacturing Co., Prosperity, SC

A certification was issued covering all workers separated on or after July 20, 1993.

TA-W-30,194; National Garment Co., Russellville, AR

A certification was issued covering all workers separated on or after July 26, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of August 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly

competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00183; Transportation Manufacturing Corp., RTS Remanufacturing, Schenectady, NY

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the workers' firm to Mexico or Canada during the relevant period. A survey of customers who purchased buses from Transportation Manufacturing Corp-RTS Remanufacturing was conducted and revealed that the customers did not increase their imports from Mexico or Canada of buses that are like or directly competitive with those produced by the subject firm.

NAFTA-TAA-00188; Continental Airlines, Inc., Houston, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services did not constitute production of an article as required by the Trade Act of 1974.

NAFTA-TAA-00184; Highland Yarn Mills, High Point, NC

The investigation revealed that criteria (3) and criteria (4) were not met. A survey was conducted with customers accounting the majority of the subject firm's decline in sales. The survey revealed that customers did not import yarn from Mexico or Canada during the relevant period.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00187; D.P. Cajal's, Inc., El Paso, TX

A certification was issued covering all workers of D.P. Cajal's, Inc., El Paso, TX separated on or after December 8, 1993.

NAFTA-TAA-00197; Larson Shingle Co., Forks, WA

A certification was issued covering all workers of Larson Shingle Co., Forks, WA separated on or After December 8, 1993.

NAFTA-TAA-00198; S. Madill, Inc., Kalama, WA

A certification was issued covering all workers of S. Madill, Inc., Kalama, Washington separated on or after December 8, 1993.

NAFTA-TAA-00191; Stephanies Fashions, Inc., El Paso, TX

A certification was issued covering all workers of Stephanies Fashions, Inc., El Paso, TX separated on or after December 8, 1993.

NAFTA-TAA-00186; A&W Brands, Inc., A Subsidiary of Cadbury Beverages, Inc., Modesto, CA

A certification was issued covering all workers of A&W Brands, Inc., in Modesto, CA separated on or after December 8, 1993.

NAFTA-TAA-00185; Alaska Corp., Rowan Bay Logging, Sitka Pulp Mill, Sitka, AK

A certification was issued covering all workers of Alaska Pulp Corp., Rowan Bay Logging, Sitka, AK and Sitka Pulp Mill, Sitka, AK separated on or after December 8, 1993.

NAFTA-TAA-00181; Anchor Advanced Products, Inc., Morristown, TN

A certification was issued covering all workers engaged in the employment related to the production of cosmetic packaging at Anchor Advanced Products, Inc., Morristown, TN separated on or after December 8, 1993.

NAFTA-TAA-00182; Sola Optical USA, Inc., Muskogee, OK

A certification was issued covering all workers of Sola Optical USA, Inc., Muskogee, OK separated on or after December 8, 1993.

NAFTA-TAA-00192; ITT Cannon, Ana, CA

A certification was issued covering all workers engaged in employment related to the production of computer harness and connector parts of the Super Computer at ITT Cannon, Santa Ana, CA separated on or after December 8, 1993.

NAFTA-TAA-00193, NAFTA-TA-00194, NAFTA-TAA-00195; Vikki, Inc., Aransas Pass, TX. R. Shrimp, Inc., Aransas pass, TX and R&A, Inc., Aransas Pass, TX

A certification was issued covering all workers of Vikki, Inc., R. Shrimp, Inc., and R&A, Inc., Aransas Pass, TX separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of August, 1994. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 13, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 94-24497 Filed 10-3-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,942]

Fuelco, Denver, CO.; Notice of Affirmative Determination Regarding Application for Reconsideration

On September 13, 1994, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 9, 1994 and published in the Federal register on August 25, 1994 (59 FR 43866).

The company submitted information indicating that the same conditions still exist when it was certified earlier under TA-W-27,295.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 19th of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-24482 Filed 10-3-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total

or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, office of Trade Adjustment Assistance, at the address shown below, not later than October 14, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 14, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.c. 20210.

Signed at Washington, D.c. this 19th day of September, 1994.

Victor J. Trunzo,

Program manager, Policy & Reemployment Services, Office of Trade, Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
MagmeTek (Co)	Oswosso, MI	09/19/94	09/19/94	30,322	Electric motors.
Suave Shoe Corp (wkrs)	Miami Lakes, FL	09/19/94	08/31/94	30,323	Footwear.
Sara Lee Hosiery (wkrs)	Lumberton, NC	09/19/94	09/09/94	30,324	Ladies' hosiery.
Sara Lee Hosiery (wkrs)	Marion, SC	09/19/94	09/09/94	30,325	Ladies' hosiery.
Sara Lee Hosiery (wkrs)	Florence, SC	09/19/94	09/09/94	30,326	Ladies' hosiery.
Samedan Oil Corp (wkrs)	Midland, TX	09/19/94	09/09/94	30,327	Oil and gas.
Pratt & Whitney UTC (IAMAW)	North Haven, CT	09/19/94	09/07/94	30,328	Aircraft parts and engines.
Pratt & Whitney UTC (IAMAW)	Southington, CT	09/19/94	09/07/94	30,329	Aircraft parts and engines.
National—Oilwell (wkrs)	Houston, TX	09/19/94	09/10/94	30,330	Oil field supplies.
Kerr-McGee Corp (wkrs)	Oklahoma City, OK	09/19/94	08/17/94	30,331	Oil and gas.
Intera Information Technologies (Co)	Denver, CO	09/19/94	02/02/94	30,332	Consulting and software.
H.F. Butler Corp (wkrs)	Piscataway, NJ	09/19/94	09/01/94	30,333	Steel weldments.
Bodard-Hale Drilling (wkrs)	Shawnee, OK	09/19/94	09/02/94	30,334	Oil and gas drilling.
Barcos Manufacturing, Inc (wkrs)	Long Island City, NY.	09/19/94	03/03/94	30,335	Tablecloths.
Bo-Mar Mfg Co., Inc (ILGWU)	Fall River, MA	09/19/94	08/29/94	30,336	Ladies' jackets and skirts.
Aeronca, Inc (IAM)	Middletown, OH	09/19/94	09/08/94	30,337	Static airframe structures.
Babcock & Wilcox, Special Metals (wkrs)	Koppel, PA	09/19/94	08/08/94	30,338	Boiler steam tubing.
Dallas Gas & Electric/Slocum Ltd (wkrs)	Slocum, TX	09/19/94	09/06/94	30,339	Crude oil.
Moran Towing (wkrs)	Philadelphia, PA	09/19/94	09/07/94	30,340	Tugboat service.
McAllister Towing (wkrs)	Camden, NJ	09/19/94	09/07/94	30,341	Tugboat service.
Linmar Petroleum Co (wkrs)	Roosevelt, UT	09/19/94	08/19/94	30,342	Crude oil.
Kerr-McGee Chemical (wkrs)	Oklahoma City, OK	09/19/94	08/17/94	30,343	Chemicals.

[FR Doc. 94–24483 Filed 10–3–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,737]

United Industries, Inc., Beloit, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 15, 1994, applicable to all workers of the subject firm. The certification notice was published in the **Federal Register** on September 2, 1994 (59 FR 45711).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The Department is changing the March 25, 1993 impact date to August 25, 1994 for the subject workers at Beloit, Wisconsin because they were already covered for certification under petition TA–W–27,235 which expired on August 25, 1994.

Accordingly, the Department is amending the subject certification by deleting the old impact date of March 25, 1993 and inserting a new impact date of August 25, 1994.

The amended notice applicable to TA–W–29,737 is hereby issued as follows:

All workers of United Industries, Inc., Beloit, Wisconsin engaged in the production of stainless steel tubing who became totally or partially separated from employment on or after August 25, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 19th day of September 1994.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24481 Filed 10–3–94; 8:45 am]

BILLING CODE 1510–30–M

Employment and Traininig Administration

Labor Surplus Area Classification Under Executive Order 12073 and 10582; Time Extension for the Annual List of Labor Surplus Areas; Notice of Time Extension for the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The annual list of labor surplus areas for the period October 1, 1993 through September 30, 1994, is extended until further notice. The Employment and Training Administration will continue to accept exceptional circumstance petitions for labor surplus area designations on the basis of the criteria in effect for the current annual list which is being extended. Upon completion of a conversion on the labor surplus area program, a new labor surplus area list will be announced and published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, USES, Employment and Training Administration, 200 Constitution Avenue NW., Room N–4470, Attention: TEESS, Washington, D.C. 20210. Telephone: 202–219–5185.

Signed at Washington, D.C. on September 26, 1994.

Doug Ross,

Assistant Secretary.

[FR Doc. 94–24486 Filed 10–3–94; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[NAFTA—00111]

Elf Atochem North America, Inc. Industrial Chemicals Division Tacoma, WA; Notice of Revised Determination on Reconsideration

On July 25, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for NAFTA Transitional Adjustment Assistance for former workers engaged in employment related to the production of chlor-alkali products at the subject firm.

Investigation findings show that the subject plant ceased production on April 20, 1994 resulting in the separation of all the Tacoma workers.

On reconsideration, new information was obtained showing that a major customer switched its entire purchases of sodium chlorate from the subject firm to a Canadian supplier.

Company officials indicated that they decided to close the Tacoma plant because of additional Canadian chlor-alkali capacity coming on-line.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that Elf Atochem's workers in Tacoma, Washington were adversely affected by increased imports of articles like or directly competitive with the chlor-alkali products produced at Elf Atochem, Tacoma, Washington. In accordance with the provisions of the Act, I make the following revised certification for the Elf Atochem workers in Tacoma, Washington.

All workers of Elf Atochem in Tacoma, Washington who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24484 Filed 10–3–94; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,866; Whitehead Manufacturing, Detroit, MI

TA–W–29,583; Smith International, Inc., Williston, ND

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,944; Gage Corp., Norman, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,043; Parsons Industrial Diamond, West Hartford, CT

The preponderance of the terminations at the subject firm are attributable to the transfer of the electroplating and compounding operations to another affiliated domestic site for consolidation of the company.

TA–W–29,827; Seward Forest Products, Seward, AK

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,149; Chatham County of Wisconsin, Beloit, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,810; Maxus Energy Corp., Dallas, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,811, TA–W–29,812; TA–W–814, TA–W–817; Maxus Exploration Co., Amarillo, TX, Canadian, TX, Dumas, TX, Jeanerette, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,818; Maxus Corporate Co., Kearny, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,819, TA–W–29,820, TA–W–29,821, TA–W–29,822, TA–W–29,823, TA–W–29,824; Maxus Exploration Co., Pampa, TX, Perryton, TX, Leedey, OK, Spearman, TX, Stinnett, TX, Dumas, TX–Sunray Gas Plant

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,989; Autoclave Engineers Group, Erie, PA

The survey revealed that none of the bids was awarded to a foreign vendor during the relevant period.

TA–W–30,223; Brown Shoe Co (Trenton Warehouse) Trenton, MO

Predominant portion of these workers' employment is dependent on corporate imports and they are not adversely impacted under the terms of the Trade Act of 1974.

TA–W–30, 105; Champion Parts Northeast Div., Beech Creek, PA

TA–W–30, 106; Champion Parts Northeast Div., Lock Haven, PA

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports or articles like or directly

competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,132; Veco Drilling, Inc., Denver, CO

A certification was issued covering all workers separated on or after June 21, 1993.

TA–W–30,165; Weidmer Brothers Well Service, Tioga, ND

A certification was issued covering all workers separated on or after July 13, 1993.

TA–W–30,062; Williams Apparel, Inc., Burns, TN

A certification was issued covering all workers separated on or after June 14, 1993.

TA–W–29,962; Occidental Chemical Corp., Burlington, NJ

A certification was issued covering all workers separated on or after May 5, 1993.

TA–W–29,945; McDonnell Douglas Corp., Tulsa, OK

A certification was issued covering all workers separated on or after May 20, 1993.

TA–W–30,086; Ron Herren, Inc., Elsberry, MO

A certification was issued covering all workers separated on or after June 30, 1993.

TA–W–29,905, TA–W–29,906, TA–W–29,907, TA–W–29,908, TA–W–29,909, TA–W–29,910; Citation Oil & Gas Corp., Oklahoma City, OK, Odessa, TX-West Texas Div. Cement, OK, Lyford, TX, Odessa, TX-Rocky Mnt Div, Stratton, NE

A certification was issued covering all workers separated on or after May 10, 1993.

TA–W–30,063, TA–W–30,064, TA–W–30,065, TA–W–30,066, A & B; Woolrich, Inc., Woolrich, PA, Avis, PA, Blanchard, PA, Broomfield, CO, Woolrich, PA, Jersey Shore, PA

A certification was issued covering all workers separated on or after June 16, 1993.

TA–W–30,181; Howes Leather Co., Bartow, WV

A certification was issued covering all workers separated on or after July 19, 1993.

TA–W–29,781; Murfin Drilling Co., Inc., Wichita, KS

A certification was issued covering all workers separated on or after April 1, 1993.

TA–W–30,218; ADI Wireline, Inc., St. Morgan, CO

A certification was issued covering all workers separated on or after August 1, 1993.

TA–W–30,198; KCA Apparel, Lawton, OK

A certification was issued covering all workers separated on or after July 23, 1993.

TA–W–29, 975; Crawford Home Fashions, AKA Daisy Decorative Products, Richmond, VA

A certification was issued covering all workers separated on or after April 18, 1993.

TA–W–29,849; Nestle' Beverage Co., Freehold, NJ

A certification was issued covering all workers separated on or after April 29, 1993.

TA–W–30,188; CENEX, Inc., Exploration & Production Dept., Billings, Mt and Operating in the Following States: A; MT, B; WY, C; ND, D; NV

A certification was issued covering all workers separated on or after July25, 1993.

TA–W–30,143, TA–W–30, 144, TA–W–30,145, TA–W–30,146; Cluett Peabody & Co., Inc., Albertville, AL, Cedartown, GA, Enterprise, AL, Austell, GA

A certification was issued covering all workers separated on or after July 12, 1993.

TA–W–30,130; Cluett Peabody & Co., Inc., Atlanta, GA

A certification was issued covering all workers separated on or after August 21, 1994.

Also, pursuant to title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of September 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade act must be met:

(1) that a significant number of proportion of workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivisions have increased.

(C) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–000199; Babcock & Wilcox, Special metals Plant, Koppel, PA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the workers' firm to Mexico or Canada during the relevant period. A survey of domestic customers to whom the subject plant sold nuclear steam generator tubing revealed that none of the customers imported this product from Canada or Mexico in 1992, 1993, or during January–June 1994.

NAFTA–TAA–00206; Brown Shoe Co., Trenton Warehouse, Trenton, TN

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services did not constitute production of an article as required by the Trade Act of 1974.

NAFTA–TAA–00205; Howes Leather Co., Durbin Div., Bartow, WV

The investigation revealed that criteria (3) and criteria (4) were not met. A survey was conducted with customers accounting the majority of the subject firm's decline in sales. The survey revealed that customers did not import sole leather from Mexico or Canada during the relevant period.

NAFTA–TAA–00196; H.H. Rosinsky & Co., Inc., Philadelphia, PA

The investigation revealed that criteria (3) and criteria (4) were not met. A survey was conducted with customers that decreased their purchases from the subject firm revealed that most of the respondents did not import women's dresses, suits, skirts, sportswear &

maternity clothes from Canada or Mexico. The survey further revealed that respondents which increased their import purchases of women's dresses, suits, skirts, sportswear & maternity clothing did not account for an important portion of the firm's sales decline during the period under investigation.

NAFTA–TAA–00203; Catoosa Knitting Mills, Inc., Crossville, TN

The investigation revealed that criteria (3) and criteria (4) were not met. Catoosa Knitting Mills is a contractor, producing men's sweaters for several manufacturers. A survey conducted with the manufacturers from whom Catoosa receives contracts revealed that none of the manufacturers contracted with firms in Mexico or Canada for the production of men's sweaters & none of them imported men's sweaters from Mexico or Canada.

NAFTA–TAA–00204; Knight Engineering & Plastics, Inc., Wheeling Plant (Courtauld's Packaging) Warwood, WV

The investigation revealed that criteria (3) and criteria (4) were not met. Knight Engineering transferred production from the Warwood, WV facility to other company-owned plants in Illinois. The company stated that the primary reason for the transfer was higher operating costs at the Warwood plant.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00200; Sun GRO Horticulture, Inc., Puyallup, WA

A certification was issued covering all workers of Sun Gro Horticulture, Inc., Puyallup, WA separated on or after December 8, 1993.

NAFTA–TAA–00145; Kyocera America, Inc., San Diego, CA

A certification was issued covering all workers engaged in the production of ceramic packages at Kyocera America, Inc., San Diego, CA separated on or After December 8, 1993.

NAFTA–TAA–00201; Echlin Engine Systems, A Div. of Pacer Industries, Inc., Washington, MO

A certification was issued covering all workers of Echlin Engine Systems, a Div. of Pacer Industries, Inc., Washington, MO separated on or after December 8, 1993.

NAFTA–TAA–00209; C.R. Bards, Inc., Bard Urological Div., Wausau, WI

A certification was issued covering all workers of C.R. Bards, Inc., Bard Urological Div., Wausau, WI separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of August, 1994. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 20, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24485 Filed 10–3–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standards.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Interim Federal Standards: 001101, "Telecommunications: Land Mobile Radio, Project 25 System and Standards Definition"; 001102, "Telecommunications: Land Mobile Radio, Project 25 Common Air Interface"; 001104, Telecommunications: Land Mobile Radio, Project 25 Encryption"; 001107, "Telecommunications: Land Mobile Radio, Project 25 Transceiver Performance and Measurement Methods", and 001108, "Telecommunications: Land Mobile Radio, Project 25 Vocoder".

DATES: Comments are due on or before January 3, 1995.

ADDRESSES: Send comments to the National Communications System, Office of Technology and Standards, Attn: NT, 701 South Court House Road, Arlington, VA 22204–2198.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Fenichel, National Communications System, telephone (703) 692–7681.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Interim Federal Standards are non-mandatory.

4. Project 25 is a joint effort of the Federal Government, state government (represented by the National Association of State Telecommunications Directors), and local government (represented by the Association of Public-safety Communications Officials, International) to develop common standards for public safety Land Mobile Radios (LMR). Industry (represented by the Telecommunications Industry Association) has also been heavily involved in the Project 25 effort.

5. Proposed Interim Federal Standard 001101 will adopt Telecommunication Industry Association (TIA) TSB 102. Proposed Interim Federal Standard 001102 will adopt TIA TSB 102BAAA and TSB 102BAAB (now in draft). Proposed Interim Federal Standard 001104 will adopt TIA Interim Standard 102AAAA and National Security Agency Specification V23–94–1 (for the encryption of classified information). Proposed Interim Federal Standard 001107 will adopt TIA TSB 102CAAA and TSB 102CAAB (now in draft). Proposed Interim Federal Standard 001108 will adopt TIA Interim Standard 102BABA.

6. Requests for copies of the draft proposed Interim Federal Standards 001101, 001102, 001104, 001107, and 001108 should be directed to the National Communications System, Office of Technology and Standards, Attn: NT, 701 South Court House Road, Arlington, VA 22204–2198.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

[FR Doc. 94–24488 Filed 10–3–94; 8:45 am]

BILLING CODE 5003–25–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by

October 31, 1994. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) Agency Clearance Officer. Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243.

Comments may also be submitted to:

(B) OMB Desk Officer. Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: NSTC Survey of Federal Laboratories Regarding their Capacity to Conduct Teacher Enhancement Programs.

Affected Public: Federal Agencies and Non-profit institutions.

Respondents/Reporting Burden: 450 respondents: One hour per response.

Abstract: Administrative staff of Federal laboratories are requested to complete a questionnaire concerning present inservice teacher enhancement programs, offered by their organizations, the subject matter emphases, and teaching populations served, and to estimate the potential for increasing services of this type. Information obtained from this survey will be used by the National Science and Technology Council for assessing the potential of Federal laboratories to contribute to improved teaching of science and mathematics in elementary, middle and senior high schools.

Dated: September 29, 1994.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 94–24480 Filed 10–3–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Washington Public Power Supply System; Notice of Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Washington Public Power Supply System (WPPSS, or the licensee) to withdraw its October 23, 1990, application for proposed amendment to Facility Operating License No. NPF–21 for the WPPSS Nuclear Project No. 2, located in Benton County, Washington. The proposed amendment would have revised the technical specifications to add specific action statements for the event of inoperable scram discharge volume vent and/or drain valves.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 7, 1991 (56 FR 37591). However, by letter dated September 2, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 23, 1990, and the licensee's letter dated September 2, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 27th day of September 1994.

For the Nuclear Regulatory Commission.

James W. Clifford,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24459 Filed 10–3–94; 8:45 am]

BILLING CODE 7950–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34723; File No. SR–Amex–94–39]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Indexed Term Notes Based on a Portfolio of Banking Industry Securities

September 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 22, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 approve for listing and trading under Section 107A of the Amex Company Guide ("Guide"), Indexed Term Notes ("Notes"), the return on which is based in whole or in part on changes in the value of a static portfolio of twenty banking industry securities ("Index").[1] The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

Under Section 107 of the Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[2] The Amex now proposes to list for trading, under Section 107A of the Guide, Notes whose value is based in whole or in part on the Index.

The Notes will be non-convertible debt securities and will conform to the listing guidelines under Section 107A of the Guide.[3] Although the specific

[1] The components of the Index are: Bancorp Hawaii, Inc.; Barnett Banks, Inc.; Baybanks, Inc.; City National Corp.; Corestates Financial; Crestar Financial Corp.; First American Corp.; First Chicago Corp.; Hibernia Corp.; Mercantile Bancorp.; Michigan National; Midlantic Corp.; North Fork Bancorp; Provident Bankshares; Summit Bancorp; U.S. Bancorp; UJB Financial Corp.; Union Planters Corp.; UST Corp.; and Vermont Financial Services.

[2] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[3] Specifically, the Notes must have: (1) A minimum public distribution of one million trading units; (2) a minimum of 400 holders; (3) an aggregate market value of at least $20 million; and (4) a term of at least one year. Additionally, the issuer of the Nortes, Lehman Brothers, Inc., must have assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. As an alternative to these financial criteria, the issuer may have either: (1) Assets in excess of $200 million and stockholders' equity in excess of $10 million; or (2) assets in excess of $100 million and stockholders' equity in excess of $20 million. The Exchange has filed a proposed rule change that would, among other things, reduce securities under Section 107A of the Guide from $20 million to $4 million. *See* File No. SR–Amex–94–36.

maturity date will not be established until immediately prior to the time of the offering, the Notes will provide for maturity within a period of not less than one nor more than seven years from the date of issue. The Notes may provide for periodic payments and/or payments at maturity based in whole or in part on changes in the value of the Index.[4] In addition, the Notes may feature a "cap" on the maximum amount and/or a "floor" on the minimum amount to be paid periodically. Additionally, the Notes shall provide that at maturity, holders will receive not less than 90% of the initial issue price of the Notes. Prior to the commencement of listing and trading of the Notes, the Exchange shall distribute a circular to its membership providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines.

Eligibility Standards for Index Components

The Components of the Index shall meet the following criteria at the time of issuance of the Notes: (1) A minimum market capitalization of $75 million, except that up to 10% of the component securities may have a market capitalization of not less than $50 million; (2) trading volume in each of the six months prior to the offering of the Notes of not less than one million shares, except that up to 10% of the component securities may have a trading volume in each of the six months prior to the offering of not less than 500,000 shares; (3) at least 90% of the weight of the Index and at least 80% of the total number of components will meet the then current criteria for standardized options trading set forth in Exchange Rule 915; (4) all components of the Index will be listed on the Amex or the New York Stock Exchange, or will be National market securities traded through Nasdaq; and (5) all components of the Index will be subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act.

Index Calculation

The Index will be calculated using an "equal dollar-weighting" methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index. To create the Index, a portfolio of equity securities will be established by the issuer representing an investment of a specified dollar amount in each component security (rounded to the nearest whole share). The value of the Index will equal the current market value of the sum of the assigned number of shares of each of the component securities divided by the current Index divisor. The Index divisor will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the establishment of the Index.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security may also be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to stockholders. Shares of a component security may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into another class of security, the termination of a depositary receipt program, or the spin-off of a subsidiary. If the security remains in the Index, the number of shares of that security may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action.[5] In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the value of the Index.

The value of the Index will be calculated continuously by the Amex and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) 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 remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate 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 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between 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. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–39 and should be submitted by October 25, 1994.

* For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[4] The Commission notes that the value of the Index at maturity shall not be adjusted to account for ordinary cash dividends paid on the component securities during the term of the Notes.

[5] The issuer will not attempt to find a replacement stock or compensate for the extinction of a security due to bankruptcy or a similar event.

[6] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 94-24515 Filed 10-3-94; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-34724; International Series Release No. 718; File No. SR-CBOE-94-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading Options on the CBOE Emerging Latin American Markets Index

September 27, 1994.

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 July 20, 1994, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange filed Amendment No. 1 to the proposed rule change on August 18, 1994,[3] and Amendment No. 2 on September 26, 1994.[4] 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

As provided in Exchange Rule 24.2, "Designation of the Index,"[5] the CBOE proposes to list for trading options on the CBOE Emerging Latin American Markets Index ("Emerging Latin American Markets Index" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style[6] index options on the Emerging Latin American Markets Index. The Index will initially consist of ten[7] closed-end funds which invest in the stocks of firms in the emerging Latin American economies. According to the Exchange, no proxy for the performance of these emerging economies is currently available in the U.S derivatives markets. The Exchange believes, therefore, that options on the Index will provide investors with a low-cost means of participating in the performance of these markets and/or hedging against the risk of investing in the Latin American emerging markets.

Index Design

The Emerging Latin American Markets Index will initially consist of ten closed-end funds.[8] All of the closed-end fund components of the Index currently trade on the New York Stock Exchange.

As of September 15, 1994, the closed-end funds comprising the Index ranged in market capitalization from a low of $118.63 million to a high of $1.294 billion. The average capitalization as of that date was $313.35 million. The closed-end fund accounting for the largest percentage of the total weighting of the Index on that date was the Chile Fund Inc. (16.64%), while the smallest was the Argentina Fund Inc. (5.65%).

Calculation

The Index is price-weighted and reflects changes in the prices of the components relative to the base date of December 31, 1991. The Index value is calculated by summing the prices of the component securities and then dividing by a divisor that yielded an index value of 100.00 as of that date. The value of the Index at the close on September 15, 1994, was 168.07.

The Index will be calculated by CBOE or its designee on a real-time basis using last-scale prices and will be disseminated every 15 seconds by the Exchange. If a component closed-end fund is not currently being traded, the most recent price at which the closed-end fund traded will be used in the Index calculation.

Maintenance

The Index will be maintained by the Exchange. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, certain rights issuances.

The Exchange states that the Index will be reviewed on approximately a monthly basis by the CBOE staff. The Exchange may change the composition of the Index at any time or from time to time to reflect the changes affecting the components of the Index or the emerging Latin American markets generally. If it becomes necessary to remove a component from the Index, every effort will be made to add a closed-end fund that preserves the character of the Index. In such circumstances, the CBOE will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement closed-end fund. The Exchange will most likely maintain nine closed-end funds in the Index at all times.

Long-Term Index Options

In addition to Index options on the full-value of the Index, the Exchange also proposes to list long-term Index option series ("LEAPS") as provided in CBOE Rule 24.9, and reduced-value Index LEAPS for which the underlying value would be computed at one-tenth (1/10th) of the value of the Index. The current and closing Index value of any such reduced-value Index LEAPS will, after such initial computation, be rounded to the nearest one-hundredth. Other than the reduced value, all other

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] In Amendment No. 1, the Exchange proposes to treat the CBOE Emerging Latin American Markets Index as a narrow-based index for purposes of margin and position limit treatment. Pursuant to CBOE Rule 24.4A, the position limits for the CBOE Emerging Latin American Markets Index would initially be set at 7,500 contracts. See Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Senior Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated August 18, 1994 ("Amendment No. 1").

[4] In Amendment No. 2, the CBOE proposes to expand the CBOE Emerging Latin American Markets Index to ten securities by adding the Emerging Mexico Fund as a component security. See Letter from Scott Lyden, Senior Research Analyst, Research Department, CBOE, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated September 26, 1994 ("Amendment No. 2").

[5] Exchange Rule 24.2 provides, in part, that the Commission must approve a particular index upon which options are traded.

[6] European-style options can only be exercised during a specified period before the options expire.

[7] *See* Amendment No. 2, *supra* note 4.

[8] The components of the Index are the: Latin American Discovery Fund Inc.; Latin American Equity Fund Inc.; Latin America Investment Fund Inc.; Argentina Fund Inc.; Brazilian Emerging Mexico Fund; Mexico Equity and Income Fund Inc.; and Mexico Fund Inc. *Id.*

specifications and calculations for the reduced-value Index LEAPS will remain the same.

Exercise and Settlement

Index options will have European-style exercise and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV of the Exchange's rules.[9] The CBOE proposes to amend Rule 24.9 to refer specifically to Emerging Latin American Markets Index options. The Exchange states that the proposed Index options would expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable

Except as modified in the proposal, the Rules in Chapter XXIV of the Exchange's Rules regarding narrow-based indexes will be applicable to Index options.[10] Pursuant to Exchange Rule 24.4A, Index option contracts based on the Emerging Latin American Markets Index will be subject to position limits of 7,500 contracts.[11] For purposes of position and exercise limits, Index LEAPS will be aggregated with Index options on a one for one basis. Under the proposal, ten reduced-value Index LEAPS contracts will equal one full-value Index option or Index LEAP for purposes of aggregating positions. The Exchange represents that it has the necessary systems capacity to support new options series that would result from the introduction of Index options an Index LEAPS.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it will provide investors with an opportunity to invest in options based upon the Emerging Latin American Markets Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

[9] Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

[10] *See* Amendment No. 1, *supra* note 3.

[11] *Id.*

[12] 15U.S.C. 78f(b)(5) (1988).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between 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. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–25 and should be submitted by October 25, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

[13] 17 CFR 200.30–3(a)(12) (1933).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24516 Filed 10–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34729; File No. SR–NSCC–94–16]

Self Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Modifying Comparison Procedures for Corporate Bond and Unit Investment Trust Transactions and Modifying the Fee Structure for Correction Fees

September 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 9, 1994, 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 will modify NSCC's trade comparison procedures for corporate bond and unit investment trust ("UIT") transactions and corresponding correction fees.

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.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Since 1993, NSCC has been redesigning its bond comparison system to accelerate the processing (*i.e.*, submission and comparison) of bond transactions to achieve higher rates of

[1] 15 U.S.C. 78s(b)(1) (1988).

trade comparison at earlier points in the comparison process. NSCC believes accelerated processing will help to increase certainty and reduce risk in the clearance and settlement of debt transactions. The first phase of this redesign process enhanced the processing of transactions in municipal securities and was implemented by NSCC on August 13, 1993.[2] The primary purpose of the current proposed rule change is to expand the accelerated comparison system to include the processing of transactions in corporate bonds and UITs. the proposed rule change also will permit NSCC to provide comparison services for baby bonds (*i.e.*, corporate bonds having a par value of less than $1,000) and new issue trading. The proposed rule change also will modify the fee structure for correction fees.

Under the proposed rule change, the cutoff time for submission of original trade input for all corporate bond and UIT transactions will be moved from 1:00 p.m. on the day following trade date ("T+1") to 2:00 a.m. on T+1. These trades will be reported back to members by 8:00 a.m. on T+1. Adjustments to original trade input will have to be made prior to the time specified by NSCC on T+1, which will be 6:00 p.m.

NSCC will accept trade input for trade-for-trade processing of corporate baby bonds. If transactions are submitted as a mixed lot (*i.e.*, submissions including baby bonds and round lots), the baby bond and the round lot portions of the transaction will be separated by NSCC upon input.

At the option of members, corporate bond and UIT transactions will be compared when the net buy side and sell side aggregate principal amounts can be matched for a particular security, even if the relevant principal amounts are specified in more than one buy side and/or more than one sell side submission, if the transactions would have been compared had such buy side and sell side principal amounts each been specified on a single submission.

Because correction processing occurs at the New York and American Stock Exchanges and at the National Association of Securities Dealers before the trade input is transmitted to NSCC, Add-by-Seller tickets, as well as Delete-by-Seller, Delete Add-by-Seller and Delete-by-Buyer instructions, will no longer be accepted under the proposed rule.[3] This change is being proposed in order to standardize correction processing.

NSCC will provide comparison services for corporate bond new issue transactions on the same basic terms and conditions as are currently provided for municipal securities transactions with the exception of syndicate takedown processing.[4] Original trade input for new issue corporate bond transactions will be accepted until the third day prior to the initial settlement date for the issue. Original input may set forth either (1) A final settlement price and a settlement date that is either the initial settlement date or a specified number of days after the initial settlement date or (2) a dollar price. Original trade input that is submitted between three and five days prior to the initial settlement date but does not set forth a final settlement price and settlement date or does not set forth a dollar price will be treated as regular input. Any corporate bond new issue transactions that remain uncompared at the opening of business on the day prior to the initial settlement date will be deleted from NSCC's system.[5]

NSCC's fee structure relating to correction fees will be amended to reflect that correction capabilities will be accelerated in conformity with comparison capabilities. These fee changes will conform all bond correction fees to the fees implemented in connection with municipal securities transaction processing in that participants will be charged for supplemental input on or after T+1.[6] Currently, NSCC charges participants for supplemental input relating to corporate bond and UIT transactions on or after T+2. In addition, the bond system correction fees for "don't know" and "questioned trade" input will be deleted because NSCC no longer processes such transactions. The proposed rule change also makes certain conforming changes and deletions to NSCC's Procedures in order to reflect greater uniformity in NSCC's bond comparison system and to eliminate certain language which has become obsolete.

The proposed changes to NSCC's comparison procedures should help achieve higher rates of trade comparison at earlier points in the comparison process and thus increase certainty and reduce risk in the clearance and settlement of corporate bond and UIT transactions. Moreover, the expansion of corporate bond processing to cover baby bond and new issue transactions will promote the prompt and accurate clearance and settlement of securities transactions. Therefore, NSCC believes the proposed rule change is consistent with Section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an 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

NSCC has not solicited or received any comments. 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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule, or

[2] For a detailed description of the municipal securities phase of the bond comparison system, refer to Securities Exchange Act Release No. 32747 (August 13, 1993), 58 FR 44530 [File No. SR–NSCC–93–2] (order approving a proposed rule change establishing a program relating to comparison procedures for municipal securities transactions).

[3] For a complete description of the New York Stock Exchange, American Stock Exchange and National Association of Securities Dealers corrections processing systems, refer to Securities Exchange Act Release Nos. 26773 (May 1, 1989), 54 FR 20227 [File No. SR–NYSE–89–03] (order approving the New York Stock Exchange's system for the resolution of uncompared transactions); 28069 (May 29, 1990), 55 FR 23324 [File No. SR–AMEX–90–01] (order approving the Intra-Day Comparison System for resolving uncompared transactions); and 28583 (November 1, 1990), 55 FR 46120 [File No. SR–NASD–89–25] (order granting accelerated approval of amendment to proposed rule change relating to the Automated Confirmation Transaction Service).

[4] NSCC defines "new issue" transactions in this context to mean transactions which are to settle on the initial settlement date for an issue or a specified number of days after the initial settlement date.

[5] This means that some new issue transactions may not be able to be put through the entire range of available trade resolution procedures prior to being dropped. In the extreme case, new issue submissions made on the second day prior to the initial settlement date that do not compare will be dropped without any opportunity for resolution. These unresolved trades will be reported on a separate unresolved trade report, and any trade dropped without the opportunity for resolution may be resubmitted after the initial settlement date.

[6] For a detailed description of NSCC's correction fees or municipal securities transactions, refer to Securities Exchange Act Release No. 34193 (June 10, 1994), 59 FR 31284 [File No. SR–NSCC–94–08] (notice of filing and immediate effectiveness of a proposed rule change modifying NSCC's fee schedule for correction fees).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–94–16 and should be submitted by October 25, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 94–24517 Filed 10–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34730; File No. SR–NYSE–94–03]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Adoption of New Rule 123A.46

September 27, 1994.

On February 22, 1994, 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 adopt a new Rule 123A.46 pertaining to members' representation of multiple orders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 34343 (July 11, 1994), 59 FR 36243 (July 15, 1994). No comments were received on the proposal.

Currently, the NYSE Rules do not place any limitations upon members who represent orders for more than one customer at the same time and on the same side of the market. New Rule 123A.46 will require such members and member organizations (including "upstairs" trading personnel) to inform customers if their orders may not receive an execution in time priority of receipt, or may not receive an equal or proportional split.

For example, if a broker was representing three not held orders to buy stock, one for 100,000 shares, and two for 50,000 shares each, and the broker executed a trade for 12,000 shares, the broker will be permitted under Rule 123A.46 to (1) allocate all 12,000 shares to the customer who entered the order first (time priority), (2) split the trade equally by giving 4,000 shares to each customer, or (3) split the trade proportionally to the customer orders, *i.e.*, 6,000 shares, 3,000 shares and 3,000 shares. Under these circumstances, the new rule will not require NYSE members to make a disclosure to its customers. However, if the execution would be split in any other manner, the member will be required by Rule 123A.46 to disclose this information to its customers prior to representing the multiple orders, unless the terms of the order provides for a different split.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[3] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that new NYSE Rule 123A.46 will benefit investors by requiring that they are informed of the manner in which their orders will be executed should a member represent multiple orders on the same side of the market. The rule specifies that in this situation, members may execute the customer orders in time priority of receipt, or split the execution equally among the orders or proportionally based upon the size of the orders. If members who represent multiple orders on the same side of the market allocate executions in any other manner, they must first inform their customers. Customers would then have the ability to withdraw their orders if they so desire.

The Commission believes that requiring members to notify customers if their orders may be executed other than in the specified manners allows investors to better monitor the representation of their orders and helps to ensure that their orders are being handled fairly and equitably. By requiring such executions or notification to customers, investors are assured that their orders will not be executed in a manner which they believe may be disadvantageous to their interests.[4]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–NYSE–94–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24518 Filed 10–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20589; 812–9002]

AMCAP Fund, Inc., et al.; Notice of Application

September 28, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: AMCAP Fund, Inc.; American Balanced Fund, Inc.; The American Funds Income Series; The American Funds Tax-Exempt Series I; The American Funds Tax-Exempt Series II, American High-Income Municipal Bond Fund, Inc.; American High-Income Trust; American Mutual Fund, Inc.; American Variable Insurance Series; The Bond Fund of America, Inc.; Capital Income Builder, Inc.; Capital

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[7] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] 15 U.S.C. 78f(b) (1988).

[4] In this regard, the Commission recently approved a proposal by the NYSE that placed limits on intra-day trading by floor brokers. The Commission stated in its approval of these intra-day trading limitations that it is not inconsistent with the Act for a self-regulatory organization to limit certain types of trading activity in order to minimize interference with the execution of public customer orders and preserve the quality of its market. See Securities Exchange Act Release No. 34363 (July 13, 1994), 59 FR 36808 (July 19, 1994). The discussion in that approval order is incorporated herein by reference.

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1993).

World Bond Fund, Inc.; Capital World Growth and Income Fund, Inc.; The Cash Management Trust of America; EuroPacific Growth Fund; Fundamental Investors, Inc.; The Growth Fund of America, Inc.; The Income Fund of America, Inc.; Intermediate Bond Fund of America; The Investment Company of America; Limited Term Tax-Exempt Bond Fund of America; The New Economy Fund; New Perspective Fund, Inc.; SMALLCAP World Fund, Inc.; The Tax-Exempt Bond Fund of America, Inc.; The Tax-Exempt Money Fund of America; The U.S. Treasury Money Fund of America; Washington Mutual Investors Fund, Inc. (collectively, the "Funds"); and Capital Research and Management Company ("CRMC").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act, and rule 2a–7 thereunder; under sections 6(c) and 17(b) from section 17(a)(1); and under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting them to offer a deferred compensation plan to certain directors and members of their advisory boards, under which the directors and advisory board members may elect to have their deferred compensation adjusted at a rate equal to the rate of return of shares of one or more investment companies of the American Funds Group.

FILING DATE: The application was filed on May 16, 1994, and amended on July 22, 1994. Applicants have agreed to file an additional amendment during the notice period. This notice reflects the changes to be made by such additional amendment.

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 October 24, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 333 South Hope Street, 52nd Floor, Los Angeles, California 90071.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or Barry D. Miller, Senior Special Counsel, 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.

Applicants' Representations

1. Each of the Funds is an open-end, diversified management investment company registered under the Act. With the exception of The Investment Company of America, which is a Delaware corporation, each of the Funds is either a Massachusetts business trust or a Maryland corporation.

2. Each Fund is governed by a board of directors/trustees, a majority of whom are not "interested persons" of the Funds within the meaning of section 2(a)(19) of the Act. CRMC, a subsidiary of The Capital Group, Inc., serves as investment adviser to each of the Funds. In addition, certain of the Funds employ advisory boards, as defined in section 2(a)(1) of the Act, whose members ("Advisors") consult from time to time with CRMC and Fund directors, primarily with respect to such Fund's investments or management. No director or Advisor employed by CRMC or its affiliated companies (other than the Funds) or by Washington Management Corporation ("WMC") (the business manager for three of the Funds) or its affiliates receives any remuneration from the Funds.

3. Applicants request an exemptive order to permit the Funds to offer certain deferred compensation plans ("Plans") to their directors who are not employees of either CRMC or its affiliates or WMC or its affiliates (the "Non-Employee Directors")[1] and their Advisors (collectively, the "Participants").[2] Applicants request that the exemption requested, other than the exemption from section 13(a)(3), which is requested only for certain of the Funds that are named as applicants, also apply to any open-end management investment company that is advised by CRMC in the future.

4. The purpose of the Plans is to permit Participants to defer receipt of all or a percentage of the fees otherwise payable to them by such Fund. Fees deferred under a Plan, and any earnings thereon, are not subject to federal or state income taxation until actually received by the Participants or their beneficiaries.

5. Each of the Plans became effective upon adoption by the board of directors of the relevant Fund, prior to the filing of the application for an exemptive order. An order is required for the Plans because the Funds wish to use returns on investment companies in The American Funds Group (which encompasses all of the Funds named as applicants, with the exception of the American Variable Insurance Series) to determine the amount of earnings and gains or losses allocated in respect of a Participant's deferred compensation account ("Deferred Payment Account"); this feature may not be implemented without SEC approval. Pending receipt of SEC approval, each Plan provides that compensation deferred by a Participant under a Plan will be credited to the Participant's Deferred Payment Account in the form of cash, and credited with earnings in an amount equal to the yield on 90-day U.S. Treasury Bills. Any conversion of previously credited cash amounts will be effected at the net asset value of the relevant Fund(s) as of the date of any order granting exemptive relief or an appropriate date thereafter.

6. Compensation deferred under a Plan is credited to a Deferred Payment Account established in the name of each Participant on the books of the relevant Fund on the date on which it would otherwise have been credited to a Participant. Participants may select one or more Funds in The American Funds Group, in which their deferred compensation will be deemed to be invested in the form of fictional shares ("Phantom Shares") of the Fund(s) selected by a Participant for purposes of crediting earnings and determining payments. Participants will receive periodic statements, at least annually, showing the balance credited to their respective Deferred Payment Accounts. A Participant's benefits under a Plan are not transferable or assignable, except in the event of death. If a Participant dies at any time before all amounts in his or her Deferred Payment Account have been paid, such remaining amounts will be paid in a lump sum as soon as

[1] Most of the Non-Employee Directors are not "interested persons" of the Funds as defined in section 2(a)(19) of the Act. However, one Non-Employee Director may be deemed an interested person due to membership on the board of directors of the parent company of a registered broker-dealer.

[2] The Plans are substantially similar to deferred compensation plans which previously were offered by certain of the Funds (the "Pre-Existing Plans") for which no-action relief was requested and granted by the Commission. *See American Balanced Fund, Inc.* (pub. avail. Feb. 13, 1984). All of the Pre-Existing Plans now have been terminated.

practicable to the Participant's designated beneficiaries.

7. Except in the case of Funds that are money market funds, a Fund sponsoring a Plan will be under no obligation to a Participant to purchase, hold, or dispose of any underlying shares of any Fund in order to exactly match its obligations to credit or charge Participants' Deferred Payment Accounts with the earnings and gains or losses attributable to any Phantom Shares. Nevertheless, if underlying shares of any Funds are purchased by a Fund for matching purposes, any and all such shares will continue to be a part of the general assets and property of such Fund. Amounts credited to a Participant's Deferred Payment Account are not evidenced by any note or other security, or funded or secured in any way. In addition, no assets of a Fund will be segregated for the account of any participant; Participants' will be general unsecured creditors of the relevant Fund for payments due under any Plan. The obligations under a Plan will be reflected as a liability on the books of the relevant Fund.

8. Participants in any Plan may elect to transfer to such Plan any amounts deferred by the Participant under any Pre-Existing Plan offered by the relevant Fund. Amounts transferred from Pre-Existing Plans will continue to earn a rate equal to the yield on 90-day U.S. Treasury Bills (as provided under the Pre-Existing Plans). Conversion to Phantom Shares of amounts transferred to the Plans from accounts under the Pre-Existing Plans will be effected at the net asset value of the relevant Fund(s) as of the date of any other granting exemptive relief or an appropriate date thereafter.

Applicants' Legal Analysis

1. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) permits an investment company to borrow funds or issue senior securities only as described in the recitals of policy contained in its registration statement, unless authorized by its shareholders. Applicants assert that the Plan contain none of the characteristics of senior securities that led Congress to enact the restrictions on the issuance of such securities. The Funds would not be borrowing for securities speculation. All liabilities created by a accruals under a Plan will be offset by assets of its corresponding Fund, which would not otherwise exist if Participants' compensation were paid on a current basis. Applicants also believe that, given the common existence of deferred compensation plans today, the Plans will not confuse shareholders, complicate the valuation of a Fund's shares, convey a false sense of safety, or be inconsistent with the theory of mutually of risk.

2. Section 13(a)(3) prohibits an investment company from deviating from the fundamental investment policies set forth in its registration statement without authorization by the vote of a majority of its outstanding voting securities. Applicants request an exemption from this section to enable the Funds named in the application to purchase shares of investment companies in The American Funds Group as underlying securities for their Participants' Deferred Payment Account without shareholder approval. Most of the Funds have fundamental investment policies that prohibit them from purchasing the securities of other investment companies.[3] This policy would prevent the Funds from purchasing shares of any other Funds in The American Funds Group without shareholder approval. Each Fund will disclose the existence of the Plans in its prospectus and, if applicable, the exception to its fundamental policies for which relief is requested herein in its statement of additional information. Applicants content that the value of the underlying securities will be *de minimis* in relation to the total net assets of each Fund. Furthermore, the value of the underlying securities held by a particular Fund in respect of a Participant's Deferred Payment Account would at all times equal the value of the Fund's obligations to pay deferred fees in respect of the corresponding Phantom Shares credited to such account. Consequently, changes in the value of such underlying securities would not affect the value of shareholders' investments. Thus, permitting the Funds to invest in underlying securities without obtaining the shareholder approval required by section 13(a)(3) would result in no harm to shareholders.

3. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such investment company. This section was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interests in such enterprises. The sale of securities issued by a Fund pursuant to a Plan would not involve Congress' concerns in enacting this section, but would merely facilitate the matching of a Fund's liability for a Participant's deferred fees with the underlying securities that would determine the amount of such Fund's liability.

4. Section 22(f) prohibits a registered open-end investment company from restricting the transferability or negotiability of any security of which it is the issuer unless the restriction is disclosed in its registration statement, and does not contravene rules and regulations prescribed by the SEC. The section was designed to bar only those restrictions on transferability or negotiability that were either not disclosed to the holder of the security or were expressly prohibited by SEC rules and regulations. Applicants assert that neither of these circumstances would apply to the restriction on transferability of a Participant's benefits under a Plan; such restrictions are clearly set forth in the Plans and do not adversely affect the interests of the Participants or of any Fund shareholder.

5. Section 22(g) prohibits a registered open-end investment company from issuing any of its securities for services or for property other than cash or securities. The provision was intended to prevent the dilutive effect on the equity and voting power of the equity of an open-end company that could result from the issuance of securities for consideration not readily value. Applicants believe that the Plans do not have this effect, particularly in view of current disclosure requirements applicable to directors' compensation. Moreover, a Fund's obligation to make payments under a Plan would not be "issued" for services or for property other than cash or securities. Although any Participant's fees which become payable to the Participant would be for services rendered to the relevant Fund, any such fees would become payable independently of the Plans.

6. Rule 2a–7 provides that the current price per share of any money market fund may be computed by use of the amortized cost method or the penny rounding method, provided the fund meets certain conditions. These conditions include requirements that the fund (a) limit its investments to securities that have a remaining maturity of 397 days or less and meet certain credit quality standards, and (b) does not maintain a dollar-weighted average portfolio maturity that exceeds 90 days. Applicants request an exemption from rule 2a-7 for each Fund

[3] An exemption from section 13(a)(3) is not necessary for the EuroPacific Growth Fund, the SMALLCAP World Fund, Inc., or the Capital World Growth and Income Fund, Inc., whose fundamental policies permit them to invest up to 5% of their assets in shares of other open-end investment companies. Applicants do not expect the Plans to cause these limits to be exceeded.

that is a money market fund solely to the extent necessary to permit each such Fund to invest in underlying securities (and to exclude underlying securities in calculating its dollar-weighted average maturity) so that an exact match with the investments chosen by the participants from such Funds can be achieved. Such an exemption would ensure that the deferred fees will not affect net asset value. The amounts involved will in all cases be *de minimis* in relation to the total net assets of each fund, and will have no effect on the per share net asset value of the Fund (since any increase or decrease in the value of the underlying securities will be precisely offset by a simultaneous increase or decrease in the value of the Fund's liability for deferred fees).

7. Section 6(c) provides that the SEC may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provisions of the Act, 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. Section 17(b) provides that any person may file with the SEC an application for an order exempting a proposed transaction of the applicant from one or more provisions of section 17(a), provided that the terms of the proposed transaction are reasonable and fair, the transaction is consistent with the policy of each registered investment company concerned, and is consistent with the general purposes of the Act. Applicants believe that the requested exemption meets the standards of sections 6(c) and 17(b).[4]

8. Section 17(d) and rule 17d–1 thereunder are designed to limit or prevent a registered investment company's joint or joint and several participation with an affiliated person in a transaction on a basis different from or less advantageous than that of the affiliated person. Applicants note that, while the Plans do possess profit-sharing characteristics, they do not have the effect of placing any Fund on a basis different from or less advantageous than that of any Participant. The effect of a Plan is merely to defer the payment of fees that the corresponding Fund otherwise would be obligated to pay on a current basis as services are performed by the Participants, enabling the fees to remain as part of the Fund's general assets and property.

[4] Applicants represent that, except for the investment policies of certain Funds which prohibit such Funds from purchasing the shares of another investment company, the Funds meet all of the standards for relief under section 17(b). The Funds' qualification for relief under section 17(b)(2) therefore is premised on the assumption that the relief requested from section 13(a)(3) is granted.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. If a Fund purchases shares issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other holders of shares of the affiliated Fund.

2. Any Fund that is a money market fund that values its assets by the amortized cost or penny-rounding methods will buy and hold shares in the Funds selected by a Participant that determine the performance of Deferred Payment Accounts to achieve an exact match between the liability of any such Fund to pay deferred fees and the assets that offset that liability.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24519 Filed 10–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20588; 811–7112]

Nuveen Select Maturities Municipal Fund 2; Notice of Application

September 28, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Select Maturities Municipal Fund 2.

RELEVANT ACT SECTION: Order requested under Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on February 16, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 24, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons 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. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Law Clerk, at (202) 942–0654, or Barry D. Miller, Senior Special Counsel, 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.

Applicant's Representations

1. Applicant is registered as a closed-end, diversified management investment company organized as a Massachusetts business trust. On August 21, 1992, applicant filed a registration statement on Form N–2 under section 8(b) of the Act and under the Securities Act of 1933. The registration statement became effective on October 23, 1992, and the public offering of applicant's shares commenced soon thereafter.

2. On March 18, 1993, applicant's board of trustees approved an agreement and plan of reorganization and liquidation providing for the transfer of substantially all of the assets of applicant to Nuveen Select Maturities Municipal Fund, a closed-end, diversified management investment company organized as a Massachusetts business trust. In exchange, the agreement provided for the issuance of shares of Nuveen Select Maturities Municipal Fund and the assumption by Nuveen Select Maturities Municipal Fund of substantially all of applicant's liabilities. In accordance with Rule 17a–8, the trustees of applicant determined that the reorganization was in the best interests of applicant and that the interests of applicant's shareholders would not be diluted as a result.[1]

3. A registration statement on Form N–14 was filed with the SEC on April 30, 1993, and the proxy statement/prospectus contained therein was furnished to applicant's shareholders. On July 28, 1993, at applicant's annual

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of Section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

shareholder meeting, shareholders of a majority of the outstanding voting shares of applicant approved the agreement and plan of reorganization and liquidation.

4. On July 28, 1993, the effective date of reorganization, applicant had 4,490,556 shares outstanding, with a net asset value per share of $11.68. On that date, Nuveen Select Maturities Municipal Fund distributed to applicant's shareholders, in exchange for their shares, shares of Nuveen Select Maturities Municipal Fund (or cash in lieu of fractional shares) of aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

5. The expenses attributable to the acquisition of applicant by Nuveen Select Maturities Municipal Fund, including SEC registration fees, printing, accounting, and legal expenses, amounted to $155,211. These expenses were allocated between applicant and Nuveen Select Maturities Municipal Fund pro rata in proportion to their respective assets, except that Nuveen Select Maturities Municipal Fund paid all SEC registration fees.

6. Applicant has no remaining assets, outstanding debts, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders, and is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant intends to file a certificate of dissolution in accordance with the laws of the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24520 Filed 10–3–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0551]

Furman Selz SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On May 27, 1994, a notice was published in the **Federal Register** (59 FR 27644) stating that an application had been filed by Furman Selz SBIC, L.P., 230 Park Avenue, New York, New York, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business June 27, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0551 on August 22, 1994, to Furman Selz SBIC, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 26, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–24466 Filed 10–3–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0309]

SBIC Partner, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 15, 1994, a notice was published in the **Federal Register** (59 FR 30830) stating that an application has been filed by SBIC Partner, L.P., 201 Main Street, Forth Worth, Texas, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given to until close of business July 14, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06–0309 on August 22, 1994, the SBIC Partner, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 26, 1994.

Robert D. Stillman,

Associate Administrator for Investment

[FR Doc. 94–24467 Filed 10–3–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/09–0398]

Sorrento Growth Partners I, L.P.; Notice of Issuance of a Small Business Investment Company License

On May 25, 1994, a notice was published in the **Federal Register** (59 FR 27094) stating that an application had been filed by Sorrento Growth Partners, I, L.P., 4225 Executive Square, San Diego, California, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business June 24, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09–0398 on September 19, 1994, to Sorrento Growth Partners I, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 26, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–24468 Filed 10–3–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 94–15]

Commercial Space Transportation Advisory Committee Open Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Wednesday, October 19, 1994, from 8:30 a.m. to 5 p.m. in room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street SW., in Washington, DC. This will be the twentieth meeting of the COMSTAC. In addition to reports from the respective COMSTAC Working Groups, the meeting will provide, among other things, an update of the COMSTAC recommendations on the National Space Transportation Policy, a presentation from the Office of the U.S. Trade

Representative regarding the space launch trade agreements, and a legislative update on Congressional activities involving commercial space transportation. This meeting is open to the interested public; however, space may be limited. Additional information may be obtained by contacting Ms. Linda H. Strine at (202) 366–2980.

Dated: September 29, 1994

Frank C. Weaver

Director, Office of Commercial Space Transportation.

[FR Doc. 94–24590 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

RTCA, Inc.; Special Committee 147 Forty-Seventh Meeting; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 162 meeting to be held November 28–29, 1994, starting at 9 a.m. The meeting will be held at the RTCA Conference room, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the minutes of the forty-sixth meeting held on August 11–12, 1994; (4) Chairman's report regarding September 12, 1994 Technical Management Committee meeting; (5) Report of working group activities: (a) Operations Working Group (b) Separation Assurance Task Force (c) Requirements Working Group (d) Enhancements Working Group; (6) Report on FAA TCAS program activities: (a) TCAS I (b) TCAS II (c) TCAS III (d) ATC Applications Activities; (7) Review of international activities/issues; (8) Review and update of verification and validation process; (9) Review of action items from last meeting; (10) Other business; (11) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC., on September 27, 1994.

Steve Zaidman,

Acting Designated Officer.

[FR Doc. 94–24499 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

[Treasury Order Number 102–16]

Delegation of Authority to the Assistant Secretary (Management) to Accept Gifts and Bequests to the Department of the Treasury; Delegation

By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 321(b), I hereby delegate all authority granted to the Secretary under 31 U.S.C. 321(d) to the Assistant Secretary (Management)/Chief Financial Officer to accept, hold, administer and use gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department of the Treasury. Gifts and bequests of money and proceeds from sales of other property received as gifts and bequests shall be deposited in the Treasury in a separate fund and shall be disbursed on order of the Assistant Secretary (Management). The Assistant Secretary (Management)/Chief Financial Officer may redelegate or assign any authority delegated by this Order.

Dated: September 28, 1994

Lloyd Bentsen,

Secretary of the Treasury.

[FR Doc. 94–24479 Filed 10–3–94; 8:45 am]

BILLING CODE 4810–25–P

Fiscal Service

Surety Companies Acceptable on Federal Bonds Liquidation; Covenant Mutual Insurance Company

Covenant Mutual Insurance Company, a Connecticut Corporation, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 57 FR 29368, July 1, 1992. The Company's authority was terminated by the Department of the Treasury effective March 3, 1993. Notice of the termination was published in the **Federal Register** of March 24, 1993, on page 15896.

On May 4, 1994, upon petition by the Insurance Commissioner of the State of Connecticut, the Superior Court of the Judicial District of Hartford/New Britain at Hartford, of the State of Connecticut, issued an Order placing Covenant Mutual Insurance Company into Rehabilitation. Mr. Robert R. Googins, the Insurance Commissioner of the State of Connecticut, was appointed as the Rehabilitator of the Company. By subsequent order dated May 4, 1994, the Connecticut Court authorized the Rehabilitator to liquidate Covenant Mutual Insurance Company in its entirety. All persons having claims against Covenant Mutual Insurance Company must file their claims, by December 31, 1994, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. It is recommended that Federal Agency claimants asserting priority status under 31 USC 3713 who have not yet filed their claim should do so, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875, Attn: Ms. Sandra P. Spooner Deputy Director.

The above office will be consolidating any and all claims against Covenant Mutual Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202/FTS) 724–7194.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, Telephone (202/FTS) 874–6905.

Dated: September 28, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–24453 Filed 10–3–94; 8:45 am]

BILLING CODE 4410–35–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: On October 4–5, the Commission will meet at the American Center in Prague with U.S. Information Agency Public Affairs Officers from U.S missions in Eastern Europe and the New Independent States of the former Soviet Union to discuss public diplomacy objectives and programs in the region.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468.

Dated: September 29, 1994.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 94–24514 Filed 10–3–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 191
Tuesday, October 4, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, October 11, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st 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 items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 30, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-24687 Filed 9-30-94; 4:06 pm]

BILLING CODE 6210-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Thursday, October 6, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6308A—Aviation Accident Report: Stall and Loss of Control on Final Approach, Atlantic Coast Airlines/United Express Flight 6291, Jetstream 4101, Columbus, Ohio, January 7, 1994

NEWS MEDIA CONTACT: Telephone: (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: September 30, 1994

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 94-24636 Filed 9-30-94; 2:59 pm]

BILLING CODE 7533-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 3, 10, 17, and 24, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 3

There are no meetings scheduled for the Week of October 3.

Week of October 10—Tentative

Thursday, October 13

9:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 17—Tentative

Tuesday, October 18

10:30 a.m. and 1:30 p.m
All Employees Meetings (Public Meetings) on "The Green" Plaza Area between buildings at White Flint
(Contact: Beth Hayden, 301-415-8200)

Thursday, October 20

10:00 a.m.
Briefing on Medical Use Program and Meeting with Advisory Committee on Medical Use of Isotopes (ACMUI) (Public Meeting)
(Contact: Janet Schlueter, 301-415-7894 or Torre Taylor, 301-504-1062)

12 noon
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 24—Tentative

Wednesday, October 26

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates, (301) 504-1963.

Dated: September 29, 1994.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 94-24591 Filed 9-30-94; 10:47 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

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 October 3, 1994.

An open meeting will be held on Wednesday, October 5, 1994, at 11:00 a.m., in Room 1C30. Closed meetings will be held on Wednesday, October 5, 1994, following the 11:00 a.m. open meeting, and on Thursday, October 6, 1994, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session, and determined that this was the earliest practicable time to provide notice of the open meeting.

The subject matter of the open meeting scheduled for Wednesday, October 5, 1994, at 11:00 a.m., will be:

1. The Commission will hear oral argument on an appeal by George Salloum, former head trader of Thomas James Associates, Inc., and by the Commission's Division of Enforcement, from an administrative law judge's initial decision. For further information, please contact Kermit B. Kennedy at (202) 942-0879.

The subject matter of the closed meeting scheduled for Wednesday, October 5, 1994, following the 11:00 a.m. open meeting will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Thursday, October 6, 1994, at 10:00 a.m., will be.

Regulatory matter regarding financial institutions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Opinion.

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 (202) 942–7070.

Dated: September 30, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–24686 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

federal register

Tuesday
October 4, 1994

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 1355, 1356, and 1357
Family Preservation and Support Services Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355, 1356, and 1357

RIN 0970–AB34

Foster Care Maintenance Payments, Adoption Assistance, Child Welfare Services

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families is proposing to amend existing regulations pertaining to child and family services to implement a new services program, "Family Preservation and Support Services," subpart 2 of title IV–B of the Social Security Act.

This new subpart aims to promote family strength and stability, enhance parental functioning, and protect children through funding a capped entitlement for States and eligible Indian tribes to develop, establish, expand, and operate family preservation services and community-based family support services, which the law defines broadly.

To receive funding in FY 1995, States and eligible Indian tribes are required to submit a five-year plan, which must be developed jointly by the State or Indian tribe and ACF after broad consultation with appropriate public and nonprofit private agencies and community-based organizations with experience in administering programs of services for children and families, including family support and preservation services. The plan may be submitted at any time after completion of the planning processes but no later than June 30, 1995.

In order to reduce administrative burden and emphasize the potential for a more comprehensive effective child and family services system, the regulations propose to consolidate this plan with similar plan requirements under title IV-B, subpart 1, "Child Welfare Services." In addition, we propose to require that the plan include information on three closely related child and family services programs: the Independent Living Program under Section 477 of the Social Security Act; and two State formula grants under the Child Abuse Prevention and Treatment Act: Part I, Basic State grants and Part II, Medical Neglect/Disabled Infants State grants.

DATES: In order to be considered, comments on this Notice of Proposed Rulemaking must be received on or before December 5, 1994.

ADDRESSES: Please address comments to Commissioner, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC, 20013, Attention: Dan Lewis.

ACF will not accept comments by FAX.

It would be helpful if agencies and organizations submitted copies in duplicate. Two weeks after the close of the comment period, all comments and letters will be available for public inspection in Room 2070, 330 C Street, SW., Washington, DC 20201, Monday through Friday between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT:

(1) Carol Williams, Associate Commissioner, Children's Bureau, Administration on Children, Youth and Families or

(2) Dan Lewis, Deputy Associate Commissioner, Children's Bureau, Administration on Children, Youth and Families, Telephone (202) 205–8622 or (202) 205–8618

SUPPLEMENTARY INFORMATION: The preamble to this Notice of Proposed Rulemaking (NPRM) is organized as follows:

I. Introduction
- A. Overview
- B. Enactment of New Legislation: Family Preservation and Support Services
- C. Previous Legislation: Adoption Assistance and Child Welfare Act of 1980 (Pub.L. 96–272)
- D. Family Preservation and Family Support: Services and Principles
- E. Development of Family Support and Family Preservation Services
- F. ACF Implementation of the New Legislation: Lessons Learned from the Field
- G. Vision for Family Preservation and Family Support Services

II. Section by Section Discussion of the NPRM
- A. Highlights of the NPRM
- B. Section by Section Discussion

III. Impact Analysis

I. Introduction

A. Overview

While many public, private, and nonprofit entities provide a wide range of services to families in need, the primary governmental responsibility for child and family services rests with the States. Each State has its own legal and administrative structures and programs that address the needs of children and families.

The Federal government assists States, and, under some programs, Indian tribes, to provide services to children and families through a variety of block grants; formula grants; discretionary grants; and national efforts in the areas of research, evaluation, technical assistance, and data collection.

Title IV–B of the Social Security Act has been a part of the Act since its inception in 1935. Historically, title IV-B has provided Federal formula grants to States to establish, extend, and strengthen child welfare services. Services are available to all children including the disabled, homeless, neglected, and dependent. Title IV–B grants to Indian tribes were first awarded in FY 1983.

Closely related programs include title IV–E of the Social Security Act (an open-ended entitlement program providing funds to States for foster care maintenance and adoption assistance payments and a formula grant program providing funds for independent living services for youth); title XX of the Social Security Act (the social services block grant which States use to fund a wide range of social services); State formula grants to assist States to provide child abuse and neglect prevention, intervention, and treatment services; the Head Start program; and in recent years, a number of discretionary grant programs, e.g., Abandoned Infants, Temporary Child Care and Crisis Nurseries, the Comprehensive Child Development Program, and the Family Resource and Support program.

B. Enactment of New Legislation: Family Preservation and Support Services

In August, 1993, under the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, Congress amended title IV–B to change the name of the title from "Child Welfare Services" to "Child and Family Services;" create a new subpart 1 entitled "Child Welfare Services" from existing statutory language; and add a new subpart 2, "Family Preservation and Support Services." (42 U.S.C. 630–635)

The FY 1994 appropriation for this new legislation (subpart 2) is $60 million. Of this amount, $2 million is reserved for Federal evaluation, research, and training and technical assistance; $600,000 is reserved for grants to Indian tribes. The balance is available for grants to States to fund planning and services for family support and family preservation.

For FY 1995, the authorization increases to $150 million. Of this amount, $6 million is reserved for Federal evaluation, research, and training and technical assistance; $1.5 million is reserved for grants to Indian tribes. A new program of grants to State

courts will be initiated at a funding level of $5 million. The balance is available for grants to States for family preservation and family support services.

C. Previous Legislation: Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272)

Enactment of a new subpart 2 to title IV–B of the Social Security Act is the first major change in this title since the amendments made by Pub. L. 96–272, the Adoption Assistance and Child Welfare Act of 1980.

The goals of that legislation were to:

- Prevent the unnecessary separation of children from their families;
- Improve the quality of care and services to children and their families; and
- Ensure permanency for children through reunification with parents, through adoption, or through another permanent living arrangement.

These goals have not been fully realized. A wide variety of reasons have been suggested by researchers and practitioners, including:

- Social, cultural, and economic changes (increases in substance abuse, community violence, restructuring of the economy, poverty, and homelessness, for example), which have affected the number of families coming to the attention of child welfare agencies and the severity of their problems;
- Rising rates of child abuse and neglect reports, particularly for child sexual abuse;
- A child welfare system unable to keep up with these increased demands, given constrained resources, high caseloads, and overburdened workers;
- Services planning that focuses most resources on crisis intervention (e.g., investigation and placement) and too few on prevention and treatment;
- Lack or shortage of services that fit the real needs of families and often are available only when families are in crisis; and
- The isolation of the child welfare services system from other services needed by vulnerable families, such as housing, employment, and substance abuse services.

Acknowledging that the system was not working for our most vulnerable children and their families, Congress amended title IV–B to provide States and eligible Indian tribes with new Federal dollars for preventive services (family support services) and services to families at risk or in crisis (family preservation services).

This legislation provides a new opportunity for States and local communities and eligible Indian tribes to review their current strategies for meeting the service needs of children and their families, identify service gaps and barriers to coordination of services, and develop and carry out a comprehensive five-year plan for providing a continuum of services to families and their children.

D. Family Preservation and Family Support: Services and Principles

As one part of our implementation plan, ACF convened a series of focus groups on family preservation and family support services in the fall of 1993. Both the discussion at the focus groups and the literature on professional practice reflected general agreement on the goals for family support and family preservation services. These services should be directed towards:

- Assuring the safety of all family members;
- Enhancing parents' ability to create safe, stable, and nurturing home environments that promote healthy child development;
- Assisting children and families to resolve crises, connect with necessary and appropriate services, and remain safely together in their homes whenever possible; and
- Avoiding unnecessary out-of-home placement of children, and helping children already in out-of-home care to be returned to and be maintained with their families or in another planned, permanent living arrangement.

Family support services are primarily community-based preventive activities designed to alleviate stress and promote parental competencies and behaviors that will increase the ability of families to successfully nurture their children; enable families to use other resources and opportunities available in the community; and create supportive networks to enhance child-rearing abilities of parents and help compensate for the increased social isolation and vulnerability of families.

Examples of community-based family support services and activities include:

- Respite care for parents and other caregivers;
- Early developmental screening of children to assess the needs of these children and assistance in obtaining specific services to meet their needs;
- Mentoring, tutoring, and health education for youth; and
- A range of center-based activities (informal interactions in drop-in centers, parent support groups) and home visiting activities.

Family preservation services typically are services designed to help families alleviate crises that might lead to out-of-home placement of children; maintain the safety of children (and other family members) in their own homes; support families preparing to reunite or adopt; and assist families in obtaining services and other supports necessary to address their needs in a culturally sensitive manner. (If a child cannot be protected from harm without placement, family preservation services are not appropriate).

Examples of family preservation activities and services include:

- Intensive preplacement preventive services;
- Respite care for parents and other caregivers (including foster parents);
- Services to improve parenting skills and support child development;
- Follow-up services to support adopting and reunifying families;
- Services for youth and families at risk or in crisis; and
- Community-based intervention and advocacy services for victims of domestic violence and their dependents.

Guiding Principles

Both family support and family preservation services are based on a common set of principles or characteristics which help assure their responsiveness and effectiveness for children and their families. Focus group participants frequently pointed out that, while various models of services or programs are available, it is an approach based on these principles that should provide an organizing framework for planning for these new services.

The principles emphasize safety for all family members; a family-focused approach while allowing for individual needs; and a service delivery approach that stresses flexibility, accessibility, coordination, and respect for cultural and community strengths. (See 45 CFR 1355.25)

E. Development of Family Support and Family Preservation Services

Family support and family preservation services are not new. They date back to the turn of the century, e.g., Hull House and the settlement house movement. Recently, however, there has been increased interest in such programs.

Over the last several years, State and local governments, foundations, national organizations, nonprofit agencies, and professional organizations have begun to develop and implement family support and family preservation programs; push for change in child welfare programs, including reform of State laws and policies to support "family-centered practice;" and experiment with changing the way child welfare services are organized and

delivered, including strengthening linkages with other agencies and resources and moving toward greater community direction and control of services.

A few examples of such efforts include the American Public Welfare Association's policy on *Commitment to Change*, the "decategorization of funding" and collaborative planning efforts in a number of States, the Children's Trust Funds and Children's Cabinets, and support for demonstrations of improved planning and child welfare service delivery from the Edna McConnell Clark Foundation, the Annie E. Casey Foundation, and the Kellogg Foundation.

Today, there are a variety of models of family preservation providing services to families at risk or in crisis. These models differ in level of intensity, services approaches, duration of services, and entrance parameters. Specific program models include Homebuilders, the Families First programs, Family Services America programs, and Maryland's Intensive Family Services program.

Also, today, there are hundreds of community-based family support programs nationwide including center-based models (family resource centers); school-based models; home-based models, including home visiting programs; and models that combine several approaches, such as Parents and Teachers, the Home Instruction Program for Preschool Youngsters (HIPPY), and the Healthy Families America initiative. The Family Services America programs are considered both family preservation and family support.

Many Indian tribes and tribal organizations also have developed and implemented family-centered or family-based services, including family preservation and family support programs. Tribal programs may be center-based, home-based (include home visiting), or contain elements of both. Most programs seek to build on family strengths and use traditional and cultural activities as a part of their services approach.

Several Federal programs or initiatives also have focused on prevention, family-centered practice, and a community-based approach. Some examples include:

- The Head Start Bureau's Family Services and Family Support Projects, and Parent and Child Centers;
- The National Comprehensive Child Development Program demonstration;
- The National Center on Child Abuse and Neglect's State community-based prevention grants associated with Children's Trust Funds;
- The National Family Support Resource Center and the National Family-Based Services Resource Center (beginning in 1994, it will be known as the National Family-Centered Practice Resource Center) funded by the Children's Bureau;
- The Family and Youth Services Bureau's Family Resource and Support program;
- The Public Health Services' (PHS) "Healthy Start" program;
- The Office of Community Services' Family Support Centers (homeless families demonstration);
- The Department of Housing and Urban Development's (HUD) Family Self-Sufficiency demonstration program; and
- The PHS Child and Adolescent Services System Program (CASSP), a planning model for coordinated mental health services for children now implemented in all States.

F. ACF Implementation of the Family Preservation and Support Services Legislation: Lessons Learned From the Field

The Administration for Children and Families (ACF) recognized that for the new program to be effective, we needed to engage in a variety of learning activities that would support the development of useful guidance and appropriate Federal regulations.

As one part of our implementation of this new legislation, we convened a series of focus groups in both the Central and Regional Offices with family support and family preservation program directors, practitioners, and experts; State, county, and city child welfare administrators; State and local agencies with experience in providing such services; representatives of Indian tribes and regional and national Tribal organizations; national advocacy, interest group, and professional organizations; representatives of national organizations representing Governors, State legislators, and counties; and parents, foster parents, and consumers of child welfare services. In addition, we met with or received written materials and recommendations from a number of other experts and practitioners in the field.

The suggestions, guidance, and information we received through this process have been invaluable to us in the development of the Program Instructions to States and Indian tribes on applying for FY 1994 funds (ACYF–PI–94–01, January 18, 1994, and ACYF PI–94–04, January 18, 1994) and this Notice of Proposed Rulemaking (NPRM):

- First, both the Program Instructions (PIs) and this NPRM follow the statutory requirements closely. In the NPRM, we have sought to avoid detailed prescriptions or requirements for specific models of services in order to allow States, Indian tribes, and local communities significant flexibility. Instead, we have identified principles of effective family support and preservation services that should guide grantees and others in conducting their planning process and designing specific services programs that meet the needs of children and families.
- Second, both the PIs and this NPRM focus on the statutory requirement for a five-year plan; they emphasize, for States and Indian tribes as appropriate, the opportunity provided by the law in making available 100 percent Federal funding for planning activities leading to the development of the five-year plan. In particular, they stress the value of a thoughtful, strategic planning process that includes broad consultation and involvement of State and local public agencies, nonprofit private agencies, parents and other consumers, representatives of professional and advocacy organizations, and community-based organizations with experience in administering programs for children and families (including family support and family preservation).
- Third, while focusing on the development and expansion of services, the PIs and this NPRM highlight the opportunity provided by the statutory requirement for broad consultation and coordination of services. In particular, we urge States and Indian tribes to use this new legislation, the new planning requirements, and the 100 percent funding as a catalyst for establishing a continuum of coordinated and integrated, culturally relevant, family-focused services for children and families regardless of funding streams. Thus, the NPRM requires consultation and coordination both within the child and family services system and among the other service delivery systems providing social, economic, and health-related support to children and their families.
- Fourth, we recognized that we could not expect coordination and collaboration across service delivery systems at the State and local level if we did not take steps toward improved coordination at the Federal level. We have been working with the Maternal and Child Health Bureau (MCHB), the Center for Mental Health Services, the Health Resources and Services Administration, the Department of Justice, and other agencies to explore and act on collaboration opportunities.

An early example of this effort to support children and family services is the discretionary announcement by the MCHB to support the State's first year family preservation and support planning process. Another example is the joint funding of a training and technical assistance center that will focus on services integration among child welfare, maternal and child health, and mental health services delivery systems.

• Finally, recommendations from the field influenced the development of our evaluation and training and technical assistance plans which are both aimed at supporting and strengthening effective service delivery for children and family services.

G. Vision for Family Preservation and Family Support Services

In passing the family preservation and support legislation, Congress recognized that new funding alone would not be sufficient to meet the goals of the legislation and Pub. L. 96–272. New or expanded services are just one element needed to improve the child and family service system. In order to ensure that services are part of a comprehensive, coordinated service delivery system that draws heavily on community-based programs in its design and implementation, States, Indian tribes, and communities are encouraged to use these new resources strategically to carry out major changes in the ways services are delivered and in the systems that deliver them.

Based on the collective views of parents, practitioners, advocates, researchers, and others who shared with ACF their concerns and hopes for strengthening the American family, the vision States, communities, and Indian tribes are encouraged to develop is of a child and family service system that:

• Keeps children and family members safe at all times;

• Builds on the resources and strengths of families;

• Offers a continuum of services to children and families that is family-focused, easily accessible, and respectful of cultural and community characteristics; and

• Links the child and family continuum of services to other community child and family services and service delivery systems (e.g., mental health, education, housing, substance abuse) and the courts, to ensure that families have access to comprehensive services to meet their individual needs.

That is, in addition to providing funds for expanding services, this new program offers States and eligible Indian tribes an extraordinary opportunity to assess and make changes in service delivery to children and families. The purpose of these changes is to assure safety and achieve improved well-being for vulnerable children and their families, particularly those experiencing, or at risk for, abuse and neglect. Because the multiple needs of these vulnerable children and families cannot be addressed adequately through categorical programs and fragmented service delivery systems, we encourage States and Indian tribes to use the planning process under the new program to help establish a continuum of coordinated and integrated, culturally relevant, family-focused services for children and families.

Among the elements that would ideally be part of the child and family services continuum, depending on family needs, are family support and family preservation services; child welfare services, including child abuse and neglect prevention, intervention, and treatment services, and foster care; and services to support reunification, adoption, kinship care, independent living, or other permanent living arrangements. Linkages to other services and service systems such as health, mental health, housing, employment, education, and child care, complete the picture of a responsive service delivery system.

Therefore, we expect that a major goal of the planning process States and Indian tribes will undertake in FY 1994–95 will be to examine the changes that are needed to make delivery of services more responsive to the needs of individuals and communities and more sensitive to the context in which they are to be delivered.

II. Section by Section Discussion of the NPRM

A. Highlights of the NPRM

1. Approach to Writing This NPRM

In implementing this new legislation, our primary aim has been to follow closely the statutory requirements as mandated by Congress. Our approach reflects not only the recommendations we received based on a broad consultation process with many outside agencies, but also our commitment to flexibility; reducing administrative burden; and supporting State and Indian tribal efforts to improve the health, development, and well-being of children, youth, and families.

Overall, we have emphasized the importance of a serious planning process and the development of a five-year plan that is a dynamic, operational document. The NPRM proposes considerable flexibility but also contains specific minimum requirements in several areas which we believe will assist States and Indian tribes to strengthen and expand services and improve service delivery.

2. Principles of Child and Family Services

As guidance to States and Indian tribes, we have included principles of services most often identified by practitioners and others as helping to assure effective services for children, youth and families. (See § 1355.25)

3. Comprehensive Child and Family Services Plan (CFSP)

We propose to consolidate into one five-year plan (rather than two plans, one of which currently is due on a one, two, or three-year cycle) all requirements applicable to the two service programs under title IV–B. These two programs are administered by the same agency, generally serve the same populations, contain similar (in some instances identical) planning requirements, and are a part of the child and family services continuum. (See § 1357.15)

4. Description of Other Services Included in the CFSP

Because services under the Independent Living Program and the Child Abuse Prevention and Treatment Act are also a part of the child and family services continuum, we propose that the CFSP describe the services provided under these funding sources and that the State explain how these funds are coordinated with and integrated into the services continuum. (See § 1357.15 (a), (n) and (o))

5. Joint Planning and Approval of the CFSP and the Annual Progress and Services Report

We have proposed an ongoing joint planning partnership to implement the statutory requirement that the CFSP may not be approved unless it was jointly developed by ACF and the State (or the Indian tribe). Both the CFSP and the Annual Progress and Services Report must be jointly developed and approved in order for a grantee to receive funding. (See § 1357.10(c) and § 1357.15(b))

6. Content of the CFSP

In designing their family preservation and family support services programs, States and Indian tribes may select the services to be provided, the target populations, and the geographic areas where services will be provided. We have not required specific "core"

services, model service approaches, client eligibility criteria, or methods for the selection of priority populations or geographic areas.

In addition to the statutory requirement for goals, measures of progress toward the goals, and annual services reports, we propose to require that the CFSP include:

- A vision statement (§ 1357.15(g));
- Measurable objectives to implement goals (§ 1357.15(i)); and
- Brief descriptions of how family preservation and support services in the CFSP are or will be linked to other services in the child and family services continuum; how the title IV–B services will help meet the permanency planning requirements in the Act; how the child and family services continuum is designed to meet the service principles; and how the services in the continuum will be coordinated with other public services and service systems. (See § 1357.15 (o), (p), and (q))

7. Planning Processes

We have proposed flexibility but also included minimum specific requirements to implement the statutory provisions for consultation and coordination of services. (See § 1357.15 (l) and (m))

In addition, we have proposed that the State and the Indian tribe, as appropriate, collect existing or available information as the basis for planning, priority setting, targeting of services, funding decisions, and measuring progress toward the goals and objectives. (See § 1357.15(k))

8. Requirements for Indian Tribes

Taking into account the resources, needs, and circumstances of Indian tribes, we have waived some and modified other programmatic and fiscal requirements for Indian tribes. (See § 1357.15 and § 1357.50(f))

We have also proposed a procedure for allowing additional Indian tribes to become eligible in FY 1996–1998. (See § 1357.50(d))

9. Administrative Costs

We have proposed what we believe is a definition of administrative costs that will be easy for States to administer. (See § 1357.32(g))

10. Technical, Editorial, and Conforming Changes

Because 45 CFR Parts 1355, 1356, and 1357 have not been amended recently, we are taking advantage of this opportunity to make technical, editorial, and conforming changes.

We welcome comments on all aspects of the NPRM, particularly on the scope of the plan and the level of effort and usefulness of the proposed planning process.

In the regulatory text, we specify which sections are applicable to States and which are applicable to Indian tribes. In those sections that apply to both States and Tribes, we use general language such as "The CFSP must include—" to indicate that all grantees must meet this provision.

B. Section-by-Section Discussion

We are proposing major amendments in 45 CFR part 1357 and primarily technical and editorial changes in 45 CFR parts 1355 and 1356.

The most important change is found in 45 CFR 1357.15, comprehensive child and family services plan requirements, in which we propose a planning process leading to the development of a consolidated five-year plan for the two Federal child and family services programs under subparts 1 and 2 of title IV–B.

Our discussion of these proposed amendments will follow in numerical order, beginning with a change in the title of subchapter G of chapter XIII of title 45 of the Code of Federal Regulations. In the title, we propose to delete the term "child welfare" and replace it with the term "child and family services" to reflect the change in the name of title IV–B of the Social Security Act made by Pub. L. 103–66.

1. Part 1355—General

Section 1355.10 Scope

This part contains general requirements applicable to both title IV–B and title IV–E of the Social Security Act. We are proposing to clarify in § 1355.10 that the title IV–B requirements also are applicable to Indian tribes unless otherwise specified.

Section 1355.20 Definitions

In § 1355.20, we are proposing to make technical changes in four definitions and to add one new definition. The terms "ACYF" and "Commissioner" are revised to reflect a change in name and organizational structure which combined two of the Department's operating divisions (Family Support Administration and Office of Human Development Services) into the Administration for Children and Families in 1991.

The term "State" is revised to delete an outdated cross-reference to two sections in 45 CFR part 1356 and to clarify which jurisdictions are eligible for funding under titles IV–B and IV–E.

The term "State agency" is revised to reflect the requirement in sections 422 and 471 of the Social Security Act that the State title IV–B, title IV–E, and title XX (social services block grant) programs must be administered by the same State agency. An exception to this requirement for States with certain administrative structures in place on December 1, 1974, is permitted by section 103(d) of Pub. L. 96–272 and is included in the definition.

Because the Independent Living Program (ILP) is now permanently authorized under section 477 of the Social Security Act and is a part of the State's child and family services continuum, we have added a definition of the ILP in this section.

Section 1355.21 State Plan Requirements for Titles IV–B and IV–E

We are proposing a conforming amendment in § 1355.21(c) to clarify that the State and the Indian tribe must make the five-year Child and Family Services Plan and the Annual Progress and Services Reports available for public review and inspection. The requirement that the State title IV–E plan also be available is a current requirement in § 1355.21(c).

Section 1355.25 Principles of Child and Family Services

A new § 1355.25, Principles of child and family services, is proposed to be added. These general principles are provided as guidance to States and Indian tribes as they develop and operate child and family services and move towards a more coordinated service delivery system for children and families. These are the principles most often identified by practitioners and others as helping to ensure responsive and effective services, particularly for family support and preservation services.

The principles emphasize the paramount importance of the safety of all members of the family, including victims of child abuse and neglect and victims of domestic violence and their dependents. "Family preservation" does NOT mean that the family must stay together or "be preserved" under all circumstances.

At the same time, the principles reflect the goal of supporting, preserving, and strengthening families as the best way to promote the safety, well-being, and the healthy development of children. They emphasize family-focused services where family strengths are identified, enhanced, respected, and mobilized.

The service principles also address the needs of individual family members who may need protection or special treatment and whose "best interest"

may be temporary care or permanent placement away from the family. They also address the need for permanency for all children, including services to emancipating youth.

In addition, the principles provide guidance in bringing about changes in State, local, and Indian tribal child and family service delivery. They emphasize the importance of accessibility, flexibility, coordination, and building on community and cultural strengths. A service delivery system organized as a continuum with linkages to other supports and programs is seen as most effective in serving children and families.

Accessibility in Relation to the Americans With Disabilities Act

Related to the principle that services should be accessible is the civil rights requirement under the Americans with Disabilities Act (ADA) for accessibility to services by the disabled. Enacted on July 26, 1990, the ADA provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodation, State and local government services, and telecommunications. The ADA defines public accommodations as facilities whose operations affect commerce and fall within twelve specified categories, including social service center establishments. Title II of the ADA governs actions by State and local governments; title III governs actions by public accommodation.

The ADA is administered by the U.S. Department of Justice (DOJ). However, most States have established a central contact, usually in the Office of the Governor or Attorney General, and questions about the ADA should be referred to that contact first. In addition, DOJ has established a technical assistance Information Line for public inquiries. The Information Line is available 24 hours daily at (202) 514–0301 (voice) or (202) 514–0381 (TDD). (This number will be replaced with a toll free 800 number in the future.) Lastly, written inquiries about the ADA may be directed to: U.S. Department of Justice, Civil Rights Division, Public Access Section, P.O. Box 66738, Washington, DC 20035–6738.

Section 1355.30 Other Applicable Regulations

This section is amended to provide an updated and corrected list of other regulations applicable to titles IV–B and IV–E. We also have indicated which regulations or which sections of the regulations apply to which titles. We have added:

- Part 30 (claims collection);
- Part 76 (drug free work place requirements);
- Parts 80, 81, 84, and 91 (implementation of the civil rights statutes);
- Part 92 (uniform administrative requirements for grants to States);
- Part 93 (lobbying restrictions);
- Part 97 (consolidated grants to insular areas); and
- Part 100 (consolidation and simplification of State plans).

We also propose to delete two regulations. The requirements in § 205.101 that identifying and organizational information must be provided by the administering agency are now incorporated into proposed § 1357.15 (e) and (f); Section 205.150 is proposed to be deleted as the cost allocation plan requirements now are found in 45 CFR part 95.

We want to call attention to a proposed change in the applicability of 45 CFR part 95, subpart A. Subpart A, Time Limits for States to File Claims, is based on section 1132 of the Act and now covers title IV–B and the Independent Living Program (as part of title IV–E). However, the States do not submit claims for the title IV–B programs or the Independent Living Program (ILP) in accordance with section 1132. Accordingly, we propose to specify that part 95, subpart A, does not apply to these programs.

The statute for both the ILP and title IV–B, subpart 2, requires that funds be expended (liquidated) within two years. For these two programs, States (and Indian tribes participating in the subpart 2 program) must file a Standard Form SF–269 expenditure report 90 days after the end of the two-year expenditure period. Therefore, other time limits to file claims are not applicable, i.e., subpart A of part 95.

We have proposed in § 1357.30(i) a two year expenditure period for title IV–B, subpart 1 funds. If approved, this change will have the operational effect of requiring an SF–269 expenditure report for all three programs.

States typically have no difficulty in accounting for their expenditures within the two year period. Therefore, we see no need to keep title IV–B funds open on an extended basis as currently allowed in subpart A of part 95. We believe this provision has been burdensome administratively to both Federal and State offices.

2. Part 1356—Requirements Applicable to Title IV–E

In § 1356.10, we have revised the language to indicate that part 1356 now contains requirements applicable to the Independent Living Program.

A new § 1356.80, Independent Living Program (ILP), is added to summarize the statutory provisions applicable to this program.

3. Part 1357—Requirements Applicable to Title IV–B

Section 1357.10 Scope and Definitions

Paragraph (a) of § 1357.10 is revised to expand the scope of part 1357 to include the new subpart 2 of title IV–B (family preservation and support services).

Paragraph (b) of this section is amended to provide that the services under both subparts 1 and 2 of title IV–B must be available on the basis of the need for the service and may not be denied on the basis of income or length of residence in the State or the Indian tribe's jurisdiction. This general eligibility statement does not preclude a State or an Indian tribe from selecting populations or geographic areas to which family preservation and family support services will be targeted nor from moving toward Statewideness of child welfare services as required in Section 422 of the Act.

In paragraph (c), we have revised the three definitions currently in paragraph (c) and added five definitions or clarifications of the following terms: children, community-based services, families, family preservation services, and family support services. The following three definitions are revised:

a. The current definition of "Child welfare services plan (CWSP)" is revised to reflect the broader, more comprehensive scope and content of the proposed "Child and Family Services Plan (CFSP)."

b. The revised definition of "Child welfare services" (title IV–B, subpart 1) is taken verbatim from section 425 of the Act. We propose to include this language because we believe that as many public and private agencies and organizations work together to provide new and more effective services and bring about changes in how services are delivered, a clear understanding of the purposes to which child welfare services are directed would be helpful.

c. The current definition of "Joint planning" is revised to propose a revitalized partnership process between ACF and the State and between ACF and the Indian tribe in the development and implementation of child and family services programs. This process is intended to be characterized by mutual respect and shared responsibility on the part of all participants.

Joint planning is required for approval of the five-year Child and Family Services Plan (section 432(b) of the Act)

and is proposed for the development and approval of the Annual Progress and Services Report (§ 1357.15(b)(4)).

We view joint planning as a process of discussion, consultation, and negotiation between the parties. It also may include Federal technical assistance, as needed. Through joint planning, State and Federal staff, and Indian tribes and Federal staff, with appropriate consultation and participation of other State, local, and community-based stakeholders, review and discuss key strategic decisions such as:

- Priorities for services and for target populations;
- Proposed goals and objectives;
- Unmet needs, services gaps, and overlaps in funding;
- Other funding resources available to provide the services needed;
- The State and local organizations, foundations, and agencies with which the State or Indian tribe can consult and coordinate services;
- Ongoing plans to move toward the goals and objectives by improving the service delivery system and ensuring a more efficient comprehensive system of care for children and families; and
- Methods for reviewing progress toward the selected goals and objectives.

Joint planning also includes Federal guidance and technical assistance after the plan has been developed and approved. This is provided through follow-up review and discussion of progress in accomplishing the goals and objectives identified in the plan and updating the plan as appropriate.

The following new definitions and clarifications of terms are proposed:

a. The term *children* refers to individuals from birth to the age of 21, with special emphasis on serving youth, adolescents, and young adults because too often they are overlooked as child and family services are developed.

This proposed language is not intended to supersede a State's legal definition of child, children, or age of majority. Rather, it is intended to emphasize that there are no age restrictions for the purpose of providing services to children under title IV–B.

b. The term *community-based services* refers to service programs characterized by accessibility and responsiveness to individual, family, and community needs and which may be provided by public or private nonprofit agencies or organizations including community-based organizations. The proposed language is intended as guidance to States and Indian tribes in identifying and working with those local agencies and organizations whose services are most likely to exemplify the principles of child and family services in 45 CFR 1355.25.

c. The term *families* is proposed to include persons needing services regardless of their family configuration. The language of the new family support and family preservation legislation explicitly refers to biological, adoptive, foster, and extended families as recipients of these services. Several agencies, organizations and focus group participants urged that we use the broadest possible language in this definition, e.g., "families as defined by themselves." Although we did not include this phrase in the proposed definition, we are in general agreement with its intent.

d. The proposed definitions of the terms *family preservation services* and *family support services* are taken from the statute. (Section 431 of the Act) In addition, language from the Conference Report has been added to provide additional examples of family support services.

The literature on professional practice and the discussion at the focus groups reflected general agreement on the goals for family support and family preservation services. These services should be directed towards:

- Enhancing parents' ability to create safe, stable and nurturing home environments that promote healthy child development;
- Assisting children and families to resolve crises, connect with necessary and appropriate services, and remain safely together in their homes;
- Avoiding unnecessary out-of-home placement of children; and
- Helping children already in out-of-home care to be returned to and be maintained with their families or in another planned, permanent living arrangement.

Currently, a number of program models, approaches, and levels of family preservation services are in operation. In this NPRM, the term "family preservation" is used to include all such service options. We do not plan to require and do not endorse any specific program model for implementation. Some activities, such as respite care, home visiting, and assistance in obtaining services, may be considered either a family support or a family preservation service.

Section 1357.15(a) Scope

Section 1357.15 contains the requirements we are proposing for the development of the comprehensive five-year Child and Family Services Plan (CFSP). We solicit comment on the overall requirements of the plan and welcome suggestions which could result in minimizing the collection and analysis of information and the reporting requirements in the plan.

This section consists of twenty-two paragraphs (a) through (v). The paragraphs cover discrete topics such as general provisions related to scope, eligibility for funds, and required assurances; paragraphs on the specific content of the comprehensive plan, including a vision statement, goals, and objectives; requirements for the description of the services to be provided, the populations to be served, and the geographic areas to be targeted; specific proposals for the planning process leading to the development of the plan; and other provisions focused on the continuum of services, permanency planning efforts, and other statutory requirements.

Paragraph (a)(1) of this section specifies the overall scope of the plan by proposing the consolidation into one comprehensive five-year plan of both the family preservation and family support services and the child welfare services programs under title IV–B of the Social Security Act.

Paragraph (a)(2) proposes that the plan must include information on the Independent Living Program (ILP) and two formula grant programs under the Child Abuse Prevention and Treatment Act (CAPTA).

Paragraph (a)(3) clarifies that some requirements in § 1357 apply only to States, some apply only to Indian tribes, and some apply to both as specified.

Overall, paragraph (a) is based on section 432 of the Act (subpart 2) which requires States and eligible Indian tribes to submit a five-year plan for family preservation and family support services. It is also based on section 422 of the Act (subpart 1) which requires a State plan for child welfare services.

We elected to consolidate the planning and reporting requirements for the two title IV–B programs for several reasons. Child welfare services and family preservation and family support services are both a part of the child and family services continuum; both programs are administered by the same agency and address common problems of the same population of children and families. In addition, focus group participants urged us to consolidate planning, application requirements, and program reporting, where possible.

Currently under subpart 1, States and Indian tribes may submit their child welfare services plan at one, two, or three year intervals. Combining the planning and reporting requirements for subparts 1 and 2 will reduce the number of plans and, consequently, the administrative burden. More

importantly, one comprehensive plan will assist both States and Indian tribes to plan for and make more effective use of resources and develop a more integrated, coordinated, and family-focused service system.

We considered requiring States to consolidate three additional programs in the CFSP—the Independent Living Program (ILP) under title IV–E, section 477; and the two child abuse and neglect formula grant programs under the Child Abuse Prevention and Treatment Act (CAPTA): Part I (Basic State grants) and Part II (Medical Neglect/Disabled Infants State grants) (sections 107(a) and 107(g) of CAPTA).

However, although the ILP and the CAPTA programs are both a part of the State's child and family services continuum, and their inclusion in the CFSP would reinforce and strengthen the comprehensiveness and usefulness of the CFSP, the current statutory and administrative requirements in these three programs are barriers to consolidation at this point. We may propose the inclusion of additional programs in the CFSP at a future date.

Instead, paragraph (a)(2) proposes to require that the State's CFSP must contain the same descriptive services information on the ILP and the two CAPTA formula grant programs as on other child and family services. (See 45 CFR 1357.15(n)) We believe that the inclusion of this information will facilitate ongoing coordination, consultation, and joint planning efforts among these programs and assist States to move toward a more comprehensive service delivery system. In addition, representatives of the ILP and CAPTA programs will be involved in the development and implementation of the CFSP, e.g., the consultation, and other processes leading to the development of goals and objectives and the required description of services in the plan. (See paragraph (l) of this section.)

Although there are barriers to requiring the ILP in the plan, there is nothing to prohibit a State from including in the CFSP the information needed to receive annual ILP funding. Section 477 of the Act requires that the annual ILP application be submitted prior to February 1. As long as this date is met, States may submit the required program and fiscal information and assurances either in the CFSP or by the statutory due date. For example, States could submit information for the FY 1996 ILP application either as a part of the FY 1995 CFSP (due June 30, 1995) or by January 31, 1996. If a State elects to consolidate the ILP application information into the CFSP, funding for the independent living program will not be withheld in the event that a State's CFSP is not approved for reasons unrelated to the ILP program.

States and Indian tribes may, and are encouraged to, include additional child and family services programs in the CFSP, at their option. (See 45 CFR 100.12.)

Section 1357.15(b) Eligibility for Funds

Paragraph (b) specifies the eligibility requirements for receipt of funds under title IV–B, subparts 1 and 2.

Paragraph (b)(1) requires that, in order to receive FY 1995 title IV–B funding, States and Indian tribes must submit for approval a five-year Child and Family Services Plan (CFSP). In order to receive funding in subsequent years, States and Indian tribes must submit for approval an Annual Progress and Services Report that meets the statutory and regulatory requirements of title IV–B, subparts 1 and 2.

Assuming that Congress appropriates the necessary funds, FY 1995 funds will be available when the CFSP has been submitted and is approved; FY 1996 funds will be available in FY 1996 based on the projected FY 1996 services information included in the CFSP. FY 1997 funds will be available in FY 1997 based on the Annual Progress and Services Report due to ACF June 30, 1996.

Paragraph (b)(2) states the requirements in section 432 (a) and (b) of the Act that a plan will be approved only if it was developed through a process of joint planning between ACF and the State (or the Indian tribe), and only after broad consultation by the State (and the Indian tribe as indicated) with appropriate public and nonprofit private agencies and community-based organizations with experience in administering programs of services for children, youth and families.

Paragraph (b)(3) proposes to require that the Annual Progress and Services Report will be approved only if it was developed through a process of joint planning between ACF and the State (or the Indian tribe) and if it meets the requirements of § 1357.16 of this Part.

Paragraph (b)(4) proposes to give the State and the Indian tribe the option of submitting the FY 1995–1999 CFSP and the FY 1996 Annual Progress and Services Report in the format of its choice, but requires that these two documents be submitted to the appropriate ACF Regional Office no later than June 30, 1995.

Section 1357.15(c) Assurances

We are proposing in § 1357.15(c) that the CFSP must contain the assurances applicable to both title IV–B programs.

Once signed by the appropriate official, the assurances will remain in effect on an ongoing basis (not just during the five-year plan) and will need to be re-submitted only if significant changes in the State's or the Indian tribe's program affects an assurance.

In the interest of clarity and convenience for grantees, ACYF will develop a compilation of all assurances for the two title IV–B programs.

Section 1357.15(d) The Child and Family Services Plan (CFSP): General

Section 1357.15(d) proposes that the CFSP must be developed based on three important planning activities, two of which are found in both subparts of title IV–B (sections 422 and 432 of the Act). Subsequent paragraphs of this section contain specific requirements for these activities. The two statutory requirements are:

- Broad involvement and consultation with a wide range of appropriate public and nonprofit private agencies and community-based organizations, parents, and others (see also § 1357.15(l)); and
- Coordination of the provision of services with other Federal and federally assisted programs serving children and families, including youth and adolescents (see also § 1357.15(m)).

In addition, we propose to add, as a necessary basis for planning and developing the CFSP, the collection of baseline information (see also § 1357.15 (k)). We are not proposing the collection of extensive new data by States or Indian tribes, but are emphasizing the use of existing and available data supplemented, if needed, by specific studies. We believe such information will help States and Indian tribes determine those programmatic and/or geographic areas where the well-being of children and families is threatened; assess needs and existing services and resources; identify gaps in services; select priorities for services funding; assist in the selection of goals and objectives; and develop opportunities for bringing about more effective and accessible services for children, youth, and families.

Child welfare information systems which States currently are designing and implementing based on recently authorized enhanced funding will be one source of valuable information during the implementation of the CFSP.

Section 1357.15(e) State Agency Administering the Programs

We are proposing in § 1357.15(e) that the CFSP identify the name of the State agency that will administer the title IV–B programs under the plan. Except as

provided by statute, the same agency must administer or supervise the administration of the programs under titles IV–B, IV–E, and XX of the Act. (See definition of State agency in 45 CFR 1355.20.)

We are further proposing in paragraph (e) that the CFSP include a description of the organization and function of the State agency and organizational charts as appropriate. It also must identify the organizational unit(s) within the State agency responsible for the operation and administration of the CFSP, and include a description of the unit's organization and function and a copy of the organizational chart(s). This information is currently required by 45 CFR 205.101 (see also 45 CFR 1355.30). We are proposing to include the required information here and delete the cross-reference in 45 CFR 1355.30.

Section 1357.15(f) Indian Tribal Organization Administering the Program(s)

We are proposing in § 1357.15 (f) that the Indian tribe's CFSP must provide the name of the Indian tribal organization (ITO) designated to administer funds under title IV–B, subpart 1, child welfare services and/or under title IV–B, subpart 2, family preservation and family support services. If the Indian tribe receives funds under both subparts, the same agency or organization must administer both programs.

Section 1357.15(f) also proposes that the CFSP of the Indian tribe must include a description of the organization and function of the office responsible for the operation and administration of the CFSP, an organizational chart of that office, and a description of how that office relates to tribal and other offices operating or administering services programs within the Indian tribe's service area, e.g., Indian Health Service.

Section 1357.15(g) Vision Statement

The new focus on family-based services and community linkages requires changes in vision, philosophy, and in the design and delivery of child and family services. In order for States and Indian tribes to develop a realistic yet forward looking CFSP, we believe that they must first set forth their vision in providing services to children and their families.

The Program Instructions encouraged States and Indian tribes to use up to $1 million of the 100 percent Federal FY 1994 funds and the planning period to help articulate that vision. Paragraph (g) proposes that the CFSP must include the vision statement as developed by the State and the Indian tribe.

Section 1357.15(h) Goals

Section 432(a)(2) of the Act requires that the CFSP describe the goals to be accomplished in the five-year plan and describe the methods to be used to measure progress toward the goals.

We are proposing in paragraph (h) that States and Indian tribes build on their vision statement and philosophy and develop goals for the next five years. Goals must be stated in the CFSP and must be expressed in terms of the improved outcome expected for children, youth and families, and for their safety and well-being. Goals also must be stated in terms of the development of a more comprehensive, coordinated, and effective child and family service delivery system.

States and Indian tribes should utilize data on the well being of children and families, needs, resources, and other information obtained during the planning process in the development of goals.

Section 1357.15(i) Objectives

We propose in paragraph (i)(1) that goals must be translated into realistic, specific, and measurable objectives which must be included in the CFSP. The objectives should focus on outcomes for children, youth, and/or families or on elements of service delivery that are linked to outcomes in important ways.

Each objective should include interim benchmarks (or due dates) and a long-term timetable, as appropriate.

Paragraph (i)(2) incorporates the requirements of section 422(b)(6) of the Act that requires the plan to include objectives directed to covering additional political subdivisions, reaching additional children in need of services, expanding and strengthening existing services, and developing new types of services.

The objectives should reflect analysis of information on families and children and on existing child welfare and related social services, assessing where needs have been growing; where there are gaps in services; what needs should be prioritized and what populations and geographic areas should be targeted; where there is a capacity for better integration and accessibility of services for children and families; and what data source(s) will be used to measure the outcomes of services.

Well-stated objectives will reflect the work of the State and Indian tribe during the consultation, coordination, and information analysis processes. Objectives also will reflect State and Indian tribal priorities, funding decisions, and strategies for implementing child and family services.

The following illustrate how an objective might be drafted. For example, objectives regarding foster care and adoption might be stated:

- By (date) , appropriately reduce the length of time spent in out-of-home placement for children in State agency foster care (target population) in the State (geographic area) from (x) days to (y) days or by (x) percentage.

(Data source to measure progress: __)

- By (date) , reduce the time between termination of parental rights and finalized adoption by (x) percentage or (y) time period for all children in State agency care.

(Data source to measure progress: ____)

A family support objective might read:

- By (date) , increase the number and proportion of families with children under age six in high poverty neighborhoods in (geographic areas) that receive family support services from _____ to _____.

(Data source to measure progress: ____)

Other objective might read:

By (date) , reduce the number of reports of child abuse and neglect involving serious injury in four counties/cities from (x) to (y) .

(Data source to measure progress: _____)

By (date) , increase the number or proportion of substance abusing parents who receive family preservation, substance abuse treatment, and other needed services and who are reunited with their children.

(Date source to measure progress: _____)

We encourage States and Indian tribes to share with us additional examples of goals and measurable objectives or approaches to drafting measurable objectives. We are considering developing model plan guidelines for States and would encourage comments on the content and usefulness of such a document.

We recommend that family preservation and family support services be targeted on populations and in geographic areas of greatest need. Targeting may include a range of vulnerable populations (children, youth and/or families) in specific geographic regions, counties, cities, communities, census tracts, or neighborhoods. States should also consider targeting services to support community-based strategies which draw on multiple funding streams and which bring a critical mass of resources to bear in high-need communities (e.g., Empowerment Zones/Enterprise Cities, Children's Cabinet initiatives).

There is no requirement that services must be statewide, although States are encouraged to move in that direction.

Section 1357.15(j) Measures of Progress

We are proposing in § 1357.15 (j) that States and Indian tribes describe in the CFSP how they will measure the results, accomplishments, and annual progress toward meeting the goals and objectives in the CFSP.

Depending on the goals, objectives, and outcomes selected, measuring progress should be based, in part, on quantifiable indicator data (e.g., numbers of substantiated child abuse and neglect reports) or on the results of activities such as monitoring mechanisms, quality assurance efforts, other information collection activities, other planning processes, and internal evaluations.

SACWIS/AFCARS/NCANDA

Three interrelated information systems, currently being established, will assist States in obtaining information to measure the annual progress toward meeting the goals and objectives in the CFSP, to quantify and document the improvements achieved, as well as identify future problem areas. These systems are the Statewide Automated Child Welfare Information System (SACWIS); the Adoption and Foster Care Analysis and Reporting System (AFCARS), a part of the SACWIS; and the National Child Abuse and Neglect Data System (NCANDS). The SACWIS/AFCARS data is expected to be available within the next two to three years during the implementation of the CFSP. Phase I of the NCANDS is operational at the present time.

• SACWIS.

As a part of the Omnibus Budget Reconciliation Act of 1993, funding is available to States for the planning, design, development, and installation of Statewide automated child welfare information systems. Such systems must be comprehensive in that they must meet the requirements for an Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479 (b)(2) of the Social Security Act and implementing regulations. To the extent practicable, these systems must also be capable of interfacing with State child abuse and neglect automated systems and with State automated systems for determining eligibility for title IV–A assistance. The Department must also determine that the system will be likely to provide more efficient, economical, and effective administration of the programs under title IV–B and title IV–E of the Act.

Enhanced Federal funding at the 75 percent matching rate is provided for such activities as well as for the cost of hardware components beginning October 1, 1993. This funding rate is eliminated in the statute after September 30, 1996, at which time a Federal matching rate of 50 percent is available. Also effective October 1, 1993, Federal financial participation is available for the operation of such systems at the 50 percent matching rate.

• AFCARS.

The purpose of AFCARS is to collect information on children in foster care and children adopted through the public child welfare system. This information will be essential for data analysis and reporting, addressing program management issues, and making policy and planning decisions. The AFCARS final rule was published in the **Federal Register** in December of 1993. The first reporting period is October 1, 1994 to March 31, 1995 for which data must be received in ACF no later than May 15, 1995.

• NCANDS.

The National Center on Child Abuse and Neglect (NCCAN) is continuing the development and implementation of the National Child Abuse and Neglect Data System (NCANDS). The NCANDS consists of two parts:

• The Summary Data Component (SDC), a compilation of key indicators of State child abuse and neglect statistics; and

• The Detailed Case Data Component (DCDC), a compilation of detailed case-level data that can be used to examine trends and issues in the field.

NCANDS summary data has been collected for the last three years. The most recent information and data regarding the NCANDS is published in a report entitled "Child Maltreatment 1992: Reports From the States to the National Center on Child Abuse and Neglect." This report is available through the Clearinghouse on Child Abuse and Neglect Information (800–FYI–3366 or 703–385–7565). When this national data base on child abuse and neglect is fully implemented, it will have the flexibility to respond to a wide range of policy and program analysis needs.

Section 1357.15(k) Baseline Information

In paragraph (k) we propose both general and specific requirements for the collection, analysis, and use of planning related information.

In section 1357.15(k)(1), we are proposing to require that States and Indian tribes base the development of the CFSP goals, objectives, and funding and service decisions on an analysis of available information on the well-being of children and families; the needs of children and families; the nature, scope, and adequacy of existing child and family and related social services programs; and the trends of these indicators over time.

We further propose that additional and updated information must also be obtained throughout the five-year period to annually measure the progress in accomplishing the goals and objectives. We do not require the collection of specific measures or indicators in recognition of the variety of kinds of information available to States and Indian tribes.

Paragraph (k)(2) requires the collection of specific information about existing family preservation and family support services, because we believe this information is important, widely available, and central to the CFSP development and implementation process.

In § 1357.15(k)(3), we are proposing that the CFSP must include the information used in developing the CFSP; an explanation of how the information was used to develop the goals and objectives and to determine the specific services to be provided, the populations to be served, and the geographic areas where services will be available; a description of how information will be used to measure progress annually over the five-year CFSP period; and explanation of how information will be used to facilitate the coordination of services.

A variety of sources of information on the well-being of children and families and service delivery capability are available. For example, the local United Way agency, Mayor's Offices, anti-poverty agency, other city/county development offices, academic institutions, and other public and private efforts are sources of information. Many States also participate in the collection of information on families and children in the Voluntary Cooperative Information System (VCIS), the "Kids Count Data Book" compiled by the Annie E. Casey Foundation which includes county-by-county profiles. State Health Departments also are sources of information on child fatalities, low birth weight in infants, teen pregnancy, and child/youth suicides as well as State and local initiatives such as Healthy Start. State Education Departments frequently have information on children in special education, drop-outs, and expulsions as well as school-based and after school programs. The Census Bureau, Chamber of Commerce, and the

AFDC agency may be sources of data on economic status indicators such as the percent or number of children in poverty, and percent or number of families receiving AFDC, Food Stamps, or medical assistance. States and communities preparing applications for the new funds under the Empowerment Zones/Enterprise Communities Program will also have collected useful data.

The SACWIS and AFCARS data will be a useful tool in measuring progress including among other data, information on the status of children placed in foster care and those placed in adoption. An additional data collection system, NCANDS, will report information on child abuse and neglect.

When fully operational, these data systems will facilitate the quantification and documentation of the improvements expected and achieved, as well as providing information on the status of the goals and objectives.

Because we believe so strongly that baseline information is essential to realistic and meaningful planning, goal setting, and progress measurement and yet recognize the variety of data availability in different States and Indian tribes, we have included some suggestions of possible indicators of child and family well being and service delivery status. Some of those indicators will be useful for setting goals and objectives, some for targeting services geographically and to priority populations, some for detailed service planning, and some for assessing progress.

(1) *Examples of indicators on child and family well-being:* Number of initial reports and substantiated reports of child abuse and neglect, percent of children born addicted or drug exposed, child death rate, incidence of domestic violence, number of children in out-of-home care, number of children in psychiatric placements, number of children awaiting adoption, youth in stable living situations after exiting foster care, and length of time spent in substitute care.

(2) *Examples of indicators related to other services systems:* Percent of low birth-weight babies, percent of births that are to single teens, teen pregnancy rate, immunization rate, percent of children in poverty, percent of children in single-parent families, percent of families receiving AFDC, runaway and homeless youth rate, child/youth suicide rates, juvenile violent crime arrest rate, teen violent death rate, percent teens not in school and not in labor force, percent teens graduating from high school on time, high school dropout rate, and percent of eligible children in Head Start.

(3) *Examples of indicators on the State's (or the Indian tribe's, as appropriate) service delivery capacity:* The extent to which child welfare, family preservation, and family support services are available and being provided (e.g., number and percentage of families served, waiting lists, etc.); the extent to which child welfare workers' caseloads (intake, protective, foster care, adoption, etc.) permit adequate protection of and service delivery to children and families; the availability of out-of-home care and placement (including adoption) resources; the availability of prevention and intervention services; the availability of critically needed services such as housing, mental health services, and substance abuse treatment; the extent to which existing services are coordinated with the provision of other child and family services, particularly child protective services and independent living services (e.g., indicators of successful referrals); and the funding resources and expenditures, geographic availability, numbers of persons served, and insufficient service capacity (unmet needs) related to these services.

(4) *Examples of indicators States or Indian tribes, as appropriate, might use or seek to develop relating to strengthening the delivery of services and accomplishing goals and objectives:* The extent to which resources are available for training, technical assistance, and consultation, including leadership development, staff development, and interdisciplinary training; the existence and utilization of quality assurance measures, program development and management and data analysis; and the implementation, expansion, and utilization of management information systems.

Indian tribes will want to obtain a general picture of the well-being of children and families in their area of jurisdiction and use available data in determining goals, objectives, and services in the CFSP. Indian tribes should use the examples of indicators and suggested sources of information as it meets their needs and circumstances.

The requirement in paragraph (k)(2) for the collection and analysis of statewide information on family preservation and family support services is an extension of the requirement in the FY 1994 Program Instructions. Most States and Indian tribes have begun to identify existing family preservation and support programs as a part of their consultation, coordination of services, and planning processes. Specific information on geographic availability; mismatches among scope, availability, and family needs; and the identifications of both public and privately funded programs must be known as the basis for State decisions on future services funding.

Finally, the collection and analysis of data is related not only to the priorities and outcomes the States and Indian tribes want to achieve but should be used in the consultation and coordination processes to identify what additional data are needed, which data will serve as baseline information on which to measure progress, and what future goals and objectives the CFSP should address.

We ask States to comment on their experiences identifying and gathering existing statewide baseline information including information on the well-being and needs of children and families; the quality and usefulness of the information gathered or expected to be gathered; information on the nature, scope, and adequacy of existing child- and family-related social service programs; and data on existing family preservation and family support services (including important gaps in service and mismatches between available services and family needs).

We solicit comment not only on the proposed indicators and their usefulness in planning, but also recommendations on how the indicators might be improved. We also seek comments on the usefulness of defining indicators more concisely so that uniform definitions can be developed.

Section 1357.15(l) Consultation

In § 1357.15(l), we are proposing to implement Section 432(b)(1) of the law. As a condition of CFSP approval, Section 432 requires that the plan be developed by the State and the Indian tribe after consultation with a wide range of appropriate public and nonprofit private agencies and community-based organizations with experience in administering services for children and families (including family preservation and family support services).

Briefly, we are proposing, in paragraph (l)(1), that States must describe in the CFSP the internal and external consultation process used to obtain broad and active involvement of major actors across the entire spectrum of the child and family service delivery system in the development of the CFSP and to explain how this process was coordinated with or was a part of other planning processes in the State.

Paragraph (l)(2) proposes that Indian tribes carry out a consultation process involving representatives of child and family services programs within their

areas of jurisdiction and appropriate to their needs and circumstances.

In paragraph (l)(3), we propose nine categories of agencies, organizations, and individuals with whom the State and the Indian tribes, as appropriate, must consult.

Finally, paragraph (l)(4), proposes that the CFSP must contain a description of how each grantee will ensure that an active consultation process continues over the five-year period.

Both those States and Indian tribes with experience in providing family preservation and family support, and those with little experience in providing youth service can benefit from a broad, active consultation process. Overall, the process will strengthen the comprehensive planning and implementation of the CFSP. Specifically, it will provide expert guidance to and assist in the development of the CFSP, including the selection of goals, objectives, and outcomes, and the design and expansion of family preservation, family support, and child welfare services; and support agency efforts to address common problems which diminish child and family well-being.

We have not mandated a particular consultation process to carry out this statutory provision. We recognize that there may be existing processes, such as State Children's Cabinets and the State Child and Adolescent Service System Program (CASSP) that can be used in the development of the CFSP. However, we have proposed specific minimum requirements which we believe are necessary to assure an active planning process, reflecting broad experience and expertise, and leading to the development of a plan that is more than a "paper exercise."

The consultation process will also be closely linked to service coordination. Collaborative initiatives to improve access to service delivery can develop by consulting with others in the field of child and family services. The information generated during the consultation process may also supplement the collection of baseline information required for the development of goals, objectives and funding decisions in § 1357.15 (k).

We believe that the nine required categories of participants in the consultation process proposed in paragraph (l)(3) represent a minimal level of programmatic, political/administrative, and experiential involvement in this process. We encourage States and Indian tribes to go beyond this proposed list and include other categories of organizations and individuals based on State and local circumstances.

This list of participant categories emphasizes both an internal and external consultation process because we believe it is critical to include the expertise of offices within the child and family service agency as well as the experience of community-based organizations and others.

The internal consultation process is particularly important to assure the participation of all major programs in the child and family services continuum. The active involvement of child protective services and the independent living program is critical, given the requirement for information on these program areas in the plan.

With regard to consultation with courts, we want to call the States' attention to the collaborative requirements between courts and State agencies in a new program of grants to the highest State Court in each State. Beginning in FY 1995, that court is eligible for a grant from ACF to assess and improve the handling of child welfare judicial proceedings under the new "Court Improvement Program," authorized by Pub. L. 103–66. Courts are strongly encouraged to collaborate with the State title IV–B agency in their assessment and improvement activities. A Program Instruction was issued June 27, 1994, to the highest State Courts requesting applications for FY 1995 funds.

Given the differing organizational structure, contacts, and resources available to each Indian tribe, the tribal consultation process will vary from the State process. If an Indian tribe has another planning process in place, we encourage it to build on the existing process rather than duplicating efforts.

Depending on the circumstances, including availability of resources, Indian tribes may choose to include other interested individuals and organizations, as appropriate. Federal and federally assisted programs operated by the Tribe should be involved, e.g., Family Violence Prevention and Services, Community Services block grant, the JOBS program, Head Start. Additionally, if the Indian Health Service and/or the Bureau of Indian Affairs is providing services within the Tribes' area of jurisdiction, representatives from these agencies also should be involved in the tribal consultation process. The Department of Education provides supplemental funds for tutoring, home/school liaison, and cultural activities to both public and BIA schools serving Indian children. Representatives of this program may also be an appropriate participant. Indian tribes also may wish to involve representatives from other Indian tribes, especially those with experience in child welfare, family support, and family preservation services.

Paragraph (l)(4) requires a description of the ongoing consultation process. Progress on goals and objectives in the CFSP will need to be reviewed annually and revisions made to reflect changed circumstances, if necessary. Participants can offer updated information, suggestions regarding revisions in the goals and/or objectives, and advice regarding funding of services for the upcoming fiscal year. These activities will be part of the annual progress reviews and services reports described in § 1357.16.

In summary, from consultation with these internal and external sources, the States and tribes could learn the current status of child and family well-being in a variety of areas; gain insight on needs, existing services, and gaps; receive advice on controversial or challenging issues; gain support for their own efforts to improve child and family services; and cultivate activities to coordinate services. This wealth of expertise from a collection of individuals and organizations, in conjunction with an analysis of baseline information, is needed to develop and fully implement the comprehensive child and family services plan.

Section 1357.15(m) Services Coordination

In § 1357.15(m), we propose to implement sections 432(a)(3) and 422(b) of the Act which require that the plan provide for coordination of services under the plan with the provision of services or benefits under other Federal or federally assisted programs serving the same populations.

We have not mandated a specific service coordination process because State, local, and Tribal needs and circumstances vary. In addition, many States and Indian tribes have a number of existing processes and coordination efforts already in place to carry out this requirement.

We have mandated in paragraph (m)(1), however, that the State's on-going coordination process must include representatives of the child and family services provided by the State agency as well as other service delivery systems providing social, health, education, and economic services to children.

We propose in paragraph (m)(2), that the State's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other

Federal and federally assisted programs serving the same populations to achieve the goals and objectives in the plan. Additionally, we propose that the description must include the participants in the service coordination process and examples of how the process led or will lead to additional coordination of services.

With respect to Indian tribes, in paragraph (m)(3), we propose that the Indian tribe must include in the coordination process representatives of other Federal or federally assisted child and family services or related programs as appropriate to their circumstances. The Indian tribe's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. For example, the Tribe may coordinate family preservation, family support and/or child welfare services provided by the Indian Health Service and the Bureau of Indian Affairs, if these agencies are providing services within the Tribe's jurisdiction. They may also coordinate services with public schools receiving supplemental education funds which may provide support services. The description must include the participants in the process and examples of how the process led or will lead to additional coordination of services.

Examples of services and programs are:

- Within the State agency: existing family support and family preservation; child abuse and neglect prevention, intervention, and treatment; foster care, and reunification, adoption, and independent living services;
- Other public and nonprofit private agencies, including community-based organizations, which provide Federal or federally assisted services or benefits. (These programs may be administered within the State title IV–B agency, by another State agency, by private nonprofit agencies and organizations, or by a combination of public and private support.)

Examples of major programs are: the social services block grant; title IV–A (income maintenance, child care, employment and training); title IV–A (emergency assistance); child support; maternal and child health; title XIX (Medicaid, EPSDT); mental health and substance abuse services; child abuse prevention (Children's Trust Funds); transitional living; runaway youth and youth gang prevention; education; developmental disabilities; juvenile justice; early childhood education and child development programs (Head Start); domestic violence; housing; nutrition (Food Stamps, Special Supplemental Food Program for Women, Infants and Children (WIC)); child care and development block grant and other child care programs; the community services block grant; Empowerment Zones and Enterprise Communities program (EZ/EC); education (school-based services); and justice programs.

We believe that the ultimate purpose of service coordination is to improve the well-being of children, youth and families. Focus group participants, and others, emphasized that effective coordination of a broad spectrum of services provides a holistic approach to serving children and families and increases the likelihood of matching families' needs with appropriate services rather than merely providing available services. Their view was that, in isolation, individual services are not likely to address the needs of children and families; many families need support and services that transcend any single agency mission; no one agency has the resources to meet all needs of all families; vulnerable families with multiple needs are less likely to independently access and integrate all the services they need; and service systems which view families' needs categorically reduce the likelihood of overall family improvement.

Section 1357.15(n) Services

At the heart of the State and Indian tribal plans are the child and family services. Paragraph (n) requires a description of the publicly funded child and family services that will be provided in FY 1995 and FY 1996, based on the requirement for a description of the family preservation and family support services in section 432(a)(5) of the Act and for a description of the child welfare services in section 422(b)(5) of the Act.

Specifically, the State's CFSP must describe the publicly funded child and family services continuum to be provided in FY 1995 and FY 1996: the family support services; the family preservation services; the child welfare services (including child abuse and neglect prevention, intervention, and treatment services and foster care); and the services to support reunification, adoption, kinship care, independent living, or other permanent living arrangement.

The Indian tribe's CFSP must describe the child welfare (including the child abuse and neglect prevention, intervention, and treatment services and foster care) and/or the family support and family preservation services to be provided in FY 1995 and FY 1996.

In addition, we propose in paragraph (n)(3), that for each service, the CFSP must indicate the population(s) to be served; the geographic areas where services will be available; the estimated number of individuals and/or families to be served; and the estimated expenditures for these services from Federal, State, local, and donated sources.

This would include, among other sources of funds, expenditure data on title IV-B, subparts 1 and 2, on the two CAPTA programs, and on the Independent Living Program. Expenditure data must include all services expenditures, i.e., those funded directly and those funded through subrecipients.

We believe that this description of services represents one of the most important sections of the CFSP. Not only will it provide a comprehensive picture of the services provided and resources available, it can clearly illustrate State and Indian tribal decision-making in directing services toward the goals and objectives in the CFSP. By providing a unified picture of the services available, it will form a basis for discussion of future coordination of services and improved service delivery. This information also will be studied by national evaluators and other researchers.

We believe the requirements of paragraph (n) will not be burdensome as much of the information on child protective services, child welfare services, foster care, and adoption is already being reported on the current CWS–101, the Annual Summary of Child Welfare Services (OMB approval no. 0980–0047, expiration date 9/30/95). We propose to add in the CFSP reporting of information on CAPTA and ILP services (which is currently available). Information will be reported for the first time on new or expanded family support and family preservation services using subpart 2 funds.

We have drafted a revised CWS–101 form for illustrative purposes. It is included as an Appendix to the NPRM, but it will not become a permanent part of the final rule or the Code of Federal Regulations. We welcome suggestions for additions or improvements in the scope of the description of services.

Section 1357.15(o) Family Preservation and Family Support Services and Linkages to Other Social and Health Services

We are proposing in paragraph (o)(1) that the State must provide information specifically on the development and/or

expansion of family preservation and family support services; how these services relate to existing family preservation and family support services; and how they link to the child and family services continuum (of which family support and family preservation services, child protective services, foster care and adoption services, reunification services, and independent living services, are a part).

Paragraph (o)(2) proposes to require an explanation in the CFSP of whether and/or how CAPTA and ILP funds are coordinated with or integrated into the child and family services continuum.

In paragraph (o)(3), we are proposing that the CFSP include a description of how the services in the child and family services continuum are linked to services in other Federal and non-federally funded public and nonprofit private programs, e.g., AFDC, Food Stamps, WIC, child care, health, education, housing, substance abuse, juvenile justice, Children's Trust Funds, and private foundations.

In meeting the requirement in paragraph (o)(1), States will use, in part, the information gathered on the availability of family preservation and family support services (§ 1357.15(k)(2)). FY 1995 will be the first year in which all States will be implementing title IV-B family preservation and family support services. Thus, the information in paragraph (o)(1) will provide a national overview of the development, operation, and/or expansion of family preservation and family support services in all States as well as identify the processes States are using to develop coordinated systems of care. We believe it also will provide a picture of implementation efforts and relationships for national evaluation purposes.

For similar reasons, we are proposing to request the information in paragraphs (o)(2) and (o)(3) on linkages with other services and service delivery systems. We believe this information will be useful to obtain a clearer understanding of each State's efforts and activities to bring about services linkages both within the child and family services continuum and with other public and privately funded service systems. It will also provide a broader national picture of such efforts.

Section 1357.15(p) Services in Relation to Service Principles

We are proposing in § 1357.15(p) that the CFSP describe how the child and family services are designed to assure the safety and protection of children, as well as the preservation and support of families, and the how services in the CFSP are or will be designed to meet the other service principles in 45 CFR 1355.25, e.g., services that are flexible, easily accessible, and respectful of cultural and community strengths. We believe these principles are the basis for the development of effective, responsive, and quality services programs.

Section 1357.15(q) Services in Relation to Permanency Planning

We are proposing in § 1357.15(q) that the State CFSP must describe how these services will help meet the permanency provisions for children and families in sections 427 and 471 of the Act, e.g., preplacement preventive services, reunification and adoption services, and long-term foster care/independent living services.

The "permanency provisions" were enacted by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272) which was passed in an effort to improve child welfare services nationwide; it focused on the importance of providing preventive and crisis intervention services and establishing permanency for the children in foster care. Through permanency planning, children were to be placed in permanent living arrangements as quickly as possible. At the heart of this concept is the "reasonable efforts" requirement to prevent family separation in cases where a child could be kept safely at home, provide appropriate services for family reunification once a child was placed in foster care, or to make another permanent living arrangement, such as adoption.

We believe that the funds authorized by the new family preservation and family support legislation provide an opportunity for States to recommit themselves to the goals of Pub. L. 96–272 and to use these funds to help bring about the changes that will assure permanency for all children.

Section 1357.15(r) Decision-Making Process: Selection of family Support Programs for Funding

We are proposing in § 1357.15(r) that the State's CFSP include an explanation of how agencies and organizations were selected to provide family support services and how these agencies and organizations meet the requirement that family support services be "community-based." This paragraph proposes to implement section 431(a)(2) of the Act which states that "family support services means community-based services to promote the well-being of children and families * * *"

Community-based services can be provided under a variety of auspices. (See § 1357.10(c).) Therefore, we urge the State to consider a wide range of family support providers in selecting the most appropriate agencies or organizations to provide this service based on the goals and objectives in the CFSP. These may include community-based organizations (CBOs), public or private nonprofit agencies, and Indian tribal organizations.

We considered requiring the State to pass through a certain percentage of the funds to CBOs to provide family support services but concluded that the circumstances in each State are so varied and allotments to the States are not large enough to justify such a requirement.

In making funding decisions, however, we strongly recommend that States examine the work and accomplishments of community-based organizations and look to them as highest priority potential providers of family support services. It is these organizations, based in and trusted by the community, which typically have the knowledge and expertise to provide these services.

Section 1357.15(s) Significant Portion of Funds Used for Family Support and Family Preservation Services

We are proposing in § 1357.15(s) that the State (not the Indian tribes) specify in the CFSP the percentage of FY 1995 and FY 1996 family preservation and family support funds (title IV–B, subpart 2) that the State will expend for each type of service. States should provide an explanation for how this distribution was reached and how it meets the requirement that a "significant portion" of the service funds must be spent for both family preservation and family support services.

Paragraph (s) is based on a statutory requirement in section 432(a)(4) of the Act which provides that a "significant portion" of the service expenditures must be used for family preservation services and family support services. While there is no minimum percentage that defines significant, we have proposed that the State's rationale will need to be especially strong if the request for either allocation is below 25 percent.

We considered a number of alternatives based on recommendations from focus group participants and others:

- That we require the State to allocate equal amounts or a fixed amount for both family preservation and family support services;

• That we prescribe a certain amount to be spent on each service and require States to pass through the family support allocation directly to CBOs to provide family support services;

• That a minimum of a third of the service dollars be used for family support; a third for family preservation; and the remainder for either family support services, family preservation services or a combination of the approaches depending on the needs of the State and community; and

• That we allow the State agency to have complete flexibility to decide how to expend the funds.

We recognize that there are differences among the States in the level at which States and communities are operating services programs. We also recognize that the needs of families and children are not identical in all jurisdictions. Therefore, our proposal reflects our desire to provide flexibility to accommodate a wide range of differences among States, to reflect the legislative history, and to strike a reasonable balance that assures the requirements of the Act are met.

Section 1357.15(t) Staff Training, Technical Assistance and Evaluation

Section 1357.15(t)(1), is based on section 422(b) of the Act. We are proposing that States include in the CFSP a staff development and training plan which addresses the two title IV–B programs. This training plan must also be combined with the training plan under title IV–E based on 45 CFR 1356.60(b)(2).

In paragraph (t)(2), we have proposed that the technical assistance activities that will be undertaken to support the goals and objectives in the plan be described in the CFSP.

In paragraph (t)(3), we propose that the State's CFSP provide a description of any evaluation and/or research activities on child and family services, underway or planned, and how they relate to the goals and objective in the CFSP.

On-going training and technical assistance activities are critical to support the continuous improvement efforts under the five-year CFSP. Focus group participants recommended training for the entire staff for the child and family services agency in order to implement the new vision and the principles of child and family services, including county administrators, supervisors, front-line staff, foster parents, State administrators, and volunteers who provide services.

Furthermore, they emphasized the importance of interdisciplinary training, particularly including the courts which carry out requirements related to child protective services, foster care and permanency planning.

Regarding our proposal for information on evaluations in paragraph (t)(3), we want to emphasize that States are not required to conduct evaluations and/or research activities related to the CFSP. We know, however, that some States are conducting such activities, and we are interested in learning about these. We know, for example, that a few States use CAPTA funds for research activities and a few States are undertaking studies to evaluate family preservation services.

Section 435 of the law requires the Department to conduct national evaluations on the effectiveness of family preservation and family support programs. The Department has recently released an RFP for three national evaluation studies. To the extent feasible, we intend to coordinate these national evaluation projects with evaluations being conducted by States, and we look forward to the States' participation in the national studies. We also encourage States to participate in a GAO study currently underway to collect information for a report to Congress on family support and family preservation.

Section 1357.15(u) Quality Assurance

We are proposing in § 1357.15(u) that the State describe in the CFSP the quality assurance system it will use to regularly assess the quality of services provided under the CFSP.

There is agreement by practitioners in the field and others that the quality of child welfare services needs improvement. This includes both quality standards for services as well as best practices for casework. We also consider quality services to be an integral part of achieving better outcomes for children and families.

We encourage and support State efforts as they develop creative ways to determine and strengthen the effectiveness of their services. In designing, expanding, and implementing quality assurance activities, States may wish to refer to the principles in 45 CFR 1355.25. Examples of quality assessment techniques include:

• Soliciting input on the effectiveness of services from public and private service providers, parents, foster parents, children and youth, other clients, and various representatives of the public.

• Reviewing case records based on a random sample of cases representative of the population of children and families served.

• Compliance with the recommended standards of national professional organizations serving children and families e.g., Child Welfare League of America, Council on Accreditation of Child and Family Service.

• Establishing specific reporting requirements to monitor contractual service providers.

We considered establishing minimum Federal standards for quality services. However, due to the wide range of differing State circumstances, we decided that, at this point, it should be left to each State to design its own quality assurance system. ACF may review, at some later date, the quality assurance systems established by the States and may consider alternate approaches to improve the quality of services. We solicit recommendations for model approaches and procedures as well as measures or indicators of quality deemed to be basic.

Section 1357.15(v) Distribution of the CFSP and the Annual Progress and Services Report

Section 432(a)(5) requires that an annual report on services (Annual Progress and Services Report) must be made available to the public. Section 1355.21(c) also requires that the title IV–B and IV–E plans be made available for public review and inspection. We are proposing in § 1357.15(v) to further implement these requirements by specifying that the CFSP must include a description of how the State and the Indian tribe will make these documents available. In addition, we propose to require that State agency and Indian tribal organizations within the State receiving title IV–B, subpart 2 funds, exchange copies of their CFSPs and their Annual Progress and Services Reports.

We believe it will be useful to States and Indian tribes to share the CFSP and the Annual Progress and Services Reports, both with each other and with those individuals, agencies, and organizations a part of the ongoing consultation and coordination effort. Such dissemination can lead to increased support and coordination of services. Annual Progress and Services Reports may also be used in preparing briefings for State Advisory Councils, State legislators and budget officials, and in highlighting accomplishments in the media.

We have not specified the form or process such distribution should take. A variety of dissemination methods may be used, e.g., newspapers, newsletters, distribution to participants in the planning process, meetings with advocacy and constituency

organizations, and electronic bulletin board notices.

Section 1357.16 Annual Progress Reviews and Services Reports

This new section of Part 1357 implements and closely follows the requirements of section 432 of the Act. In summary, sections 432 (a)(2) and (a)(5) require that once the five-year plan is developed and in operation, the State and the Indian tribe annually must review the progress made in accomplishing the goals in the plan; and, on the basis of the annual (interim) review, must:

- Periodically update or revise the statement of goals in the plan, if necessary, to reflect changed circumstances;
- Prepare, send to ACF, and make available to the public, a description of the services that will be provided in the immediately succeeding fiscal year under the plan; and
- Include in the description of services the population(s) to be served and the geographic area(s) where services will be available.

Paragraph (a) reflects the statutory requirement for an annual review of progress toward accomplishing the goals and objectives in the plan and the preparation of an Annual Progress and Services Report, based on updated information. It also requires that the State and the Indian tribe involve the agencies, organizations, and individuals who are a part of the on-going consultation and coordination process in the development of paragraphs (a)(2) through (a)(4), i.e., revisions in the statement of goals and objectives and descriptions of services to be provided in the up-coming fiscal year.

Paragraphs (a) (1) through (7) propose that the content of the report must include: A report on specific accomplishments and progress made toward meeting goals and objectives; any revisions to the goals and objectives; a description of the continuum of services to be provided in the upcoming year (see § 1357.15 (n)); information on training, technical assistance, research, evaluation, and management information systems efforts; and, for States only, information required to document the maintenance of effort (supplantation) requirement.

The annual review must be based on updated information in order to measure progress in achieving the goals and objectives in the CFSP. States and Indian tribes may utilize various sources of information (as they did in establishing the goals and objectives in the five-year plan) such as future State management information system reports (e.g., SACWIS/AFCARS/NCANDS); other planning processes; available public and private data sources (e.g., health departments, "Kids Count Data Book"); and outcomes of other activities such as monitoring, quality assurance efforts, and service delivery improvements.

We believe the information we propose to require in the Annual Progress and Services Report, like the information required in 45 CFR 1357.15(n), is a modest extension of information available to and, for most of the services in the continuum, already being provided to ACF. We also believe that this information is and will be important, useful, and necessary as States, Indian tribes, public and private agencies and organizations, advocacy groups, parents, and others continue to work over the five-year plan period to bring about improved well-being for children and families.

In paragraph (b) we propose deadlines for submitting the Annual Progress and Services Report to ACF, based on the requirement in section 432(a)(5).

In paragraph (c), we specify the information that should be reported by those States and Indian tribes that used FY 1994 funds for services.

Paragraph (d) proposes to require each State and Indian tribe to make the Annual Progress and Services Reports available to the agencies and organizations and others with whom they are consulting and working to coordinate services. We do not specify a mechanism(s) that must be used to do this; we believe there are many options for this purpose including newsletters, public reports to the media, and use of electronic bulletin boards.

Paragraphs (e) and (f) reflect requirements in section 432 (a)(2) of the Act for a final review in FY 1999 of progress made toward accomplishing the goals and objectives in the five-year plan and the development of a new plan for the next five-year period. States and Indian tribes must conduct a final review; prepare a final Progress and Services report; send the final report to ACF, and make it available to the public; and, in consultation with a broad range of agencies, organizations, practitioners, and others, develop a new five-year plan following the requirements in § 1357.15.

Section 1357.20 Child Abuse and Neglect Programs

This section is revised to update and correct the citations to the Child Abuse Prevention and Treatment Act and to include the subject of those citations for clarity.

Section 1357.30 State Fiscal Requirements (Title IV–B, Subpart 1, Child Welfare Services)

In this section, we are proposing a number of editorial and technical changes and one major policy change regarding time limits on expenditures for subpart 1 funds. The editorial and technical changes are: revising the section title to indicate that these fiscal provisions apply only to States receiving funds under title IV–B, subpart 1; adding titles as needed to all paragraphs in this section; redesignating paragraphs as needed for clarity; and adding a reference to title IV–B, subpart 1, in paragraphs (a), (d), (e)(3), and the introductory language to paragraphs (e) and (e)(2) for specificity and clarity. The major policy change regarding time limits on expenditures is found in new paragraph (i).

Current rules in paragraphs (h) and (i) of this section require an obligation period (within the year the Federal funds were awarded) and a liquidation period either "within two years or the period within which claims must be filed under title IV–B, whichever is earlier." These requirements have proven to be unnecessarily confusing to and burdensome on States.

Therefore, we propose to delete the requirement for an obligation period and propose that subpart 1 funds must be expended (liquidated) by September 30 of the fiscal year following the fiscal year in which the funds were awarded. This will mean an identical expenditure period for funds under title IV–B, subparts 1 and 2, and the independent living program. We believe this simplification and congruence of rules will be welcomed by States administering these programs. A conforming amendment has been made in 45 CFR 1355.30 to clarify that 45 CFR part 95, subpart A, is not applicable to title IV–B programs.

Section 1357.32 State Fiscal Requirements (Title IV–B, Subpart 2, Family Preservation and Family Support Services)

We propose to add a new § 1357.32 to specify the fiscal requirements for the State administration of title IV–B, subpart 2. We considered putting the fiscal requirements for both subpart 1 and subpart 2 of title IV–B in one section, but because of the considerable differences in statutory requirements, this did not appear to be a useful approach.

The proposed regulation reflects statutory requirements in sections 432, 433, and 434 of the Act.

In paragraph (d), the requirement for 75 percent Federal reimbursement of

allowable expenditures and the matching rate also is taken from the Act (it is the same reimbursement rate for both subparts 1 and 2). The State's match may be computed either as 25 percent of total funds or 33 percent of the Federal share.

Paragraph (e) contains the statutory requirement against supplantation, i.e., using subpart 2 funds to take the place of funds currently being spent for family support or family preservation services, thus reducing the level of services being provided.

Section 432(a)(7) of the Act requires that funds under subpart 2 must not be used to supplant "Federal or non-Federal funds" for these services. We propose to define "non-Federal" to mean State and local public funds. Nongovernmental funds would not be included.

We believe States should be held accountable for a maintenance of effort, and ACF will be collecting information annually on State level spending to monitor this provision. Local public entities will provide assurances on maintenance of effort to the State and maintain sufficient information to document this maintenance of effort upon request.

Paragraph (g) on administrative costs reflects the requirement in section 432 (a)(4) of the Act that States using funds for services may not use more than ten percent of total Federal and State funds under title IV–B, subpart 2, for administrative costs.

We received many recommendations on how administrative costs should be defined, e.g., providing a complete list of all items considered "administrative" or allowing States to use their own definition of administrative costs.

In paragraph (g) we have proposed what we believe is a reasonable yet flexible approach by defining administrative costs as those costs allocable to title IV–B, subpart 2, in a State's cost allocation plan for auxiliary functions to support development and implementation of the Child and Family Services Plan and Annual Progress and Services Report. These auxiliary functions (e.g., costs incurred for a common or joint purpose) may include but are not limited to such items as procurement; payroll; management, maintenance, and operation of space and property; and indirect costs.

As the funds a State will receive under subpart 2 are not large, we believe most States easily will be able to identify such costs equal to ten percent of their allotment, based on their cost allocation plans. (Administrative costs over and above the ten percent limit must be funded from other non-Federal sources of funds.)

Also we have added a clarification in paragraph (g)(3) to explain that costs directly associated with implementing the CFSP are not considered administrative costs, e.g., service delivery, ongoing planning activities, training, supervision.

Finally, paragraph (g) also proposes that, for the purpose of computing the 10 percent limitation, the administrative costs of State subrecipients must also be taken into account. The State, therefore, must calculate what it will spend on administrative costs, and what will be available for subrecipients and obtain assurances from the subrecipients to ensure that the total for administrative costs does not exceed the 10 percent limitation.

We look forward to receiving alternate recommendations if this approach to defining administrative costs is viewed as not workable.

Additional Issue for Public Comment: Permitting In-Kind Matching Funds

We are requesting public comment on an issue about which we did not propose a change in current policy. In revised fiscal sections § 1357.30 and § 1357.40, and proposed new fiscal sections § 1357.32 and § 1357.50 for States and Indian tribes we have continued the current requirement that matching funds must be cash or donated funds. We are interested in public comment, however, on whether we should permit States and Indian tribes to use in-kind funds to meet the match requirement under the title IV–B programs.

On the one hand, allowing in-kind funds to be used to meet the match requirement provides additional flexibility to States and Indian tribes in providing the match; it may also encourage participation in the services program among community-based organizations. On the other hand, there has been some concern in other programs where in-kind match has been permitted that the provision may be used inappropriately and may not ensure that the full matching resources are new resources directed to the purpose of the legislation.

We would welcome the views particularly of States, Indian tribes, nonprofit and community-based agencies and organizations, and advocacy organizations on this issue. We especially would appreciate not only a statement of position but also the reasons for the position and how allowing (or not allowing) in-kind match would (or would not) benefit the title IV–B programs.

Section 1357.40 Direct Payments to Indian Tribal Organizations (Title IV–B, Subpart 1, Child Welfare Services)

This section contains fiscal and administrative requirements applicable to Indian tribes eligible for and administering grants under title IV–B, subpart 1.

Most of the changes proposed in this section are editorial, i.e., to revise the title of the section and paragraphs (d)(1) and (d)(5) to clarify that this section applies only to Indian tribal grantees under title IV–B, subpart 1; to delete paragraphs (b), (c), (d) and (e) (on joint planning, title IV–B plan requirements, submittal of the plan and the annual budget request, and coordination of services respectively) as these provisions are now incorporated into the child and family services plan requirements in § 1357.15; and to redesignate remaining paragraphs.

One major change has been proposed. A new paragraph (b) proposes that in order to receive funding under subpart 1, an Indian tribe must have in effect an approved five-year child and family services plan that meets the requirements applicable to Indian tribes in § 1357.15.

Currently, Indian tribes may submit their title IV–B (subpart 1, child welfare) services plan at one, two, or three year intervals with annual updates. We believe a five-year plan will not only reduce administrative burden but will enable the Indian tribe to deliver services in the context of a plan that includes both short-term objectives and long-term goals, supported by consultation and coordination activities, leading to more coordinated and effective services.

As noted in the discussion on § 1357.15, not all requirements are applicable to Indian tribes. We especially ask for comment from the Indian tribes, either on this section or on § 1357.15, as to whether the five-year comprehensive plan requirements as proposed will help Indian tribes better serve children and families.

New paragraph (c) entitled "Information related to the requirements of Section 427 of the Act" retains language from current paragraphs (c)(9) through (c)(15). The remaining provisions in current paragraph (c) are found in § 1357.15(b).

In paragraphs (b)(2) and (g)(5), we have summarized and corrected references to specific fiscal and administrative requirements for Indian tribes. The cross references in paragraph (g)(5) pertain to five requirements in § 1357.30 applicable to Indian tribes

which we have not repeated in this section.

Section 1357.50 Direct Payments to Indian Tribal Organizations (Title IV–B, Subpart 2, Family Preservation and Family Support Services)

Section 1357.50 is a new section added to propose requirements applicable only to Indian tribes eligible for and administering grants under title IV–B, subpart 2. We considered combining into one section all fiscal and administrative requirements for Indian tribes under title IV–B, subparts 1 and 2 but, as with the State fiscal requirements in §§ 1357.30 and 1357.32, the statutory requirements for Indian tribes are different in each subpart. It appeared to be simpler and clearer to put them in separate sections.

In paragraph (a), we have included the definitions from section 431(a) of the Act for the terms "Alaska Native organization," "Indian tribe," and "tribal organization." These are included for clarity; the tribal allotments are computed based on the first two definitions, and the definition of tribal organization is included because section 434 of the Act provides that ACF will pay to the tribal organization of the Indian tribe any amount to which the Indian tribe is entitled under subpart 2.

Paragraph (b)(1) explains the statutory requirement for eligibility for funds in FY 1994 which is based on the Indian tribe's FY 1995 allotment. (The FY 1995 allotment must be at least $10,000 for the Indian tribe to be eligible in FY 1994.) Additional explanation on eligibility was sent to Indian tribes and others in Program Instruction ACYF–PI–94–04, January 18, 1994.

Paragraph (c) proposes that, beginning in FY 1995, in order to receive title IV–B, subpart 2 funds, an Indian tribe must submit a comprehensive child and family services plan that meets the requirements applicable to Indian tribes in § 1357.15.

In order to fund as many eligible Indian tribes as possible under the law, we have proposed in paragraph (d) a process for adding Indian tribal grantees in FY 1996 through FY 1998.

For FY 1996, FY 1997, and FY 1998, we propose to calculate allotments as required in section 433 of the Act. Those Indian tribes whose allotment is at least $10,000 (the minimum for eligibility specified in the law), will be invited to apply. As in FY 1995, in order to receive funding, the Indian tribe must submit a comprehensive child and family services plan that meets the requirements applicable to Indian tribes in § 1357.15. The statute does not make available 100 percent Federal funds for planning in FYs 1996–1998.

We want to point out that while this proposal increases the number of Indian tribes receiving funds, it will decrease the amount the Indian tribes eligible in the first year (FY 1994) will otherwise receive in FYs 1996–98. Although we have received recommendations that funding additional Indian tribes should be our first priority, we also are concerned that the size of most of the grants to Indian tribes is small. Indian tribes have been creative in the past in using comparatively small grants to provide services, but we are concerned that smaller grants will be less effective in helping Indian tribes develop and operate the needed services. We look forward to hearing from the Indian community on this proposal.

Another issue about which we have received many recommendations is that of funding consortia of Indian tribes, e.g., to permit two or more tribes to apply for funding whose combined total grant would equal $10,000. We have researched the legislative history and analyzed the statute and can find no basis for funding consortia, given the clear language of the law.

Paragraph (e) specifies that the allotments will be computed based on section 433 of the Act.

We have accepted recommendations from Indian tribes and other Indian advocacy groups to waive certain statutory requirements. This waiver authority is based on the Secretary's discretion in section 432(b) of the Act to waive any provision in section 432 that is determined to be inappropriate to Indian tribes, taking into account the resources, needs, and other circumstances of the Indian tribe. In paragraph (f), we propose to waive three statutory provisions for Indian tribes: the ten percent limit on administrative costs, the supplantation provision, and the requirement that a significant portion of funds must be used for both family preservation and family support services.

We believe that waiving the supplantation and significant portion provisions are reasonable, given the limited dollars available to the Indian tribes, our desire to reduce inappropriate requirements, and the circumstances of tribal services programs. We believe that waiving the ten percent administrative cost limitation and allowing Indian tribes to use their current negotiated indirect cost rates is reasonable based on the need for flexibility in working with small grantees and our understanding that, in some cases, some service-related costs are reflected in the indirect cost rates negotiated by some Indian tribes.

Paragraph (g) reflects the statutory requirement for a 25 percent match rate. Although we received many recommendations that this provision also be waived, we do not have the authority to do so. Section 432(b) of the Act permits waivers only of requirements in section 432. The match requirement is in section 434 of the Act. However, we have included in paragraph (g)(2) a list of three Federal sources of funds which Indian tribes may use as a source of matching funds.

Paragraph (h) states the time limit on expenditure of funds (section 434(b) of the Act). This means that Indian tribes must submit their Standard Form (SF) 269 expenditure reports annually, 90 days after the end of the expenditure period, i.e., by December 30 of each year. In addition, paragraph (h) references other applicable fiscal and administrative requirements (that may be found in the Program Instruction (ACYF–PI–94–04, January 18, 1994)) and which will be prepared by ACF in the form of assurances for all grantees.

III. Impact Analysis

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Notice of Proposed Rulemaking implements statutory authority for a broad consultation and coordination process leading to the development of a five-year child and family services plan.

The Executive Order also encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described earlier in the preamble, ACF held focus group discussions with State, local, and tribal officials, and a broad range of private nonprofit agencies, organizations, practitioners, researchers, parents, and others to obtain their views on planning and implementation issues for this new title IV–B program. We believe this NPRM reflects, to a considerable degree, the recommendations of the focus group participants for flexibility, accountability, and reduced administrative burden on both States and Indian tribes.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the

impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This regulation, if promulgated, will affect only States and certain Indian tribes. Therefore, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains information collection activities which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C 35).

In accordance with the Paperwork Reduction Act of 1980, the Department will submit for OMB approval the reporting requirements for the five-year comprehensive child and family services plan (CFSP) and Annual Progress and Service Reports in 45 CFR 1357.15 and 1357.16. The CFSP incorporates previously approved planning requirements for title IV–B, subpart 1 (OMB control number 0980–0142).

The Annual Summary of Child Welfare Services (CWS–101) also will be modified and submitted to OMB for approval. (The CWS–101 currently is approved under OMB control number 0980–0047.)

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the agency official(s) designated for this purpose whose name appears at the beginning of this preamble, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C. 20503. Attn: Wendy Taylor, Desk Officer for ACF/HHS.

List of Subjects

45 CFR Part 1355

Adoption and foster care; Child abuse and neglect; Child and family services; Child welfare services; Data collection; Definitions—Grant Programs social programs; Family preservation and family support services.

45 CFR Part 1356

Adoption and foster care; Administrative costs; Child and family services; Child welfare services; Fiscal requirements (title IV–E); Grant Programs—Social programs; Independent living program; Statewide information systems.

45 CFR Part 1357

Adoption and foster care; Child abuse and neglect; Child and family services; Child welfare services; Family preservation and family support services; Independent living program.

(Catalog of Federal Domestic Assistance Program No. 93.556—Family Preservation and Support Services; No 93.645—Child Welfare Services—State Grants; No. 93.669—Child Abuse and Neglect—State Grants; and No. 93–674—Independent Living)

Dated: August 10, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: August 31, 1994.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, 45 CFR Chapter XIII, subchapter G, is proposed to be amended as follows:

1. Subchapter G is amended by revising the heading to read as follows:

SUBCHAPTER G—THE ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, FOSTER CARE MAINTENANCE PAYMENTS, ADOPTION ASSISTANCE, AND CHILD AND FAMILY SERVICES

PART 1355—GENERAL

2. The authority citation for Part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq. and 42 U.S.C. 1301 and 1302.

3. Section 1355.10 is revised to read as follows:

§ 1355.10 Scope.

Unless otherwise specified, this Part 1355 applies to States and Indian tribes and contains general requirements for Federal financial participation under titles IV–E and IV–B of the Social Security Act.

4. Section 1355.20(a) is amended by revising four definitions and by adding one definition to read as follows:

§ 1355.20 Definitions.

(a) * * *

ACYF means the Administration on Children, Youth and Families, Administration for Children and Families (ACF), U. S. Department of Health and Human Services.

* * * * *

Commissioner means the Commissioner on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services.

* * * * *

Independent Living Program (ILP) means the programs and activities established and implemented by the State to assist youth, as defined in section 477(a)(2) of the Act, to prepare to live independently upon leaving foster care. Programs and activities that may be provided are found in section 477(d) of the Act.

State means, for title IV–B, the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. For title IV–E, the term "State" means the 50 States and the District of Columbia.

State agency means the State agency administering or supervising the administration of the title IV–E and title IV–B State plans and the title XX social services block grant program. An exception to this requirement is permitted by section 103(d) of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272). Section 103(d) provides that, if on December 1, 1974, the title IV–B program (in a State or local agency) and the social services program under section 402(a)(3) of the Act (the predecessor program to title XX) were administered by separate agencies, that separate administration of the programs could continue at State option.

* * * * *

5. Section 1355.21(c) is revised to read as follows:

§ 1355.21 State plan requirements for titles IV–E and IV–B.

* * * * *

(c) The State agency and the Indian tribe must make available for public review and inspection the Child and Family Services Plan (CFSP) and the Annual Progress and Services Reports. (See 45 CFR 1357.15 and 1357.16.) The State agency also must make available for public review and inspection the title IV–E State Plan.

6. A new § 1355.25 is added to read as follows:

§ 1355.25 Principles of child and family services.

The following principles, most often identified by practitioners and others as helping to assure effective services for children, youth, and families, should guide the States and Indian tribes in developing and operating child and family services and implementing improvements in service delivery systems.

(a) The safety and well-being of children and of all family members is assured. When safety can be assured, strengthening and preserving families is seen as the best way to promote the healthy development of children. One

important way to keep children safe is to stop violence against their mothers.

(b) Services are focused on the family as a whole; service providers work with families as partners in identifying and meeting individual and family needs; family strengths are identified, enhanced, respected, and mobilized to help families solve the problems which compromise their functioning and well-being.

(c) Services promote the healthy development of children and youth, promote permanency for all children, and help prepare youth emancipating from the foster care system for self-sufficiency and independent living.

(d) Services may focus on intervention, protection, treatment, or other services to meet the needs of the family and the best interests of the individual who may be placed in out-of-home care.

(e) Services are flexible, coordinated, and accessible to families and individuals, often delivered in the home or the community, and are delivered in a manner that is respectful of and builds on the strengths of community and cultural groups.

(f) Services are organized as a continuum, designed to achieve measurable outcomes, and are linked to a wide variety of supports and services outside the child and family services system (e.g., housing, substance abuse treatment, mental health, health, education, and job training, child care, informal support networks) which can be crucial to meeting families' and children's needs.

(g) Many child and family services are community-based and involve community organizations and residents (including parents) in their design and delivery.

(h) Services are intensive enough to meet family needs and keep children safe. The level of intensity and duration of services needed to achieve these goals may vary greatly between preventive (family support) and crisis intervention services (family preservation), based on the changing needs of children and families at various times in their lives. A family or an individual does not need to be in crisis in order to receive services.

7. Section 1355.30 is revised to read as follows:

§ 1355.30 Other applicable regulations.

Except as specified, the following regulations are applicable to all programs funded under titles IV–B and IV–E of the Act.

(a) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

(b) 45 CFR part 30—Claims Collection.

(c) 45 CFR part 74—Administration of Grants (Applicable only to title IV–E foster care and adoption assistance, except that: (1) Subpart G, Cost sharing or Matching, and Subpart I, Financial Reporting Requirements, will not apply. ACF will provide forms and instructions for financial reporting; and (2) § 74.4(a)(2) contains requirements applicable to title IV–B (Subparts 1 and 2) and the Independent Living Program.).

(d) 45 CFR part 76—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

(e) 45 CFR part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964.

(f) 45 CFR part 81—Practice and Procedure for Hearings Under part 80 of this title.

(g) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.

(h) 45 CFR part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

(i) 45 CFR part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Applicable only to the title IV–B programs and the Independent Living Program under Section 477 of the Act).

(j) 45 CFR part 93—New Restrictions on Lobbying.

(k) 45 CFR part 95—General Administration—Grant Programs (Public Assistance and Medical Assistance). (Applicable to title IV–B and title IV–E except that, notwithstanding 45 CFR 95.1(a), subpart A, Time Limits for States to File Claims, does not apply to title IV–B (subparts 1 and 2) and the Independent Living Program.)

(l) 45 CFR part 97—Consolidation of Grants to the Insular Areas. (Applicable only to the title IV–B programs).

(m) 45 CFR part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities. (Only one section is applicable: 45 CFR 100.12, How may a State simplify, consolidate, or substitute federally required State plans?).

(n) 45 CFR part 201—Grants to States for Public Assistance Programs. Only the following sections are applicable:

(1) § 201.5—Grants. (Applicable to title IV–E foster care and adoption assistance only.)
(2) § 201.6—Withholding of payment; reduction of Federal financial participation in the costs of social services and training.
(3) § 201.7—Judicial review.
(4) § 201.15—Deferral of claims for Federal financial participation. (Applicable only to title IV–E foster care and adoption assistance.)
(5) § 201.66—Repayment of Federal funds by installments. (Applicable only to title IV–E foster care and adoption assistance.)

(o) 45 CFR 204.1—Submittal of State Plans for Governor's Review.

(p) 45 CFR part 205—General Administration—Public Assistance Programs. Only the following sections are applicable:

(1) § 205.5—Plan amendments.
(2) § 205.10—Hearings (Applicable only to title IV–E foster care and adoption assistance.)
(3) § 205.50—Safeguarding information for the financial assistance programs.
(4) § 205.100—Single State agency.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

8. The authority citation for part 1356 is revised to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq., and 42 U.S.C. 1302.

9. Section 1356.10 is revised to read as follows:

§ 1356.10 Scope.

This part applies to State programs for foster care maintenance payments, adoption assistance payments, related foster care and adoption administrative and training expenditures, and the independent living services program under title IV–E of the Act.

10. Section 1356.80 is added to part 1356 to read as follows:

§ 1356.80 Independent Living Program (ILP).

(a) *Scope.* To receive payments under section 477 of the Act, the State agency must meet the applicable requirements of sections 472, 474, 475, and 477 of the Act.

(b) *Application requirements.* Based on section 477 of the Act, each State must submit an annual application for funds under the Independent Living Program (ILP).

(c) *Allotments.* Payments to each State will be made in accordance with section 477(e)(1) of the Act.

(d) *Matching funds.* (1) States are entitled to their share of the basic amount of $45 million of the ILP

appropriation with no requirement for matching funds.

(2) States are required to match dollar-for-dollar any of the funds they receive, through additional or reallocated funds, over their share of the $45 million basic amount.

(3) The State's contribution may be in cash or donated funds.

(4) Matching contributions must be for costs otherwise allowable under section 477 of the Act, e.g., matching contributions for the provision of room and board are not allowable.

(e) *Reallocation of funds.* Basic funds and additional funds not requested by a State will be available for reallocation to other States under the provisions of section 477(e)(2) of the Act.

(f) *Expenditure of funds.* Section 477(f)(3) of the Act requires that funds must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(g) *Maintenance of effort.* Amounts payable under section 477 of the Act shall supplement and not replace:

(1) Title IV–E foster care funds available for maintenance payments and administrative and training costs; and

(2) Any other State funds available for independent living activities and services.

(h) *Prohibition.* ILP funds may not be used for room and board (section 477(e)(3) of the Act).

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV–B

11. The authority citation for part 1357 is revised to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq., and 42 U.S.C. 1302.

12. Section 1357.10 is revised to read as follows:

§ 1357.10 Scope and definitions.

(a) *Scope.* This part applies to State and Indian tribal programs for child welfare services under subpart 1, and family preservation and family support services under subpart 2 of title IV–B of the Act.

(b) *Eligibility.* Child and family services under title IV–B, subparts 1 and 2, must be available on the basis of need for services and must not be denied on the basis of income or length of residence in the State or within the Indian tribe's jurisdiction.

(c) *Definitions.*

Child and Family Services Plan (CFSP) means the document, developed through joint planning, which describes the publicly-funded State child and family services continuum (family support and family preservation services; child welfare services, including child abuse and neglect prevention, intervention, and treatment services and foster care; and services to support reunification, adoption, kinship care, independent living, or other permanent living arrangements); for Indian tribes, describes the child welfare and/or family preservation and support services to be provided by the Indian tribe; includes goals and objectives both for improved outcomes for the safety and well-being of children and families and for service delivery system reform; specifies the services and other implementation activities that will be undertaken to carry out the goals and objectives; and includes plans for program improvement and allocation of resources.

Child welfare services means the definition contained in section 425(a)(1) of the Act. These are public social services directed to accomplish the following purposes:

(1) Protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children;

(2) Preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children;

(3) Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible;

(4) Restoring to their families children who have been removed, by the provision of services to the child and the family;

(5) Placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and

(6) Assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.

Children refers to individuals from birth to the age of 21 including infants, children, youth, adolescents, and young adults.

Community-based services refers to programs delivered in accessible settings in the community and responsive to the needs of the community and the individuals and families residing therein. These services may be provided under public or private nonprofit auspices.

Families includes, but is not limited to, biological, adoptive, foster, and extended families.

Family preservation services means services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including—

(1) Services programs designed to help children, where appropriate, return to families from which they have been removed; or be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

(2) Preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families;

(3) Service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement;

(4) Respite care of children to provide temporary relief for parents and other caregivers (including foster parents); and

(5) Services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition.

Family support services means community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development. Family support services may include:

(1) Services, including in-home visits, parent support groups, and other programs, designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition;

(2) Respite care of children to provide temporary relief for parents and other caregivers;

(3) Structured activities involving parents and children to strengthen the parent-child relationship;

(4) Drop-in centers to afford families opportunities for informal interaction with other families and with program staff;

(5) Information and referral services to afford families access to other community services, including child

care, health care, nutrition programs, adult education and literacy programs, and counseling and mentoring services; and

(6) Early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

Joint Planning means an ongoing partnership process between ACF and the State and between ACF and an Indian tribe for the review and analysis of the State's and the Indian tribe's child and family services, including analysis of the service needs of children, youth, and families; selection of unmet service needs that will be addressed; and development of goals and objectives that will result in improved outcomes for children and families and the development of a more comprehensive, coordinated and effective child and family services delivery system.

13. Section 1357.15 is revised to read as follows:

§ 1357.15 Comprehensive child and family services plan requirements.

(a) *Scope.* (1) This section describes the requirements for the development and implementation of the five-year comprehensive child and family services plan (CFSP). The State's CFSP must meet the requirements of both of the following programs; the Indian tribe's CFSP must meet the requirements of one or both of the following programs depending on the Tribe's eligibility:

(i) child welfare services under title IV–B, subpart 1; and

(ii) family preservation and family support services under title IV–B, subpart 2.

(2) For States only, the CFSP also must contain information on the following programs:

(i) The independent living program under title IV–E, section 477 of the Act; and

(ii) Two child abuse and neglect formula grant programs under the Child Abuse Prevention and Treatment Act (CAPTA): Part I (Basic State grants) and Part II (Medical Neglect/Disabled Infants State grants) (sections 107(a) and 107(g) of CAPTA).

(3) States must meet all requirements of this section except those that apply only to Indian tribes. Indian tribes must meet the requirements of this section only as specified.

(b) *Eligibility for funds.* (1) In order to receive funding under title IV–B, subparts 1 and 2, beginning in FY 1995, each State and eligible Indian tribe must submit and have approved a five-year Child and Family Services Plan (CFSP); beginning in FY 1996, each grantee must submit and have approved an Annual Progress and Services Report that meets the statutory and regulatory requirements of title IV–B, subparts 1 and 2.

(2) The CFSP will be approved only if the plan was developed jointly by ACF and the State (or the Indian tribe), and only after broad consultation by the State (and the Indian tribe) with a wide range of appropriate public and non-profit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation and support services).

(3) The Annual Progress and Services Report will be approved if it was developed jointly by ACF and the State (or the Indian tribe) and if it meets the requirements of 45 CFR 1357.16.

(4) The five-year CFSP for FYs 1995–1999 may be submitted in the format of the State's or the Indian tribe's choice and must be submitted no later than June 30, 1995, to the appropriate ACF Regional Office.

(c) *Assurances.* The CFSP must contain the assurances applicable to each title IV–B program. The assurances will remain in effect on an ongoing basis and will need to be re-submitted only if a significant change in the State or the Indian tribe's program affects an assurance.

(d) *The child and family services plan (CFSP): General.* The State and the Indian tribe must base the development of the CFSP on a planning process that includes:

(1) Broad involvement and consultation with a wide range of appropriate public and non-profit private agencies and community-based organizations, parents, and others;

(2) Coordination of the provision of services under the plan with other Federal and federally assisted programs serving children and families, including youth and adolescents; and

(3) Collection of existing or available information to help determine vulnerable or at-risk populations or target areas; assess service needs and resources; identify gaps in services; select priorities for targeting funding and services; formulate goals and objectives; and develop opportunities for bringing about more effective and accessible services for children and families.

(e) *State agency administering the programs.* (1) The State's CFSP must identify the name of the State agency that will administer the title IV–B programs under the plan. Except as provided by statute, the same agency is required to administer or supervise the administration of all programs under titles IV–B and IV–E of the Act and the social services block grant program under title XX of the Act. (See the definition of "State agency" in 45 CFR 1355.20.)

(2) The CFSP must include a description of the organization and function of the State agency and organizational charts as appropriate. It also must identify the organizational unit(s) within the State agency responsible for the operation and administration of the CFSP, and include a description of the unit's organization and function and a copy of the organizational chart(s).

(f) *Indian tribal organization administering the program(s).* (1) The Indian tribe's CFSP must provide the name of the Indian tribal organization (ITO) designated to administer funds under title IV–B, subpart 1, child welfare services and/or under subpart 2, family preservation and family support services. If the Indian tribe receives funds under both subparts, the same agency or organization must administer both programs.

(2) The Indian tribe's CFSP must include a description of the organization and function of the office responsible for the operation and administration of the CFSP, an organizational chart of that office, and a description of how that office relates to tribal and other offices operating or administering services programs within the Indian tribe's service area, e.g., Indian Health Service.

(g) *Vision statement.* The CFSP must include a vision statement and a statement of the grantee's philosophy in providing child and family services and developing or improving a coordinated service delivery system.

(h) *Goals.* The CFSP must specify the goals, based on the vision statement, that will be accomplished during the five-year period of the plan. The goals must be expressed in terms of improved outcomes for and the safety and well-being of children and families, and in terms of a more comprehensive, coordinated, and effective child and family service delivery system.

(i) *Objectives.* (1) The CFSP must include the realistic, specific, measurable objectives that will be undertaken to achieve each goal. Each objective should focus on outcomes for children, youth, and/or their families or on elements of service delivery (such as quality) that are linked to outcomes in important ways. Each objective should include both interim benchmarks and a long-term timetable, as appropriate, for achieving the objective.

(2) For States and Indian tribes administering the title IV–B, subpart 1

program, the CFSP must include objectives to make progress in covering additional political subdivisions, reaching additional children in need of services, expanding and strengthening the range of existing services, and developing new types of services.

(j) *Measures of progress.* The CFSP must describe how the grantee plans to measure the results, accomplishments, and annual progress toward meeting the goals and objectives, especially the outcomes for children, youth, and families.

(k) *Baseline information.* (1) For FY 1995, the State and the Indian tribe must base the development of the CFSP goals, objectives, and funding and service decisions on an analysis of available information on the well-being of children and families; the needs of children and families; the nature, scope, and adequacy of existing child and family and related social services; and the trends of these indicators over time. Additional and updated information must be obtained throughout the five-year period to measure progress in accomplishing the goals and objectives.

(2) The State must collect and analyze State-wide information on family preservation and family support services currently available to families and children, including the nature and scope of existing public and privately funded family support and family preservation services; the extent to which each service is available and being provided in different geographic areas and to different types of families; and important gaps in service, including mismatches between available services and family needs as identified through baseline data and the consultation process. Other services which impact on the ability to preserve and support families may be included in the assessment. The Indian tribe must collect and analyze information on family preservation and family support services currently available within their service delivery area including the information in this paragraph as appropriate.

(3) The CFSP must include the information used in developing the plan; an explanation of how this information and analysis were used in developing the goals, objectives, and funding and service decisions, including decisions about geographic targeting and service mix; a description of how information will be used to measure progress over the five-year period; and how this information will be used to facilitate the coordination of services.

(l) *Consultation.* (1) The State's CFSP must describe the internal and external consultation process used to obtain broad and active involvement of major actors across the entire spectrum of the child and family service delivery system in the development of the plan. The description should explain how this process was coordinated with or was a part of other planning processes in the State.

(2) The Indian tribe's CFSP must describe the consultation process appropriate to its needs and circumstances used to obtain the active involvement of major actors providing child and family services within the tribe's area of jurisdiction.

(3) For States (and Indian tribes), the consultation process must involve:

(i) All appropriate offices and agencies within the State agency (or within the Indian tribal service delivery system), e.g., child protective services (CPS), foster care and adoption, the social services block grant, emergency assistance, reunification services, independent living, and other services to youth;

(ii) In a State-supervised, county-administered State, county social services and/or child welfare directors or representatives of the county social services/child welfare administrators' association;

(iii) A wide array of State, local, tribal, and community-based agencies and organizations, both public and private nonprofit with experience in administering programs of services for infants, children, youth, adolescents, and families, including family preservation and family support services;

(iv) Parents, including birth and adoptive parents, foster parents, families with a member with a disability, and consumers of services;

(v) For States, representatives of Indian tribes within the State;

(vi) For States, representatives of local government, e.g., counties, cities, and other communities, neighborhoods, or areas where needs for services are great;

(vii) Representatives of professional and advocacy organizations (including, for example foundations and national resource centers with expertise to assist States and Indian tribes to design, expand, and improve the delivery of services); individual practitioners working with children and families; the courts; representatives or other States or Indian tribes with experience in administering family preservation and family support services; and academicians, especially those assisting the child and family service agency with management information systems, training curricula, and evaluations;

(viii) Representatives of State and local agencies administering Federal and federally assisted programs including, but not limited to, Head Start; the local education agency (school-linked social services, adult education and literacy programs, Part H programs); developmental disabilities; nutrition services (Food Stamps, Special Supplemental Food Program for Women, Infants and Children (WIC)); Title IV–A (Emergency Assistance, income maintenance, child care, employment and training); runaway youth, youth gang, juvenile justice programs and youth residential and training institutions; child care and development block grant (CCDBG) and respite care programs; domestic and community violence prevention and services programs; housing programs; the health agency (substance abuse, Healthy Start, maternal and child health, Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), mental health, and public health nursing); law enforcement; and new Federal initiatives such as the Empowerment Zones and Enterprise Communities Program; and

(ix) Administrators, supervisors and front line workers (direct service providers) of the State child and family services agency.

(4) The CFSP must describe the ongoing consultation process that each grantee will use to ensure the continued involvement of a wide range of major actors in meeting the goals and objectives over the five-year operational period of the plan and developing the Annual Progress and Services Report.

(m) *Services coordination.* (1) States must include in the ongoing coordination process representatives of the full range of child and family services provided by the State agency as well as other service delivery systems providing social, health, education, and economic services to children and their families.

(2) The State's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The description must include the participants in the process and examples of how the process led or will lead to additional coordination of services, e.g., integrated service models, improved accessibility, use of a consolidated application or intake form, inter-disciplinary training, coordinated case management for several programs, pooled resources through blended financing, shared information across

services providers, co-location of several services or programs.

(3) The Indian tribe must include in the coordination process representatives of other Federal or federally assisted child and family services or related programs. The Indian tribe's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The descriptions must include the participants in the process and any examples of how the process led or will lead to additional coordination of services.

(n) *Services.* (1) The State's CFSP must describe the publicly funded child and family services continuum: Child welfare services (including child abuse and neglect prevention, intervention, and treatment services; and foster care); family preservation services; family support services; and services to support reunification, adoption, kinship care, independent living, or other permanent living arrangement to be provided in FY 1995 and FY 1996.

(2) The Indian tribe's CFSP must describe the child welfare services (including child abuse and neglect prevention, intervention, and treatment services and foster care) and/or the family support and family preservation services to be provided in FY 1995 and FY 1996.

(3) For each service described, the CFSP must indicate:

(i) The population(s) to be served;

(ii) The geographic area(s) where the services will be available;

(iii) The estimated number of individuals and/or families to be served; and

(iv) The estimated expenditures for these services from Federal, State, local, and donated sources, including title IV–B, subparts 1 and 2, the two CAPTA programs referenced in paragraph (a) of this section, and the independent living program.

(o) *Family preservation and family support services and linkages to other social and health services.* (1) The State's CFSP must explain how the funds under title IV–B, subpart 2 of the Act, will be used to develop or expand family support and family preservation services; how the family support and family preservation services to be provided in FY 1995 and FY 1996 relate to existing family support and family preservation services; and how these family support and preservation services will be linked to other services in the child and family services continuum.

(2) The State's CFSP must explain whether and/or how funds under the CAPTA and independent living programs are coordinated with and integrated into the child and family services continuum described in the plan.

(3) The State's CFSP must describe the existing or current linkages and the coordination of services between the services in the child and family services continuum and the services in other Federal and non-federally funded public and nonprofit private programs, including Children's Trust Funds and private foundations.

(p) *Services in relation to service principles.* The CFSP must describe how the child and family services are designed to assure the safety and protection of children as well as the preservation and support of families, and how they are or will be designed to meet the other service principles in 45 CFR 1355.25, e.g., services that are flexible, easily accessible, and respectful of cultural and community diversity.

(q) *Services in relation to permanency planning.* For States administering both title IV–B programs (subparts 1 and 2), the CFSP must explain how these services will help meet the permanency provisions for children and families in sections 427 and 471 of the Act, e.g., preplacement preventive services, reunification services, independent living services.

(r) *Decision-making process: selection of family support programs for funding.* The State's CFSP must include an explanation of how agencies and organizations were selected for funding to provide family support services and how these agencies and organizations meet the requirement that family support services be community-based.

(s) *Significant portion of funds used for family support and family preservation services.* Each State must indicate the specific percentage of FY 1995 and FY 1996 family preservation and family support funds (title IV–B, subpart 2), that the State will expend for community-based family support and for family preservation services, and the rationale for the choice. It must also include an explanation of how this distribution was reached and why it meets the requirements that a "significant portion" of the service funds must be spent for each service. Examples of important considerations might include the nature of the planning efforts that led to the decision, the level of existing State effort in each area, and the resulting need for new or expanded services. While there is no minimum percentage that defines significant, the State must have an especially strong rationale if the request for either allocation is below 25 percent.

(t) *Staff training, technical assistance, and evaluation.* (1) The State's CFSP must include a staff development and training plan in support of the goals and objectives in the CFSP which addresses both of the title IV–B programs covered by the plan. This training plan also must be combined with the training plan under title IV–E as required by 45 CFR 1356.60(b)(2).

(2) The State's CFSP must describe the technical assistance activities that will be undertaken in support of the goals and objectives in the plan.

(3) The State's CFSP must describe any evaluation and research activities underway or planned with which the State agency is involved or participating and which are related to the goals and objectives in the plan.

(u) *Quality assurance.* The State must include in the CFSP a description of the quality assurance system it will use to regularly assess the quality of services under the CFSP and assure that there will be measures to address identified problems.

(v) *Distribution of the CFSP and the annual progress and services report.* The CFSP must include a description of how the State and the Indian tribe will make available to interested parties the CFSP and the Annual Progress and Services Report. (See 45 CFR 1355.21(c) and 45 CFR 1357.16(d).) State agencies and Indian tribal organizations within the State must exchange copies of their CFSPs and their annual services reports.

14. A new § 1357.16 is added to read as follows:

§ 1357.16 Annual progress reviews and services reports.

(a) *Annual progress reviews and services reports.* Annually, each State and each Indian tribe must conduct an interim review of the progress made in the previous year toward accomplishing the goals and objectives in the plan, based on updated information. In developing paragraphs (a)(2) through (a)(4), the State and the Indian tribe must involve the agencies, organizations, and individuals who are a part of the on-going CFSP-related consultation and coordination process. On the basis of this review, each State and Indian tribe must prepare and submit to ACF, and make available to the public, an Annual Progress and Services Report which must include the following—

(1) A report on the specific accomplishments and progress made in the past fiscal year toward meeting each goal and objective, e.g., toward improved outcomes for children and

families and a more comprehensive, coordinated, effective child and family services continuum;

(2) Any revisions in the statement of goals and objectives, if necessary, to reflect changed circumstances;

(3) For Indian tribes, a description of the child welfare and/or family preservation and family support services to be provided in the upcoming fiscal year highlighting any changes in services or program design and including the information required in 45 CFR 1357.15(n);

(4) For States, a description of the child protective, child welfare, family preservation, family support, and independent living services to be provided in the upcoming fiscal year highlighting any additions or changes in services or program design and including the information required in 45 CFR 1357.15(n);

(5) Information on activities in the areas of training, technical assistance, research, evaluation, or management information systems that will be carried out in the upcoming fiscal year in support of the goals and objectives in the plan;

(6) For States only, the information required to meet the maintenance of effort (supplantation) requirement in section 432(a) (7) and (8) of the Act; and

(7) Any other information the State or the Indian tribe wishes to include.

(b) *Submittal of the annual progress and services report.* The State and the Indian tribe must send the Annual Progress and Services Report to the appropriate ACF Regional Office no later than June 30 of the year prior to the fiscal year in which the services will be provided, i.e., the report submitted and made public by June 30, 1995, as a part of the CFSP will describe the services to be provided in FY 1996. The report covering FY 1997 services must be submitted by June 30, 1996.

(c) *Annual progress and services reports on FY 1994 family support and family preservation services.* Each State and Indian tribe that used FY 1994 funds under title IV–B, subpart 2, for services must describe in the CFSP what services were provided, the population(s) served, and the geographic areas where services were available. The CFSP also must include the amount of FY 1994 funds used for planning, for family preservation services, for family support services, and a brief statement on how these services met the service priorities of the State or the Indian tribe.

(d) *Availability of the annual progress and services report.* The State and the Indian tribe must make the Annual Progress and Services Report available to the public including the agencies, organizations, and individuals with which the State or the Indian tribe is coordinating services or consulting and to other interested members of the public. Each State and each Indian tribe within the State must exchange copies of their Annual Progress and Services Reports.

(e) *FY 1999 Final Review.* In FY 1999, each State and each Indian tribe must conduct a final review of progress toward accomplishing the goals and objectives in the plan. On the basis of the final review, it must—

(1) Prepare a final report on the progress made toward accomplishing the goals and objectives; and

(2) Send the final report to the ACF Regional Office and make it available to the public.

(f) *FY 2000 Five-Year State Plan.* Based on the FY 1999 final review and final Annual Progress and Services Report, and in consultation with a broad range of agencies, organizations, and individuals, the State and Indian tribe must develop a new five-year CFSP following the requirements of 45 CFR 1357.15.

15. Section 1357.20 is revised to read as follows:

§ 1357.20 Child abuse and neglect programs.

The state agency must assure that, with regard to any child abuse and neglect programs or projects funded under title IV–B of the Act, the requirements of section 107(f) of the Child Abuse Prevention and Treatment Act, as amended (42 U.S.C. 5106(f)) are met. These requirements relate to the reporting of known and suspected incidents of child abuse and neglect; the prompt investigation of reports and the protection of children in danger of abuse and neglect; confidentiality; the cooperation of law enforcement officials, courts, and appropriate State agencies providing human services; and responding to reports of medical neglect.

16. Section 1357.30 is revised to read as follows:

§ 1357.30 State fiscal requirements (title IV–B, subpart 1, child welfare services).

(a) *Scope.* The requirements of this section shall apply to all funds allotted or reallotted to States under title IV–B, subpart 1, and to all funds not needed for foster care which are transferred from title IV–E and awarded to States under title IV–B.

(b) *Allotments.* Allotments for each State shall be determined in accordance with section 421 of the Act.

(c) *Payments.* Payments to States shall be made in accordance with section 423 of the Act.

(d) *Enforcement and termination.* In the event of a State's failure to comply with the terms of the grant under title IV–B, subpart 1, the provisions of 45 CFR 92.43 and 92.44 will apply.

(e) *Matching or cost-sharing.* Federal financial participation is available only if costs are incurred in implementing sections 422, 423, and 425 and, when applicable, section 427 of the Act in accordance with the grants administration requirements of 45 CFR Part 92 except that—

(1) Non-public third party in-kind contributions may not be used to meet the requirements of the non-Federal share of the costs of programs funded under this part.

(2) The total of Federal funds used for the following purposes under title IV–B may not exceed an amount equal to the FY 1979 Federal payment under title IV–B:

(i) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(ii) Foster care maintenance payments, plus;

(iii) Adoption assistance payments.

(3) Notwithstanding paragraph (e)(2) of this section, State expenditures required to match the title IV–B, subpart 1 allotment may include foster care maintenance expenditures in any amount.

(f) *Prohibition against purchase or construction of facilities.* Funds awarded under title IV–B may not be used for the purchase, construction, or other capital costs for child care facilities.

(g) *Maintenance of effort.* (1) A State may not receive an amount of Federal funds under title IV–B in excess of the Federal payment made in FY 1979 under title IV–B unless the State's total expenditure of State and local appropriated funds for child welfare services under title IV–B of the Act is equal to or greater than the total of the State's expenditure from State and local appropriated funds used for similar covered services and programs under title IV–B in FY 1979.

(2) In computing a State's level of expenditures under this section in FY 1979 and any subsequent fiscal year, the following costs shall not be included—

(i) Expenditures and costs for child day care necessary to support the employment of a parent or other relative;

(ii) Foster care maintenance payments; and

(iii) Adoption assistance payments.

(3) A State applying for an amount of Federal funds under title IV–B greater than the amount of title IV–B funds received by that State in FY 1979 shall certify:

(i) The amount of their expenditure in FY 1979 for child welfare services as described in paragraphs (g) (1) and (2) of this section, and

(ii) The amount of State and local funds that have been appropriated and are available for child welfare services as described in paragraphs (g) (1) and (2) of this section for the fiscal year for which application for funds is being made.

Records verifying the required certification shall be maintained by the State and made available to the Secretary as necessary to confirm compliance with this section.

(h) *Reallotment.* (1) When a State certifies to the Commissioner that funds available to that State under its title IV–B, subpart 1 allotment will not be required, those funds shall be available for reallotment to other States.

(2) When a State, after receiving notice from the Commissioner of the availability of funds, does not certify by a date fixed by the Commissioner that it will be able to expend during the period stated in paragraph (i) of this section all of the funds available to it under its title IV–B, subpart 1 allotment, those funds shall be available for reallotment to other States.

(3) The Commissioner may reallot available funds to another State when he determines that—

(i) The requesting State's plan requires funds in excess of the State's original allotment; and

(ii) The State will be able to expend the additional funds during the period stated in paragraph (i) of this section.

(i) *Time limit on expenditures.* Funds under title IV–B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

17. A new § 1357.32 is added to read as follows:

§ 1357.32 State fiscal requirements (title IV–B, subpart 2, family preservation and family support services).

(a) *Scope.* The requirements of this section apply to all funds allocated to States under title IV–B, subpart 2, of the Act.

(b) *Allotments.* The annual allotment to each State shall be made in accordance with section 433 of the Act.

(c) *Payments.* Payments to each State will be made in accordance with section 434 of the Act.

(d) *Matching funds.* (1) Funds used to provide services in FY 1994 and in subsequent years will be federally reimbursed at 75 percent of allowable expenditures. Federal funds, however, will not exceed the amount of the State's allotment.

(2) The State's contribution may be in cash or donated funds.

(3) Except as provided by Federal statute, other Federal funds may not be used to meet the matching requirement.

(e) *Supplantation (Maintenance of effort).* States may not use the Federal funds under title IV–B, subpart 2, to supplant Federal or non-Federal funds for existing family preservation and family support services. For the purpose of implementing this requirement, "non-Federal funds" means State and local public funds. Local public entities will provide assurances on their maintenance of effort to the State and maintain sufficient information to document this maintenance of effort upon request. ACF will collect information annually from each State on expenditures for family support and family preservation using the State fiscal year 1992 as the base year.

(f) *Time limits on expenditures.* Funds must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(g) *Administrative costs.* (1) States using funds for services in FY 1994 and subsequent years may not use more than 10 percent of total Federal and State service expenditures under subpart 2 for administrative costs at either State or subrecipient levels. States must obtain such assurances from subrecipients as to ensure that no more than 10 percent of total State funds are used for administrative costs.

(2) For the purposes of title IV–B, subpart 2, "administrative costs" are costs properly identified through an agency's accounting system (meeting the requirements of 45 CFR Parts 92 and 95) which are:

(i) Allocable (in accordance with the agency's approved cost allocation plan) to the title IV–B, subpart 2 program cost centers; and

(ii) Costs of auxiliary functions necessary to sustain the direct effort involved in administering the state plan for title IV–B, subpart 2, or an activity providing service to the program. These services may be centralized in the grantee department or in some other agency, and may include but are not limited to the following: Procurement; payroll processing; personnel functions; management, maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing; and indirect costs.

(3) Program costs are costs, other than administrative costs, incurred in connection with developing and implementing the CFSP (e.g., delivery of services, planning, consultation, coordination, training, or supervision).

18. Section 1357.40 is revised to read as follows:

§ 1357.40 Direct payments to Indian Tribal Organizations (title IV–B, subpart 1, child welfare services).

(a) *Who may apply for direct funding?* Any Indian Tribal Organization (ITO) that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible tribal organizations authorized by the membership of the tribes to act for them is eligible to apply for direct funding if:

(1) The Indian tribe (or tribes comprising the ITO) is providing, under a contract (or grant) with the Secretary of the Interior under section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) child welfare services which would otherwise be provided directly by the Secretary of the Interior; and

(2) The Indian tribe, consortium or group has a plan for child welfare services provided by the ITO that is jointly developed by the Indian Tribal Organization and the Department.

(b) *Title IV–B Child and Family Services Plan (CFSP).* (1) In order to receive funds under title IV–B, subpart 1, beginning in FY 1995, the Indian tribe or tribal organization must have in effect an approved five-year child and family services plan that meets the applicable requirements of § 1357.15 of this part.

(2) The Indian tribe or tribal organization must also comply with section 422 of the Act; 45 CFR part 1355 (except that the requirements in § 1355.30 for a single State agency and Governor's review of the CFSP do not apply); and other applicable requirements of section 1357 of this part.

(c) *Information related to the requirements of Section 427 of the Act.* The following information must be submitted along with the assurances required to be eligible for title IV–B, subpart 1 funds:

(1) A statement of the legal responsibility, if any, for children who are in foster care on the reservation and those awaiting adoption;

(2) A description of tribal jurisdiction in civil and criminal matters, existence or nonexistence of a tribal court and the type of court and codes, if any;

(3) An identification of the standards for foster family homes and institutional care and day care;

(4) The Indian tribal organization's political subdivisions, if any;

(5) Whether the tribal organization is controlled, sanctioned or chartered by the governing body of Indians to be served and if so, documentation of that fact;

(6) Any limitations on authorities granted to the Indian tribal organizations; and

(7) The tribal resolution(s) authorizing an application for a direct title IV–B, subpart 1 grant under this Part.

(d) *Grants: General.* (1) Grants may be made to eligible Indian tribal organizations in a State which has a jointly developed child and family services plan approved and in effect.

(2) Federal funds made available for a direct grant to an eligible ITO shall be paid by the Department, from the title IV–B allotment for the State in which the ITO is located. Should a direct grant be approved, the Department shall promptly notify the State(s) affected.

(3) If an eligible ITO includes population from more than one State, a proportionate amount of the grant will be paid from each State's allotment.

(4) The receipt of title IV–B funds must be in addition to and not a substitute for funds otherwise previously expended by the ITO for child welfare services.

(5) Only the following fiscal and administrative requirements in 45 CFR 1357.30 apply to Indian tribal grants under this section:

(i) § 1357.30(d) Enforcement and termination;

(ii) § 1357.30(e) Matching and cost sharing;

(iii) § 1357.30(f) Prohibition against purchase or construction of facilities;

(iv) § 1357.30(g) Maintenance of effort; and

(v) § 1357.30(i) Time limit on expenditures.

19. A new § 1357.50 is added to read as follows:

§ 1357.50 Direct payments to Indian tribal organizations (title IV–B, subpart 2, family preservation and support services).

(a) *Definitions. Alaska Native Organization* means any organized group of Alaska Natives eligible to operate a Federal program under the Indian Self-Determination Act (Pub.L. 93–638) or such group's designee as defined in section 482(i)(7)(A) of the Act.

Indian tribe means any tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and for which a reservation (including Indian reservations, public domain Indian allotments, and former Indian reservations in Oklahoma) exists.

Tribal organization means the recognized governing body of the Indian tribe.

(b) *Eligibility for funds: FY 1994.* (1) Section 432(b)(2) of the Act provides that the Secretary may not approve a plan of an Indian tribe whose FY 1995 allotment under subpart 2 would be less than $10,000. Therefore, only those Indian tribes whose FY 1995 allotment is $10,000 or more are eligible to receive funds beginning in FY 1994.

(2) ACF will pay any amount to which an Indian tribe is entitled to the tribal organization of the Indian tribe.

(c) *Eligibility for funds: FY 1995.* In order to receive funds under title IV–B, subpart 2, in FY 1995, an Indian tribe eligible for planning funds in FY 1994 must submit a Child and Family Services Plan that meets the applicable requirements in section 1357.15 of this Part.

(d) *Eligibility for funds: FY 1996 through FY 1998.* (1) ACF will make grants to additional Indian tribes in FYs 1996 through 1998, based on anticipated increases in appropriations.

(2) Allotments will be calculated in FYs 1996, 1997, and 1998 as required in Section 433 of the Act. Those Indian tribes in each year whose allotment is at least $10,000 will be notified of their eligibility to apply.

(3) In order to receive funds, an Indian tribe must submit a Child and Family Services Plan (CFSP) that meets the applicable requirements of 45 CFR 1357.15. The plan must cover a one, two, or three year period (between FY 1996–FY 1998), depending on when the Indian tribe applies. There are no funds available for planning in FYs 1996–98, but the Regional Office staff of ACF will, through the joint planning process, assist the Indian tribe in developing its CFSP.

(e) *Allotments.* Allotments to Indian tribes are computed based on section 433 of the Act and are based on a ratio of the number of children in each Indian tribe with an approved plan compared to the number of children in all Indian tribes with approved plans, based on the most current and reliable data available.

(f) *Waivers of requirements.* ACF has waived for Indian tribes three statutory requirements:

(1) The limitation on administrative costs to 10 percent of total Federal and tribal funds; (Indian tribes may use the indirect cost rate agreement in effect for the Tribe.);

(2) The requirement that funds under this program may not be used to supplant other Federal and non-Federal funds; and

(3) The requirement that a significant portion of funds must be used for both family support and family preservation services.

(g) *Matching requirement.* (1) Funds used to provide services in FY 1994 and in subsequent years will be federally reimbursed at 75 percent of allowable expenditures. (This is the same Federal financial participation rate as title IV–B, subpart 1.) The Indian tribe's share must be at least 25 percent of the total or 33 percent of the Federal share. Federal funds, however, will not exceed the amount of the Indian tribe's allotment.

(2) The Indian tribe's contribution may be in cash or donated funds. In addition, Indian tribes, by statute, may use the following three Federal sources of funds as matching funds: Indian Child Welfare Act funds, Indian Self-Determination and Education Assistance Act funds, and Community Development Block Grant funds.

(h) *Fiscal and administrative requirements.* An Indian tribe must expend all funds by September 30 of the fiscal year following the fiscal year in which the funds were awarded. Other fiscal and administrative requirements will be found in the compilation of statutory assurances to be prepared by ACF.

Appendix to the NPRM: Revised reporting form—Annual Summary of Child and Family Services. (This Appendix will not be published as a part of the final rule.)

BILLING CODE 4184–01–P

[FR Doc. 94-24325 Filed 10-3-94; 8:45 am]
BILLING CODE 4184-01-C

ANNUAL SUMMARY OF CHILD AND FAMILY SERVICES [OMB APPROVAL #_____ EXP. DATE_____]

STATE OF _____ for FY OCTOBER 1, 19__ TO SEPTEMBER 30, 19__

DUE JUNE 30, 19__

SERVICES/ACTIVITIES	ESTIMATED EXPENDITURES BY PROGRAM (IN THOUSANDS)												
	IV-B		CAPTA		ILP	IV-E	TITLE XX	IV-A (E/A)	OTHER FED PROG.	STATE LOCAL DONATE	NO. TO BE SERVED	POP. TO BE SERVED	GEOG. AREA TO BE SERVED
	I CWS	II FP/FS	I	II									
1) PREVENTION & SUPPORT SERVICES (FS)													
2) PROTECTIVE SERVICES													
3) CRISIS INTERVENTION (FP)													
4) REUNIFICATION SERVICES													
5) FOSTER CARE MAINTENANCE: (a) FOSTER FAMILY & RELATIVE FOSTER CARE													
b) GROUP CARE													
6) ADOPTION SUBSIDY PMTS.													
7) ADMINISTRATION & MANAGEMENT													
8) FP/FS 10% ADMIN. COST													
9) SIGNIFICANT PORTION													
10) STAFF TRAINING													
11) FOSTER PARENT TRAINING & RECRUITMENT													
12) ADOPTIVE PARENT TRAINING & RECRUITMENT													
13) CHILD CARE RELATED TO EMPLOYMENT/TRAINING													
14) TOTAL													

Federal Register

Tuesday
October 4, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 11

Direct Final Rulemaking Procedure; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

[Docket No. 27925; Notice No. 94–30]

RIN 2120–AF55

Direct Final Rulemaking Procedure

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to the President's Executive Order on Regulatory Planning and Review, the Vice President's National Performance Review, and the Administration's Civil Aviation Initiative, the FAA proposes to implement a new and more efficient procedure for adopting non-controversial or consensual rules. This "direct final rulemaking" procedure involves issuing a rule for notice and comment, with a statement that if the FAA receives no adverse or negative comment, or notice of intent to file such a comment, the rule will become effective at the end of a specified period of time after the close of the comment period. This new procedure is expected to reduce significantly the time needed to publish routine or non-controversial final rules.

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27925. Comments may be inspected in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donald P. Byrne, Assistant Chief Counsel for Regulations, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental energy, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received 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 substantive public contact with the Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27925. "The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 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 in the mailing list for future NPRMs should request from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, Oct. 4, 1993), the President set forth the Administration's regulatory philosophy and principles. The Executive Order contemplates an efficient and effective rulemaking process, including the conservation of the limited government resources available for carrying out its regulatory functions. In responding to both the letter and the spirit of the President's order, the Secretary of Transportation has directed administrations within the Department of Transportation (DOT) to focus on improvements that can be made in the way in which they propose and adopt regulations.

The Administrative Conference of the United States (ACUS) recently observed that the rulemaking process has become increasingly time consuming. (Aviation interests in particular have expressed concern to the FAA over the time-consuming workings of the regulatory process.) ACUS believes that agencies should consider innovative methods for developing rules and obtaining public input, including the use of such groups as advisory committees and negotiated rulemaking committees. The FAA and the industry have been engaged in one such effort for several years, through the Aviation Rulemaking Advisory Committee (ARAC).

In addition to focusing on consensus-based rulemaking, ACUS believes that agencies should consider the use of "direct final" rulemaking where appropriate to eliminate duplicative review of non-controversial rules. Under the direct final rulemaking procedure, an agency issues a final rule with an opportunity for comment and a statement that if the agency receives no adverse or negative comments, the rule becomes effective automatically at a specified time after close of the comment period. If an adverse comment or a notice of intent to file such a comment is received, the agency withdraws the rule before the effective date and issues a notice of proposed rulemaking (NPRM) in the normal manner.

This expedited process was initially recommended by the Vice President in his report on the National Performance Review ("Creating a Government That Works Better and Costs Less; Improving Regulatory Systems"). Use of the process is encouraged in rulemakings in which the agency does not believe there will be adverse public comment, in order to help agencies streamline their rulemaking procedures.

The FAA proposes to use the direct final rulemaking procedure for non-controversial rules and for consensual rules, where it believes there will be no adverse public comment. The FAA

believes that this expedited process can be used effectively for a number of proposed agency rules, including many of the proposed regulations based on recommendations of broad-based advisory committee groups such as ARAC. The FAA would consider issuing a direct final rule where such an advisory committee has involved representatives of all interested parties in negotiating a proposed rule; the committee has reached a unanimous recommendation; and the nature of the negotiations leads the FAA to believe the public will not file adverse comments. The FAA would expect this often to be the case, for example, for recommendations of the ARAC intended to harmonize FAA and European technical standards for the manufacture of aircraft.

The direct final rulemaking process may also be used to regularly issue airworthiness directives, whenever there is broad consensus within sections of the aviation community on the FAA's view of the appropriate correction for an unsafe condition in an aviation product. Other possible uses of the process would include routine regulations amending airspace designations and possibly the extension of a compliance date that is not expected to be controversial.

The Direct Final Rule Procedure

When the FAA believes that a proposed regulation is unlikely to result in adverse comment, it may choose to use the direct final rule process. The direct final rule will advise the public that no adverse comments are anticipated, and that unless a written adverse or negative comment, or a written notice of intent to submit an adverse comment is received within the comment period, the regulation will become effective at the end of a specified period of time after close of the comment period. If no written adverse or negative comment, or notice of intent to submit such a comment is received within the comment period, the direct final rule will become effective on the date indicated in the direct final rule. The FAA will publish a notice in the **Federal Register** indicating that no adverse comments were received and confirming the date on which the final rule will become effective.

Comments that are outside the scope of the rule will not be considered adverse under this procedure. A comment recommending a rule change in addition to the direct final rule would not be considered an adverse comment, unless the commenter states that the rule would be inappropriate as proposed or would be ineffective without the additional change. A comment not so qualified would be beyond the scope of the rulemaking.

If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a notice of withdrawal of the direct final rule will be published in the **Federal Register**, and an NPRM will be published with a new comment period. Normal procedures for the agency's receipt and consideration of comments will then apply.

Interested persons are encouraged to submit comments on this proposed new procedure. In particular, comments are invited on specific areas of the FAA's regulations for which this procedure might be appropriate.

Regulatory Evaluation

This proposed amendment to part 11 would provide a new and more efficient procedure for adopting non-controversial or consensual rules. Little or no cost would be associated with the FAA's use of this procedure in appropriate instances. Use of this alternative procedure is expected to reduce the costs of rulemaking to the FAA by eliminating duplicate publication of rule text when no adverse comment was received. In cases where the rule would result in cost savings to the aviation industry, use of this alternative would allow the industry to receive the cost savings sooner than would be the case if current rulemaking procedures were used. Accordingly, the FAA has determined that because no costs can be foreseen, the expected economic impact of the amendment is minimal, and that a full regulatory evaluation is not warranted.

International Trade Impact

The proposed rule is only a change in the FAA's procedures for rulemaking, and will have no impact on trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 ensures that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The costs associated with this proposed rule are minimal, and are well below any threshold established by FAA Order 2100.14A. Accordingly, this proposed rule would not have a significant economic impact on any small entity.

Federalism Implications

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

Conclusion

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); (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act; and (4) that because any economic impact would be minimal, a full regulatory evaluation is not warranted.

List of Subjects in 14 CFR Part 11

Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

The Federal Aviation Administration proposes to amend 14 CFR part 11 as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. app. 1341(a), 1343(d), 1348, 1354(a), 1401–1405, 1421–1431, 1481, 1502; 49 U.S.C. 106(g).

2. A new section 11.17 is added to subpart A to read as follows:

§ 11.17 Direct final rule.

Whenever the FAA anticipates that a proposed regulation is unlikely to result in adverse comment, it may choose to issue a direct final rule. The direct final rule will advise the public that no adverse or negative comments are anticipated, and that unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified in the direct final rule. If no written adverse or negative comment, or notice of intent to submit such a comment is received within the comment period, the direct final rule will become effective on the date indicated in the direct final rule. The FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking will be published with a new comment period. Normal procedures for the agency's receipt and consideration of comments will then apply.

Issued in Washington, DC on September 27, 1994.

Mark L. Gerchick,

Chief Counsel.

[FR Doc. 94–24493 Filed 9–29–94; 1:51 pm]

BILLING CODE 4910–13–M

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