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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

[Amendment No. 347]

Food Stamp Program; Technical Amendments Concerning Disabled in Group Homes and Income Exclusion for Plans for Achieving Self-Support

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes provisions of the proposed rule published on December 21, 1992 concerning certain provisions of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 that dealt with disabled persons in group homes and income exclusions for Plans for Achieving Self-Support. This final rule expands the food stamp eligibility of certain blind and disabled individuals residing in group homes and excludes income of an SSI recipient necessary for the fulfillment of a Plan for Achieving Self Support (PASS).

DATES: The amendment to 7 CFR 273.9(c)(17) was effective October 1, 1990 and is applicable on the earlier of December 13, 1991 (the date of enactment of Pub. L. 102–237), October 1, 1990 (for food stamp households for which the State agency knew, or had notice, that a household member had a PASS), or beginning on the date that a fair hearing was requested. The remaining amendments were effective and were to be implemented no later than February 2, 1992.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302 or by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows:

(1) For program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15;

(2) For State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities);

(3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Executive Order 12372.

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service (FNS), has certified that this rule would not have a significant economic impact on a substantial number of small entities. The changes would affect food stamp applicants and recipients and State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Background

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237, enacted December 13, 1991) (the FACT Act) contained several technical amendments to the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101–624). A proposed rule dealing with these technical amendments was published at 57 FR 60489 on December 21, 1992 and provided the public with 60 days to comment on the proposed provisions. A total of five comments were received regarding this proposed rule. Four State agencies and one public interest group commented on the provisions of the proposed rulemaking. The concerns raised by the commenters are discussed below. For a full explanation of the provisions of this rule, the reader should refer to the preamble of the proposed rule.

Expanded Opportunity for Using Food Stamps to Pay for Meals in Certain Group Homes

Under current regulations, many, but not all, blind or disabled persons living in a group home may be certified for food stamps. The reasons for this are discussed in detail in the proposed rule. The Department proposed to amend the regulations to expand the provisions governing the eligibility of blind or disabled persons living in group homes to include all persons defined as blind or disabled under Section 3 of the Food Stamp Act of 1977, as amended (7 U.S.C. 2012) (the Act). This expansion was authorized by section 901 of the FACT Act which amended section 3(g)(7) and 3(i) of the Act (7 U.S.C. 2012 (g) and (i)) to expand eligibility to receive food stamps and to use them to purchase meals provided by certified group living arrangements, to all

individuals who meet the Act's definition of "disabled" contained in section 3(r)(2)–(7) of the Act (7 U.S.C. 2012 (r)(2)–(7)).

The Department received three comments, all supporting the proposal. Two of the three commenters requested clarifications about the rule. One of these two commenters requested that the provision be expanded to clarify whether the provisions regarding eligibility of individuals residing in group homes applied to homes with less than four residents and group homes not required to be licensed by the State. This provision does not modify the eligibility criteria of the group home in which eligible individuals may reside; rather, it addresses the eligibility criteria of certain residents of a group home. Thus, the commenter's concern is outside of the scope of this rulemaking.

The second commenter requesting clarification wished to know how participation of residents in group homes would be accomplished in an electronic benefit transfer (EBT) issuance system. The specifics of EBT interface in group homes, drug/alcoholic treatment programs, shelters for battered women and children, and other specialized arrangements need to be addressed during the development of a State agency's EBT system. Therefore, we are not addressing this concern in this final rule.

Accordingly, the Department is adopting as proposed the definitions of "Eligible foods" and "Group living arrangement" at 7 CFR 271.2. The Department is also adopting as proposed the provisions at 7 CFR 273.1(e)(1)(iii) and 273.11(f) so that disabled or blind persons as (defined in 7 CFR 271.2) may apply for and receive food stamps and use their food stamps to pay for meals provided by a group living arrangement.

Exclude Plans for Achieving Self-Support (PASS) from Income

Under 7 CFR 273.9(c) of the food stamp regulations, certain items are excluded from income in determining food stamp eligibility and calculating benefits. Section 903 of the FACT Act and the provisions of Public Law 102–265 (making technical corrections to the FACT Act) require that funds provided for a PASS plan be excluded from income for food stamp purposes. The PASS program is designed to help Supplemental Security Income (SSI) recipients become self-supporting. The plans, which must be approved by the Social Security Administration (SSA), permit an individual to set aside a specified amount of money to be used or deposited into a special account for an approved purpose. The Department proposed to amend the regulations at 7 CFR 273.9(c) to exclude PASS funds from income in determining food stamp eligibility and benefits. The Department received four comments on this provision, three from State agencies and one from a public interest group. Two commenters supported the provision; two commenters opposed the provision.

One State agency opposed the provision because the State agency does not know how to identify income for a PASS account and thus believes that there is a potential for error in excluding such income. The State agency believes that it is necessary to establish a way for such income to be reported as PASS income before such income can be excluded. The exclusion is required by statute; therefore, the Department must require that such income be excluded. It is the household's responsibility to report and verify that such income is necessary for fulfillment of its PASS on order for the income to be excluded. The household should be able to provide such verification because the SSA approves the individual's PASS in writing, identifying the amount of income that shall be set aside each month to fulfill the PASS. Further, SSA requires that the household provide for clear identification of the funds that are to be set aside. Eligibility workers should ask SSI recipients during the interview whether they have a PASS.

Section 903 of the FACT Act and Pub. L. 102–265 provide for a food stamp exclusion for amounts necessary for the fulfillment of a PASS. In the proposed rule, the amendatory language for 7 CFR 273.9(c) *Income exclusions* was: "Income of an SSI recipient which has been determined necessary for the fulfillment of a plan for achieving self-support (PASS) * * *." The second commenter objected to the phrase "which has been determined" in the regulatory amendment. The commenter objected to the language because it believes that the phrase unnecessarily complicates the issue because the language in Section 903 of the FACT Act specifies exclusion of income necessary for fulfillment of a PASS. The Department has adopted the commenter's suggestion and deleted the phrase "which has been determined" from the final rule. Other than this deletion, the rule at 7 CFR 273.9(c)(17) is adopted as proposed.

Implementation and Effective Dates

The provisions extending food stamp eligibility to all blind or disabled persons (as defined by the Food Stamp Act) who live in certain group living arrangements and to include meals served to these blind or disabled persons as eligible for purchase with food stamps were effective and had to be implemented no later than February 1, 1992 in accordance with the provisions of the FACT Act and with a December 27, 1991 memorandum to all Regional Administrators of the Food and Nutrition Service.

Also in accordance with that memorandum and the provisions of the FACT Act, the income exclusion for PASS accounts is effective on the earlier of: (1) December 13, 1991, the date of enactment of the FACT Act, (2) October 1, 1990, for food stamp households for which the State agency knew, or had notice, that a household member had a PASS, or (3) beginning on the date that a fair hearing was requested contesting the denial of an income exclusion for amounts provided for a PASS. State agencies are not required to do file searches for cases relating to PASS households unless the question of an income exclusion for PASS had been raised with the State agency prior to December 13, 1991.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant program-social programs.

7 CFR Part 272

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 271, 272, and 273 are amended as follows:

1. The authority citation for parts 271, 272, and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2,

a. The definition of *Eligible foods* is amended by revising paragraph (5); and

b. The definition of *Group living arrangement* is amended by revising the second sentence.

The revisions read as follows:

§ 271.2

Definitions.

* * * * *

Eligible foods * * * (5) Meals prepared and served by a group living arrangement facility to residents who are blind or disabled as defined in paragraphs (2) through (11) of the definition of "Elderly or disabled member" contained in this section; * * *

* * * * *

Group living arrangement * * * To be eligible for food stamp benefits, a resident of such a group living arrangement must be blind or disabled as defined in paragraphs (2) through (11) of the definition of "Elderly or disabled member" contained in this section.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(131) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(131) *Amendment No. 347.* The provisions of this amendment are effective as specified in paragraphs (g)(131)(ii) (A), (B), and (C) of this section. State agencies are not required to do file searches for cases relating to PASS households unless the question on an income exclusion for PASS had been raised with the State agency prior to December 13, 1991.

(i) The provisions at § 271.2, § 273.1, and § 273.11 were effective and had to be implemented no later than February 1, 1992.

(ii) The provision at § 273.9(c)(17) is effective the earlier of: (A) December 13, 1991, the date of enactment of Pub. L. 102–237; (B) October 1, 1990, for food stamp households for which the State agency knew, or had notice, that a household member had a PASS; or

(C) Beginning on the date that a fair hearing was requested contesting the denial of an income exclusion for amounts provided for a PASS.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

4. In § 273.1, paragraph (e)(1)(iii) is amended by removing the words "and who receive benefits under title I, title II, title X, title XIV, or title XVI of the Social Security Act" and adding the words "(as defined in paragraphs (2) through (11) of the definition of "Elderly or disabled member," contained in § 271.2)" after "individuals".

5. In § 273.9, a new paragraph (c)(17) is added to read as follows:

§ 273.9 Income and Deductions.

* * * * *

(c) *Income exclusions.* * * *

(17) Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS) which has been approved under sections 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. This income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

* * * * *

6. In § 273.11,

a. The heading of paragraph (f) is revised;

b. The first sentence of paragraph (f)(1) is amended by removing the words, "who receive benefits under title II or title XVI of the Social Security Act"; and

c. Paragraph (f)(3) is amended by removing the words, "who receive benefits under title II or title XVI of the Social Security Act".

The revision reads as follows:

§ 273.11

Action on households with special circumstances.

* * * * *

(f) *Residents of a group living arrangement.* * * *

* * * * *

Dated: January 26, 1994.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 94–2653 Filed 2–7–94; 8:45 am]

BILLING CODE 3410–30–U

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures of Energy Consumption and Water Use Information About Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Energy and Water Use Rule requires that Table 1, in § 305.9, which sets forth the representative average unit energy costs for five residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This document revises the table to incorporate the latest figures for average unit energy costs as published by DOE in the **Federal Register** on December 29, 1993.[1]

DATES: The revisions to § 305.9(a) and Table 1 are effective February 8, 1994. The mandatory dates for using these revised DOE cost figures are detailed in the **SUPPLEMENTARY INFORMATION** section, below.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final rule, then called the Appliance Labeling Rule (44 FR 66466), in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201.[2] The rule requires the disclosure of energy efficiency or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in § 305.9(a) of the rule sets forth the representative average unit energy costs to be used for all requirements of the rule. As stated in § 305.9(b), the Table is intended to be revised periodically on the basis of updated information provided by DOE.

On December 29, 1993, DOE published the most recent figures for representative average unit energy costs. Accordingly, Table 1 is revised to reflect these latest cost figures as set forth below.

The dates when use of the figures in revised Table 1 becomes mandatory in calculating cost disclosures for use in reporting, labeling and advertising products covered by the Commission's rule and/or EPCA are as follows:

For 1994 Submissions of Data Under § 305.8 of the Commission's Rule

The new cost figures must be used in all 1994 cost submissions. For convenience, the annual dates for data submission are repeated here:

Fluorescent lamp ballasts: March 1
Clothes washers: March 1

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[1] 58 FR 68901.

[2] Since its promulgation, the rule has been amended three times to include new product categories—central air conditioners (52 FR 46888, Dec. 10, 1987), fluorescent lamp ballasts (54 FR 1182, Jan. 12, 1989), and certain plumbing products (58 FR 54955, Oct. 25, 1993). In accordance with a directive in the Energy Policy Act of 1992, Pub. L. 102–486 (October 24, 1992), the Commission imitated a proceeding to amend the rule to include certain lamp products (58 FR 60147, Nov. 15, 1993).

Water heaters: May 1
Furnaces: May 1
Room air conditioners: May 1
Dishwashers: June 1
Central air conditioners: July 1
Heat pumps: July 1
Refrigerators: August 1
Refrigerator-freezers: August 1
Freezers: August 1

For Labeling and Advertising of Products Covered by the Commission's Rule

Using 1994 submissions of estimated annual costs of operation based on the 1994 DOE cost figures, the staff will determine whether to publish new ranges. Any products for which new ranges are published must be labeled with estimated annual cost figures calculated using the 1994 DOE cost figures. If such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the **Federal Register**. Products that have been labeled prior to the effective date of any range modification need not be relabeled. Advertising for such products will also have to be based on the new costs and ranges beginning ninety days after publication of the new ranges in the **Federal Register**.

Energy Usage Representations Respecting Products Covered by EPCA but not by the Commission's Rule

Manufacturers of products covered by section 323(c) of EPCA, but not by the Energy and Water Use Rule (clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers, pool heaters and space heaters) must use the 1994 representative average unit costs for energy in all representations beginning May 9, 1994.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR part 305 is amended as follows:

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1994)

Type of energy	In common terms	As required by DOE test procedure	Dollars per million Btu[1]
Electricity	8.41¢/kWh[2,3]	$0.0841/kWh	$24.65
Natural Gas	60.4¢/therm[4] or $6.22/MCF[5,6]	$0.00000604/Btu	$6.04
No. 2 heating oil	$1.054/gallon[7]	$0.00000760/Btu	$7.60
Propane	$0.983/gallon[8]	$0.00001076/Btu	$10.76
Kerosene	$1.133/gallon[9]	$0.00000839/Btu	$8.39

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1kWh=3,412 Btu.
[4] 1 therm=100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,030 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

* * * * *

Donald S. Clark,
Secretary.

[FR Doc. 94–2823 Filed 2–7–94; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 10

Registration of Floor Traders; Mandatory Ethics Training for Registrants; Suspension of Registrants Charged With Felonies

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; correction.

SUMMARY: This document contains corrections to the final rules which were published Thursday, April 15, 1993 (58 FR 19575). The rules implemented requirements mandated by the Futures Trading Practices Act of 1992 and imposed requirements for registration of floor traders and ethics training for registrants.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of this correction amended chapter 1 of title 17 of the Code of Federal Regulations by revising Section 1.62, Contract market requirement for floor broker and floor trader registration, and by revising Section 10.1, Scope and applicability of rules of practice on the effective date.

Need for Correction

As published, the final rules contain typographical errors which are in need of clarification.

Correction of Publication

Accordingly, the publication on April 15, 1993, of the final rules, which were the subject of FR Doc. 93–8798, is corrected as follows:

§ 1.62 [Corrected]

Paragraph 1. On page 19589, in the second column, in § 1.62, paragraph (a)(1), line four, the section designation "5a(12)" is corrected to read "5a(a)(12)(A)".

Par. 2. On page 19589, in the third column, in § 1.62, paragraph (a)(2), line four, the section designation "5a(12)" is corrected to read "5a(a)(12)(A)".

§ 10.1 [Corrected]

Par. 3. On page 19597, in the third column, in § 10.1, paragraph (a), lines 10 and 11, the phrase "7 U.S.C. 9, 12a(2), 12a(3), 12a(4) and 12(a)(11)," is corrected to read "7 U.S.C. 9 and 15, 12a(2), 12a(3), 12a(4) and 12a(11)".

* * * * *

Issued in Washington, DC on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–2165 Filed 2–7–94; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 9

Rules Relating to Review of Exchange Disciplinary, Access Denial or Other Adverse Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Conforming amendments.

SUMMARY: This document contains amendments to 17 CFR Part 9 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR Part 9, Rules Relating to Review of Exchange Disciplinary, Access Denial or Other Adverse Actions, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

Need for Correction

As published, the regulations contain references to designations of statutory provisions which have been changed and typographical errors which are in need of clarification.

Accordingly, 17 CFR Part 9 is amended by making the following conforming amendments:

PART 9—RULES RELATING TO REVIEW OF EXCHANGE DISCIPLINARY, ACCESS DENIAL OF OTHER ADVERSE ACTIONS

§ 9.1 [Amended]

1. In § 9.1(b)(1), the phrase "section 5a(11) of the Act" is revised to read "section 5a(a)(11) of the Act".

§ 9.25 [Amended]

2. In § 9.25, the phrase "section 8c(1)(B) of the Act" is revised to read "section 8c(a)(2) of the Act".

* * * * *

Issued in Washington, D.C. on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–2145 Filed 2–7–94; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 10

Rules of Practice

AGENCY: Commodity Futures Trading Commission.

ACTION: Conforming amendments.

SUMMARY: This document contains amendments to 17 CFR Part 10 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR Part 10, Rules of Practice, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

Need for Correction

As published, the regulations contain references to designations of statutory provisions which have been changed and typographical errors which are in need of clarification.

List of Subjects in 17 CFR Part 10

Administrative practice and procedure, authority delegations (Government agencies), commodity futures.

Accordingly, 17 CFR Part 10 is amended by making the following conforming amendments:

PART 10—RULES OF PRACTICE

§ 10.1 [Amended]

1. In § 10.1(b), the phrase "sections 6b and 6(c) of the Act," is revised to read "sections 6b and 6(d) of the Act,".

2. In § 10.1(c), the phrase "section 6(b) of the Act, 7 U.S.C. 9;" is revised to read "section 6(c) of the Act, 7 U.S.C. 9 and 15;".

3. In § 10.1(d), the phrase "sections 6(b) and 6b of the Act, 7 U.S.C. 9 and 13a;" is revised to read "sections 6(c) and 6b of the Act, 7 U.S.C. 9 and 15 and 13a;".

§ 10.3 [Amended]

4. In § 10.3(d) the phrase "secuon 6(b) of the Act" is revised to read "section 6(c) of the Act".

* * * * *

Issued in Washington, D.C. on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–2146 Filed 2–7–94; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 11

Rules Relating to Investigations

AGENCY: Commodity Futures Trading Commission.

ACTION: Conforming amendments.

SUMMARY: This document contains amendments to 17 CFR Part 11 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR Part 11, Rules Relating to Investigations, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

Need for Correction

As published, the regulations contain references to designations of statutory

provisions which have been changed and typographical errors which are in need of clarification.

List of Subjects in 17 CFR Part 11

Administrative practice and procedure, Commodity futures, investigations

Accordinly, 17 CFR Part 11 is amended by making the following conforming amendments:

PART 11—RULES RELATING TO INVESTIGATIONS

1. The authority citation for Part 11 is revised to read as follows:

Authority: 7 U.S.C. 4a(j), 9 and 15, 12, 12a(5), unless otherwise noted.

§ 11.1 [Amended]

2. In § 11.1, the phrase "sections 6(b) and 8 of the Commodity Exchange Act, as amended, 7 U.S.C. 9 and 12" is revised to read "sections 6(c) and 8 of the Commodity Exchange Act, as amended, 7 U.S.C. 9 and 15 and 12".

* * * * *

Issued in Washington, DC. on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–2147 Filed 2–7–94; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 19

Reports By Persons Holding Bona Fide Hedge Positions Pursuant To § 1.3(z) Of This Chapter And By Merchants And Dealers In Cotton

AGENCY: Commodity Futures Trading Commission.

ACTION: Conforming amendment.

SUMMARY: This document contains a amendment to 17 CFR Part 19 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR Part 19, Reports By Persons Holding Bona Fide Hedge Positions Pursuant to § 1.3(z) Of This Chapter And By Merchants And Dealers In Cotton, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

Need for Correction

As published, the regulations contain a reference to a designation of a statutory provision which has been changed and which is in need of clarification.

List of Subjects in 17 CFR Part 19

Commodity futures, cotton, grains, reporting and recordkeeping requirements.

Accordingly, 17 CFR Part 19 is amended by making the following conforming amendment:

PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSAUNT TO § 1.3 (Z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON

1. The authority citation for Part 19 is revised to read as follows:

Authority: 7 U.S.C. 6g(a), 6i, and 12a(5), unless otherwise noted.

* * * * *

Issued in Washington, DC on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–2148 Filed 2–7–94; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 21

Special Calls

AGENCY: Commodity Futures Trading Commission.

ACTION: Conforming amendments.

SUMMARY: This document contains amendments to 17 CFR Part 21 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: February 7, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR Part 21, Special Calls, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

Need for Correction

As published, the regulations contain references to designations of statutory provisions which have been changed and typographical errors which are in need of clarification.

List of Subjects in 17 CFR Part 21

Brokers, Commodity futures, Reporting and recordkeeping requirements, Silver.

Accordingly, 17 CFR Part 21 is amended by making the following conforming amendments:

PART 21—SPECIAL CALLS

1. The authority citation for Part 21 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b), unless otherwise noted.

§ 21.03 [Amended]

2. In § 21.03(h), each of the six occurrences of the phrase "section 6(b)" is revised to read "section 6(c)".

3. In § 21.03(h), the phrase "7 U.S.C. 9," is revised to read "7 U.S.C. 9 and 15,".

* * * * *

Issued in Washington, DC, on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–2149 Filed 2–7–94; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 30

Foreign Futures and Foreign Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Conforming amendments.

SUMMARY: This document contains amendments to 17 CFR part 30 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

Background

In light of the recent passage of the Futures Trading Practices Act of 1992,

102 Cong., 2d Sess., Pub. L. 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR part 30, Foreign Futures and Foreign Options Transactions, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

Need for Correction

As published, the regulations contain references to designations of statutory provisions which have been changed and typographical errors which are in need of clarification.

List of Subjects in 17 CFR Part 30

Commodity futures, fraud.

Accordingly, 17 CFR Part 30 is amended by making the following conforming amendments:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for Part 30 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

§ 30.02 [Amended]

2. In § 30.02(a), the phrase "sections 2(a)(1), 4, 4c, 4f, 4g, 4k, 4l, 4m, 4n, 4o, 4p, 6, 6c, 6d, 8, 8a, 9, 12, 13, and 14 of the Act" is revised to read "sections 1a, 2, 4, 4c, 4f, 4g, 4k, 4l, 4m, 4n, 4o, 4p, 6, 6c, 8, 8a, 9, 12, 13, and 14 of the Act".

* * * * *

Issued in Washington, DC, on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–2150 Filed 2–7–94; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 31

Leverage Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Conforming amendment.

SUMMARY: This document contains an amendment to 17 CFR Part 31 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Pub. L. 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR Part 31, Leverage Transactions, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

Need for Correction

As published, the regulations contain a reference to designations of statutory provisions which have been changed and which are in need of clarification.

List of Subjects in 17 CFR Part 31

Commodity futures, currency, fraud, gold, reporting and recordkeeping requirements, silver.

Accordingly, 17 CFR Part 31 is amended by making the following conforming amendment:

PART 31—LEVERAGE TRANSACTIONS

§ 31.5 [Amended]

1. In § 31.5(d), the phrase "sections 6 and 6(a) of the Act." is revised to read "sections 6(a) and 6(b) of the Act.".

* * * * *

Issued in Washington, DC, on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–2151 Filed 2–7–94; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 32

Regulation of Commodity Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Conforming amendments.

SUMMARY: This document contains amendments to 17 CFR Part 32 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Future Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR Part 32, Regulation of Commodity Option Transactions, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

Need for Correction

As published, the regulations contain references to designations of statutory provisions which have been changed and typographical errors which are in need of clarification.

List of Subjects in 17 CFR Part 32

Commodity futures, fraud reporting and recordkeeping requirements.

Accordingly, 17 CFR Part 32 is amended by making the following conforming amendments:

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

1. The authority citation for Part 32 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6c and 12a, unless otherwise noted.

§ 32.1 [Amended]

2. In § 32.1(b)(2), the phrase "sections 2(a) and 2(b) of the Act;" is revised to read "sections 1a(13) and 2(b) of the Act;"

§ 32.3 [Amended]

3. In § 32.3(c), the phrase "section 2(a)(1) of the Act" is revised to read "section 1a of the Act".

* * * * *

Issued in Washington, DC on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–2152 Filed 2–7–94; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 156

Registration of Broker Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule, which was published Tuesday, June 1, 1993, (58 FR 31167). The rule defined entities commonly known as "broker associations" and required that such entities register with their respective contract markets pursuant to contract market rules.

EFFECTIVE DATE: February 7, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction amended chapter 1 of title 17 of the Code of Federal Regulations by adding Part 156 on the effective date.

Need for Correction

As published, the authority citation for the final rule contains a typographical error which is in need of clarification.

Correction of Publication

Accordingly, the publication on June 1, 1993 of the final rule, which was the subject of FR Doc. 93–12780, is corrected as follows:

PART 156—[CORRECTED]

Paragraph 1. On page 31171, in the second column, the authority citation is corrected to read "Authority: 7 U.S.C. 6b, 6c, 6j(d), 7a(b), and 12a."

* * * * *

Issued in Washington, DC, on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–2161 Filed 2–7–94; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 190

Bankruptcy

AGENCY: Commodity Futures Trading Commission.

ACTION: Conforming amendments.

SUMMARY: This document contains amendments to 17 CFR Part 190 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR Part 190, Bankruptcy, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

Need for Correction

As published, the regulations contain references to designations of statutory provisions which have been changed and typographical errors which are in need of clarification.

List of Subjects in 17 CFR Part 190

Bankruptcy, brokers, commodity futures, reporting and recordkeeping requirements.

Accordingly, 17 CFR Part 190 is amended by making the following conforming amendments:

PART 190—BANKRUPTCY

1. The authority citation for Part 190 is revised to read as follows:

Authority: 7 U.S.C. 1a; 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556, and 761–766, unless otherwise noted.

§ 190.01 [Amended]

2. In § 190.01(kk)(2)(ii), the phrase "section 5a(12) of the Commodity Exchange Act;" is revised to read "section 5a(a)(12) of the Commodity Exchange Act;".

§ 190.05 [Amended]

3. In § 190.05(b), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12) of the Act".

* * * * *

Issued in Washington, DC on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–2164 Filed 2–7–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 93F–0297]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *N*-[4-(aminocarbonyl)phenyl]-4-[[1-[[(2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)amino]carbonyl]-2-oxopropyl]azo]benzamide (C. I. Pigment Yellow 181) as a colorant in all polymers intended for use in contact with food. This action is in response to a petition filed by Hoechst Celanese Corp.

DATES: Effective February 8, 1994; written objections and requests for a hearing by March 10, 1994.

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

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 17, 1993 (58 FR 48659), FDA announced that a food additive petition (FAP 3B4393) had been filed by Hoechst Celanese Corp., 500 Washington St., Coventry, RI 02816. The petition proposed that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of *N*-[4-(aminocarbonyl)phenyl]-4-[[1-[[(2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)amino]carbonyl]-2-oxopropyl]azo]benzamide (C. I. Pigment Yellow 181) as a colorant in all polymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that § 178.3297(e) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence

supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 10, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3297 Colorants for Polymers.

* * * * *

(e) * * *

Substances	Limitations
* * * * * * *	
N-[4-(Aminocarbonyl)phenyl]-4-[[1-[[(2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)amino]carbonyl]-2-oxopropyl]azo]benzamide (C. I. Pigment Yellow 181, CAS Reg. No. 74441–05–7).	For use at levels not to exceed 1 percent by weight of polymers. The finished articles are to contact food only under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter.
* * * * * * *	

Dated: January 31, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–2880 Filed 2–7–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 520 and 524

Animal Drugs, Feeds, and Related Products; Promazine Hydrochloride Tablets; Nitrofurazone Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations that reflect approval of two new animal drug applications (NADA's). One NADA is held by Wyeth-Ayerst Laboratories and provides for use of promazine hydrochloride tablets. The other NADA is held by Squire Laboratories, Inc., and provides for use of nitrofurazone solution. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: February 18, 1994.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0749.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 10–783 for Sparine Tablets (promazine hydrochloride) held by Wyeth-Ayerst Laboratories, Division of American Home Products Corp., P.O. Box 8299, Philadelphia, PA 19101, and NADA 138–455 for Fura-Zone Solution (nitrofurazone) held by Squire Laboratories, Inc., 100 Mill St., Revere, MA 02151. The sponsors requested withdrawal of approval of the NADA's. This document removes 21 CFR 520.1962(b) and amends 21 CFR 524.1580d(b) to reflect the withdrawal of approval of these NADA's.

List of Subjects in 21 CFR Parts 520 and 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 524 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1962 [Amended]

2. Section 520.1962 *Promazine hydrochloride* is amended by removing paragraph (b) and reserving it.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.1580d [Amended]

4. Section 524.1580d *Nitrofurazone solution* is amended in paragraph (b) by removing the last sentence.

Dated: January 31, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–2754 Filed 2–7–94; 8:45 am]

BILLING CODE 4160–01–F

UNITED STATES INFORMATION AGENCY

22 CFR Part 503

Freedom of Information Act Regulations

AGENCY: United States Information Agency.

ACTION: Notice of final rule.

SUMMARY: This regulation revises the Agency's current regulation implementing the Freedom of Information Act (FOIA). Other regulatory provisions regarding law enforcement records, fees for processing requests, and Executive Order No. 12600, concerning predisclosure notification for business records, were already printed and are unaffected by this rule as they already conform to the amendments enacted by the Freedom of Information Reform Act of 1986 (Final Rule published June 26, 1989).

EFFECTIVE DATE: February 8, 1994.

ADDRESSES: Freedom of Information Office, United States Information Agency, room M–29, 301 4th Street SW., Washington, DC 20547, telephone (202) 619–5499.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora, Freedom of Information Officer (202) 619–5499.

SUPPLEMENTARY INFORMATION: The United States Information Agency published a Notice of Proposed Rulemaking to revise its FOIA regulations on November 16, 1993 (FR/Vol. 58, No. 219). Pursuant to that notice, USIA received only one comment from the public, and it was commendatory.

The final rule is based on the proposed rule.

List of Subjects in 22 CFR Part 503

Freedom of Information.

Accordingly, 22 CFR part 503 is amended as set forth below:

PART 503—FREEDOM OF INFORMATION ACT REGULATION

The authority citation for part 503 is revised to read as follows:

Authority: 5 U.S.C. 552 Reform Act of 1986 as amended by Pub. L. 99–570; Sec. 1801–1804; 22 U.S.C. 2658; 5 U.S.C. 301; 13 U.S.C. 8; E.O. 10477, as amended; 47 FR 9320, Apr. 2, 1982, E.O. 12356. 5 U.S.C. Sec. 552 (1988 & Supp. III 1991) *as amended by* Freedom of Information Reform Act of 1986, Pub. L. No. 99–570, title I, Sections 1801–1804, 100 Stat. 3207, 3207–48–50 (1986) (codified at 5 U.S.C. Sec. 552 (1988)); 22 U.S.C. Sec. 2658 (1988); 5 U.S.C. Sec. 301 (1988); 13 U.S.C. Sec. 8 (1988); Executive Order No. 10477, 3 CFR 958 (1949–1953) *as amended by* Executive Order No. 10822, 3 CFR 355 (1959–1963), Executive Order No. 12292, 3 CFR 134 (1982), *reprinted in* 22 U.S.C. Sec. 1472 (1988); Executive Order No. 12356, 3 CFR 166 (1983), *reprinted in* 50 U.S.C. Sec. 401 (1988).

2. Sections 503.1 through 503.6 are revised to read as follows:

§ 503.1 Introduction and definitions.

(a) Introduction. The FOIA and this part apply to all records of the United States Information Agency, including all of its foreign posts. As a general policy, USIA follows a balanced approach in administering the FOIA. We recognize the right of public access to information in the possession of the Agency, but we also protect the integrity of the Agency's internal processes. This policy calls for the fullest possible disclosure of records consistent with those requirements of administrative necessity and confidentiality which are recognized by the Freedom of Information Act.

(b) Definitions—*Access Appeal Committee* or *Committee*, means the Committee delegated by the Agency Director for making final Agency determinations regarding appeals from the initial denial of records under the FOIA. This Committee also reviews final appeal denials of documents made by the National Endowment for Democracy (NED) for its records.

Agency or *USIA* means the United States Information Agency. It includes all components of USIA in the U.S. and all foreign posts abroad (known as the U.S. Information Service or USIS). (See 22 CFR part 504, chapter V—Organization.)

Commercial use, when referring to a request, means that the request is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. The identity of the requester (individual, non-profit corporation, for-profit corporation), or the nature of the records, while in some cases indicative of that purpose or use, is not necessarily determinative. When a request is from a representative of the news media, the request shall be deemed not to be for commercial use.

Department means any executive department, military department, government corporation, government controlled corporation, any independent regulatory agency, or other establishment in the executive branch of the Federal Government. A private organization is not a department even if it is performing work under contract with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession and control of USIA.

Duplication means the process making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include paper copy, microform, audiovisual materials, and magnetic tapes, cards and discs.

Educational institution means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education.

FOIA means section 552 of title 5, United States Code, as amended.

Freedom of Information Officer means the USIA official who has been delegated the authority to release or withhold records and assess, waive, or reduce fees in response to FOIA requests.

Non-commercial scientific institution means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

Post or *USIS* means all overseas offices of the USIA.

Records means any handwritten, typed or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards; magnetic tapes, cards, or discs; paper tapes; audio or video recordings; maps; photographs; slides, microfilm; and motion pictures). It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials. Nor does it include books, magazines, pamphlets, or other reference material in formally organized and officially designated USIA libraries, where such materials are available under the rules of the particular library.

Representative of the news media means a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. "News" means information that is about current events or that would be of current interest to the public. News media entities include television and radio broadcasters, publishers of periodicals (to the extent they publish "news") who make their products available for purchase or subscription by the general public, and entities that

may disseminate news through other media (e.g., electronic dissemination of text). Freelance journalists shall be considered representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract or a requester's past publication record may show such a basis.

Request means asking in writing for records whether or not the request refers specifically to the Freedom of Information Act.

Review means examining the records to determine which portions, if any, may be released, and any other processing that is necessary to prepare the records for release. It includes only the first examination and processing of the requested documents for purposes of determining whether a specific exemption applies to a particular record or portion of a record.

Search means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and a quicker way to comply with the request.

§ 503.2 Making a request.

(a) *How to request records.* All requests for documents shall be made in writing. Requests should be addressed to the United States Information Agency, Freedom of Information Officer, GC/FOI, room M–301 4th Street SW., Washington, DC 20547. Write the words "Freedom of Information Act Request" on the envelope and letter.

(b) *Details in your letter.* Your request for documents should provide as many details as possible that will help us find the records you are requesting. If there is insufficient information, we will ask you for more. Include your telephone number(s) to help us reach you if we have questions. If you are not sure how to write your request or what details to include, you may call the FOIA Office. The more specific the request for documents, the faster the Agency will be able to respond to your requests.

(c) *Requests not handled under FOIA.* We will not provide documents requested under the FOIA and this part if the records are currently available in the National Archives, subject to release through the Archives, or commonly sold to the public by it or another agency pursuant to statutory authority (for example, records currently available from the Government Printing Office or the National Technical Information Service). Agency records that are normally freely available to the general public, such as USIA World, are not covered by the FOIA. Also requests from Federal departments and court orders for documents are not FOIA requests, nor are requests from Chairmen of Congressional committees or subcommittees.

(d) *Referral of requests outside the agency.* If you request records that were created by or provided to us by another Federal department, we may refer your request to or consult with that department. We may also refer requests for classified records to the department that classified them. In cases of referral, the other department is responsible for processing and responding to your request under that department's regulation. When possible, we will notify you when we refer your request to another department.

(e) *Responding to your request*—(1) *Retrieving records.* The Agency is required to furnish copies of records only when they are in our possession and control. If we have stored the records you want in a records retention center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. The Agency's record retention policies are set forth in the General Records Schedules of the National Archives and Records Administration and in USIA's Records Disposition Schedule, which establish time periods for keeping records before they may be destroyed.

(2) *Furnishing records.* The Agency is only required to furnish copies of records which we have or can retrieve; we are not compelled to create new records. For example, if the requested information is maintained in computerized form and we can, with minimal computer instructions, produce the information on paper, we will do so—if this is the only way to respond to a request. We are not, however, required to write a new computer program in order to print documentary material in a format you might prefer.

On the other hand, we may decide to conserve government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. The Agency is required to furnish only one copy of a record. If we are unable to make a legible copy of a record to be released, we will not attempt to reconstruct it. Rather we will furnish the best copy possible and note its poor quality in our reply or on the copy. If material exists in different forms, we will provide the record in the form that best conserves government resources. For example, if it requires less time and expense to provide a computer record as a paper printout rather than on tape, we will provide the printout.

§ 503.3 Availability of agency records.

(a) *Release of records.* If we have released a record or part of a record to others in the past, we will ordinarily release it to you also. This principle does not apply if the previous release was an unauthorized disclosure. However, we will not release it to you if a statute forbids this disclosure and we will not necessarily release it to you if an exemption applies in your situation and did not apply or applied differently in the previous situations.

(b) *Denial of requests.* All denials are in writing and describe in general terms the material withheld and state the reasons for the denial, including a reference to the specific exemption of the FOIA authorizing the withholding or deletion. The denial also explains your right to appeal the decision and it will identify the official to whom you should send the appeal. Denial letters are signed by the person who made the decision to deny all or part of the request, unless otherwise noted.

(c) *Unproductive searches.* We make a diligent search for records to satisfy your request. Nevertheless, we may not be able always to find the records you want using the information you provided, or they may not exist. If we advise you that we have been unable to find the records despite a diligent search, you will nevertheless be provided the opportunity to appeal the adequacy of the Agency's search. However, if your request is for records that are obviously not connected with this Agency or your request has been provided to us in error, a "no records" response will not be considered an adverse action and you will not be provided an opportunity to appeal.

(d) *Appeal of denials.* You have the right to appeal a partial of full denial of your FOIA request. To do so, you must put your appeal in writing and address it to the official identified in the denial letter. Your appeal letter must be dated and postmarked within 30 calendar days from the date of the Agency's denial letter. Because we have some discretionary authority in deciding whether to release or withhold records, you may strengthen your appeal by explaining your reasons for wanting the records. However, you are not required to give any explanation. Your appeal will be reviewed by the Agency's Access Appeal Committee which consists of senior Agency officials. When the

Committee responds to your appeal, that constitutes the Agency's final action on the request. If the Access Appeal Committee grants your appeal in part or in full, we will send the records to you promptly or set up an appointment for you to inspect them. If the decision is to deny your appeal in part or in full, the final letter will state the reasons for the decision, name the officials responsible for the decision, and inform you of the FOIA provisions for judicial review.

§ 503.4 Time limits.

(a) *General.* The FOIA sets certain time limits for us to decide whether to disclose the records you requested, and to decide appeals. If we fail to meet the deadlines, you may proceed as if we had denied your request or your appeal. Since requests may be misaddressed or misrouted, you should call or write to confirm that we have the request and to learn its status if you have not heard from us in a reasonable time.

(b) *Time allowed.* (1) We will decide whether to release records within 10 working days after your request reaches the appropriate area office that maintains the records you are requesting. When we decide to release records, we will actually provide the records at that time, or as soon as possible after that decision, or let you inspect them as soon as possible thereafter.

(2) We will decide an appeal within 20 working days after the appeal reaches the appropriate reviewing official.

(3) The FOI Officer or appeal official may extend the time limits in unusual circumstances for initial requests or appeals, up to 10 working days. We will notify you in writing of any extensions. "Unusual circumstances" include situations where we: Search for and collect records from field facilities, records centers or locations other than the office processing the records; search for, collect, or examine a great many records in response to a single request; consult with another office or department that has substantial interest in the determination of the request; and/or conduct negotiations with submitters and requesters of information to determine the nature and extent of non-disclosable proprietary materials.

§ 503.5 Records available for public inspection.

(a) To the extent that they exist, we will make the following records of general interest available for your inspection and copying:

(1) Orders and final opinions, including concurring and dissenting opinions in adjudications. (See § 503.8(e) of this part for availability of internal memoranda, including attorney opinions and advice.)

(2) Statements of policy and interpretations that we have adopted but have not published in the **Federal Register**.

(3) Administrative staff manuals and instructions to staff that affect the public. (We will not make available, however, manuals or instructions that reveal investigative or audit procedures as described in § 503.8 (b) and (g) of this part.)

(4) In addition to such records as those described in paragraph (a) of this section, we will make available to any person a copy of all other Agency records, unless we determine that such records should be withheld from disclosure under subsection (b) of the Act and §§ 503.8 and 503.9 of this part.

(b) Before releasing these records, however, we may delete the names of people, or information that would identify them, if release would invade their personal privacy to a clearly unwarranted degree. (See § 503.8(f).)

(c) This Agency does not publish an FOIA index because it is impracticable to do so.

§ 503.6 Restriction on some agency records.

Under the U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. 1461, as amended), the USIA is prohibited from disseminating within the United States information about the U.S., its people, and its policies when such materials have been prepared by the Agency for audiences abroad. This includes films, radio scripts and tapes, video tapes, books, and similar materials produced by the Agency. However, this law does provide that upon request, such information shall be made available at USIA for examination only by representatives of the press, magazines, radio systems and stations, research students or scholars and available for examination only to Members of Congress.

§ 503.9 [Reserved]

3. Section 503.9 is removed and reserved.

Les Jin,

General Counsel.

[FR Doc. 94–2708 Filed 2–7–94; 8:45 am]

BILLING CODE 8230–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This document effectuates a name change of a fair employment practice agency (706 Agency) which is authorized to investigate civil rights violations in employment.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Boyce Nolan, Equal Employment Opportunity Commission, Office of Program Operations, Charge Resolution Review Program, 1801 L Street NW., Washington, DC 20507. Telephone (202) 663–4856.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

Accordingly, title 29, chapter XIV, part 1601 of the Code of Federal Regulations is amended as follows:

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 US.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117.

§ 1601.74 [Amended]

2. Section 1601.74, paragraph (a) is amended by removing "Kansas Commission on Human Rights" and adding "Kansas Human Rights Commission".

Signed at Washington, DC, this 31st day of January, 1994.

For the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 94–2797 Filed 2–7–94; 8:45 am]

BILLING CODE 6750–01–M

29 CFR Part 1601

706 Agencies

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies

as certified designated agencies. The designation permits the Commission to accept the findings and resolutions of State and local fair employment practices agencies in regard to most cases processed under contract without individual, case-by-case substantial weight reviews by the Commission. Publication of this amendment effectuates the designation of the Delaware Department of Labor and the Howard County (MD) Office of Human Rights as certified designated FEP agencies.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Boyce Nolan, Equal Employment Opportunity Commission, Office of Program Operations, Charge Resolution Review Program, 1801 L Street, NW., Washington, DC 10507, Telephone (202) 663–4856.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

Accordingly, title 29, chapter XIV of the Code of Federal Regulations, part 1601 is amended as follows:

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117.

Section 1601.80 is amended by adding in alphabetical order the following agencies:

§ 1601.80 Certified designated FEP agencies.

* * * * *

Delaware Department of Labor

* * * * *

Howard County (MD) Office of Human Rights

* * * * *

Signed at Washington, DC, this 31st day of January, 1994.

For the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 94–2798 Filed 2–7–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Iowa Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Iowa as a modification to the State's permanent regulatory program (hereinafter, referred to as the "Iowa program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to exemptions for coal extraction incidental to the extraction of other minerals, restriction of financial interests of State employees, exemption of coal extraction incident to government-financed highway or other construction, protection of employees, initial regulatory program, areas unsuitable, permits for operations and exploration, small operator assistance, bonding and insurance, permanent program performance standards, inspection and enforcement, blaster certification, and contested cases and public hearings. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program

On January 21, 1981, the Secretary of Interior conditionally approved the Iowa program. General background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Iowa program can be found in the January 21, 1981, **Federal Register** (46 FR 5885). Subsequent actions concerning Iowa's program and program amendments can be found at 30 CFR 915.15 and 915.16.

II. Submission of Amendment

From October 1, 1983, to December 20, 1989, a number of changes were made to Federal regulations concerning surface coal mining and reclamation operations. During this time period, pursuant to Federal regulations at 30 CFR 732.17, OSM notified Iowa in four separate 732 letters dated December 12, 1988, (Administrative Record No. IA–336); May 11, 1989, (Administrative Record No. IA–340); November 28, 1989, (Administrative Record No. IA–347); and February 7, 1990, (Administrative Record IA–349), that the State rules must be amended to be consistent with the revised Federal regulations.

By letter dated November 23, 1992 (Administrative Record No. IA–372), Iowa submitted a proposed amendment to its program pursuant to SMCRA. Iowa submitted the proposed amendment with the intent of satisfying the outstanding 732 notifications from OSM and the required program amendments OSM placed on its program in a November 6, 1991, rulemaking action (56 FR 56578) at 30 CFR 915.16(a) of the Federal regulations.

OSM announced receipt of the proposed amendment in the January 14, 1993, **Federal Register** (58 FR 4376) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on February 16, 1993. The public hearing scheduled for February 8, 1993, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns related to Iowa Administrative Code (IAC) 27–40.1(3), General; 27–40.3(207), General; IAC 27–40.4(10), Full water year; IAC 27–40.21(207), Areas designated by an Act of Congress; IAC 27–40.31(207), Requirements for permits and permit processing; IAC 27–40.32(207), Revision, renewal, and transfer, assignment, or sale of permit rights; IAC 27–40.34, Permit application—minimum requirements for legal, financial, compliance, and related information; IAC 27–40.39(1), Requirements for permits for special categories of mining; IAC 27–40.61(1), Permanent program performance standards—general provisions; IAC 27–40.63, Permanent program performance standards—surface mining activities; IAC 27–40.67, Permanent program performance standards—coal preparation plants not located within the permit area of a mine; IAC 27–40.73(2)g, Enforcement; IAC 27–40.74, Civil penalties; and IAC 27–40.75, Individual civil penalties. OSM notified Iowa of the concerns by letter dated May 10, 1993 (Administrative Record No. IA–381).

Iowa responded in a letter dated July 8, 1993 (Administrative Record No. IA–383), by submitting revised language for the proposed amendment to address the concerns raised by OSM. On July 21, 1993, OSM published a notice in the **Federal Register** (58 FR 38991) announcing receipt of revised language for the proposed amendment and inviting public comment on its adequacy. The public comment period ended August 5, 1993. By letters dated August 20, 1993 (Administrative Record No. IA–388), and August 30, 1993 (Administrative Record No. IA–389), Iowa provided OSM with additional information to clarify and correct three editorial errors. These clarifications are discussed in the appropriate findings to follow.

III. Director's Findings

1. Provisions Not Discussed

Iowa proposes revisions to its rules that involve minor editorial and word changes, and recodification. Iowa also proposes to revise its current incorporation by reference of OSM's regulations from those in effect as of July 1, 1987, to those in effect as of July 1, 1992.

The Director finds that these proposed revisions, unless specifically discussed below, are no less effective than the Federal regulations and is approving them.

2. Provisions Not Discussed That Are Substantively the Same as the Counterpart Federal Regulations

Iowa proposes revisions to rules that contain language that is the same or similar to the counterpart Federal regulations, replace Federal references and terms with appropriate State references and terms, or add specificity without adversely affecting other aspects of the program regulation. The Director, therefore, finds that these proposed revisions to Iowa's regulations are no less effective in meeting SMCRA's requirements than the Federal regulations. These revisions are as follows (Federal regulation counterparts are indicated in brackets): IAC 27–40.4(207) and 40.4(6), concerning the permanent regulatory program and the exemption for coal extraction incidental to the extraction of other minerals [30 CFR Part 702]; IAC 27–40.4(7)(f)(2), concerning the impact of a request for administrative review by persons adversely affected on an exemption determination [30 CFR 702.11(f)(2)]; IAC 27–40.4(8)(3), concerning the impact of a petition for administrative review on a decision to revoke an exemption [30 CFR 702.17(c)(3)]; IAC 27–40.31(15), concerning a permittee's right to appeal for administrative review [30 CFR 773.21(c)]; IAC 27–40.33(1) and (2), concerning general content requirements for permit applications [30 CFR 777.11(a)(3) and 777.14(a)]; IAC 27–40.35(1) and (3), Vegetation information and land use [30 CFR 779.19(a) and (b)]; IAC 27–40.35(9), Climatological information [30 CFR 779.18]; IAC 27–40.35(13), Identification of public roads [30 CFR 779.24(h)]; IAC 27–40.51(5), concerning soil productivity levels required for release of performance bonds on prime farmlands [30 CFR 800.40(c)(2)]; IAC 27–40.73(2)g, concerning notification of owners and controllers of a permit upon issuance of a cessation order [30 CFR 843.11(g)]; IAC 27–40.74(6), concerning procedures to prepare a request for a hearing on a violation [30 CFR 845.19]; IAC 27–40.74(7), concerning procedures for determining final assessment of a violation [30 CFR 845.20]; and IAC 27–40.75(3), concerning final order and opportunity for review of a penalty assessment [30 CFR 846.17(b)(1)].

3. Iowa Code Chapter 207

In the letter dated July 8, 1993 (Administrative Record No. IA–383), submitting revised language for the proposed amendment in response to OSM concerns, Iowa notified OSM that the Iowa Code has been reorganized in an attempt to achieve more logical groupings by agency and function in the Code. Therefore, Iowa Code chapter 83 is now Iowa Code chapter 207. Iowa indicated that no substantive changes were made to the statute. All references to Iowa Code chapter 83 in the Iowa Administrative Code have been revised to read Iowa Code chapter 207. OSM approves the recodification based upon its understanding that no substantive changes were made to the statute.

4. Provisions Adopting Suspended Federal Regulations

Iowa proposes to adopt by reference several Federal regulations or portions thereof that are suspended. In its cover letter dated July 8, 1993, Iowa indicated it's intention to adopt the suspension rule announcements located at the end of the sub-Parts to the Federal regulations as published in the Code of Federal Regulations. Accordingly, the Director considers any proposed Iowa rule adopting a suspended Federal regulation noted in the 30 CFR as of July 1, 1992, to also be suspended in the State program. Therefore, the Director finds that with this clarification, these proposed State rules are no less effective than the Federal counterpart regulations and is approving them. The following is a list of the proposed Iowa rules adopting suspended Federal regulations as noted in the July 1, 1992, 30 CFR and the **Federal Register** notices that explain the Federal suspensions.

a. At IAC 27–40.3(207), Iowa incorporates 30 CFR 700.11, Applicability, and the suspension notice that suspends paragraph (b) of that section insofar as it excepts from the applicability of 30 CFR chapter VII:

(1) Any surface coal mining operations commencing on or after June 6, 1987; and

(2) Any surface coal mining operations conducted on or after November 8, 1987 (52 FR 21228, 21229, June 4, 1987).

b. At IAC 27–40.4(207), Iowa incorporates the definition and suspension notice for "affected area" at 30 CFR 701.5, Definitions (51 FR 41952, 41960, November 20, 1986).

c. At IAC 27–40.12(207), Iowa incorporates 30 CFR 715.17, Protection of the hydrologic system, and the suspension notice that suspends paragraph (a)(1) of that section insofar as it applies to total suspended solids (TSS) discharges (44 FR 77447, 77451, December 31, 1979).

d. At IAC 27–40.21(207), Iowa incorporates the definition of the term "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" at 30 CFR 761.5, Definitions, and the suspension notice relating to the definition insofar as the listed values are evaluated for compatibility solely in terms of reclaimability (51 FR 41952, 41960, November 20, 1986).

e. At IAC 27–40.21(207), Iowa incorporates 30 CFR 761.11, area where mining is prohibited or limited, and the suspension notice that suspends 30 CFR 761.11(h) (51 FR 41952, 41961, November 20, 1986).

f. At IAC 27–40.35(207), Iowa incorporates 30 CFR 779.21, soils resources information, and the suspension notice that suspends 30 CFR 779.21 to the extent that it requires soils survey information for lands not qualifying as prime farmland (45 FR 51547, 51548, August 4, 1980).

g. At IAC 27–40.37(207), Iowa incorporates 30 CFR 783.21, soils resources information, and the suspension notice that suspends 30 CFR 783.21 to the extent that it requires soils survey information for lands not qualifying as prime farmland (45 FR 51547, 51548, August 4, 1980).

h. At IAC 27–40.63(207), Iowa incorporates 30 CFR 816.46, hydrologic balance: siltation structures, and the suspension notice that suspends 30 CFR

816.46(b)(2) (51 FR 41952, 41961, November 20, 1986).

i. At IAC 27–40.63(207), Iowa incorporates 30 CFR 816.81, coal mine waste: general requirements, and the suspension notice that suspends paragraph (a) of that section insofor as it allows end dumping or side dumping of coal mine waste (51 FR 41952, 41961, November 20, 1986).

j. At IAC 27–40.64(207), Iowa incorporates 30 CFR 817.46, hydrologic balance: siltation structures, and the suspension notice that suspends 30 CFR 817.46(b)(2) (51 FR 41952, 41962, November 20, 1986).

k. At IAC 27–40.64(207), Iowa incorporates 30 CFR 817.81, coal mine waste: general requirements, and the suspension notice that suspends paragraph (a) of that section insofar as it allows end dumping or side dumping of coal mine waste (51 FR 41952, 41962, November 20, 1986).

l. At IAC 27–40.71(207), Iowa incorporates 30 CFR 840.11, inspections by State regulatory authority, and the suspension notice that suspends 30 CFR 840.11(g) and (h) (56 FR 25036, June 3, 1991).

5. Required Program Amendments

Iowa submitted proposed revisions in response to required program amendments at 30 CFR 915.16(a) of the Federal regulations that OSM placed on the Iowa program in the November 6, 1991, final rule **Federal Register** notice (56 FR 56578, 56594). The Director finds that the following proposed State regulations satisfy the required program amendments and are no less effective than the Federal regulations indicated in each required program amendment, and the Director is approving them [the codified required amendments at 30 CFR 915.16 are indicated in brackets]: IAC 27–40.11(2), by deleting from incorporation by reference the Federal regulation at 30 CFR 710.12 and by insuring that the appropriate State citations are substituted for incorporated Federal citations, [30 CFR 915.16(a)(2)]; IAC 27–40.13(207), by deleting from incorporation by reference subparagraphs (1) through (5) from the Federal regulation at 30 CFR 716.1(a), [30 CFR 915.16(a)(3)]; IAC 27–40.21(5) and (7), by specifying that the general word substitutions for "Act" and "Secretary" at rule IAC 27–40.1(207) do not apply to the incorporated 30 CFR 761.3 and by removing the incorporation by reference of 30 CFR 761.12(c), [30 CFR 915.16(a)(4)]; IAC 27–40.51(5) by insuring that the phrase "and Part 823 of this chapter" is incorporated in its rule, [915.16(a)(7)]; IAC 27–40.61(1) through (4) by requiring that the performance standards and design requirements of Iowa's approved program be followed and by deleting the reference to "Parts 818 through 828" and replacing it with "Parts 819, 823, 827, and 828," [30 CFR 915.16(a)(8)]; IAC 27–40.63 (207) and 27–40.64 (207) by providing design criteria for the construction or modification of coal mine waste refuse piles, [30 CFR 915.16(a)(9)]; IAC 27–40.63 (207) by incorporating by reference the Federal regulations at 30 CFR 816.104 and .105 that define thick and thin overburden, [30 CFR 915.16(a)(11)]; IAC 27–40.66(207) by deleting from its incorporation by reference the Federal regulation at 30 CFR 823.11(a) thereby requiring that prime farmland occupied by all coal preparation plants, support facilities and roads that are a part of the surface mining activities meet the applicable prime farmland performance standards, [30 CFR 915.16(a)(12)]; IAC 27–40.67(2) by deleting from incorporation by reference subchapters 30 CFR 827.13(a)(1) through (3) that deal with interim performance standards that are not applicable to the Iowa program, [30 CFR 915.16(a)(14)]; IAC 27–40.72(3)b by requiring that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality had been waived or disclosed, [30 CFR 915.16(a)(15)]; IAC 27–40.73(2)c by referencing the appropriate counterpart rule to section 521(a)(5) of SMCRA, which is Iowa Code Section 207.14(6), [30 CFR 915.16(a)(16)]; IAC 27–40.73(6)e by referencing the State statute that establishes procedural requirements for formal adjudicatory hearings, which is Iowa Code Chapter 17A, [30 CFR 915.16(a)(17)]; IAC 27–40.73(6)g by referencing Iowa Code section 207.14 which contains provisions corresponding to section 521(a)(4) and 525 of SMCRA, [30 CFR 915.16(a)(18)]; IAC 27–40.74(5), (6), and (7) by replacing the current rules with rules that are substantively the same as the corresponding Federal rules at 30 CFR 845.18, .19, and .20 thereby: (1) providing rule specific procedures for conducting informal settlements; (2) providing that the proposed penalty amount be put in escrow prior to the commencement of the assessment conference; and (3) providing escrow account handling provisions, [30 CFR 915.16(a)(19)]; IAC 27–40.82(1) by deleting 30 CFR 955.1 and .2 regarding certification of blasters since they are not applicable to the State, [30 CFR 915.16(a)(20)]; and IAC 27–40.99(1)d. and (2) by deleting the reference to Iowa Code section 207.14, subsection 4, and instead referring to Iowa Code section 17A.15(3), the provision that establishes procedures for appealing the decision of an administrative law judge, [30 CFR 915.16(a)(21)].

Accordingly, the Director is removing the required program amendments as identified above from the Iowa program and as codified at 30 CFR 915.16.

6. IAC 27–40.1 (3) and (4), IAC 27–40.35, IAC 27–40.37, IAC 27–40.38, IAC 27–40.63, and IAC 27–40.64, Authorization of Land Surveyors

Iowa proposes to revise its rules at IAC 27–40.1 (3) and (4) by deleting from 30 CFR 779.25(b), 780.14(c), 780.25(a)(1)(i), 780.25(a)(3)(i), 783.25(b), 784.16(a)(1)(i), 784.16(a)(3)(i), 816.46(b)(3), 816.49(a)(2), 816.49(a)(10)(ii), 816.151(a), 817.46(b)(3), and 817.151(a), as incorporated by reference into the State program, specific language which allows land surveyors to prepare and certify certain cross-sections, maps, and plans. Iowa also proposes, at IAC 27–40.37 (incorporating 30 CFR Part 783), IAC 27–40.38 (incorporating 30 CFR Part 784), IAC 27–40.63 (incorporating 30 CFR Part 816), and IAC 27–40.64 (incorporating 30 CFR Part 817), to make similar changes to the incorporated language which allows land surveyors to prepare and certify certain cross-sections, maps, and plans.

Section 507(b)(14) of SMCRA and the Federal regulations allow land surveyors to prepare and certify such cross-sections, maps, and plans only to the extent allowed by the State. Thus, this option is discretionary to the State regulatory authority and Iowa's decision not to allow land surveyors to perform such duties does not render Iowa's program inconsistent with SMCRA or the Federal regulations. Iowa, in a previous program amendment submittal, received approval from the Director on November 6, 1991, to prohibit land surveyors from performing design and certification tasks in other locations of its program (56 FR 56578, 56584).

In Iowa's July 8, 1993, response to OSM's May 10, 1993, concerns on this amendment, some of the Federal regulations incorporated by reference at IAC 27–40.1 (3) and (4) included similar, but slightly different language from the language the State proposed to delete.

Therefore, Iowa submitted an editorial clarification to OSM in a letter dated August 20, 1993 (Administrative Record No. IA–388), to clarify the exact language that the State proposed to delete from the incorporated Federal

provisions. Consequently, the Director finds Iowa's proposed revisions at IAC 27–40.1 (3) and (4), IAC 27–40.35 (incorporating 30 CFR Part 779), IAC 27–40.37 (incorporating 30 CFR Part 783), IAC 27–40.38 (incorporating 30 CFR Part 784), IAC 27–40.63 (incorporating 30 CFR Part 816), and IAC 27–40.64 (incorporating 30 CFR Part 816), and IAC 27–40.64 (incorporating 30 CFR Part 817), to be consistent with SMCRA and the Federal regulations and is approving the revisions.

7. IAC 27–40.1(5), Registered, Professional Engineer

Iowa proposes to revise its rules at IAC 27–40.1(5) by deleting the words "registered, professional engineer" from its incorporation by reference of 30 CFR Parts 779, 780, 783, 784, 816, and 817. Iowa proposes to replace the deleted phrase with the phrase "professional engineer, registered with the State of Iowa." This proposed change insures that professional engineers meet State registration requirements.

The Director finds the proposed revision at IAC 27–40.1(5) to be consistent with SMCRA and the Federal regulations and is approving it.

8. IAC 27–40.3(207), General

Iowa, at IAC 27–40.3(207), proposes to revise its rules by deleting 30 CFR 700.12, dealing with petitions to initiate rulemakings, from its incorporation by reference of 30 CFR Part 700. OSM, in its May 10, 1993, issue letter (Administrative Record No. IA–381) to Iowa, expressed concern that, by deleting the incorporation of 30 CFR 700.12, Iowa would be left without any rule to provide procedural requirements pertaining to such petitions. In a letter dated July 8, 1993 (Administrative Record No. IA–383), Iowa supported its decision to delete 30 CFR 700.12 by explaining that the Iowa Department of Agriculture and Land Stewardship promulgated rules to provide procedural requirements for petitions to initiate rulemaking at IAC 21–3. The Iowa rules at IAC 21–3, in turn, adopt the Iowa Uniform Rules on Agency Procedure, Chapter X, that set forth procedures for handling petitions for rulemaking. Iowa submitted both the Iowa Uniform Rules on Agency Procedure, Chapter X, and IAC 21–10 for OSM's review.

Iowa further explained in its July 8, 1993, letter that rule IAC 21–3.5(17A) addresses petitions received for related entities and that "[w]hile the Division has its own rulemaking authority separate from the Secretary of Agriculture, the Division is an entity of the Iowa Department of Agriculture and Land Stewardship * * * . Any petitions received relative to the coal regulatory program will be so forwarded." OSM understands Iowa's explanation to mean that any petitions received by the Secretary of Agriculture relative to the coal regulatory program will be forwarded to the Division for processing in accordance with IAC 21–3 and the Iowa Uniform Rules on Agency Procedure, Chaper X.

Upon review of IAC 21–3 and the Iowa Uniform Rules on Agency Procedure, the Director finds them to be no less effective than the Federal counterpart regulation at 30 CFR 700.12 and is approving them. With regard to Iowa's proposed revision at IAC 27–40.3(207), to delete the incorporation of 30 CFR 700.12 of the Federal regulations, the Director finds this deletion acceptable so long as Iowa amends this rule to clearly identify IAC 21–3 as governing procedures regarding petitions for initiating rulemaking. Thus, the Director is requiring Iowa to further amend its rules at IAC 27–40.3 by clearly identifying IAC 21–3 as governing procedures regarding petitions for initiating rulemaking.

9. IAC 27–40.4(9), Definition for "Previously Mined Area"

Iowa proposes to revise its rules at IAC 27–40.4(9) by deleting the Federal definition for "previously mined area" at 30 CFR 701.5 and inserting in lieu thereof the following:

> "Previously mined area" means land previously mined on which there were no surface coal mining operations subject to the standard of the Surface Coal Mining and Reclamation Act of 1977 (Public Law 95–87, as amended); all highwalls created after August 3, 1977, and all fully reclaimed sites are excluded from this definition.

Iowa's proposal is in response to a required amendment at 30 CFR 915.16(a)(1) (November 6, 1991 (56 FR 56578, 56594)), that required the State to provide a definition for "previously mined area" that excludes all highwalls created after August 3, 1977, and all fully reclaimed sites. The Director finds that Iowa's proposal satisfies the required amendment at 30 CFR 915.16(a)(1) and the Director is, therefore, approving the proposed definition.

Since the required amendment was promulgated at 30 CFR 915.16(a)(1), however, on January 8, 1993 (58 FR 3466), OSM issued a new definition for "previously mined area." The new definition provides as follows: "*Previously mined area* means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII."

This definition limits the applicability of 30 CFR 816.106 and 817.106 to those areas mined prior to August 3, 1977, that are either unreclaimed or reclaimed to lesser standards than those prescribed by SMCRA, while also ensuring that areas mined prior to that date that have been fully and satisfactorily reclaimed pursuant to SMCRA's standards will not be redisturbed and then reclaimed under the less stringent requirements of 30 CFR 816.106 and 817.106. According to the preamble discussion for the definition of "previously mined area," under the definition, unreclaimed or partially reclaimed areas mined prior to August 3, 1977, would continue to qualify for the partial highwall elimination exemption of 30 CFR 816.106 and 817.106, but would be otherwise held to full compliance with the reclamation standards of 30 CFR chapter VII. In such instances, the operator would be required to eliminate the highwall to the maximum extent technically practical, and to demonstrate the stability of the remaining highwall remnant.

As stated above, Iowa's proposed definition explicitly excludes all highwalls created after August 3, 1977, and all fully reclaimed sites. It is not explicitly clear, however, that the proposed Iowa definition is consistent in all respects with the newly-promulgated Federal definition. For example, under the Federal definition, in order for land to qualify as a "previously mined area," the land must both: (1) have been affected by surface coal mining operations prior to August 3, 1977; and (2) not have been reclaimed to the standards of 30 CFR chapter VII.

By comparison, under the State proposal, the key consideration in determining whether an area of land qualifies as previously mined area, is whether the previous surface coal mining operations there were "subject to the standards of the [SMCRA] * * *" To the extent the State proposal relies upon whether an area of land was subject to the standards of SMCRA, it is similar to the previous Federal definition of "previously mined area," promulgated on May 8, 1987 (52 FR 17526, 17529).

As discussed in the preamble to the promulgation of the current Federal definition of "previously mined area," the 1987 Federal definition of that term was remanded by the United States District Court for the District of Columbia. *See National Wildlife Federation* v. *Lujan*, 733 F. Supp. 419, 438–442 (1990). The Court found that the 1987 definition did not conform to

the requirements of SMCRA to the extent it relied upon any date other than the date of SMCRA's enactment—August 3, 1977. *Id.*

Therefore, although the Director finds Iowa's proposed rule at IAC 27–40.4(9) satisfies the previous required amendment at 30 CFR 915.16(a)(1) and is approving it, the Director is requiring Iowa to further amend its definition of "previously mined area" at IAC 27–40.4(9) to be explicitly no less effective than the current Federal definition at 30 CFR 701.5. The Director will modify the required amendment at 30 CFR 915.16(a)(1) in accordance with this finding.

10 IAC 27–40.21(207), Definition for "Valid Existing Rights"

Iowa proposes to revise its rules at IAC 27–40.21(207) by incorporating by reference the definition for "valid existing rights" (VER) at 30 CFR 761.5 as it existed on July 1, 1992. Paragraphs (a) and (c) of the definition were suspended on November 20, 1986 (51 FR 41952, 41954–41955). In that suspension notice, OSM stated the following with regard to Federal Programs and the Indian Lands Program:

> * * * Suspending the rule has the effect of undoing the improper promulgation and leaving in place the VER test in use before the 1983 definition was promulgated. That test was the 1979 test, including the "needed for and adjacent" test, as modified by the August 4, 1980, suspension notice which implemented the District Court's February 1980 opinion in *In Re: Permanent (I)* (the 1980 test) * * * Under the 1980 test, a demonstration of both property rights and that the person either had made a good faith effort to obtain all permits necessary to mine or that the coal is both needed for and adjacent to an ongoing surface coal mining operation is sufficient to establish VER.
>
> Accordingly, OSM will make VER determinations in Federal program States and on Indian lands using the 1980 test. OSM will make VER determinations on a case-by-case basis after examining the particular facts of each case, and will consider property rights in existence on August 3, 1977, the owner of which by that date had made a good faith effort to obtain all permits, as one class of circumstances which would invariably entitle the property owner to VER. VER would also exist when there are property rights in existence on August 3, 1977, the owner of which can demonstrate that the coal is both needed for an immediately adjacent to a mining operation in existence prior to August 3, 1977.

As discussed in Finding no. 4 of this document, Iowa has indicated its intention to adopt the suspension notices located at the end of the federal regulations published in the Code of Federal regulations. Thus, as applied to the definition of VER, the Director interprets Iowa's adoption of the Federal definition to include the above-quoted language language from the November 20, 1986, preamble. The Director will notify Iowa of any change in the Federal regulation in accordance with 30 CFR 732.17(d) and may in the future require Iowa to modify its regulatory program to remain consistent with the Federal provision. In the meantime, the Director is approving Iowa's proposed adoption by reference of the definition for VER at 30 CFR 761.5.

11. IAC 27–40.31(2), Requirements for Permits and Permit Processing

Iowa proposes to revise its rules at IAC 27–40.31(2) by requiring that the words "and the scale of the map" be added at the end of the last sentence of 30 CFR 773.13(a)(1)(ii), as incorporated by reference into the State program. In addition, Iowa proposes to add the following paragraph to 30 CFR 773.13(a)(1)(ii), as incorporated by reference into the State program:

> The legal description shall include popular township, county, township, range, section, and the United States Geological Survey map identification by property owners. Section lines shall be marked and the sections shall be identified on the map. The total acreage of the proposed permit area shall be given to the nearest acre.

While the Federal regulations at 30 CFR 773.13(a)(1) do not require such detailed information, in accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for which no Federal counterpart provision exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not construed to be inconsistent with the Federal program. Therefore, the Director is approving Iowa's proposed revision at IAC 27–40.31(2).

12. IAC 27–40.31(9), Requirements for Permits and Permit Processing

Iowa proposes, at IAC 27–40.31, to add paragraph (9) that specifies that the general word substitution of the term "Act" with the term "Iowa Code chapter 207" found at IAC 27–40.1(2) does not apply to 30 CFR 773.15(b), as incorporated by reference into the Iowa program.

The incorporated Federal regulation, 30 CFR 773.15(b), requires that no permit be issued if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant "is currently in violation of the Act or any other law, rule or regulation referred to in [30 CFR 773.15]," as indicated by any available information, including the list of violation notices submitted in the application. Among the specified violations are:

> Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, delinquent civil penalties issued pursuant to section 518 of the Act, bond forfeitures where violations upon which the fortfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation. . . .

The preamble to the Federal regulation dated October 3, 1988 (53 FR 38868, 38886, clarifies that all unabated violations are included, no matter when they were issued:

> The Act requires regulatory authorities to consider past conduct in the permitting process. . . . In view of [sections 507(b)(4), (b)(5), and 510(c)] of the Act, it is clear that Congress both contemplated and authorized holding applicants accountable for past violations.

Furthermore, permit denial is based on violations of any State or Federal program. As explained in the preamble to 30 CFR 778.14(c) dated September 28, 1983 (48 FR 44344, 44389), the reference to "the Act" in SMCRA section 510(c), on which these Federal regulations are based, includes all State and Federal programs approved under SMCRA. *See also* (53 FR 38868, 38882–38883) October 3, 1988. Therefore, in the context of the State's incorporation by reference of the Federal regulation at 30 CFR 773.15(b), the term "Act" must be understood to have the same meaning that it has under the Federal program.

The Director therefore finds Iowa's proposed revision at IAC 27–40.31(9) to be consistent with SMCRA and the Federal regulations and is approving it.

13. IAC 27–40.31 (13) and (14), Requirements for Permits and Permit Processing

a. *Time frame for permit application objections.* Iowa proposes to revise its rule at IAC 27–40.31 that addresses

comments and objections on permit applications by adding a paragraph (13) that would replace the phrase "a reasonable time established by the regulatory authority" in incorporated 30 CFR 773.13(b)(1) with the phrase "60 days of the notification." This would allow those public entities identified at 30 CFR 773.13(b)(1) 60 days to submit written comments or objections with respect to the effects of the proposed mining operations on the environment within their areas of responsibility. OSM interprets the phrase "60 days of the notification" to mean 60 days from the date of *receipt* of the notification required to be given to specific public entities under 30 CFR 773.13(a)(3).

The allowance of 60 days from the date of receipt of the notification of an application for a permit action for the governmental entities identified at 30 CFR 773.13(a)(3) to submit written comments or objections is a reasonable time frame and is consistent with the time frames allowed for in SMCRA. Therefore, the Director finds this proposed revision to be no less effective than the Federal regulation in meeting SMCRA's requirements and is approving it.

b. *Reapplication requirements.* Iowa proposes to revise its rule at IAC 27–40.31(14), dealing with the review of permit applications, to require that the following sentence be added at the end of incorporated 30 CFR 773.15(a)(2): "In case willful suppressing or falsifying of any facts or data is identified, the division may require the applicant to reapply for the same area."

Iowa's proposed revision conflicts with SMCRA, the Federal regulations, and other provisions of the Iowa program. Section 510(b)(1) of SMCRA and section 30 CFR 773.15(c)(1) of the Federal regulations provide that no application for a permit or permit revision shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant, that the permit application is accurate and complete and that all the requirements of this Act and the State or Federal program have been complied with. Counterpart State provisions to section 510(b)(1) of SMCRA and 30 CFR 773.15(c)(1) can be found in the Iowa program at section 207.9(2)(a) of the Iowa Code and IAC 27–40.31 (incorporating 30 CFR 773.15 by reference).

Thus, under SMCRA, the Federal regulations, and the Iowa program, in the event willful suppressing or falsifying of any facts or data is identified, the regulatory authority would have no discretion and would be required to deny the permit. Therefore, the Director finds Iowa's proposed added language at IAC 27–40.31(14) to be less stringent than SMCRA, less effective than the Federal regulations in meeting SMCRA's requirements, and inconsistent with approved Iowa program. Accordingly, the Director is not approving it.

The Director also notes that under the Federal, as well as the State, program, anyone who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plant, or other document filed or required to be maintained under the program, is subject to criminal penalties, including imprisonment. *See* section 518(g) of SMCRA. *See also* Section 207.15(6) of the Iowa Code.

14. IAC 27–40.32, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights

a. *Revisions and amendments.* Iowa proposes to revise its rule at IAC 27–40.32(1) by adding an introductory provision that explains that the term "revision" is used to describe "a change to a permit that constitutes a significant departure from the original permit. Any change to an Iowa permit that does not constitute a significant departure from the original permit is called an "amendment" to the permit in the context of these rules." The introductory provision continues by requiring that the public notice, public participation, and notice of decision requirements of 30 CFR 773.13, 773.19(b), and 778.21 apply to all revisions.

Iowa proposes to revise IAC 27–40.32(1) by clarifying that "[s]ignificant departures, including incidental boundary revisions, shall be treated as revisions." Significant departures include any change in the permit area, mining method or reclamation procedure, which would, in the opinion of the regulatory authority, significantly change the effect the mining operations would have on either those persons impacted by the permitted operation or on the environment. At IAC 27–40.32(3), Iowa clarifies that, unless it qualifies as an incidental boundary revision, any change in permit area must be treated as a new permit application.

At IAC 27–40.32(1), Iowa also proposes to add a sentence to the end of the State's substitute paragraph (b) for 30 CFR 774.13(b) that requires "[a] change which does not constitute a significant departure from the original permit will be processed as an amendment to the permit[.]"

Iowa proposes to add a new paragraph (6) at IAC 27–40.32 that modifies its incorporation by reference of 30 CFR 774.13(a) by adding the following at the end of the incorporated Federal regulation:

> The "revision" is a significant departure in mining and reclamation operations defined at subrule 40.32(1)(b)(2)(i), and it requires a public notice. The division uses the term "amendment" for an insignificant revision. and it does not require a public notice.

The Federal regulations at 30 CFR 774.13 do not address permit "revisions" versus "amendments" specifically, however, 30 CFR 774.13(b)(2) requires the regulatory authority to create guidelines establishing the scale or extent of revisions for which all the permit application information requirements and procedures of 30 CFR Chapter VII, Subchapter G, including the public notice, public participation, and notice of decision requirements of 30 CFR §§ 773.13, 773.19(b) (1) and (3), and 778.21, shall apply. The Federal regulations at 30 CFR 774.13(b)(2) also specify that such requirements and procedures shall apply "at a minimum to all significant permit revisions."

There are four concerns regarding Iowa's proposed changes to its program. First, Iowa has language in its program, at IAC 27–40.32(2), that provides, in part:

> Any application for a revision which proposes *significant alterations* in the operations described in the materials submitted in the application for the original permit under Part 3 of these rules or in the conditions of the original permit, shall, at a minimum, be subject to the requirements of Part 9 of these rules and must provide replacement documentation fully describing changes to be made in the same detail as required in the original permit (emphasis added).

By comparison, the proposed language at 27–40.32 (1) and (6) described above refers to *significant departures* and significant departures appear to only be required to provide public participation and public notice. Therefore, it appears that Iowa is proposing a two-tiered system for revisions: an all-inclusive revision, referred to as a significant alteration, which requires full replacement documentation and adherence to the requirements of Part 9, and a subset to the significant alteration, referred to as a significant departure, which only requires public participation and notice.

Second, the preamble to the Federal rules at 30 CFR 774.13(b)(2) dated September 28, 1983, (48 FR 44344, 44377) makes it clear that all revisions to the permit, whether they be significant or insignificant, or in Iowa's case a revision or an amendment, must be approved by the regulatory authority and incorporated into the permit.

Under the final rule, the regulatory authority will establish the guidelines for revisions. However, all revisions must be approved and incorporated into the permit since they are changes to that document. The permit and all public copies of it should reflect all revisions approved by the regulatory authority so that all interested persons, including inspectors, the operator, and the public, will have an accurate copy of the permit. The permit is the document which authorizes the operator to mine and must be accurate.

The first paragraph of proposed IAC 27–40.32(1) seems to require that any change to a permit be approved by the regulatory authority, either by amendment or revision. At a later section of proposed IAC 27–40.32(1), however, Iowa states that:

[(b)](2) A revision or amendment to a permit shall be obtained:

(i) For changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, *when such changes constitute a departure from the method or conduct of mining and reclamation operations contemplated in the original permit* (emphasis added).

Thus, in one portion of the proposal Iowa seems to require, like the Federal regulations, that all changes to a permit be approved by the regulatory authority. However, in another portion of the proposal, Iowa seems to require such regulatory authority approval only for a particular type of change to a permit. Moreover, Iowa does not insure that all revisions (significant departures and amendments) be incorporated into the permit and all public copies of the permit.

Third, the Federal regulations set forth criteria for approval at 30 CFR 774.13(c) that govern all permit revisions, whether significant or nonsignificant. Iowa has, at proposed 27–40.32(207), incorporated by reference the Federal provision at 30 CFR 774.13(c) into the Iowa program. However, in the context of the Iowa program, the term "permit revision" only includes significant revisions. Thus, the Federal regulations require that the criteria at 30 CFR 774.13(c) govern the approval of *all* revisions, while the State proposal requires that such criteria govern only the approval of significant revisions.

Finally, Iowa has not outlined what permit application standards and procedures apply to amendments. The preamble to 30 CFR 774.13(b)(2) dated September 28, 1983 (48 FR 44344, 44377), clearly requires the regulatory authority to establish guidelines as to what requirements will apply to nonsignificant revisions (i.e. amendments) to the permit.

In light of the concerns outlined above, the Director finds Iowa's proposed rules at IAC 27–40.32(1) and 32(6) to be inconsistent with and less effective than the Federal program requirements and is not approving them to the extent that these proposed rules attempt to distinguish between permit amendments and revision.

b. *Permit review.* Iowa proposes to revise IAC 27–40.32(1) and .32(1)(b)(2)(ii) in response to a required program amendment placed on the Iowa program at 30 CFR 915.16(a)(5). This required program amendment directed Iowa to require that the Federal regulations at 30 CFR 773.13, 773.19(b)(1) and (3), and 778.21 apply, at a minimum, to all significant permit revisions and that the division may, at any time, as well as at midterm review, require reasonable revisions or modifications.

Iowa, at IAC 27–40.32(1), proposes to require that 30 CFR 773.13, 773.19(b)(1) and (3), and 778.21 apply, at a minimum, to all significant permit revisions. However, since the Director is not approving Iowa's proposed distinction between permit amendments and revisions, this proposed language does not work in the context of the existing rules at IAC 27–40.32(1). Therefore, the Director is not approving the proposed language at IAC 27–40.32(1).

Iowa, at IAC 27–40.32(1)(b)(2)(ii), proposes to require that the division may, at any time, as well as at midterm review, require reasonable revisions or modifications. Therefore, the Director finds that Iowa has adequately addressed this portion of the required program amendment at 30 CFR 915.16(a)(5) and is approving the proposed language at IAC 27–40.32(1)(b)(2)(ii).

The Director will amend the required program amendment at 30 CFR 915.16(a)(5) in accordance with this finding.

c. *Incidental boundary revisions.* Iowa proposes to add a requirement to IAC 27–40.32(3) that incidental boundary revisions (IBR's) shall be considered, on demonstration by the operator, for an area in which the proposed mining operations are contiguous to the approved permit. OSM interprets the proposed language to mean that before an area of land can be added to a permit as an IBR, it must be contiguous to the approved permit.

The Federal regulations at 30 CFR 774.13(d) do not specifically require that lands subject to an IBR be contiguous to the approved permit area. However, in accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for which no Federal counterpart provisions exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program. Therefore, the Director finds that the reproposed rule at IAC 27–40.32(3) is not inconsistent with SMCRA or the Federal regulations and is approving it.

d. *Permit renewal exclusion.* Iowa proposes to add a new paragraph (8) at IAC 27–40.32 that would exclude the need for a permit renewal if the Division determines that the phase II bond was released over the entire permit area before the expiration of the permit term. This proposed language is similar to OSM's final rule at 30 CFR 773.11(a) published in the April 5, 1989, **Federal Register** (54 FR 13814), that establishes that a permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done.

However, the Federal regulation at 30 CFR 773.11(a) continues by requiring that obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended. Iowa incorporates by reference, at IAC 27–40.31(207), that portion of 30 CFR 773.11(a) which requires that obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended. Therefore, the Director finds Iowa's proposed rule at IAC 27–40.32(8) to be

no less effective than the Federal regulation and is approving it.

e. *Permit application information.* Iowa proposes to add a new paragraph (9) at IAC 27–40.32 that modifies its incorporation by reference of 30 CFR 774.15(b)(2)(i) to require that, in addition to the application information required by the Federal provision for a permit renewal, an applicant must also provide information concerning the "current status of the mine plan, other details and the time table—if different from the one previously approved—for the remaining phases of the operation and reclamation plans."

While the corresponding Federal regulation does not require this additional information, in accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for which no Federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program. Therefore, the Director is approving Iowa's proposed revision at IAC 27–40.32(9).

15. IAC 27–40.34(3), Permit Application—Minimum Requirements for Legal, Financial, Compliance, and Related Information

Iowa proposes to add, at IAC 27–40.34, a paragraph (3) that specifies that the general word substitution of the term "Act" with the term "Iowa Code chapter 207" at IAC 27–40.1(2) does not apply to 30 CFR 778.14(c), as incorporated by reference into the Iowa program, regarding minimum information requirements about violations that must be included in any permit application. As discussed in Finding No. 12 of this document, references to "the Act" in the Federal regulations at 30 CFR 778.14(c) and section 510(c) of SMCRA include, in addition to SMCRA and its implementing regulations, all State and Federal programs approved under SMCRA. *See e.g.* (48 FR 44344, 44389) September 28, 1983. *See also* (53 FR 38868, 38882–38883) October 3, 1988.

Thus, 30 CFR 778.14(c) requires information regarding violations received pursuant to SMCRA or any State or Federal law, rule, or regulation enacted or promulgated pursuant to SMCRA. In addition, 30 CFR 778.14(c) requires information regarding violations received pursuant to any non-SMCRA Federal law, rule, or regulation, or any non-SMCRA State law, rule, or regulation which was enacted pursuant to Federal law, rule, or regulation, which pertains to air or water environmental protection and which were received in connection with any surface coal mining and reclamation operation. Therefore, in the context of the State's incorporation by reference of the Federal regulation at 30 CFR 778.14(c), the term "'Act" must be understood to have the same meaning that it has under the Federal program.

The Director finds Iowa's proposed revision at IAC 27–40.34(9) to be consistent with SMCRA and the Federal regulations and is approving it.

16. IAC 27–40.35 (10) and (11), Climatological Information

a. *Rain gauge identification* Iowa proposes to revise IAC 27–40.35(10) by adding a paragraph (c) to the incorporated Federal regulation at 30 CFR 779.18 that would provide as follows:

> Location of the rain gauges nearest to the permit area, preferably in the same watershed as the permit itself, shall be marked on a map, and these shall be described in the text as well, along with the period of available record at these gauges.

While the corresponding Federal regulations at 30 CFR 779.18 do not require this information, in accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for which no Federal counterpart provision exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program. Therefore, the Director is approving Iowa's proposed revision at IAC 27–40.35(10).

b. *Climatological impact description.* Iowa proposes to revise IAC 27–40.35(11) by adding a paragraph (d) to the incorporated Federal regulation at 30 CFR 779.18 that would provide as follows:

> A brief descrition shall be provided about the impact of the climatological factors on operation and reclamation plans, specifically what part of the year would be more conducive than others to various mining and reclamation operations.

While the corresponding Federal regulations at 30 CFR 779.18 do not require this information, in accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for which no Federal counterpart provision exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program. Therefore, the Director is approving Iowa's proposed revision at IAC 27–40.35(11).

17. IAC 27–40.35 (12), (13) and (14) Maps: General Information

a. *Hydrologic area.* Iowa proposes, at IAC 27–40.35(12), to revise its incorporation by reference of 30 CFR 779.24(g) by deleting the phrase "defined by the regulatory authority." Iowa further proposes to add the following sentence at the end of incorporated 30 CFR 779.24(g): "Hydrologic area" is the area that consists of the permit area and the adjacent area." Thus, the Iowa proposal would require permit applications to include maps showing, among other things, the locations of water supply intakes for current users of surface water flowing into, out of, and within the permit and adjacent area.

Iowa adopts by reference at IAC 27–40.4(207), the term "adjacent area" as it is defined at 30 CFR 701.5. The definition for "adjacent area" includes the area outside the permit area where resources, determined according to the context in which *adjacent area* is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings. In explaining the meaning of the term "adjacent area," OSM stated in the **Federal Register** notice dated April 5, 1983 (48 FR 14814, 14818–14819), that:

> The term "adjacent area" is intended to refer to an area of variable size in which specified resources could be adversely impacted by mining operations. The size of the adjacent area could vary on a case-by-case basis depending upon whether impacts

on water, fish and wildlife, cultural resources, or others are being considered * * *.

* * * * *

* * * The area determined to be within the "adjacent area" must be defined within the context of the particular resource being evaluated and often will depend upon local conditions. * * * Thus, the adjacent area may differ from case to case depending upon the factors under consideration. This can best be resolved by the regulatory authority within the context of the particular requirement of the regulatory program and the conditions within the particular State, region, or locale where the proposed mining operation is located.

Thus, Iowa's proposed revision ensures that permit application maps will illustrate the locations of all water supply intakes for current users whose surface water supply will or could reasonably be expected to be adversely affected by the proposed mining operations. Accordingly, the Director finds IAC 27–40.35(12) to be consistent with SMCRA and no less effective than the Federal regulations, and is approving it.

b. *Section and section line identification.* Iowa proposes, at IAC 27–40.35(14), to revise its incorporation by reference of 30 CFR 779.24(1) by inserting the following at the beginning of the regulation: "Section lines and section identification, and any * * *." Thus, as revised by the State, the incorporated provision would require that permit applications include maps showing, among other things, "[s]ection lines and section identification, and any other relevant information required by the regulatory authority."

The Federal regulation at 30 CFR 779.24(1) simply allows the regulatory authority to require other information. While the corresponding Federal regulations 30 CFR 779.24(1) do not require the information regarding section lines and section identification, in accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for which no Federal counterpart provision exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program. Therefore, the Director is approving Iowa's proposed revision at IAC 27–40.35(14).

18. IAC 27–40.36(3), Surface Mining Applications—Minimum Permit Requirements for Reclamation and Operation Plan and IAC 27–40.38(8), Underground Mining Permit Applications—Minimum Permit Requirements for Reclamation and Operation Plan

Iowa proposes to add the following new language at IAC 27–40.36(3) and 27–40.38(8), which deal with minimum requirements for reclamation and operations plans for surface and underground mining permit applications, respectively:

The determination of probable hydrologic consequence (PHC) made pursuant to these rules as part of a permit application shall address all proposed mining activities associated with the permit area for which authorization is sought as opposed to addressing only those activities expected to occur during the term of the permit.

In a November 6, 1991, rulemaking (56 FR 56578, 56584–56578), OSM requested that Iowa clarify how it intended to implement 30 CFR 780.21(f) and 784.14(d) regarding PHC determinations. The State proposal satisfies the concerns OSM expressed in Finding No. 15 of the November 6, 1991, **Federal Register** document. Accordingly, the Director finds the State proposals at IAC 27–40.36(3) and 27–40.38(8) to be consistent with SMCRA and the Federal regulations and is approving them.

19. 27–40.36 (5) and (6), Hydrologic Information

a. *Water quality measurement.* Iowa proposes, at IAC 27–40.36(5), to revise its incorporation by reference of 30 CFR 780.21(a) by adding the following sentence at the end of the regulation: "The methodology for measurement of the quantity of both surface water and groundwater shall also be described." OSM interprets this to mean that such measurement methodologies must be described in the permit application, although the State proposal does not explicitly so provide. The Federal regulation at 30 CFR 780.21(a) requires that all water-quality analyses performed shall be conducted according to the methodology in the 15th edition of "Standard Methods for the Examination of Water and Wastewater" or the methodology in 40 CFR Parts 136 and 434 but the regulation does not specify that the methodology for measurement of the quantity of both surface water and groundwater shall also be described.

However, section 30 CFR 777.13(a) requires all technical data submitted in the application be accompanied by, among other things, a description of the methodology used to collect and analyze the data. Iowa incorporates 30 CFR 777.13(a) at IAC 27–40.33(207). Hence, the addition of this proposed language simply reiterates the need for a description of the methodology used. Therefore, The Director is approving Iowa's proposed revision at IAC 27–40.36(5).

b. *Water information requirements.* Iowa proposes, at IAC 27–40.36(6), to revise its incorporation by reference of 30 CFR 780.21(d) by deleting the phrase "may be required by the regulatory authority" and replacing it with the phrase "is required." The deleted phrase provided the State with discretion whether to require actual surface and groundwater information be provided when modeling techniques, interpolation or statistical techniques are included in the permit application. Iowa, by removing this phrase, will now require the actual surface and groundwater information to be included in all permits applications.

The Director finds that this is a matter left to the discretion of the State regulatory authority under the Federal regulations. Accordingly, the Director finds this proposed revision at IAC 27–40.36(6) to be no less effective than the Federal regulations and is approving it.

20. IAC 27–40.37(4), Cross Sections, Maps, and Plans

Iowa proposes to revise its rule at 27–40.37(4) to correct a typographical error. The current language provides that the first sentence in incorporated 30 CFR 783.24, dealing with informational requirements for underground mining permit applications, is changed to read "The permit application shall include cross sections at a vertical exaggeration of 10:1, maps at a scale of 1:2400, and plans showing. . . ." The State provision thus specifies more detailed requirements for cross sections and maps than are specified in the Federal regulations at 30 CFR 783.25(a). This State provision, along with IAC 27–40.35(a), the parallel State provisions for surface mining permit applications, was approved by OSM on November 6, 1991 (56 FR 56578, 56579–56580), as a provision that added specificity to the Iowa program without adversely affecting other aspects of the program.

Iowa, in its July 8, 1993, submission proposed to correct the provision to require cross sections with a vertical exaggeration of 1:10, instead of 10:1. However, in revising the provision, Iowa inadvertently created another

typographical error by requiring cross sections with a vertical exaggeration of 10:11:10. Consequently, Iowa, in a letter dated August 20, 1993, submitted an editorial clarification to is revised rule to clarify that the provision requires cross sections with a vertical exaggeration of 1:10. OSM understands Iowa's intent to exaggerate the vertical scale of a relief map or cross section in order to make the map or section more clearly perceptible. Therefore, in Iowa's case, the scale of vertical representation is exaggerated 10 times compared to the horizontal.

The Director finds this proposed revision to be no less effective than the Federal requirement and is approving it.

21. IAC 27–40.39(8), IAC 27–40.67.1, and IAC 27–40.67(3), Coal Preparation Plants Not Located Within the Permit Area of a Mine

Iowa proposes to revise IAC 27–40.39(8) to require that the following clarifying sentence be added to incorporated 30 CFR 785.21(a): "An off-site processing plant operated in connection with the mine but off the mine site will be regulated without regard to its proximity to the mine." Iowa also proposes to add a rule at IAC 27–40.67(1) that would delete the Federal regulation 30 CFR 827.1 from Iowa's incorporation by reference of 30 CFR Part 827. Finally, Iowa proposes to add a rule at IAC 27–40.67(3) that states "[p]roximity shall not be the decisive factor in deciding to regulate an offsite processing plant."

These proposed rule changes are in response to, and satisfy, required program amendments placed on Iowa's program at 30 CFR 915.16(a)(6) and (13) in a November 6, 1991 (56 FR 56578, 56594–56595), rulemaking action.

These proposed rule changes are also in accordance with OSM's latest clarification of its position regarding regulation of off-site coal preparation plants. In a final rule **Federal Register** notice published on January 8, 1993, (58 FR 3466, 3468) OSM stated its position as follows:

> OSM's position on the proximity issue, as clarified today in this final rule, is that surface mining regulatory authorities may consider geographic proximity as a factor in determining whether off-site coal processing facilities operate in connection with a mine as long as proximity is not the decisive factor. To allow proximity to be the decisive factor would render "in connection with" equivalent to "at or near." That is not the Secretary's intent.

Therefore, the Director finds Iowa's proposed rules at IAC 27–40.39(8), IAC 27–40.67(1), and IAC 27–40.67(3) to be consistent with the Federal program and is approving them. The Director will amend 30 CFR 915.16(a) by removing the required program amendments at 30 CFR 915.16(a)(6) and 30 CFR 915.16(a)(13).

22. IAC 27–40.51(7), Bond Release Application

Iowa proposes to revise its rules at IAC 27–40.51(7) to modify 30 CFR 800.40(a)(2), as incorporated by reference into the Iowa program, by deleting the phrase "Within 30 days after an application for bond release has been filed with the regulatory authority, the permittee shall submit a copy of an advertisement placed" and inserting in its place the following: "After an application for bond release is deemed complete by the division, an advertisement shall be placed by the permittee within 30 days of the date of notification of completeness." In addition, Iowa proposes to add the following sentence after the first sentence of 30 CFR 800.40(a)(2), as modified: "The permittee shall submit a copy of the advertisement to the division within 30 days of the last publication."

The Federal regulations at 30 CFR 800.40(a)(2) do not require a permittee to obtain a "notification of completeness" prior to placing an advertisement announcing an application for bond release. Under the Federal regulations, the advertisement is placed within 30 days after the application has been filed with the regulatory authority. Iowa proposes to delay the advertisement until it can verify that the application is complete.

While the concept of requiring a permittee to obtain a notification of completeness prior to placing the advertisement is not considered less effective than the Federal program, the implementation of this concept would render Iowa's program less effective than the Federal program because of the inherent contradiction this revision would create in the State rules regarding applicable time limits for the processing of bond release applications.

That is, the Iowa proposal retains the provision of the Federal regulations at 30 CFR 800.40(b)(2) that requires the regulatory authority to notify the involved parties of its decision on the bond release application "[w]ithin 60 days from the filing of the bond release application * * *" However, under the proposed revision, once an application is submitted, and allowance is made for: (1) The permittee obtaining a notice of completeness; (2) the permittee's 30-day time frame for placing the newspaper advertisement; (3) the running of the advertisement of four successive weeks; and (4) the permittee's 30 day time frame for submitting a copy of the advertisement to the regulatory authority, it would be virtually impossible for the regulatory authority to ever comply with the 60-day notification requirement of 30 CFR 800.40(b)(2). Therefore, the Director finds Iowa's proposed rule at 27–40.51(7) is less effective than the Federal regulations at 30 CFR 800.40(a)(2) and is not approving it.

23. IAC 27–40.63(207) and (2), Contemporaneous Reclamation, Backfilling and Grading Time and Distance Requirements

Iowa proposes, at IAC 27–40.63(207), to incorporate by reference the Federal regulations at 30 CFR Part 816 as they were in effect on July 1, 1992. This would include the Federal regulation at 30 CFR 816.101 concerning backfilling and grading time and distance requirements. The Federal regulation at 30 CFR 816.101 was suspended on July 31, 1992 (57 FR 33874), in compliance with a Joint Stipulation of Dismissal dated April 16, 1992, entered by the United States District Court for the District of Columbia in *National Coal Association and American Mining Congress* v. *U.S. Department of the Interior, et al.*, Civil No. 92–0408–CRR. The impact of this suspension is that all coal mining operations are subject to the State-specific contemporaneous reclamation rules currently in effect.

In addition, Iowa, at IAC 27–40.63(2), proposes to delete the last sentence of 30 CFR 816.100, concerning contemporaneous reclamation, from its incorporation by reference of 30 CFR Part 816, and replace it with the requirement that:

> Contemporaneous reclamation shall not exceed 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The regulatory authority may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under 30 CFR 780.18(b)(3), that additional time is necessary.

Since the Federal provision at 30 CFR 816.100 only contains one sentence, the Director interprets Iowa's intent to be a complete deletion of the Federal provision at 30 CFR 816.100.

The State's proposed substitute language for 30 CFR 816.100 is substantively the same as the language found in the Federal regulations at 30 CFR 816.101 (a)(2) and (b). The combination of the State's proposed substitute language for 30 CFR 816.100 and the incorporation of 30 CFR

816.101, will provide the Iowa program with backfilling and grading time and distance performance standards.

Iowa's deletion of 30 CFR 816.100 which requires backfilling, grading, topsoil replacement, and revegetation to occur as contemporaneously as practicable on all lands disturbed by surface mining activities, does not render Iowa's program less effective than the Federal program because contemporaneous reclamation requirements are found elsewhere in the Iowa program.

As discussed above, the Iowa program contains time and distance performance standards for backfilling and grading. Moreover, the contemporaneous reclamation requirement for revegetation, incorporated by reference by Iowa at IAC 27–40.63(207), is provided for at 30 CFR 816.113.

With regard to the requirement of 30 CFR 816.100 that topsoil replacement occur as contemporaneously as practicable with mining operations, while there is no specific State counterpart provision, logic maintains that if revegetation is completed contemporaneously, topsoil replacement, which must be done prior to revegetation, is also contemporaneous. Nevertheless, the Director finds that, in order to be no less effective than the requirements of the Federal regulations at 30 CFR 816.100, Iowa must amend its program to explicitly require that topsoil replacement occur as contemporaneously as practicable with mining operations.

Therefore, the Director finds Iowa's proposed rule at IAC 27–40.63(2) to be no less effective than the Federal program and is approving it. The Director also finds that Iowa's incorporation of the Federal regulation at 30 CFR 816.101 does not render its program less effective than the Federal program and is approving it. However, the Director is requiring Iowa to further amend its program to explicitly require that topsoil replacement occur as contemporaneously as practicable with mining operations.

24. IAC 27–40.63(207) and 27–40.64(207), Design Criteria for the Construction or Modification of Coal Mine Waste Refuse Piles

Iowa proposes to revise its rules at IAC 27–40.63(207) and 27–40.64(207) by incorporating by reference the Federal regulations at 30 CFR Parts 816 and 817, including 30 CFR 816.83 and 817.83, as they existed on July 1, 1992.

Iowa's current rules, approved by the Director in a November 6, 1991, rulemaking (56 FR 56578) incorporate the Federal regulations at 30 CFR 816.83 and 817.83 as they existed on July 1, 1987, including the editorial notes at the end of these regulations. These editorial notes state that 30 CFR 816.83 and 817.83 are suspended insofar as they "permit the construction of coal refuse piles using lifts of greater than 2 feet thickness." The Director, in the same November 6, 1991, rulemaking, placed a required program amendment on Iowa's program at 30 CFR 915.16(a)(10). This required program amendment directed Iowa to amend its rules to provide design criteria, specifically, for lift thickness and long-term stability. Iowa has chosen, instead, to incorporate the current Federal regulations at 30 CFR 816.83 and 817.83, as reinstated on June 9, 1988 (53 FR 21764, 21765–21766), that do not impose specific design criteria for lift thickness and long-term stability, but instead impose performance standards to assure stability.

The Director finds that Iowa's proposed revision at IAC 27–40.63(207) and 27–40.64(207) regarding design criteria for the construction or modification of coal mine waste refuse piles is no less effective than the Federal regulations and is approving them. Consequently, the Director is removing the required program amendment at 30 CFR 915.16(a)(10).

25. IAC 27–40.63(9), Impoundment Inspections

Iowa proposes to revise its rules at 27–40.63(9) by adding the following sentence to 30 CFR 816.49(a)(10)(i), as incorporated by reference into the State program: "Yearly inspection of the impoundments shall be done in the second quarter of each calendar year, and the inspection report shall be submitted to the Division with the second quarter water monitoring report." The Division, by adopting this revision, is fixing the time of the yearly inspections.

The corresponding Federal regulation requires a yearly inspection but does not set a specific time that the yearly inspection must be conducted. Therefore, the State regulatory authority is implicitly given the discretion to provide for such specific time frames. Therefore, the Director finds Iowa's proposed revision at IAC 27–40.63(9) to be no less effective than the counterpart Federal regulation and is approving it.

26. IAC 27–40.63(12), Disposal of Noncoal Mine Wastes

Iowa proposes to revise its rules at IAC 27–40.63(12) by deleting 30 CFR 816.89, dealing with disposal of noncoal mine wastes, from the State's incorporation by reference of 30 CFR Part 816 and inserting, in lieu thereof, the following:

(a) Noncoal mine wastes including, but not limited to, grease, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a landfill permitted by the Iowa department of natural resources (DNR) pursuant to 561 IAC 101, 102, and 103. Lubricants, paints, and flammable liquids may not be buried in the State of Iowa but, along with and (sic) other toxic wastes, must be disposed of in the legally prescribed manner. Iowa law prohibits final disposal of noncoal wastes within the permit area.

Pending final disposal at a permitted DNR facility, noncoal mine waste shall be placed and stored in a controlled manner in a designated portion of the permit area so as to ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

Noncoal mine waste shall at no time be deposited in a refuse pile or impounding structure.

No excavation for or storage of noncoal mine waste shall be located within eight feet of any coal outcrop or coal storage area.

(b) Final disposal of noncoal mine wastes shall be in a designated, State-approved solid waste disposal site permitted by the Iowa department of natural resources pursuant to 561 IAC 101, 102, and 103.

(c) Notwithstanding any other provision in this chapter, any noncoal mine waste defined as "hazardous" under section 3001 of the resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 as amendment) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

The State proposal differs from the Federal provision at 30 CFR 816.89 in several respects. First, Iowa's proposed rule makes it clear that, in Iowa, lubricants, paints, and flammable liquids may not be buried and must be disposed of in the legally prescribed manner. This difference between the State and the Federal provisions does not render the State program less effective in meeting SMCRA's requirements than the Federal regulation since the Federal provision at 30 CFR 816.89(b) explicitly provides that operation of a disposal site shall be conducted in accordance with all local, State, and Federal requirements.

Second, Iowa's proposed rule also makes it clear that there can be no final disposal of noncoal wastes within the permit area. Instead, final disposal of noncoal mine wastes must be in a landfill permitted by the Iowa Department of Natural Resources. This provision of the Iowa program is no less

effective in meeting SMCRA's requirements than the Federal counterpart provisions since the Federal provision at 30 CFR 816.89(b) requires that final disposal of noncoal mine waste shall be in a designated disposal site in the permit area *or* a State-approved solid waste disposal area.

Third, at subsection (c), the Iowa proposal requires that any noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) and the Federal regulations at 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations. This portion of the Iowa proposal is substantively similar to a former Federal provision that existed at 30 CFR 816/817.89(d). *See* (48 FR 43994, 44006) September 26, 1983. The Federal provision was suspended on November 20, 1986 (51 FR 41952, 41962) to implement the decision of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Min. Regulation Litigation*, 620 F. Supp. 1519, 1538 (D.D.C. 1985). The court remanded the rule because OSM failed to comply with the public notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. §§ 500–706, in promulgation of the Federal provision.

OSM subsequently deleted 30 CFR 816/817.89(d) in the **Federal Register** notice dated December 17, 1991 (56 FR 65612, 65635–65636). As discussed in the December 17, 1991, **Federal Register** notice, in deleting the provision, OSM reasoned that Congress had assigned permitting, inspection, and enforcement responsibilities under RCRA to the Environmental Protection Agency (EPA) and that SMCRA did not require OSM or the State regulatory authorities to assume such responsibilities. It was further reasoned that Congress would not appropriate funds to OSM or State regulatory authorities for this task. With the deletion of this requirement, OSM stated that it would continue "consistent with its jurisdiction under the Act, to coordinate its regulatory program with EPA to facilitate the implementation of RCRA regulations." However, OSM's action does not prohibit or prevent a State regulatory authority from choosing to assume such responsibilities in coordination with EPA. Under section 505(b) of SMCRA and 30 CFR 730.11, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for which no Federal counterpart provision exists. Section 505(b) and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program.

Because there is no Federal counterpart provision to the paragraph (c) of proposed IAC 27–40.63(12), OSM evaluated Iowa's proposal based upon its consistency with section 515(b)(14) of SMCRA. Section 515(b)(14) of SMCRA generally requires that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard, are to be treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters. Because Iowa's proposal here provides for the handling and disposal of "hazardous" noncoal mine wastes in a manner designed to prevent contamination of ground or surface waters, i.e., pursuant to the provisions of subtitle C of RCRA, the Director finds that Iowa's proposed provision at paragraph (c) of proposed IAC 27–40.63(12) is not inconsistent with section 515(b)(14) of SMCRA and is approving the provision.

In summary, then, the Director finds that Iowa's proposed revisions at IAC 27–40.63(12) are consistent with SMCRA and the Federal regulations and is approving them. The Director, by way of this notice, is requesting that Iowa correct a typographical error in its rule in the phrase "along with and other toxic wastes." The word "and" should be corrected to read "any."

27. IAC 27–40.68, Special Permanent Program Performance Standards—In Situ Mining

Iowa proposes, at IAC 27–40.68, to delete the incorporation by reference of 30 CFR Part 828, dealing with performance standards for in situ mining operations, and to reserve IAC 27–40.68. Therefore, in situ mining operations are prohibited in Iowa and the State cannot approve any such operations since there are no rules to govern such operations. In accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental control and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such provisions shall not be construed to be inconsistent with the Federal program. Therefore, the Director is approving the proposed revision at IAC 27–40.68.

28. IAC 27–40.71(4), State Regulatory Authority—Inspection and Enforcement, and 27–40.74(3), Civil Penalties

Iowa proposes, at IAC 27–40.71(4) and IAC 27–40.74(3), to delete from its incorporation by reference of 30 CFR 840.11(g)(3)(ii) and 845.15(b)(2) the phrase "sections 518(e), 518(f), 521(a)(4) or 521(c) of the Act" and replace it with "Iowa Code sections 207.15, 207.15, 207.14 and 207.14," respectively.

The proposed State substitute citations are not exact counterpart provisions to the provisions of SMCRA referenced at 30 CFR 840.11(g)(3)(ii) and 845.15(b)(2).

Iowa, in a letter dated August 30, 1993 (Administrative Record No. IA–389), proposed to editorially clarify its program at IAC 27–40.71(4) by providing alternate State substitute citations that are the exact counterparts to the Federal provisions cited at 30 CFR 840.11(g)(3)(ii). Therefore, the Federal Citations at sections 518(e), 518(f), 521(a)(4) and 521(c) of SMCRA are proposed to be replaced by Iowa Code subsections 207.15(6), 207.15(7), 207.14(3), and 207.14(8), respectively.

The Director finds Iowa's proposed revision at IAC 27–40.71(4) to be no less effective than the Federal counterpart regulation and is approving it. However, the Director finds that the State proposal at IAC 27–40.74(3) is less effective than its Federal counterpart provision. The Federal provision at 30 CFR 845.15(b)(2) refers to very specific enforcement procedures that the regulatory authority should take under particular circumstances. In contrast, the State proposal at IAC 27–40.74(3) merely refers to the statutory sections of the Iowa program dealing with enforcement in general. Therefore, the Director is not approving the proposed revision at IAC 27–40.74(3). Iowa is required to amend its program by providing the same specific editorial citation corrections at IAC 27–40.74(3) as it did at IAC 27/40.71(4).

29. IAC 27–40.74(207) and (8), Use of Civil Penalties for Reclamation

Iowa proposes, at IAC 27–40.74(207), to incorporate 30 CFR Part 845 as in effect on July 1, 1992. This incorporation by reference includes 30 CFR 845.21 which deals with the use of Federal funds collected from civil penalties by OSM for reclamation. The Director recognizes that 30 CFR 845.21 deals with the disbursement of money collected by the United States from the assessment of civil penalties and does not have application within the State program.

Iowa also proposes to revise its rules at IAC 27–40.74 by adding a paragraph (8) which provides as follows:

Use of civil penalties for reclamation. In accordance with Iowa Code section 207.10(6), the division may expend funds collected from civil penalties to perform reclamation work on sites where the bond has been forfeited and additional funds are needed to complete the reclamation of the site.

The Federal regulations at 30 CFR 845.21 address only how the Federal government is to allocate its funds. Therefore, Iowa has discretion as to how it spends its monies collected from civil penalties.

Accordingly, the Director finds Iowa's proposed rule at IAC 27–40.74(8) not to be inconsistent with the Federal program and is approving it.

30. IAC 27–40.74(5)a., Procedures for Assessment Conference

Iowa proposes, at IAC 27–40.74(5)a. to revise its rule by changing the number of days that a person who was issued a notice of assessment has to provide written request for an assessment conference to review the proposed assessment. Iowa proposes to increase the timeframe from 15 days from the date the notice of assessment was mailed to 30 days from the date the notice of assessment was mailed.

The Federal regulation at 30 CFR 845.18 allows the person to request an assessment conference within 30 days from the date that the proposed assessment *is received.* Since the number of days within which a person may request an assessment conference is a procedural matter, Iowa's proposal must be evaluated from the point of view of its similarity to the Federal rules in affording rights and remedies to persons. *See* (46 FR 53376) October 28, 1981.

The Director finds that the time difference between the date of mailing versus the date of receipt is minor enough to be considered similar and, therefore, finds the proposed revision at IAC 27–40.74(5) to be no less effective than the Federal regulation and is approving it.

31. IAC 27–40.75(207), Individual Civil Penalties

Iowa proposes, at IAC 27–40.75(207), to incorporate by reference the Federal regulations at 30 CFR Part 846 as in effect on July 1, 1992, dealing with individual civil penalties. Some exceptions to this incorporation by reference are proposed and are discussed below.

a. *Scope.* Iowa proposes, at IAC 27–40.75(1), to delete from incorporation by reference, the Federal regulation at 30 CFR 846.1, Scope. This provision merely states that Part 846 covers assessment of individual civil penalties (ICP's) under section 518(f) of the Act. It does not set out any separate substantive requirement relating to ICP's. The Director, therefore, finds that the proposed revision at IAC 27–40.75(1) does not render Iowa's program less effective than the Federal program and is approving it.

b. *Violation, failure or refusal.* Iowa proposes, at IAC 27–40.75(2), to delete paragraphs (1) and (2) from the definition of "violation, failure or refusal" at 30 CFR 846.5, and insert in lieu thereof, substitute paragraphs (1) and (2). Iowa's proposed language is substantively similar to the deleted Federal language except that, where the Federal regulation provides the specific statutory cite of section 518(b) of the Act as being excepted from failure or refusal to comply with orders, Iowa substitutes a general reference to Iowa Code section 207.15.

As explained in the preamble to the final rule for 30 CFR 846.5 (53 FR 3664, 3666, February 8, 1988), the specific exception for orders issued pursuant to section 518(b) of the Act in the definition of violation, failure or refusal is required by section 518(f) of SMCRA:

Section 518(f) specifically prohibits the Secretary from assessing penalties for failure to comply with an order incorporated in a civil penalty decision rendered under section 518(b), presumably because it would be counter-productive to assess an individual civil penalty for the nonpayment of the original civil penalty assessed against the corporate permittee.

Both section 518 of SMCRA and the State counterpart provision at Iowa Code section 207.15 cover more than just the original civil penalty assessed against the corporate permittee. Accordingly, Iowa's proposal to completely exempt *all* orders issued under Iowa code section 207.15 is less effective in meeting SMCRA's requirements than the Federal rule because section 518(f) exempts only one particular type of order issued under section 518. The Director is not approving Iowa's proposed revision at IAC 27–40.75(2) to the extent that Iowa's proposed rule provides for the exemption of all orders issued under Iowa Code section 207.15.

c. *Service.* Iowa proposes, at IAC 27–40.75(4), to delete from its incorporation by reference the Federal regulation at 30 CFR 846.17(c), dealing with service of civil penalty assessments, and insert in lieu thereof the following:

Service. For purposes of this section, service is sufficient if it would satisfy Division III of the Iowa rules of civil procedure for service of an original notice and petition.

Iowa provided OSM with a copy of the service requirements from the Division III of the Iowa Rules of Civil Procedure for review (Administrative Record No. IA–383).

Upon review, the Director finds that the Division III of the Iowa Rules of Civil Procedure for service of an original notice and petition provision is the State counterpart provision to rule 4 of the Federal Rules of Civil Procedure. The Director notes that Division III of the Iowa Rules of Civil Procedure, unlike 30 CFR 846.17(c), does not appear to normally allow service to be performed on the individual to be assessed an individual civil penalty by certified mail. Proposed State alternatives to procedural rules contained in the Federal regulations are evaluated "from the point of view of their similarity to the Secretary's rules in affording rights and remedies to persons" (46 FR 53376, October 28, 1981). The Director finds that the State proposal affords additional procedural rights and remedies to persons by not allowing service by certified mail. Accordingly, the Director finds that Division III of the Iowa Rules of Civil Procedure is not inconsistent with the Federal program and is approving it. The Director also finds that the IAC 27–40.75(4) incorporation of Division III of the Iowa Rules of Civil Procedure does not render its program less effective than the Federal regulation at 30 CFR 846.17(c) and is approving it as well.

IV. Public and Agency Comments

Public Comments

For a complete history of the opportunity provided for public comment on the proposed amendment, please refer to "*Submission of Amendment.*" Because no one requested an opportunity to testify at a public hearing, no hearing was held. No public comments were received.

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), comments were solicited from the Administrator of the Environmental Protection Agency (EPA), and various other Federal agencies with an actual or potential interest in the Iowa program. Comments were also solicited from various State agencies.

Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), concurrence was solicited from the EPA for those aspects of the proposed

amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

By letter dated January 4, 1993 (Administrative Record No. IA–376), the EPA regional office in Kansas City, Kansas responded that it had no comment.

By letter dated October 19, 1993 (Administrative Record No. IA–392), the EPA headquarters office in Washington, D.C. concurred with Iowa's proposed amendment as it related to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

No other agencies commented on the proposed amendment.

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

30 CFR 732.17(h)(4) requires that all amendments that may have an effect on historic properties be provided to the SHPO and ACHP for comment. Comments were solicited from these offices. No comments were received from SHPO or ACHP.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Iowa on November 23, 1992, and revised on July 21, 1993, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations and identified in the codified portion of this notice under 30 CFR 915.16(b).

The Director is not approving certain provisions of the Iowa amendment for reasons set forth in Findings: no. 13b, IAC 27–40.31(14), concerning willful suppressing or falsifying of facts in permit applications: no. 14a, IAC 27–40.32(1), concerning guidelines for permit revisions and amendments; no. 22, IAC 27–40.51(7), concerning bond release applications, no. 28, IAC 27–40.71(4), concerning enforcement procedures; and no. 31b, IAC 27–40.75(2), concerning the definition of violation, failure or refusal.

The Director is approving but requiring Iowa to further amend its regulations as discussed in Findings: no. 8, IAC 27–40.3(207), concerning petitions to initiate rulemaking; no. 9, IAC 27–40.4(9), concerning the definition of "previously mined area;" and no. 23, IAC 27–40.63(207) and (2), concerning contemporaneous reclamation, backfilling and grading time and distance requirements.

The Director is approving the Iowa proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 915 codifying decisions concerning the Iowa program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not excercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Iowa program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Iowa of only such provisions.

VII. Procedural Determinations

Compliance with Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Compliance With Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review).

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

VIII. List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 28, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 915—IOWA

1. The authority citation for Part 915 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 915.15 is amended by adding paragraph (j) to read as follows:

915.15 Approval of regulatory program amendments.

* * * * *

(j) With the exceptions of IAC 27–40.31(14), concerning willfull suppressing or falsifying of facts in permit applications, IAC 27–40.32(1), concerning guidelines for permit revisions and amendments, IAC 27–40.51(7), concerning bond release applications, and IAC 27–40.75(2), concerning the definition of violation, failure or refusal, the following revisions to the Iowa Administrative Code submitted to OSM on November 23, 1992, as revised on July 8, 1993, are approved effective February 8, 1994.

IAC 27–40.1, Authority and scope; 27–40.3, General; 27–40.4, Permanent regulatory program and exemption for coal extraction incidental to the extraction of other minerals; 27–40.5, Restrictions on financial interests of State employees; 27–40.6, Exemptions for coal extraction incident to government-financed highway or other constructions; 27–40.7, Protection of employees; 27–40.11, Initial regulatory program; 27–40.12, General performance standards—initial program; 27–40.13, Special performance standards—initial program; 27–40.21, Areas designated by an Act of Congress; 27–40.22, Criteria for designating areas as unsuitable for surface coal mining operations; 27–40.23, State procedures for designating areas unsuitable for surface coal mining operations; 27–40.30, Requirements for coal exploration; 27–40.31, Requirements for permits and permit processing; 27–40.32, Revision; renewal; and transfer, assignment, or sale of permit rights; 27–40.33, General content requirements for permit applications; 27–40.34, Permit application—minimum requirements for legal, financial, compliance, and related information; 27–40.35, Surface mining permit applications—minimum requirements for information on environmental resources; 27–40.36, Surface mining permit applications—minimum requirements for reclamation and operation plan; 27–40.37, Underground mining permit applications—minimum requirements for information on environmental resources; 27–40.38, Underground mining permit applications—minimum requirements for reclamation and operation plan; 27–40.39, Requirements for permits for special categories of mining; 27–40.41, Permanent regulatory program—small operator assistance program; 27–40.51, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs; 27–40.61, Permanent program performance standards—general provisions; 27–40.62, Permanent program standards—coal exploration; 27–40.63, Permanent program standards—surface mining activities; 27–40.64, Permanent program standards—underground mining activities; 27–40.65, Special permanent program standards—auger mining; 27–40.66, Special permanent program standards—operations on prime farmland; 27–40.67, Special permanent program standards—coal preparation plants not located within the permit area of a mine; 27–40.68, Special permanent program standards—in situ processing; 27–40.71, State regulatory authority—inspection and enforcement; 27–40.73, Enforcement; 27–40.74, Civil penalties; 27–40.75 Individual civil penalties; 27–40.81, Permanent regulatory program requirements—standards for certification of blasters; 27–40.82, Certification of blasters; and 27–40.92, Contested cases.

3. Section 915.16 is amended by revising paragraph (a) introductory text and paragraph (a)(1), removing and reserving paragraphs (a)(2)–(a)(4), revising paragraph (a)(5), removing and reserving paragraphs (a)(6)–(a)(21) and by adding paragraph (b) to read as follows:

§ 915.16 Required program amendments.

(a) By April 11, 1994, Iowa shall amend its program at:

* * * * *

(1) IAC 27–40(9) by providing a definition of "previously mined area" that is no less effective than the current Federal definition at 30 CFR 701.5.

* * * * *

(5) IAC 27–40.32(1) by requiring that the Federal regulations at 30 CFR 773.13, 773.19(b) (1) and (3), and 778.21 apply, at a minimum, to all significant permit revisions.

* * * * *

(b) By April 11, 1994, Iowa shall amend its program at:

(1) IAC 27–40.3(207) by providing a rule reference to IAC 21–3 as the source for procedures regarding petitions for initiating rulemaking.

(2) IAC 27–40.63(207) and (2), by explicitly requiring that topsoil replacement occur as contemporaneously as practicable with mining operations.

(3) IAC 27–40.74(3) by providing exact State counterpart provisions to the provisions of SMCRA referenced at 30 CFR 845.15(b)(2).

[FR Doc. 94–2729 Filed 2–7–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 348

[Department of the Treasury Circular, Public Debt Series No. 21–75]

Regulations Governing 2-Percent Depository Bonds

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule is being published to terminate the offering of 2-Percent Depository Bonds and amend by removal Part 348 from Title 31 of the CFR, effective immediately.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Fred A. Pyatt, Director, Division of Special Investments, Bureau of the Public Debt, on (304) 480–7752.

SUPPLEMENTARY INFORMATION: Department of the Treasury Circular, Public Debt Series No. 21–75, dated July 10, 1975, provides for the offering and issuance of 2-Percent Depository Bonds.

Two Percent Depositary Bonds are acceptable to secure deposits of Federal funds with, and the faithful performance of duties by, depositaries and financial agents, as designated in Part 348. The bonds have been offered to such depositaries and financial agents in an amount not to exceed the amount of their qualification.

All outstanding 2-Percent Depositary Bonds have been redeemed by the Department of the Treasury. Depositaries and financial agents are receiving payments for expenses incurred in handling Federal funds through arrangements not involving 2-Percent Depositary Bonds. The offering of 2-Percent Depositary Bonds will terminate effective upon publication of this rule in the **Federal Register**.

Because all outstanding 2-Percent Depositary Bonds have been redeemed, part 348, which governs these securities, is unnecessary and, therefore, should be removed from title 31 of the CFR concurrent with termination of the offering.

Special Analysis: Because this amendment relates to the terms and conditions of special purpose Treasury securities, the notice and public procedures, and the delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) are inapplicable. It has been determined that the rule does not constitute a "significant regulatory action" for purposes of Executive Order No. 12688.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply to this rule.

List of Subjects in 31 CFR Part 348

Banks, Banking, Bonds, Electronic funds transfer, Government securities.

Accordingly, 31 CFR part 348 is amended as follows:

Part 348—[Removed]

1. Part 348 is removed.

Dated: January 26, 1994.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 94–2840 Filed 2–17–94; 8:45 am]

BILLING CODE 4810–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 22–2–6004; FRL–4817–4]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on May 18, 1993. The revision concerns a rule from the following District: San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate the emission 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 rule controls VOC emissions from non-assembly line motor vehicle and mobile equipment refinishing operations. Thus, EPA is finalizing the approval of this revision 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 March 10, 1994.

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

Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1745 West Shaw, Suite 104, Fresno, CA 93711.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1195.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 1993 in 58 FR 28944, EPA proposed to approve the following rule into the California SIP: SJVUAPCD's Rule 460.2, Motor Vehicle and Mobile Equipment Refinishing Operations. Rule 460.2 was adopted by SJVUAPCD on September 19, 1991. The rule was submitted by the California Air Resources Board (CARB) to EPA on January 28, 1992.

This rule was submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas 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. A detailed discussion of the background for the above rule and nonattainment area is provided in the notice of proposed rulemaking (NPR) cited above.

EPA has evaluated the above rule 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 NPR cited above. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provision and evaluation has been provided in 58 FR 28944 and in the technical support document (TSD) available at EPA's Region IX office(Rule 460.2–TSD dated December 23, 1992).

Response to Public Comments

On March 22, 1993, EPA published a direct-final rulemaking notice in the **Federal Register** approving SJVUAPCD Rule 460.2, and one comment was received from the Flexible Packaging Association (FPA). Because of that comment, EPA published a withdrawal of the direct-final notice on May 18, 1993 and on the same day proposed approval of Rule 460.2 providing a 30-day public comment period (58 FR 28944)

The comment from the FPA has been evaluated by EPA and a summary of the comment and EPA's response is set forth below.

Comment: The FPA commented that they believe capture efficiency (CE) test protocols which require the use of a temporary total enclosure (TTE) are excessively expensive and not technically justified, compared to "nonenclosed mass balance tests". FPA is currently running side by side comparison testing in cooperation with EPA. FPA believes that a requirement to use the TTE method prior to an evaluation of this testing is premature.

Response: EPA's interim policy on the implementation of CE protocols is to refrain from listing the lack of a CE test protocol as a rule deficiency while EPA develops and reviews possible alternatives to CE test protocols which use a TTE. However, EPA has continued to encourage states and local agencies to reference CE test protocols in their regulations where appropriate and to use EPA's recommended method for measuring CE where noncompliance is suspected. State and local agencies are free to include CE test protocol requirements in their regulations.

EPA Action

EPA is finalizing action to approve the above rule 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 this rule into the federally approved SIP. The intended effect of approving this rule 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

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). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from the date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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: December 9, 1993.

Felicia Marcus,

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 paragraph (c) (187)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(187) * * *

(i) * * *

(A) * * *

(*2*) Rule 460.2 adopted on September 19, 1991.

* * * * *

[FR Doc. 94–2660 Filed 2–7–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 261

[SW–FRL–4835–2]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule; amendment.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending part 261, appendix IX to reflect changes in ownership and name for the General Cable Company, Muncie, Indiana, and to delete exclusions that have been terminated. Exclusions for the following facilities have been deleted: The Envirite Corporation, Thomaston, Connecticut; Pamcor C, Incorporated, Las Piedras, Puerto Rico; Texas Instruments, Incorporated, Dallas, Texas; Tricil Corporation, Nashville, Tennessee; Tricil Corporation, Hilliard, Ohio; Tricil Corporation, Muskegon, Michigan; and the William L. Bonnell Company, Carthage, Tennessee. Today's amendment documents these changes.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346 or at (703) 920–9810. For technical information contact Mr. Jim Kent, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–6946.

SUPPLEMENTARY INFORMATION: In this document EPA is amending appendix IX to part 261 to reflect changes in the status of exclusions for certain facilities. The petition process under §§ 260.20 and 260.22 allows facilities to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste. Based on waste specific information provided by petitioner, EPA granted exclusions to the following facilities: General Cable Company, Muncie, Indiana (51 FR 37723, October 24, 1986); Envirite Corporation, Thomaston, Connecticut (51 FR 41323, November 14, 1986), Pamcor C, Incorporated, Las Piedras, Puerto Rico (51 FR 37019, October 17 1986); Texas Instruments, Incorporated, Dallas, Texas (50 FR 34667, August 27, 1985); Tricil, Nashville, Tennessee (51 FR 41494, November 17, 1986); Tricil, Hilliard, Ohio (51 FR 41494, November 17, 1986); Tricil, Muskegon, Michigan (51 FR 41494, November 17, 1986); William Bonnell Company, Carthage, Tennessee (51 FR 37019, October 17, 1986).

On May 17, 1993, the Agency was notified that ownership of the General Cable Company, Muncie, Indiana, had been transferred to Indiana Steel & Wire Corporation (IS&W). In this notification, IS&W noted that no changes had been made in the management of EPA Hazardous Wastes Nos. F006 and K062 excluded by the Agency and that all conditions of the exclusion continue to be met. Today's notice documents this change by updating appendix IX to incorporate this change in name.

EPA is also deleting seven exclusions from appendix IX because these facilities have notified EPA that they have permanently changed their processes or otherwise ceased operations that generate the excluded waste. The specific facilities, and the date on which generation of the excluded waste ceased, are given below. Envirite Corporation, Thomaston, Connecticut, May 31, 1990; Pamcor C. Incorporated, Las Piedras, Puerto Rico, October 1, 1992; Texas Instruments, Incorporated, Dallas, Texas, December 22, 1988; Tricil, Nashville, Tennessee, January 1, 1990; Tricil, Hilliard, Ohio, June 30, 1991; Tricil, Muskegon, Michigan, September 1, 1992; William Bonnell Company, Carthage, Tennessee, August 7, 1991. All of the above generators have confirmed in writing that they no longer generate the delisted waste at their facilities. On October 15, 1993, the Agency notified these facilities of the proposed action and solicited their comments. No comments were received disputing the Agency's intended action. Therefore, this notice documents this by deleting these exclusions from part 261, appendix IX. These facilities would need to submit new delisting petitions if they wish to generate excluded waste at any time in the future.

These changes to appendix IX of part 261 are effective February 8, 1994. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six-months when the regulated community does not need the six-month period to come into compliance. As described above, all affected facilities have ceased generation of the delisted waste. Therefore, a six-month delay in the effective date is not necessary in this case. This provides a basis for making these amendments effective immediately upon publication under

the Administrative Procedures Act, pursuant to 5 U.S.C. 5531(d).

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, and reporting and recordkeeping requirements.

Dated: January 25, 1994.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) 6921, 6922, and 6938.

2. Part 261, appendix IX, table 1, is amended by removing the entries for "Envirite Corporation, Thomaston, Connecticut"; "Pamcor C, Incorporated, Las Piedras, Puerto Rico"; "Texas Instruments, Incorporated, Dallas, Texas"; "Tricil, Nashville, Tennessee"; "Tricil, Hilliard, Ohio"; Tricil, Muskegon, Michigan"; and "William Bonnell Company, Carthage, Tennessee". The "General Cable Co." name is removed and the entry for "Indiana Steel & Wire Corporation" is added in alphabetical order to read as follows:

Appendix IX—[Amended]

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * * * *		
Indiana Steel & Wire Corporation (formerly General Cable Co.).	Munci, IN	Dewatered wastewater treatment sludges (EPA Hazardous Waste Nos. F006 and K062) generated from electroplating operations and steel finishing operations after October 24, 1986. This exclusion does not apply to sludges in any on-site impoundments as of this date.
* * * * *		

[FR Doc. 94–2706 Filed 2–7–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7593]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to

the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region V				
Indiana: Anderson, city of, Madison County	180150	November 7, 1974 Emerg; December 4, 1979 Reg; February 16, 1994 Susp.	2–16–94	Feb. 16, 1994.
Minnesota: Pine Island, city of, Goodhue County.	270145	September 4, 1974 Emerg; March 2, 1981 Reg; February 16, 1994 Susp.	2–16–94	Do.
Region VIII				
South Dakota: Fort Pierre, city of, Stanley County.	465419	May 4, 1972 Emerg; January 12, 1973 Reg; February 16, 1994 Susp.	2–16–94	Do.
Region X				
Washington: Bothell, city of, King County	530075	June 20, 1975 Emerg; June 1, 1982 Reg; February 16, 1994 Susp.	3–2–94	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: January 31, 1994.

Robert Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–2857 Filed 2–7–94; 8:45 am]

BILLING CODE 6718–21–P

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44 CFR Part 65

[Docket No. FEMA–7081]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster

Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Emergency Management Agency certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Alameda	City of San Leandro.	Dec. 3, 1993, Dec. 10, 1993, *The Daily Review.*	The Honorable John Faria, Mayor, City of San Leandro, 835 East 14th Street, San Leandro, California 94577.	Nov. 19, 1993	060013
Hawaii: Maui	Unincorporated Areas.	Dec. 10, 1993, Dec. 12, 1993, *The Maui News.*	The Honorable Linda Crockett Lingle, Mayor, County of Maui, 200 South High Street, Wailuku Maui, Hawaii 96793.	Dec. 22, 1993	150003
Texas: Bexar	City of San Antonio.	Nov. 23, 1993, Nov. 30, 1993, *San Antonio Express News.*	The Honorable Nelson Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283.	Oct. 21, 1993	480045
Texas: Collin	City of Allen	Nov. 23, 1993, Nov. 30, 1993, *Dallas Morning News.*	The Honorable Joe Farmer, Mayor, City of Allen, City Hall, One Butler Circle, Allen, Texas 75002.	Sept. 27, 1993	480131
Texas: Dallas	City of Dallas	Dec. 3, 1993, Dec. 10, 1993, *The Dallas Morning News.*	The Honorable Steve Bartlett, Mayor, City of Dallas, 1500 Madrilla 5EN, Dallas, Texas 75201.	Oct. 29, 1993	480171

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 14, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–2858 Filed 2–7–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7084]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Emergency Management Agency certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois: Cook	Village of Wheeling.	June 10, 1993, June 17, 1993, *Daily Herald.*	Ms. Sheila Schultz, President of the Village of Wheeling, Cook County, 255 West Dundee Road, P.O. Box V, Wheeling, Illinois 60090.	June 3, 1993	170173 C
Maine: Lincoln	Town of South Bristol.	Nov. 4, 1993, Nov. 11, 1993, *Lincoln County News.*	Mr. Larry Kelsey, Chairman of the Town of South Bristol Board of Selectmen, HC 64, Box 050, Walpole, Maine 04573.	Oct. 26, 1993	230220 B
Pennsylvania: Clinton	City of Lock Haven.	Nov. 26, 1993, Dec. 3, 1993, *The Express.*	The Honorable Robert Edmonston, Mayor of the City of Lock Haven, 20 E. Church Street, Lock Haven, Pennsylvania 17745–2599.	Nov. 16, 1993	420328 A
Commonwealth of Puerto Rico.	Municipality of Cauguas.	Nov. 11, 1993, Nov. 18, 1993, *The San Juan Star.*	The Honorable Pedro J. Rossello, Governor of the Commonwealth of Puerto Rico, Office of the Governor, San Juan, Puerto Rico 00901.	To be determined	720000 B,D

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 14, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–2859 Filed 2–7–94; 8:45 am]

BILLING CODE 6718–03–P

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44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Emergency Management Agency certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Colorado:Boulder (FEMA Docket No. 7074).	City of Boulder	August 5, 1993, August 12, 1993, *Boulder Daily Camera.*	The Honorable Leslie Durgin, Mayor, City of Boulder, 1739 Broadway, Boulder, Colorado 80306.	July 8, 1993	080024
Idaho: Ada (FEMA Docket No. 7076).	City of Meridian	August 19, 1993, August 26, 1993, *The Valley News.*	The Honorable Grant Kingsford, Mayor, City of Meridian, 33 East Idaho Avenue, Meridian, Idaho 83642.	August 11, 1993	160180

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Idaho: Ada (FEMA Docket No. 7076).	Unincorporated Areas.	August 19, 1993, August 26, 1993, *The Idaho Statesman.*	The Honorable Vern Bisterfeldt, Chairman, Ada County Board of Commissioners, 650 Main Street, Boise, Idaho 83702.	August 11, 1993	160001
Texas: Tarrant (FEMA Docket No. 7074).	City of Fort Worth	July 9, 1993, July 15, 1993, *Fort Worth Star Telegram.*	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	June 28, 1993 ...	480596
Texas: Tarrant (FEMA Docket No. 7076).	City of Fort Worth	August 20, 1993, August 26, 1993, *Fort Worth Star Telegram.*	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	August 12, 1993	480596
Texas: Tarrant (FEMA Docket No. 7076).	City of Haltom City ..	August 20, 1993, August 26, 1993, *Fort Worth Star Telegram.*	The Honorable Charles Womack, Mayor, City of Haltom City, P.O. Box 14246, Haltom City, Texas 76117.	August 12, 1993	480599
Texas: Tarrant (FEMA Docket No. 7074).	Town of Westover Hills.	July 9, 1993, July 15, 1993, *Fort Worth Star Telegram.*	The Honorable Sam Berry, Mayor, Town of Westover Hills, 5824 Merrymount Road, Fort Worth, Texas 76107.	June 28, 1993 ...	480615
Texas: Tarrant (FEMA Docket No. 7074).	City of Westworth Village.	July 9, 1993, July 15, 1993, *Fort Worth Star Telegram.*	The Honorable W. O. Henker, Mayor, City of Westworth Village, 311 Burton Hill Road, Fort Worth, Texas 76114.	June 28, 1993 ...	480616

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 14, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–2862 Filed 2–7–94; 8:45 am]

BILLING CODE 6718–03–P

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44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Emergency Management Agency certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
ARKANSAS	
Hardy (city), Sharp County (FEMA Docket No. 7075)	
Spring River:	
Approximately 0.16 mile downstream of the confluence with Forty Island Creek	*362
Approximately 160 feet downstream of U.S. Highway 62	*369
Aproximately 1,690 feet upstream of U.S. Highway 62	*370
Forty Island Creek:	
Approximately 0.22 mile above the confluence with Spring River	*356
Approximately 0.65 mile above the confluence with Spring River	*375
Approximately 1.67 mile above the confluence with Spring River	*414
Maps are available for review at the Mayor's Office, Church Street Fire Station, Hardy, Arkansas.	
NEVADA	
Douglas County (unincorporated areas) (FEMA Docket No. 7058)	
Carson River:	
Approximately 1,200 feet downstream of an old railroad grade, at the Carson City corporate limits	*4,646
Aproximately 6,000 feet downstream of U.S. Highway 395	*4,648
Aproximately 2,200 feet downstream of U.S. Highway 395	*4,651
Maps are available for review at Douglas County Public Works Department, 1615 Eighth Street, Minden, Nevada.	
OREGON	
Lane County (unincorporated areas) (FEMA Docket No. 7071)	
Siuslaw River:	
Aproximately 5,800 feet downstream of U.S. Highway 101 (Oregon Coast Highway)	*10
At Southern Pacific Railroad	*10
Approximately 300 feet downstream of the confluence with Sweet Creek	*15
Approximately 200 feet upstream of the confluence with Slide Gulch	*26
At the confluence with Berkshire Creek	*32
At the confluence with Cleveland Creek	*71
Approximately 1,200 feet upstream of the confluence with Lake Creek	*124
McKenzie River:	
Approximately 5,800 feet downstream of State Highway 126 (McKenzie Highway)	*555
Approximately 800 feet upstream of State Highway 126 (McKenzie Highway)	*571
Approximately 2,100 feet upstream of the convergence of McKenzie River North Channel	*588
Approximately 500 feet downstream of the divergence of McKenzie River North Channel	*596
Approximately 800 feet upstream of the divergence of McKenzie River North Channel	*599
McKenzie River-North Channel:	
At the confluence with McKenzie River Main Channel	*584
Approximately 2,000 feet upstream of the convergence with McKenzie River Main Channel	*590
At the divergence from McKenzie River Main Channel	*597
Cedar Creek:	
Approximately 3,300 feet downstream of State Highway 126 (McKenzie Highway)	*544
At State Highway 126 (McKenzie Highway)	*555
Lost Creek:	
Approximately 200 feet downstream of Rattlesnake Road (Alignment)	*709
At Lost Creek Road	*750
Approximately 200 feet upstream of Eagles Rest Road	*793
Approximately 900 feet upstream of the confluence with Gosage Creek	*839
Maps are available for review at the Land Management Division, Lane County Department of Public Works, 125 East Eighth Avenue, Eugene, Oregon.	
TEXAS	
Denton County (unincorporated areas) (FEMA Docket No. 7073)	
Denton Creek:	
At U.S. Highway 377	*564
Just upstream of Interstate Highway 35 West	*582
Approximately 1,000 feet upstream of the confluence of Trail Creek	*597
At F.M. 407	*610
Approximately 2,400 feet upstream of Old Justin-Ponder Road	*635
Clear Creek:	
At the confluence with Elm Fork Trinity River	*537
Just upstream of F.M. 428	*560
Just upstream of F.M. 2164	*588
At Rector Road	*601
Approximately 300 feet upstream of Interstate Highway 35	*620
Little Elm Creek:	
At the confluence of Running Branch	*537
At the confluence of Mustang Creek	*547
Just upstream of F.M. 1385	*556
Approximately 5,000 feet downstream of Mobberly Road	*566
Just upstream of Mobberly Road	*571
Pecan Creek (Above Little Elm Creek):	
At the confluence with Little Elm Creek	*537
Approximately 10,000 feet upstream of the confluence with Little Elm Creek	*546
Just upstream of F.M. 428	*561
Approximately 5,000 feet upstream of F.M. 428	*570
Just upstream of Mustang Road	*575
Mustang Creek:	
At the confluence with Little Elm Creek	*548
Just upstream of F.M. 428	*560
Just upstream of Mobberly Road	*574
Doe Branch:	
Approximately 3,000 feet downstream of U.S. Highway 380	*537
Just upstream of Fish Trap Road	*549
Just upstream of Parvin Road	*567
Maps are available for review at Denton County Department of Public Works, Plats and Map Division, 110 West Hickory, Denton, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 14, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–2860 Filed 2–7–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster

Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Emergency Management Agency certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
ILLINOIS	
Jacksonville (city), Morgan County (FEMA Docket No. 7073)	
Town Brook:	
Approximately 75 feet upstream of Clay Avenue	*579
Approximately 650 feet upstream of Massey Lane	*604
Maps available for inspection at the Jacksonville City Hall, Inspection Department, 200 West Douglas, Jacksonville, Illinois.	
KENTUCKY	
Russellville (city), Logan County (FEMA Docket No. 7070)	
Town Branch:	
At upstream side of Newton Road	*564
At downstream face of U.S. Highway 79	*621
Town Branch Tributary C:	
At confluence with Town Branch	*577
Approximately 230 feet upstream of confluence with Town Branch	*577
Town Branch Tributary D:	
Approximately 150 feet upstream of confluence with Town Branch	*576
At confluence of Town Branch Tributary F	*595
Town Branch Tributary F:	
At confluence of Town Branch Tributary D	*595
Approximately 60 feet downstream of East 9th Street	*597
Town Branch Tributary G:	
At confluence with Town Branch	*565
Approximately 250 feet upstream of confluence with Town Branch	*565
Maps available for inspection at the City Engineering Office, 168 South Main Street, Russellville, Kentucky.	
LOUISIANA	
Ouachita Parish (unincorporated areas) (FEMA Docket No. 7070)	
Youngs Bayou:	
At Ruby Road	*66
At confluence of Oliver Road Canal and West Prong Youngs Bayou	*69
West Prong Youngs Bayou:	
At confluence with Youngs Bayou	*69
Area west of confluence with East Prong Youngs Bayou	*71
Pine Bayou:	
At confluence with Youngs Bayou	*66
Approximately 800 feet upstream of Burg Jones Road	*70
Zoo Branch:	
At confluence with Pine Bayou	*69
At Standifer Avenue	*69
Oliver Road Canal:	
At confluence with Youngs Bayou	*69
Downstream side of Louberta Street	*70
Canal L–11:	
At confluence with Little Bayou Boeuf	*69
At confluence of Chauvin Bayou	*74
North Branch Chauvin Bayou:	
Approximately 0.5 mile downstream of Smith Road	*71
Approximately 1,200 feet downstream of SR 2	*71
Black Bayou:	
At confluence of Levee Ditch	*70
At extreme upstream corporate limits	*71
Black Bayou Tributary:	
Approximately 350 feet downstream of Hilton Street	*95
Approximately 250 feet upstream of Hilton Street	*100
Levee Ditch:	
At confluence with Black Bayou	*70
At upstream corporate limits	*71
Golf Course Creek:	
At downstream corporate limits	*71
At upstream corporate limits	*71
Ouachita River:	
Approximately 1,700 feet downstream of City of Monroe most southerly corporate limits	*83
Approximately 400 feet upstream of City of Monroe most northerly corporate limits	*85
Little Bayou Boeuf:	
At confluence with Bayou Lafourche	*69
At the confluence of Canal L–11	*69
Petticoat Bayou:	
At confluence with Bayou Lafourche	*66
At confluence of Raccoon Bayou	*66
Raccoon Bayou:	
At confluence with Petticoat Bayou	*66
Upstream of U.S. Route 165	*69
Black Bayou Lake:	
At confluence with Bayou DeSierd	*75
At Swartz Fairbanks Road	*96
Airport Canal:	
At confluence with Youngs Bayou	*67
At Union Pacific Railroad	*74
Airport Canal Lateral "A":	
At confluence with Airport Canal	*67
At Illinois Central Railroad	*68
Caney Creek:	
At confluence with Canal L–11	*73
Approximately 40 feet upstream of State Route 139	*90
East Prong Youngs Bayou:	
At downstream corporate limits	*71
At upstream corporate limits	*71
Bayou Lafourche:	
At downstream corporate limits	*66
At upstream corporate limits	*69
Swayze School Canal:	
Approximately 300 feet northeast of intersection of Peters Street and Beverly Street	#1
Approximately 650 feet upstream of McGee Street	*70
Approximately 1,000 feet upstream of Burg Jones Road	*70
At confluence with Youngs Bayou	*67
Maps available for inspection at the Department of Public Works, 337 Well Road, Monroe, Louisiana.	
MAINE	
Farmingdale (town), Kennebec County (FEMA Docket No. 7071)	
Kennebec River:	
Approximately 1,000 feet downstream of confluence of Unnamed Brook No. 3	*25
At confluence of Meadow Brook	*28
Maps available for inspection at the Farmingdale Town Office, 175 Maine Avenue, Farmingdale, Maine.	
Mercer (town), Somerset County (FEMA Docket No. 7071)	
North Pond:	
Entire shoreline within community	*256
Maps available for inspection at the Tax Records Room, Mercer Town Office, Mercer, Maine.	
Stockton Springs (town), Waldo County (FEMA Docket No. 7058)	
Penobscot Bay:	
Along shoreline of Mill Pond	*10
Along shoreline at Sandy Point	*23
Stockton Springs Tributary:	
At upstream side of the Bangor and Aroostook Railroad	*32
At upstream side of State Route 3 and U.S. Route 1	*120
Harris Road Tributary:	
At upstream side of the Bangor and Aroostook Railroad	*33
At upstream corporate limits	*209
Stowers Meadow Outlet:	
Approximately 75 feet upstream of confluence with Penobscot River	*11
At confluence of Stowers Meadow	*40
Stowers Meadow: Entire shoreline within community	*40
Stowers Meadow Tributary A:	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
At confluence with Stowers Meadow	*40
At upstream side of Meadow Road	*91
Stowers Meadow Tributary B:	
At confluence with Stowers Meadow	*40
At upstream side of Meadow Road	*45
Stowers Meadow Tributary C:	
At confluence with Stowers Meadow	*40
At upstream side of Meadow Road	*51
Stowers Meadow Tributary D:	
At confluence with Stowers Meadow Tributary E	*49
At upstream side of Meadow Road	*63
Stowers Meadow Tributary E:	
At confluence with Stowers Meadow	*40
At upstream side of Meadow Road	*61
Maps available for inspection at the Town Offices, Stockton Springs, Maine.	
MASSACHUSETTS	
Topsfield (town), Essex County (FEMA Docket No. 7058)	
Howlett Brook:	
At downstream side of Ipswich Road	*35
At Divergence of Mile Brook	*54
Pye Brook:	
At Divergence of Mile Brook	*54
Approximately 0.12 mile upstream of State Route 97	*65
Mile Brook:	
Approximately 125 feet downstream of U.S. Route 1	*42
At Divergence from Pye Brook	*54
Unnamed Tributary to Fish Brook:	
At confluence with Fish Brook	*46
Approximately 0.29 mile upstream of Boxford Road	*61
Maps available for inspection at the Town Engineer's Office, Town Hall, 8 West Common Street, Topsfield, Massachusetts.	
MICHIGAN	
East Tawas (city), Iosco County (FEMA Docket No. 7073)	
Tawas Bay:	
Shoreline from approximately 3,000 feet west of Newman Street to approximately 2,200 feet from west of Newman Street	*587
Shoreline approximately 2,100 feet west of Newman Street to approximately 80 feet west of Newman Street	*585
Shoreline from 400 feet west of Alice Street extended to approximately 2,600 feet east of Alice Street	*587
Maps available for inspection at the City Manager's Office, City Hall, 120 West Westover Street, East Tawas, Michigan.	
MISSISSIPPI	
Canton (city), Madison County (FEMA Docket No. 7066)	
Batchelor Creek:	
Approximately 2 miles above confluence with Tilda Bogue	*216
Approximately 0.5 mile upstream of State Route 43	*253
Batchelor Creek Tributary 1:	
Approximately 550 feet upstream of confluence with Batchelor Creek	*222
Approximately 0.53 mile upstream of State Route 16	*248
Stream E:	
At confluence with Bear Creek	*224
Approximately 0.2 mile downstream of U.S. Route 51	*225
Little Bear Creek:	
At confluence with Bear Creek	*231
Approximately 500 feet upstream of confluence with Bear Creek	*231
Batchelor Creek Tributary 2:	
At confluence with Batchelor Creek	*232
Approximately 0.2 mile upstream of confluence with Batchelor Creek	*234
Maps available for inspection at the City Clerk's Office, City Hall, 226 East P Street, Canton, Mississippi.	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Greene County (unincorporated areas) (FEMA Docket No. 7070)	
Faulk Ditch:	
Approximately 0.5 mile downstream of State Highway 63	*85
Approximately 2.5 miles upstream of State Highway 63	*109
Chickasawhay River:	
Approximately 0.9 mile downstream of State Highway 63	*85
Approximately 0.82 mile upstream of State Highway 63	*88
Blakely Creek:	
At confluence with Chickasawhay River	*87
Approximately 0.78 mile upstream of Oak Street	*109
Martin Creek:	
At confluence with Chickasawhay River	*85
Approximately 0.6 mile upstream of Lackey Street	*106
Maps available for inspection at the Greene County Courthouse, Board of Supervisors' Office, Leakesville, Mississippi.	
Jackson (city), Hinds, Rankin, and Madison Counties (FEMA Docket No. 7070)	
Pearl River:	
At downstream corporate limits	*268
At upstream corporate limits	*286
Cany Creek:	
At confluence with Pearl River	*270
Approximately 450 feet upstream of County T.V. Road	*341
Hardy Creek:	
At confluence with Pearl River	*272
Approximately 0.19 mile upstream of Greenwood Avenue	*272
Three Mile Creek:	
At confluence with Pearl River	*272
Approximately 0.02 mile downstream of Illinois Central Gulf Railroad	*272
Lynch Creek:	
At confluence with Pearl River	*274
Approximately 50 feet upstream of 2nd Illinois Central Gulf Railroad crossing	*274
Town Creek:	
At confluence with Pearl River	*275
At downstream side of Interstate Route 220	*349
Town Creek Tributary No. 2:	
At confluence with Town Creek	*325
Approximately 0.20 mile upstream of confluence with Town Creek	*325
Town Creek Tributary No. 3:	
At confluence with Town Creek	*281
Approximately 400 feet upstream of Marion Dunbar Street	*331
Town Creek Tributary No. 4:	
Approximately 250 feet upstream of confluence with Town Creek	*288
Approximately 100 feet downstream of Overbrook Drive	*337
Stream 1:	
At confluence with Pearl River	*284
Approximately 0.25 mile downstream of Braeburn Drive	*284
Trahon Creek:	
At the downstream corporate limits	*279
Approximately 100 feet downstream of Henderson Road	*320
Trahon Creek Tributary No. 1:	
At confluence with Trahon	*290
Approximately 120 feet upstream of Lakeshore Road	*304
Hanging Moss Creek Tributary No. 4:	
Approximately 300 feet upstream of confluence with Hanging Moss Creek	*294
Approximately 350 feet upstream of Old Agency Road	*372
Purple Creek:	
At confluence with Pearl River	*283
Approximately 500 feet upstream of Old Canton Road	*283
Big Creek:	
Approximately 300 feet upstream of downstream corporate limits	*318
At upstream side of State Route 18	*362
Big Creek Tributary No. 5:	
At confluence with Big Creek	*333
At downstream side of State Route 18	*386

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Big Creek Tributary No. 6:	
At confluence with Big Creek Tributary No. 5	*356
At the upstream corporate limits	*402
Big Creek Tributary No. 7:	
At confluence with Big Creek	*340
At upstream crossing of State Route 18	*361
Town Creek Tributary No. 5:	
At confluence with Town Creek	*291
Approximately 100 feet downstream of Illinois Central Gulf Railroad	*360
Eubanks Creek:	
At confluence with Pearl River	*278
Approximately 425 feet downstream of Wood Dale Drive	*278
Twin Lakes Creek G:	
At confluence with Pearl River	*281
Upstream side of Kimwood Drive	*317
Twin Lakes Creek H:	
At confluence with Pearl River	*281
Approximately 0.3 mile upstream of confluence with Pearl River	*261
Belhaven Creek:	
At confluence with Pearl River	*277
Approximately 185 feet upstream of U.S. Route 55	*277
Hanging Moss Creek:	
At confluence with Pearl River	*283
Approximately 300 feet upstream of Ridgewood Road	*283
White Oak Creek (Tributary 3 to Hanging Moss Creek):	
At confluence with Hanging Moss Creek	*283
Approximately 0.24 mile upstream of Old Canton Road	*283
Maps available for inspection at the Building Official's office, Department of Planning and Development, 429 South West Street, Jackson, Mississippi.	
Madison (city), Madison County (FEMA Docket No. 7066)	
Culley Creek:	
Approximately 370 feet upstream of Natchez Trace Parkway	*297
At downstream side of Hoy Road	*336
Stream S:	
Approximately 0.9 mile above confluence with Bear Creek	*289
Approximately 1.1 miles above confluence with Bear Creek	*293
Stream T:	
Approximately 1 mile above confluence with Bear Creek	*301
Approximately 1.2 miles above confluence with Bear Creek	*305
Heam Creek:	
Approximately 350 feet upstream of Natchez Trace Parkway	*301
Approximately 0.7 mile upstream of confluence of Heam Creek Tributary	*326
Heam Creek Tributary:	
At confluence with Heam Creek	*312
At Hoy Road	*327
Brashear Creek:	
Approximately 250 feet downstream of Old Cantor Road	*303
Approximately 250 feet downstream of Gravel Road	*352
Maps available for inspection at Public Works Department, 525 Post Oak Road, Madison, Mississippi.	
Madison County, (unincorporated areas) (FEMA Docket No. 7066)	
Batchelor Creek Tributary 1:	
Upstream side of Fores Road	*232
Approximately 0.36 mile upstream of State Route 16	*243
Stream J:	
800 feet above confluence with Stream I	*245
Approximately 500 feet upstream of Ragsdale Ray Road	266
Stream Q:	
Approximately 500 feet upstream of confluence with Bear Creek	*268
Approximately 1.5 miles upstream of Gluckstadt Road	*321
Culley Creek:	
At confluence with Brashear Creek	*297

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Approximately 370 feet upstream of Natchez Trace Parkway	*297
Stream R:	
At confluence with Stream Q	*288
Approximately 1.5 miles upstream of confluence with Stream Q	*306
Stream I:	
At confluence with Bear Creek	*237
Approximately 0.45 mile upstream of Interstate Route 55	*274
Stream O:	
At confluence with Bear Creek	*264
Approximately 1 mile upstream of Gluckstadt Road	*295
Stream N:	
At confluence with Bear Creek	*261
Approximately 0.4 mile upstream of Church Road	*283
Stream S:	
At confluence with Bear Creek	*278
Approximately 1.1 miles above confluence with Bear Creek	*293
Heam Creek:	
Approximately 100 feet above Natchez Trace Parkway	*300
Approximately 500 feet above Natchez Trace Parkway	*301
Stream P:	
At confluence with Bear Creek	*259
Approximately 350 feet upstream of Clarksdale Road	*296
Stream T:	
At confluence with Bear Creek	*284
Approximately 1.2 miles upstream of confluence with Bear Creek	*305
Batchelor Creek Tributary 2:	
Approximately 1,000 feet upstream of confluence with Batchelor Creek	*234
Approximately 0.7 mile upstream of confluence with Batchelor Creek	*240
Heam Creek Tributary:	
At Hoy Road	*327
Approximately 600 feet upstream of Hoy Road	*328
Brashear Creek:	
Approximately 1,100 feet upstream of confluence of Culley Creek	*297
Approximately 2.6 miles upstream of Interstate Route 55 (southbound)	*395
Bear Creek:	
At Heindl Road	*209
Approximately 1.8 miles upstream of Bozeman Road	*320
Batchelor Creek:	
At confluence of Tilda Bogue	*206
Approximately 0.7 mile upstream of Miller Street	*234
Hanging Moss Creek Tributary 4:	
Approximately 200 feet downstream of New Road	*354
Approximately 1,100 feet downstream of Old Agency Road	*366
Maps available for inspection at the Chancery Clerk's Office, Madison County Courthouse, Canton, Mississippi.	
Ridgeland (city), Madison County (FEMA Docket No. 7066)	
Purple Creek Tributary 1:	
Approximately 0.15 mile above confluence with Purple Creek	*312
At confluence with Purple Creek	*308
Purple Creek Tributary 6:	
At confluence with Purple Creek	*326
Approximately 0.2 mile above confluence with Purple Creek	*328
Purple Creek Tributary 7:	
At confluence with Purple Creek	*327
Approximately 0.09 mile above confluence with Purple Creek	*330
School Creek:	
Approximately 450 feet upstream of County Line Road	*292
Approximately 550 feet upstream of Lake Harbour Drive	*322
Beaver Creek:	
At confluence with Brashear Creek	*303
Approximately 1,600 feet upstream of Illinois Central Gulf Railroad	*327
Beaver Creek Tributary (formerly Brashear Creek):	
At confluence with Beaver Creek	*317
Approximately 0.11 mile above confluence with Beaver Creek	*318
Brashear Creek:	
At County Line Road	*287
Approximately 0.7 mile upstream of confluence with Beaver Creek	*306
Maps available for inspection at the Public Works Department, City Hall, Ridgeland, Mississippi.	
NEW JERSEY	
New Providence (borough), Union County (FEMA Docket No. 7071)	
Passaic River:	
At downstream corporate limits	*208
Approximately 20 feet downstream of Central Avenue	*211
Salt Brook:	
Approximately 250 feet downstream of Springfield Avenue	*211
Approximately 40 feet downstream of CONRAIL	*259
West Branch Salt Brook:	
At confluence with Salt Brook	*213
Approximately 320 feet upstream of Morris Avenue	*233
Maps available for inspection at the Engineering Department, Municipal Building, Second Floor, 360 Elkwood Avenue, New Providence, New Jersey.	
OHIO	
Munroe Falls (city), Summit County (FEMA Docket No. 7066)	
Cuyahoga River:	
Approximately 900 feet downstream of downstream corporate limits	*999
Approximately 50 feet upstream of upstream corporate limits	*1,007
Maps available for inspection at the City Hall, 43 Munroe Falls Avenue, Munroe Falls, Ohio.	
SOUTH CAROLINA	
Dorchester County (unincorporated areas) (FEMA Docket No. 7053)	
Ashley River:	
At county boundary	*7
Just downstream of confluence of Eagle Creek	*9
Coosaw Creek:	
About 1,300 feet downstream of Dorchester Road	*10
Just upstream of trail road	*17
Eagle Creek:	
At mouth	*8
At county boundary	*22
Unnamed Tributary to Ashley River:	
Just upstream of State Road 13	*38
About 1,500 feet upstream of confluence of Tributary No. 1	*54
Hurricane Branch:	
Just upstream of Tudor Road	*47
Just downstream of unpaved road extending from Longleaf Road	*71
Chandler Bridge Creek:	
Just upstream of Miles Jamison Road	*25
About 2,100 feet upstream of Miles Jamison Road	*28
Rumphs Hill Creek:	
Just downstream of Norfolk Southern Railway	*59
Just downstream of Lawrence Drive	*67
Negro Branch:	
Just downstream of Orangeburg Road	*42
Just downstream of White Boulevard	*74
Platt Branch:	
Just downstream of Orangeburg Road	*42
Just downstream of Lake Drive	*54
Stanley Branch:	
About 1,600 feet downstream of State Road 58	*41
About 1.0 mile upstream of State Road 58	*54
Green Bay Branch:	
At mouth	*25
Just downstream of Short Street	*69
Tributary No. 2:	
At mouth	*7
Just downstream of Dorchester Road	*18
Edisto River:	
At county boundary	*18
Just downstream of State Road 29	*50
Four Hole Swamp:	
About 2,400 feet downstream of State Road 19	*39
Just downstream of U.S. Route 78	*46
Polk Swamp:	
Just upstream of U.S. Route 15	*66
Just downstream of State Road 16	*99
Tributary No. 3:	
At mouth	*15
Just upstream of trail road	*15
Sawpit Creek:	
At county boundary	*10
About 1,900 feet upstream of trail road	*27
Tributary No. 4:	
At mouth	*62
About 1,550 feet upstream of mouth	*67
Tributary No. 5:	
At mouth	*58
Just downstream of State Route 22	*65
Tributary No. 6:	
At mouth	*53
Just downstream of McMakin Street	*58
Tributary No. 1:	
At mouth	*50
About 1,450 feet upstream of mouth	*55
Maps available for inspection at the County Planning Department, P.O. Box 2220, Summerville, South Carolina.	
TENNESSEE	
Mt. Juliet (city), Wilson County (FEMA Docket No. 7070)	
Stoners Creek:	
At Mt. Juliet Road	*550
Approximately 1.65 miles downstream of Pascal Drive	*484
Maps available for inspection at the Mt. Juliet City Hall, 2040 North Mt. Juliet Road, Mt. Juliet, Tennessee.	
Wilson County (unincorporated areas) (FEMA Docket No. 7070)	
Stoners Creek:	
Just upstream of Rutland Road	*541
At Old Lebanon Dirt Road	*569
Sinking Creek:	
Approximately 100 feet upstream of Interstate 40	*572
Approximately 800 feet upstream of Stumpy Lane	*594
Cedar Creek:	
Just upstream of North Posey Hill Road	*542
Approximately 0.8 mile upstream of North Posey Hill Road	*553
Maps available for inspection at the Wilson County Planning Department, 236 E. Main Street, Room 5, Lebanon, Tennessee.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 14, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–2861 Filed 2–7–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199–3299; I.D. 020394A]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 61 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 4, 1994, until superseded by the final 1994 specifications in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The interim specification of pollock total allowable catch in Statistical Area 61 was established by interim specifications (58 FR 60575, November 17, 1993) as 4,232 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 interim specification of pollock in Statistical Area 61 soon will be reached. The Regional Director established a directed fishing allowance of 3,832 mt, and has set aside the remaining 400 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 61, effective from 12 noon, A.l.t., February 4, 1994, until superseded by the final 1994 specifications in the **Federal Register**.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: February 3, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–2870 Filed 2–3–94; 2:43 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 59, No. 26
Tuesday, February 8, 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.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1945

RIN 0575–AB72

Revisions to the Direct Emergency Loan Instructions To Implement Administrative Decisions Pertaining to the Applicant Loan Eligibility Calculation, Appraisals, and Crop Insurance

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its emergency loan (EM) regulations to revise the applicant eligibility calculation and appraisal requirements and to require crop insurance. This action is necessary to ease the EM eligibility requirements, to expedite EM application processing time, and to reduce losses to family-size farmers and the Government. The intended effect is to provide assistance to a greater number of farmers affected by major disasters in a timely manner.

DATES: Written comments must be submitted on or before February 23, 1994.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, room 5428, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 720–5114.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and the Office of Management and Budget (OMB) has determined that it is a "significant regulatory action." Based on information compiled by the Department, OMB has determined that this proposed rule:

(1) Would alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(2) Is a significant public policy issue as related to the direction of the EM loan program.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA program as listed in the Catalog of Federal Domestic Assistance: 10.404—Emergency Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the E.O.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0090, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This proposed rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Discussion of Proposed Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. FmHA is publishing this proposed rule with a 15-day comment period. This proposed rule relieves the restriction of considering disaster related assistance or compensation in the EM eligibility calculation. Furthermore, the Agency has concluded that the need to provide immediate assistance to farmers who have suffered severe production and physical losses as a result of natural disasters also justifies the shortened comment period under 5 U.S.C. 553(d) as discussed below.

Major agricultural disasters during the 1993 crop year, including extensive flooding and rainfall in 9 Midwestern States and drought in 3 Southeastern States, will result in a significant increase in demand for FmHA direct loan assistance. In the 9 flood states alone, over 8 million acres of crops were lost or not planted in 1993. Estimates indicate that the 1993 floods were the second costliest weather disaster in the history of the United States. Preliminary estimates are that as many as 10,000 of the affected farmers may require financial assistance from FmHA.

The need for a change in the regulations is immediate. Farmers have concluded 1993 operations, and are consulting with their lenders to plan for 1994. Farmers who have suffered severe production losses are in dire need of disaster program assistance to repay creditors and suppliers annual production loans, open supplier accounts, and installments due on intermediate and long term debts and to otherwise repair and continue their

farming and ranching operations. FmHA is receiving loan requests at an increasing rate. The Agency wants to give the public an opportunity for input on the proposed change but FmHA needs regulations in place for spring planting, so a reasonable compromise was the 15-day comment period.

Because of the scope of the situation and the impact on local, regional, and national economies, the Agency believes that an amendment to the regulations after a shortened comment period is the only way to assure that affected farmers receive the assistance they need on a timely basis to recover from these disasters. Any further delay in the timing of this amendment will reduce the Agency's ability to meet the needs of those affected, thus imposing additional hardships on those who have already suffered substantially from flood or drought, and jeopardizing individual and community financial recovery from these disasters. The proposal to require crop insurance on the coming year's crop as a condition of making EM loans is necessary to protect the borrower and the Government. The requirement and its exceptions, however, will not delay the making or reduce the number of EM loans.

The making, supervision, and servicing of farm loans to FmHA borrowers is governed primarily by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et seq.). In particular, 7 U.S.C. 1970 provides that the Secretary, and through delegation FmHA, shall extend emergency loans "to any applicant seeking assistance based on production losses if the applicant shows that a single enterprise which constitutes a basic part of the applicant's farming, ranching, or aquaculture operation has sustained at least a 30 per centum loss of normal per acre or per animal production," or a lesser per centum as determined by FmHA, as a result of the disaster and other eligibility criteria are met. Under the statute, FmHA also must make production loss loans based on 80 per centum, or such greater per centum as determined by FmHA, of the total actual production loss sustained by the eligible applicant.

The existing emergency (EM) loan regulations state that all financial disaster assistance/compensation will be considered in determining the applicant's eligibility for EM assistance and again in calculating the maximum amount of loss loan entitlement. Once eligibility is established, then all single enterprises showing a production loss are considered in the calculation to determine the maximum loss loan entitlement.

The Agency has concluded that modifications to the current provisions are in order. In the 13 years (since 2/13/80) that FmHA has employed the present calculation for determining eligibility, there have been numerous instances where producers would have suffered qualifying losses yet were deemed ineligible for an emergency loss loan only because the dollar loss was reduced by the amount of disaster related assistance/compensation so that the 30 percent loss level was not reached. Based on this experience, it is the Agency's opinion that the ability of FmHA to carry out the underlying intent of the program—to provide loans to farmers who have suffered losses due to natural disasters and who cannot obtain credit from private sources—has been seriously hindered. For this reason, the Agency has concluded that it can best serve these farmers, and thereby meet the goals of the program, by revising its regulations as follows.

The Agency proposes to amend 7 CFR part 1945, subpart D, § 1945.163, by revising the applicant eligibility calculation to consider only the dollar loss of a single enterprise based on the difference in income between the disaster year and the normal year. Disaster related assistance/compensation would not be considered in the eligibility calculation. The maximum loss loan entitlement, however, still would be the sum of production losses to all enterprises less any disaster related assistance/compensation and costs not incurred. This change is necessary to respond to the extreme financial stress of many farmers affected by repetitive natural disasters.

By changing the EM loan eligibility calculation, more applicants will be permitted to qualify for loan assistance. This revision to the regulation complies with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5155, prohibiting the duplication of Federal disaster benefits. The amount of the individual EM loss loan entitlement will continue to be reduced by the amount of any disaster related assistance or compensation received or to be received by the applicant. The Agency considered limited legislative history related to EM loan legislation (Pub. L. 94–68, August 5, 1975) which suggested that a person who had Federal crop insurance which covered a portion of the disaster loss might become ineligible by not meeting the 20 percent damage test (now 30 percent). The legislative history, however, was found unpersuasive and insufficient to require the Agency to continue its practice of considering other disaster benefits at the point of EM eligibility when not specifically required by statute. The Agency proposes these changes with the belief that more farmers in need will be assisted and a prudent loan making program will be preserved within statutory constraints.

The Agency also proposes to amend § 1945.169 by requiring applicants to purchase multi-peril crop insurance when receiving EM loan assistance. CONACT section 321(b) states that an applicant shall be ineligible for EM loan assistance for crop losses to an annual crop planted or harvested after December 31, 1986, if crop insurance was available to the applicant under the Federal Crop Insurance Act. However, the Disaster Assistance Acts of 1988 and 1989; the Food Agriculture, Conservation, and Trade Act (FACT Act) of 1990; the Dire Supplemental Appropriations Act of 1991; and the Supplemental Appropriations, Transfers and Recessions Act of 1992 waived this crop insurance requirement for losses to annual crops planted for harvest in years 1988–1993.

While these statutes waived the eligibility requirement, the Disaster Assistance Acts of 1988 and 1989 and the 1990 FACT Act required eligible EM applicants to agree to purchase crop insurance as a loan condition, subject to certain exceptions. (The loan would be made on the condition that the borrower obtain crop insurance in the future, if not already insured.) The Dire Supplemental Appropriations Act of 1991 and the Supplemental Appropriations, Transfers and Recessions Act of 1992 did not have this requirement. However, upon implementing changes required by the 1991 Act, the Agency administratively required eligible applicants to obtain crop insurance on their 1992 crop in order to receive an EM loan. This administrative language was inadvertently omitted when making regulation changes required by the 1992 Act.

The Agency believes it is prudent for applicants to purchase crop insurance on the coming year's crop and proposes to once again require it as an EM loan condition. Currently, FmHA only encourages EM borrowers to obtain FCIC crop insurance or multi-peril crop insurance, if available. Most FmHA applicants have limited resources and are unable to fully recover from major disasters. Purchasing crop insurance will reduce the applicant's risk of incurring devastating losses, and will also protect the Government's interest. The Agency, however, has provided for two exceptions. If crop insurance is not

available, the Agency will not require it. In addition, if the premium cost of the insurance would prevent the applicant from showing ability to repay the loan, the Agency will waive the requirement. The Agency wants to provide assistance to such applicants if they can otherwise project repayment ability. Thus, the crop insurance requirement will not delay the making of needed EM loans or limit the number of loans made since crop insurance is only a loan condition which will be waived in the two instances noted above.

The Agency also proposes to amend §1945.175 by revising the requirement for two complete appraisals when the first appraisal reflects adequate security for the loan(s). Section 324 (d) of the CONACT states that farm security, including land, livestock, and equipment, for EM loans will be valued based on the higher of the value of the assets on the day before the Governor requests assistance and the value of the assets one year before such day. While the two values must be considered, the values need not be based on two complete appraisals.

The proposed change indicates that when a real estate appraisal to establish the value on the day before the Governor's EM designation request reflects adequate security for the loan, the basis for the second value for one year and one day before the subject request will be documented in an attachment to the appraisal. When the first appraisal does not reflect adequate security only the applicable parts of a second Form FmHA 1922–1, "Appraisal Report - Farm Tract," reflecting the changes between the two dates, will be completed to establish the value one year and one day before the Governor's request. In cases where there is a physical loss of real estate and funds will be used for development, the recommended market value will be as improved. This is consistent with general appraisal practices and current Form FmHA 1922–1 which includes a provision for the contributory value of buildings as improved.

With respect to chattel appraisals, when the value one year and one day before the Governor's request reflects adequate security, the value one day before the Governor's request will be established on Form FmHA 1945–15, "Value Determination Worksheet," by a reasonable estimate. This change will reduce Agency processing time and cost in relation to Emergency loans.

List of Subjects in 7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

Therefore, part 1945, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1945—EMERGENCY

1. The authority citation for part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

2. Section 1945.163 is amended by revising paragraph (d) to read as follows:

§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.

* * * * *

(d) *Compensation for losses.* All financial assistance provided through any disaster relief program and all compensation for disaster losses received from any source by an EM loan applicant will reduce the applicant's loss by the amount of such compensation. All such compensation will be considered in determining the maximum amount of loss loan entitlement. Disaster related assistance/compensation will not be considered in the EM eligibility calculation. The amount of any disaster program benefits received from ASCS, including the Emergency Feed Assistance Program (EFAP), Emergency Conservation Program (ECP), and Disaster Program payments will be considered as compensation for losses (ASCS Deficiency Payments are not to be considered as compensation).

* * * * *

3. Section 1945.169 is amended by revising paragraph (j) to read as follows:

§ 1945.169 Security.

(j) *Crop insurance.* All recipients of EM loans must agree, as a condition of the loan, to obtain multi-peril crop insurance under the Federal Crop Insurance Act for the coming year's crop. When one of the conditions of paragraph (j)(1) of this section exists, the approval official will document in the applicant's file the basis for not requiring crop insurance.

(1) Applicants will not be required to obtain crop insurance when any one of the following conditions exists:

(i) Crop insurance is not available for the crop, i.e., there is no open season and no opportunity to acquire crop insurance.

(ii) The financial projections on which the loan approval is based indicate that the premium cost of the required insurance would prevent the applicant from projecting a feasible plan, and thus disqualifying the applicant for loan assistance.

(2) When crops are the primary source of repayment for EM loans, FmHA will require an "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(3) When EM loans are based on physical losses only, crop insurance will only be required when loan funds will be used for annual production expenses. In such cases, the same conditions will apply as stated in paragraph (j)(1) of this section.

(4) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, notwithstanding the limits of §§ 1962.17 and 1962.29(b) of subpart A of part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment. The FmHA County Office will maintain a record on Form FmHA 1905–12, "Monthly Expirations," of the dates which each borrower's crop insurance premium(s) is due. This is in accordance with FmHA Instruction 1905–A, a copy of which is available in any FmHA office.

(5) When an applicant purchases the necessary crop insurance as a condition to receiving an EM loan and, after the EM loan is closed, allows the policy(ies) to lapse or be cancelled before completion of the production year, the borrower will become immediately liable for full repayment of all principal and interest outstanding on any EM loan made on the condition of obtaining crop insurance. The loan approval official will insert this requirement in item 41 of Form FmHA 1940–1, "Request for Obligation of Funds," which is signed by the applicant and the FmHA loan approval official.

* * * * *

4. Section 1945.175 is amended by revising paragraphs (c)(2), and (c)(4) to read as follows:

§ 1945.175 Options, planning and appraisals.

(c) *Appraisals.*

* * * * *

(2) Real estate appraisals will be completed as provided in subpart E of part 1922 of this chapter. However, the value of assets that secure EM loans associated with a disaster having any portion of its incidence period occurring on or after May 31, 1983, must be based on the higher of two values, all of which

must be part of the file. These values will show:

(i) The asset value on the day before a State Governor's, Indian Tribal Council's, or an FmHA State Director's first EM designation request, which is associated with the naming of one or more counties in a State as a disaster area where eligible farmers may qualify for EM loans; or the asset value one year (365 days) and one day before the designation request.

(ii) Form FmHA 1922–1, will be completed to reflect the recommended market value (RMV) as of the day before the Governor's request.

(A) When the value one day before the Governor's request reflects adequate security for the loan(s), the basis for arriving at the second value, one year and one day before the Governor's request, will be documented in an attachment to the appraisal.

(B) When the first appraisal does not reflect adequate security only the applicable Part(s) 2, 3, 5, 6, 7, and 8 of a second Form FmHA 1922–1, will be completed to reflect changes between the two dates, and establish a value one year and one day before the Governor's request.

(C) In cases where there is a physical loss of real estate and funds will be used for development, the RMV will be as improved.

(iii) The following types of real estate offered as collateral for securing EM loans will be appraised at the present market value only:

(A) Farm real estate the applicant/borrower did not own on the date set forth in paragraph (c)(2)(i) of this section.

(B) Real estate "not owned" by the applicant/borrower (for example, a relative if offering real estate as collateral for the proposed EM loan).

(C) A single family dwelling located on a nonfarm tract.

(D) Other types of real estate such as apartment houses and commercial buildings. The County Supervisor will request the assistance of the State Director in establishing the value of such real estate.

(iv) Sales data utilized in the preparation of the necessary appraisal(s) should conform to the dates set forth in paragraph (c)(2)(i) of this section, to ensure a fair market value of the property is established. In addition, it should be confirmed that said sales resulted from reasonable sales efforts and that both the buyer and seller were willing, informed, and knowledgeable parties.

* * * * *

(4) Chattel appraisals will be completed on Form FmHA 1945–15, "Value Determination Worksheet," (EM loans only) when chattels are taken as security. The property which will serve as security will be described in sufficient detail so it can be identified. Sources such as livestock market reports and publications reflecting values of farm machinery and equipment will be used as appropriate. The value of assets that secure EM loans associated with a disaster having any portion of the incidence period occurring on or after May 31, 1983, must be based on the higher of two values, all of which must be made part of the file. These values will be based on the time periods contained in paragraph (c)(2)(i) of this section.

(i) In those cases where the value one year and one day before the Governor's request reflects adequate security, the appraiser or County Supervisor will reasonably estimate the value one day before the Governor's request.

(ii) Chattels owned by the applicant, and nonfarm chattel property offered as security (such as planes, house trailers, boats, etc.) will be appraised at the present market value only. Chattels that the applicant/borrower did not own on the dates set forth in paragraph (c)(2)(i) of this section will be appraised at the present market value only.

Dated: February 1, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–2777 Filed 2–7–94; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1384–92]

RIN 1115–AD18

Adjustment to the Examinations Fee Schedule; Comment Period Extended

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On January 10, 1994, at FR 1308–1316, the Immigration and Naturalization Service proposed a regulation adjusting the examinations fee schedule. To ensure that the public has ample opportunity to fully review and comment on the proposed rulemaking, this notice extends the public comment period from February 9, 1994 through March 11, 1994.

DATES: Written comments must be submitted on or before March 11, 1994.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1384–92 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Barbara J. Atherton, Chief, Fee Analysis and Operations Branch, Office of Finance, Immigration and Naturalization Service, 425 I Street, NW., room 6240, Washington, DC 20536, telephone 202–616–2754.

Dated: February 2, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–2785 Filed 2–7–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AGL–1]

Proposed Class E Airspace Establishment; Morris, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace near Morris, IL, to accommodate an amended Very High Frequency Omnidirectional Range Station-Airport (VOR–A) instrument approach procedure to Morris Municipal-James R. Washburn Field Airport, Morris, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

DATES: Comments must be received on or before March 25, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–1, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief

Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace near Morris, IL, to accommodate an amended VOR–A instrument approach procedure to Morris Municipal-James R. Washburn Field Airport, Morris, IL. Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

AGL IL E5 Morris, IL [New]

Morris Municipal-James R. Washburn Field Airport, IL
(lat. 41°25′53″N., long. 88°25′17″W.)

That airspace extending upward from 700 feet above the surface within a 6.7 mile radius of the Morris Municipal-James R. Washburn Field Airport, excluding that airspace which overlies the Chicago, IL, Class E airspace.

* * * * *

Issued in Des Plaines, Illinois on January 25, 1994.

John P. Cuprisin,
Manager, Air Traffic Division.

[FR Doc. 94–2836 Filed 2–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 121, 129, and 135

[Docket No. 26718; Notice No. 93–14A]

RIN 2120–AE42

Aging Airplane Safety

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking, extension of comment period.

SUMMARY: This document announces an extension of the comment period on Notice No. 93–14 entitled, "Aging Airplane Safety" (58 FR 51944; October 5, 1993). This comment period is extended from February 2, 1994, until March 4, 1994. The extension responds to the request of the Regional Airline Association (RAA) and is needed to permit RAA, and other affected parties, additional time to develop comments responsive to Notice 93–14.

DATES: The comment period is being extended from February 2, 1994, to March 4, 1994.

ADDRESSES: As stated in Notice No. 93–14, comments should be mailed, or delivered in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 26718, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket, room 915G, weekdays between 8:30 a.m. and 5 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick Sobeck, Flight Standards Service, Aircraft Maintenance Division (AFS–300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–7355.

SUPPLEMENTARY INFORMATION: On October 5, 1993, the FAA issued Notice No. 93–14, entitled "Aging Airplane Safety" that proposed changes that would require persons operating older airplanes to certify that certain airplane maintenance actions had been performed; would allow the Administrator to establish an airplane operational limit beyond which additional maintenance actions must be accomplished, would implement part of the FAA's Aging Airplane Program Plan; and would respond to the Aging Aircraft Safety Act of 1991. The proposed rules are intended to assure that older airplanes are properly maintained for continued use in air transportation.

By a request dated January 21, 1994, RAA asked that the comment period be extended 30 days. Because of heavy commitments to recent Aviation Rulemaking Advisory Committee (ARAC) activities, and many questions from its member airlines on the proposals, RAA had not completed analyzing the potential effects of the proposed rulemaking and could not provide substantive comments prior to the close of the comment period.

The FAA has determined that an extension of the comment period will allow RAA and its members additional time for a more thorough review of applicable issues and questions raised by the NPRM, and the drafting of responsive comments. The FAA recognizes, in addition, that the intervening holiday period may have impeded the ability of interested persons to formulate comprehensive responses to the issues in the NPRM.

In order, therefore, to give all interested persons additional time to complete their comments, the FAA finds that it is in the public interest to extend the comment period. Accordingly, the comments period will close on March 4, 1994.

Issued in Washington, DC, on February 2, 1994.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 94–2833 Filed 2–7–94; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN5–1–5192; FRL–4835–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On January 11, 1991, the Indiana Department of Environmental Management (IDEM) submitted amendments of its source monitoring rules and sulfur dioxide (SO2) rules to the United States Environmental Protection Agency (USEPA) as State Implementation Plan (SIP) revisions. Because of unsupported emission limit relaxations and enforceability deficiencies in the amended State regulations, USEPA is proposing to disapprove this SIP revision request.

DATES: Comments on this revision and on the proposed USEPA action must be received by March 10, 1994.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mary Onischak at (312) 353–5954. (It is recommended that you telephone before visiting the Region 5 Office.) Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address:

Regulation Development Branch, Regulation Development Section (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On January 11, 1991, IDEM submitted its amended source monitoring rules and sulfur dioxide (SO2) rules to USEPA as Indiana State Implementation Plan (SIP) revisions. The submittal amends 326 Indiana Administrative Code (IAC) Articles 3 and 7. Because the rules contain enforceability deficiencies and unsupported emission limit relaxations, USEPA proposes to disapprove the January 11, 1991 submittal.

II. Analysis of State Submittal

Indiana's revised monitoring rule consists of 326 IAC 3–1.1, 3–2.1, and 3–3. The revised sulfur dioxide rule consists of 326 IAC 7–1.1, 7–2, 7–3, and 7–4. The following paragraphs describe the individual rules

326 IAC 3–1.1

326 IAC 3–1.1 requires continuous emission monitoring for sources in several categories, including large fossil fuel-fired steam generators, sulfuric acid producers, and catalytic cracking units. Fossil fuel-fired steam generators of greater than 100 million British Thermal Units per hour (MMBTU/hr) heat input capacity are required under this rule to continuously monitor their emissions for opacity, nitrogen oxide, sulfur dioxide, and oxygen or carbon monoxide content. The rule allows IDEM's Commissioner to require additional sources to use continuous monitoring equipment. This rule contains the minimum emission monitoring requirements set forth in 40 CFR part 51, appendix P.

326 IAC 3–1.1 requires facilities to report excess emissions quarterly, and allows 3-hour block averaging of gaseous measurements. This averaging time is consistent with the SO_2 National Ambient Air Quality Standards (NAAQS). Facility owners must keep all monitoring records on file for 2 years. These requirements are consistent with 40 CFR part 51, appendix P. The rule requires facility owners to submit to IDEM written standard operating procedures describing calibration and quality control procedures for the operation of all required continuous emission monitors. The rule also sets forth conversion factors to be used with monitoring data.

326 IAC 3–1.1 refers to 40 CFR [part] 60, appendix B for the performance specifications of the required monitoring equipment, and specifies that where reference is made to the "Administrator" in 40 CFR [part] 60, appendix B, the term "Commissioner" is to be inserted for the purposes of this rule. Such substitution is allowed by USEPA, according to 40 CFR part 51, appendix P, paragraph 3.1. The USEPA has set forth explicit criteria for the Commissioner's modification of the rule's requirements in 40 CFR part 60, appendix B. However, "Commissioner's discretion" language that USEPA finds

unacceptable for the reasons described in section III below appears in other portions of 326 IAC 3–1.1, e.g., 326 IAC 3–1.1–1 (waivers) and 326 IAC 3–1.1–2 (alternate instrument response settings), and renders these rules unapprovable.

326 IAC 3–2.1

326 IAC 3–2.1 provides reporting requirements and specifies the facility operating conditions under which emission testing should be performed. The rule also prescribes specific testing procedures for particulate matter, sulfur dioxide, nitrogen oxides, and volatile organic compounds. It specifies that sources should use emission test methodologies set forth in 40 CFR [part] 61, appendix A, and 40 CFR [part] 61, appendix B. This is incorrect. The rule should cite 40 CFR Part 60, appendix A, rather than 40 CFR [part] 61, appendix A. In addition, the rule allows the State to authorize alternate emission test methods, changes in test procedure, or alternate operating load levels during tests. Such "Commissioner's discretion" is not acceptable to USEPA, for the reasons described below in section III.

326 IAC 3–3

326 IAC 3–3 prescribes sampling and analysis procedures for coal and fuel oil. Sources with total coal-fired capacity of 1500 or more MMBTU/hr actual heat input must collect composite samples daily, in accordance with specified American Society for Testing and Materials (ASTM) procedures. Sources with total coal-fired capacity between 100 and 1500 MMBTU/hr actual heat input must draw coal samples at least 3 times per day and at least once per 8-hour period, but may composite and analyze these samples monthly. It is not acceptable for facilities of this size to perform only monthly coal analysis to determine compliance. Monthly analysis will not ensure that the short-term SO_2 NAAQS will be protected. 326 IAC 3–3 does not specify coal sampling analysis procedures to be used by facilities with total coal-fired heat input capacity less than 100 MMBTU/hr. These small facilities are required by 326 IAC 7–2 to report coal analysis data, as collected pursuant to 326 IAC 3–3, but it is not clear whether each facility must use the coal sampling and analysis methods prescribed for the larger facilities or is expected to provide its own alternative method. This rule also allows "Commissioner's discretion" in prescribing and in performing alternate fuel sampling and analysis procedures. The USEPA believes that such discretion is unacceptable for the reasons described below in section III of this document.

326 IAC 7–1.1

326 IAC 7–1.1 sets forth general SO_2 emission limits for fuel combustion facilities with a potential to emit 25 tons per year or 10 pounds per hour of SO_2. Facilities are also required to comply with specific emission limitations pursuant to 326 IAC 7–4, if applicable. 326 IAC 7–1.1 introduces SO_2 emission limits for oil-burning facilities. Facilities combusting residual oil may not exceed 1.6 pounds SO_2 per million British Thermal Units (lb/MMBTU) of SO_2, and facilities combusting distillate oil may not emit more than 0.5 lb/MMBTU of SO_2. 326 IAC 7–1.1 continues to state that facilities combusting coal may not emit more than 6.0 lb/MMBTU. Facilities which use both coal and oil simultaneously as fuel must adhere to the SO_2 emission limit for coal alone. Facilities which use both oil and any fuel other than coal simultaneously must not exceed the SO_2 emission limit for the oil alone. This rule allows facilities to meet their SO_2 emission limits by combining their usual fuel with lower-sulfur fuels. However, this rule fails to couple the lb/MMBTU emission limits with any applicable averaging time. The rule should require compliance with the emission limits on at least a three-hour basis in order to assure compliance with the short-term SO_2 NAAQS. Since the averaging time applicable to these emission limits is not made clear either in this rule or in other portions of Indiana's SO_2 SIP, 326 IAC 7–1.1 cannot be approved.

326 IAC 7–2

326 IAC 7–2 specifies that compliance or noncompliance with emission limits can be determined by a stack test in accordance with the test methods in 40 CFR [part] 60, appendix A. Continuous emission monitoring data collected pursuant to 326 IAC 3–1 may be used to determine compliance with emission limits. 326 IAC 7–2 also requires facilities to report the results of fuel sampling and analysis. Fuel combustion sources with total coal-fired heat input capacity of 1500 MMBTU/hr or greater are to keep records of average daily coal sulfur content and SO_2 emission rate (in units of lb/MMBTU). Sources with total coal-fired heat input capacity between 100 and 1500 MMBTU/hr need only record and report average monthly coal sulfur content and SO_2 emission rate. Monthly coal analysis is not acceptable for facilities of this size. Long-term averaging does not assure compliance with the short-term SO_2 NAAQS, since shorter periods of high emissions may not be detected. Sources with total coal-fired heat input capacity less than 100 MMBTU/hr may submit either calendar month or annual average coal sulfur content and SO_2 emission data. While it may be reasonable for very small sources to have less stringent sampling and analysis requirements, the calculation and reporting of an annual average alone is not acceptable. This would not be an acceptable determination of continuous compliance.

326 IAC 7–2 specifies that SO_2 emission rates for fuel combustion sources should be calculated based on emission factors published in AP–42, "Compilation of Air Pollutant Emission Factors." If compliance is to be determined through fuel sampling and analysis, USEPA prefers that SO_2 emissions be calculated under the assumption that 100 percent of the fuel sulfur content will be emitted from the facility as SO_2. The factors given in AP–42, however, are acceptable. 326 IAC 7–2 also allows IDEM's Commissioner to approve alternate SO_2 emission factors based on sulfur dioxide measurements, but the rule does not specify the rigorous scientific support required, or that the alternate emission factors will be included in site-specific SIP revisions. Therefore, this rule cannot be approved. For compliance determinations, USEPA cannot allow the Commissioner to have blanket authority to accept emission factors other than the generally applicable factors given in AP–42 for SO_2 emission calculations from fuel sampling data. To be approvable, 326 IAC 7–2 must set forth any site-specific alternative emission factors allowed by the State, and the State must compile sufficient technical support for the use of those emission factors. Additional site-specific emission factors should not be allowed except through site-specific SIP revisions, which must support the alternate emission factors with data from a series of emission tests and provide for periodic reverification of the emission factors' accuracy. In any case, 326 IAC 7–2 should also clearly state the approved emission factors and formulae to be used in calculating SO_2 emission rates from fuel analysis data.

326 IAC 7–3

326 IAC 7–3 requires that sources with total actual emissions of SO_2 greater than 10,000 tons per year install and operate ambient SO_2 monitors. The rule gives IDEM's Commissioner discretionary authority to grant waivers of all or part of the requirements of this rule. While the rule provides a set of criteria for reviewing these petitions, the rule should also require that monitoring data be provided in order to justify the

waiver of requirements for further monitoring. The rule should also provide for USEPA review of any waivers.

326 IAC 7–4

326 IAC 7–4 sets forth facility-specific SO_2 emission limitations and recordkeeping requirements for Lake, Marion, Vigo, Wayne, LaPorte, Jefferson, Sullivan, Vermillion, Floyd, Warrick, Morgan, Gibson, Dearborn, and Porter Counties. The January 11, 1991 submittal contains minor revisions to 326 IAC 7–4, which primarily consist of the removal of outdated interim compliance dates for various sources. The rule also reflects facility name changes that have occurred recently. However, in 326 IAC 7–4–1(c)(10), the emission limits for Inland Steel in Lake County have been relaxed. Similarly, the SO_2 emission limits for Bethlehem Steel in Porter County have been relaxed in 326 IAC 7–4–14(1)(C). In the case of Inland Steel, which is located in an area currently designated as nonattainment for SO_2, section 193 of the Clean Air Act precludes approval of this SIP revision. Section 193, the general savings clause, states that no SIP requirements in effect in a nonattainment area before the date of enactment of the Clean Air Act Amendments of 1990 may be relaxed unless equivalent or greater emission reductions are made. No emission reductions offsetting the Inland Steel relaxation have been identified by the State. Both the Inland Steel and the Bethlehem Steel relaxations are affected by section 110(l) of the Clean Air Act, which prohibits USEPA from approving a SIP revision if the revision would interfere with attainment. The USEPA can approve a SIP revision containing relaxations to existing emission limitations only if the State provides a modeled attainment demonstration performed according to USEPA guidelines to show that the relaxed limits will continue to protect the NAAQS. No information has been submitted to USEPA in support of the relaxed emission limitations for Inland Steel or Bethlehem Steel. Therefore, 326 IAC 7–4–1(c)(10) and 326 IAC 7–4–14(1)(C) cannot be approved.

III. Enforceability: "Commissioner's Discretion"

Rules containing "Commissioner's discretion" language allow IDEM's Commissioner to remove or modify federally enforceable requirements and restrictions for individual facilities. "Commissioner's discretion" language is found in 326 IAC 3–1.1, 3–2.1, 3–3, 7–2, and 7–3. Such language is unacceptable because it does not provide for USEPA review of rule modifications or exemptions made after USEPA's approval of the original rule. Modifications to SIP rules may affect an area's attainment and maintenance of the NAAQS, and may compromise the federal enforceability of the SIP limits. In order for "Commissioner's discretion" language to be approvable, any subsequent rule modifications made by the Commissioner must not hamper the SIP's enforceability or ability to assure the protection and maintenance of the standards. The USEPA may approve the rule if it provides that any modifications will be submitted to USEPA as SIP revisions, or if the rule explicitly states the criteria which the Commissioner will use to evaluate any requests for rule modifications or exemptions. Without such provisions, USEPA cannot be certain that each facility subject to the original rule will comply with all of the rule's requirements. Therefore, rules containing "Commissioner's discretion" language without either federally approved criteria for the expected modifications or provisions for USEPA review of the modifications cannot be approved and incorporated into the SIP.

IV. Proposed Rulemaking Action and Solicitation of Public Comment

The USEPA is proposing to disapprove Indiana's January 11, 1991 submittal. The rules do not couple the general SO_2 emission limits with compliance methods or averaging times adequate to ensure continuous compliance and maintenance of the NAAQS. 326 IAC 3–1.1, 3–2.1, 3–3, 7–2, and 7–3 contain "Commissioner's discretion" language, which could hamper USEPA's ability to enforce the State rules. 326 IAC 3–2.1 fails to properly cite the acceptable methodologies for source emission testing. 326 IAC 7–4 contains emission limits which are less stringent than the previously approved limits, and the January 11, 1991 submittal failed to show that the relaxations continue to protect the NAAQS. Because of these deficiencies, USEPA is proposing to disapprove the January 11, 1991 submittal.

Public comments are solicited on the requested SIP revision and on USEPA's proposal to disapprove. Public comments received by March 10, 1994 will be considered in the development of USEPA's final rulemaking action.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The 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.

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). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for the Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future notice will inform the general public of these tables. Under the revised tables this action remains classified as a Table 2. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the 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.

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. (5 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 businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The USEPA's disapproval of the State request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and

recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 26, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–2848 Filed 2–7–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 55

[FRL–4835–4]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed rulemaking ("NPR")—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (South Coast AQMD) is the designated COA. This is the first update of the South Coast AQMD OCS requirements since promulgation of the OCS Air Regulations on September 4, 1992. The OCS requirements for the South Coast AQMD contained in the Technical Support Document are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations. Proposed changes to the existing requirements are discussed below.

DATES: Comments on the proposed update must be received on or before March 10, 1994.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A–5), Attn: Docket No. A–93–16 section IV, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 section IV. This docket is available for public inspection and copying Monday-Friday during regular business hours at the following locations:

EPA Air Docket (A–5), Attn: Docket No. A–93–16 section IV, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 section IV, Environmental Protection Agency, 401 M Street SW., room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55 [1], which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur: (1) At least annually; (2) upon receipt of a Notice of Intent (NOI) under § 55.4; and (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This NPR is being promulgated in response to the submittal of rules by the South Coast AQMD. Public comments received in writing within 30 days of publication of this notice will be considered by EPA before promulgation of the final updated rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations in part 55, even though the same rules may ultimately be disapproved for inclusion as part of the state's SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the state and local rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules [2] and requirements for toxics and the South Coast AQMD's RECLAIM (Regional Clean Air Incentives Market) requirements. RECLAIM requirements will be incorporated as appropriate through a separate consistency update.

After review of the rules submitted by the South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to rescind the following rule which has been applicable to OCS sources:

Rule 107 Determination of Volatile Organic Compounds in Organic Material (Rescinded 3/6/92)

The following rules submitted as amendments to existing requirements are proposed for inclusion in part 55, except the sections of the rules relating

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[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Upon delegation the onshore area will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

to toxics, administrative requirements, and RECLAIM requirements:

Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 212 Standards for Approving Permits (Adopted 9/6/91) except (c)(3) section on toxics and (e) administrative requirement
Rule 219 Equipment Not Requiring a Written Permit (Adopted 9/11/92)
Rule 301 Permit Fees (Adopted 6/11/93) except all references to RECLAIM
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 6/11/93)
Rule 304.1 Analyses Fees (Adopted 6/6/92)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 403 Fugitive Dust (Adopted 7/9/93)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 10/2/92)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Reg IX New Source Performance Standards (Adopted 4/9/93)
Rule 1106 Marine Coatings Operations (Adopted 8/2/91)
Rule 1107 Coating of Material Parts and Products (Adopted 8/2/91)
Rule 1113 Architectural Coatings (Adopted 9/6/91)
Rule 1122 Solvent Cleaners (Adopted 4/5/91)
Rule 1146.1 Emission of Oxides of Nitrogen From Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 7/10/92)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 12/4/92)
Rule 1302 Definitions (Adopted 5/3/91)
Rule 1304 Exemptions (Adopted 9/11/92)

Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. This exemption continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and in the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final OCS rulemaking dated September 4, 1992 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0249. This consistency update does not add any further requirements.

List of Subjects in 40 CFR Part 55

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

Dated: January 28, 1994.

John Wise,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

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

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

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(G) to read as follows:

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

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources.*

* * * * *

4. Appendix A to CFR part 55 is proposed to be amended by revising paragraph (7) under the heading California to read as follows:

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

* * * * *

(California) * * *

(7) The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources:

Rule 102 Definition of Terms (Adopted 11/4/88)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (9/6/91) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 9/11/92)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 6/11/93) except all references to RECLAIM
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 6/11/93)
Rule 304.1 Analyses Fees (Adopted 6/6/92)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 7/6/90)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 7/9/93)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)

Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only. (Adopted 5/5/78)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 10/2/92)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Storage of Organic Liquids (Adopted 12/7/90)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)

Addendum to Regulation IV

Rule 701 General (Adopted 7/9/82)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)

Regulation IX—New Source Performance Standards (Adopted 4/9/93)

Rule 1106 Marine Coatings Operations (Adopted 8/2/91)
Rule 1107 Coating of Metal Parts and Products (Adopted 8/2/91)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/5/85)
Rule 1110.2 Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 9/7/90)
Rule 1113 Architectural Coatings (Adopted 9/6/91)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/1/78)
Rule 1122 Solvent Cleaners (Degreasers) (Adopted 4/5/91)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 11/2/90)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 1/6/89)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 7/10/92)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 12/4/92)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 12/7/90)
Rule 1176 Sumps and Wastewater Separators (Adopted 1/5/90)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 5/3/91)
Rule 1303 Requirements (Adopted 5/3/91)
Rule 1304 Exemptions (Adopted 9/11/92)
Rule 1306 Emission Calculations (Adopted 5/3/91)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 10/6/89)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)

Regulation XVII Appendix

* * * * *

[FR Doc. 94–2487 Filed 2–7–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7082]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet

the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Emergency Management Agency certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).	
				Existing	Modified
Texas	Carrollton (City), Dallas, Denton, and Collin Counties.	Stream 6D–5	Approximately 300 feet upstream of the confluence with Hutton Branch.	*495	*494
			Approximately 0.6 mile upstream of Carmel Drive.	None	*546
		Elm Fork of Trinity River	Just downstream of Beltline Road	*441	*440
			Approximately 200 feet upstream of the confluence of Denton Creek.	*445	*446

Maps available for inspection at the City Engineering Department, 1945 Jackson Road, Carrollton, Texas.
Send comments to The Honorable Milburn R. Gravely, Mayor of the City of Carrollton, Dallas, Denton, and Collin Counties, 1945 Jackson Road, Carrollton, Texas 75011–0535.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 14, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–2855 Filed 2–7–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

[Docket No. FEMA–7083]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or

pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Emergency Management Agency certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source or flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
MAINE	
Calais, City (Washington County)	
St. Croix River:	
Calais-Robbinston corporate limits	*15
Calais-Baring Plantation corporate limits	*80
Maps available for inspection at the Calais City Hall, Community Development Office, Church Street, Calais, Maine.	
Send comments to The Honorable Harold Clark, Mayor of the City of Calais, Washington County, Calais City Hall, Church Street, Calais, Maine 04619.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Illinois	Morris (City) Grundy County.	Nettle Creek	Approximately 200 feet upstream of Illinois Michigan Canal.	*503	*506
			At upstream corporate limits	*506	*507
		East Fork Nettle Creek	At confluence with Nettle Creek	*503	506
			Approximately 150 feet upstream of Gore Road.	*548	*547
		East Fork Nettle Creek Tributary.	At the upstream side of Illinois Highway 47.	None	*517
			Approximately 200 feet upstream of upstream corporate limits.	None	*520
Maps available for inspection at the Morris City Hall, 320 Wauponsee Street, Morris, Illinois. Send comments to the Honorable Robert T. Feeney, Mayor of the City of Morris, Grundy County, 320 Wauponsee Street, Morris, Illinois 60450.					
Illinois	Mundelein (Village) Lake County.	Diamond Lake Drain	Approximately 250 feet downstream of corporate limit.	*714	*721
			Approximately 100 feet upstream of Diamond Lake Road.	*742	*744
		Diamond Lake	For entire shoreline within community	*742	*744
Maps available for inspection at the Mundelein Village Hall, 440 East Hawley Street, Mundelein, Illinois. Send comments to Ms. Marilyn Sindels, Mundelein Village President, 440 East Hawley Street, Mundelein, Illinois 60060.					
Maine	Phillips (Town) Franklin County.	Sandy River	Approximately 0.45 mile downstream of Bridge Street.	None	*543
			At upstream corporate limit	None	*818
		Orbeton Stream	At confluence with Sandy River	None	*718
			Upstream side of Toothaker Pond Road	None	*737
		South Branch Sandy River	At confluence with Sandy River	None	*745
			Approximately 0.8 mile upstream of Boise Cascade Road.	None	*913
		Toothaker Pond	Entire shoreline within community	None	*795

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Town Hall, Phillips, Maine. Send comments to Mr. Gordon Davenport, Chairman of the Town of Phillips Board of Selectmen, Franklin County, P.O. Box 96, Phillips, Maine 04966.					
Massachusetts	Easton (Town) Bristol County.	Queset Brook	Approximately 125 feet upstream of Dean Pond Dam.	*96	*97
			Approximately 0.28 mile upstream of Canton Street.	None	*183
		Gowards Brook	Approximately 0.46 mile downstream of Norton Avenue.	None	*94
			Upstream side of State Route 106	None	*147
		Whitman Brook	At confluence with Queset Brook	None	*122
			Approximately 0.37 mile upstream of Conrail.	None	*135
Maps available for inspection at the Planning and Zoning Office, 136 Elm Street, Easton, Massachusetts. Send comments to Mr. Kevin Paicos, Easton Town Administrator, 136 Elm Street, Easton, Massachusetts 02356.					
Michigan	Dearborn (City) Wayne County.	River Rouge	Approximately 450 feet downstream of Evergreen Road (North Bound).	None	*587
			Approximately 100 feet upstream of Ford Road (West Bound).	None	*597
		Lower River Rouge	At the confluence with River Rouge	None	*589
			At the Gulley Road	None	*603
		North Branch Ecorse Creek.	At the Southfield Freeway	None	*601
			Approximately 1,300 feet downstream of Madison Street.	None	*611
Maps available for inspection at the Dearborn City Hall West, Office of City Engineer, 4500 Maple Street, Dearborn, Michigan. Send comments to the Honorable Michael Guido, Mayor of the City of Dearborn, 13615 Michigan Avenue, Dearborn, Michigan 48126.					
New York	Hamburg (Town) Erie County.	Buttermilk Falls Creek	Approximately 800 feet downstream of Lakeview Road.	*727	*726
			At Heltz Road	None	*742
Maps available for inspection at the Building Inspection Office, S–6100 South Park Avenue, Hamburg, New York. Send comments to Mr. John A. Michalek, Hamburg Town Supervisor, S–6100 South Park Avenue, Hamburg, New York 14075.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 14, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–2856 Filed 2–7–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15, 31, 42, 46, and 52

[FAR Cases 89–14, 89–21, 89–31, 89–61, 91–17, and 91–67]

Federal Acquisition Regulation, Withdrawal of Proposals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rules; withdrawal.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration have decided to withdraw six proposed rules. These rules appeared between 1989 and 1992 and have subsequently been determined to be unnecessary, incorporated into other rules, or need further review.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755.

SUPPLEMENTARY INFORMATION:

FAR Case 89–14, Indirect Cost Rate Agreements

The proposed rule, published March 7, 1989, in the **Federal Register** (54 FR 10133), is hereby withdrawn. The rule proposed changes to Federal Acquisition Regulation (FAR) 15.804–4(i), 42.705–1, 42.705–2, and the clause 52.216–13 to clarify the requirement for certification under the Truth-in-Negotiations Act for final indirect cost rate agreements. The rule subsequently was determined to be unnecessary.

FAR Case 89–21, Inspection for Commercial, Off-the-Shelf Supplies

The proposed rule revising FAR 46.202–1, 46.301, and 46.302 published April 20, 1989, in the **Federal Register** (54 FR 16094), is hereby withdrawn.

Withdrawal is considered necessary because the subject matter associated with this case has been incorporated with a case which proposes changes to part 46, including inspection of commercial supplies.

FAR Case 89–11, Title to Property Under the Progress Payments Clause

The proposed rule, published May 1, 1989, in the **Federal Register** (54 FR 18631), is hereby withdrawn, as agreed upon by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council. The proposed FAR clarifications published for public comment have been determined to be unnecessary because the current FAR adequately covers the issues addressed by the proposed rule.

The rule proposed a change to the progress payments clause at FAR 52.232–16. The councils published the proposed rule to assist in assessing whether the FAR should be revised to emphasize that it is and always has been the intent of the FAR that the interest taken by the Government in property covered by the clause is title in the form of ownership, and not a mere lien. The Councils have determined that there is no need to clarify the intent of the FAR. Contracts containing the Progress Payments clause clearly reflect the intention of the parties to grant title to the property to the Government and not grant merely a lien.

FAR Case 89–61, Noncommercial Cost Principles

The proposed rule, published July 28, 1989, in the **Federal Register** (54 FR 31480), is hereby withdrawn. The rule proposed revising FAR subparts 31.3, 31.6, and 31.7 to set forth a new rule on the allowability of costs incurred under Federal contracts with educational institutions, state and local governments, federally recognized Indian tribal governments, and nonprofit organizations. The statutory prohibitions at 10 U.S.C. 2324(e) on allowable costs under defense contracts have been published in the Defense Federal Acquisition Regulation Supplement and FAR coverage is not necessary. Civilian agency contracts that are awarded to these noncommercial entities rely on the cost principles promulgated by the Office of Management and Budget.

FAR Case 91–17, Contractor Acquisition of Automatic Data Processing Equipment

The proposed rule, published May 3, 1991, in the **Federal Register** (56 FR 20507), is hereby withdrawn. This rule proposed raising two dollar thresholds in FAR 31.205–2 from $500,000 to $1,000,000. The first threshold (31.205–2(b)(2)(iii)(B)) pertains to the initial decision to lease automatic data processing equipment (ADPE), which requires contracting officer's approval. The second threshold (31.205–2(d)(3)) pertains to a contractor requirement to furnish data supporting the annual justification for retaining or changing existing ADPE capability and the need to continue leasing. Revising the thresholds in FAR 31.205–2 will be considered further as a part of a comprehensive review of the cost principle.

FAR Case 91–67, Employee Stock Ownership Plans

The proposals rule, published February 4, 1992, in the **Federal Register** (57 FR 4181), is hereby withdrawn. The Councils published the proposed rule to clarify that the cost principle at FAR 31.205–6(j)(8), Employee stock ownership plans, applies to all employee stock ownership plans (ESOPs) regardless of whether or not an ESOP meets the definition of "pension plan" in FAR 31.205–6(j)(1) (i.e., provides a benefit payable for life). After consideration of public comments and further examination of the issues involved, the Councils determined that the proposed rule fails to adequately address major issues associated with the allowability of costs for ESOPs. The Councils plan to address these issues in a future proposed rule.

List of Subjects in 48 CFR Parts 15, 31, 42, 46, and 52

Government procurement.

Dated: November 9, 1993.

Albert A. Vicchiolla,

Director.

[FR Doc. 94–2626 Filed 2–7–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

48 CFR Parts 912, 952 and 970

Acquisition Regulation; Project Control System

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is amending the Department of Energy Acquisition Regulation (DEAR) to update existing coverage addressing the use of contractor project control systems. The Department's new approach emphasizes evaluation criteria that stress explicit technical and schedule baseline development and control in addition to cost control.

DATES: Written comments should be submitted no later than February 8, 1994.

ADDRESSES: Comments should be forwarded to the attention of Kevin M. Smith, Procurement Policy Division, at the address indicated below.

FOR FURTHER INFORMATION CONTACT:

Kevin M. Smith, Procurement Policy Division (HR–521.1), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8189.

Mary Ann Masterson, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1900.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Analysis
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the National Environmental Policy Act
IV. Public Comments

I. Background

The DOE previously used the Cost and Schedule Control System Criteria (CSCSC) to evaluate management systems on selected contracts. A recent internal directive, DOE Notice 4700.5, Project Control System Guidelines (Notice), revised the method for applying control systems to the management of projects by expanding upon and replacing the CSCSC. The new approach includes explicit technical and schedule baseline development and control in addition to cost control. The previous directive addressing this issue, DOE Order 2250.1D, Cost and Schedule Control Systems Criteria, has been canceled. DOE Project Managers are responsible for determining the applicability of the Project Control System and the extent to which the requirements of the Notice will be utilized in individual contracts. Project Managers will have the flexibility to tailor requirements, encourage formulation of customized project control strategies for each project or group of projects, and emphasize the appropriate degree of application for each guideline element to effectively control technical, schedule, and cost risks.

II. Section-by-Section Analysis

A detailed list of changes follows:

1. Subpart 912.70 is added to provide guidance for the use of the new Project Control System Guidelines.
2. Subsection 952.212–73, Cost and schedule control systems criteria, is amended to incorporate the Project Control System contract clause.
3. Subsection 970.5204–50 is amended to reflect the new Project Control System Guidelines.

III. Procedural Requirements

A. Review Under Executive Order 12866

The Department of Energy has determined that today's regulatory

action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that executive order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this proposed rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences such as changed construction rates. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule will apply to States that contract with DOE; however, none of the revisions is substantive in nature.

F. Review Under the National Environmental Policy Act

DOE has concluded that this proposed rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.) (1976) or the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

IV. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESSES" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action. Comments received after that date will be considered to the extent that time allows. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. The Department's generally applicable procedures for handling information, which has been submitted in a document and may be exempt from public disclosure, are set forth in 10 CFR 1004.11. The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to section 50(c) of the DOE Organization Act (42 U.S.C. 7191(c)) and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 48 CFR Parts 912, 952, and 970

Government procurement.

Issued in Washington, DC, on February 1, 1994.

G. L. Allen,

Acting Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The authority citation for parts 912 and 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 912—CONTRACT DELIVERY OR PERFORMANCE

2. Subpart 912.70 is added to read as follows:

Subpart 912.70—Project Control System

912.7001 Project control system.
912.7002 Solicitation provision and contract clause.

Subpart 912.70—Project Control System

§ 912.7001 Project control system.

DOE project managers are responsible for determining the applicability of the Project Control System and the extent to which the requirements of the applicable DOE Directives will be utilized in individual contracts. Project managers will have the flexibility to tailor requirements, encourage formulation of customized project control strategies for each project or group of projects, and determine the appropriate degree of application for each guideline element to effectively control technical, schedule, and cost risks.

§ 912.7002 Solicitation provision and contract clause.

(a) The contracting officer shall include the clause at 952.212–73, Project Control System, in solicitations and contracts identified by the project manager as suitable for the requirements of the Project Control System Guidelines.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Subsection 952.212–73 is revised to read as follows: 952.212–73 *Project control system.*

As prescribed in 912.7002(a), insert the following clause in solicitations and contracts where the requirements of the Project Control System are to be utilized.

Project Control System (XXX 1994)

(a) In the performance of this contract, the contractor shall establish, maintain, and use a project control system meeting the requirements specified in the contract, in DOE Notice 4700.5 "PROJECT CONTROL SYSTEM GUIDELINES," and any other system requirements defined by the contracting officer. The contractor may propose the use of a pre-existing project control system if such system satisfies the requirements of DOE Notice 4700.5.

(b) The contractor shall provide the contracting officer with a detailed written description of the proposed project control system for review and approval within _____ [contracting officer insert number] calendar days after award of the contract. Cost effective application of controls will be a critical factor in determining acceptability of the proposed system.

(c) Upon system approval by the contracting officer, the contractor shall fully implement the project control system. The contractor shall not make any significant changes to the approved system without the prior written approval of the contracting officer. If a pre-existing project control system does not satisfy the requirements of DOE Notice 4700.5, revisions necessary to assure compliance shall be made with no change to the estimated cost/fixed fee, or price of the contract.

(d) The contractor shall provide the contracting officer or his/her authorized representative with access to all pertinent records, data, and plans for purposes of initial approval, approval of proposed changes, and the operation of the project control system.

(e) The contractor shall set forth applicable project control system requirements in those subcontracts identified by the contracting officer. The contractor shall incorporate in the identified subcontracts provisions for review and surveillance of the subcontractors' systems. The review will be conducted by the contractor, unless the Government, contractor, or subcontractor requests Government review.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

4. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

§ 970.5204–50 [Amended]

5. Section 970.5204–50 is amended by revising the heading to read "Project control system."

[FR Doc. 94–2736 Filed 2–7–94; 8:45 am]
BILLING CODE 6450–01–P

Notices

Federal Register
Vol. 59, No. 26
Tuesday, February 8, 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

Forest Service

Twelve Lakes Stabilization Project, Wasatch-Cache National Forest, Summit County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to stabilize Big Elk, Crystal, Duck, Fire, Island, Long, Marjorie, Pot, Star, Teapot, Wall, and Weir Lake reservoirs located in non-motorized backcountry adjacent to the Mirror Lake Highway. These lakes will no longer be used for water storage purposes. Restoration of watershed resources, fishery and wildlife habitat, and previous recreation impacts will occur. This project is mitigation for lost fishery and recreational opportunities related to the construction of Jordanelle Reservoir (Central Utah Project).

DATES: Comments concerning the scope of the analysis should be received in writing by March 8, 1994.

ADDRESSES: Send written comments to POB 68, Kamas, Utah 84036.

FOR FURTHER INFORMATION CONTACT: Mead Hargis, Kamas Ranger District, 801–783–4338.

SUPPLEMENTARY INFORMATION: The Wasatach-Cache National Forest is the lead agency.

The Kamas Ranger District invites comments on the proposed action and alternatives. Scoping will include written, phone or personal comments. No meetings are scheduled. District employees will meet with any person who requests a meeting.

The decisions to be made include whether or not to stabilize these lakes and if so at what lake surface elevation and what, if any, recreation and natural resource restoration will be necessary.

Preliminary issues include cost, fishery benefits, roadless character, wetlands, cultural resources, potential impacts of stablization attracting more recreational use to these lakes.

Preliminary alternatives include No Action, stabilization at natural lake levels, low hazard dam levels, and levels above low hazard dam elevations.

A 404 Dredge and Fill permit from the Army Corps of Engineers and Utah State Stream Alternation permits will be necessary.

The Responsible Official is Melissa Blackwell, District Ranger, Kamas Ranger District.

Estimated dates of availability: Draft EIS August 1994, final EIS November 1994.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 S. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: February 1, 1994.

Melissa Blackwell,

District Ranger.

[FR Doc. 94–2837 Filed 2–7–94; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Hannah D. Atkins, Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by John Kennedy, Secretary of State, for an additional farm product produced in that State as follows:

Quail

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c) (2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c) (2); 7 CFR 2.18(e) (3), 2.56(a) (3), 55 F.R. 22795.

Dated: January 31, 1994.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 94–2776 Filed 2–7–94; 8:45 am]

BILLING CODE 3410–KD–P

Forest Service

Butch Creek Timber Sale; Idaho Panhandle National Forests, Pend Oreille County, Washington.

ACTION: Notice of availability of the draft environmental impact statement for proposed activities in the Butch Creek project area.

DATES: The comment period on this draft environmental impact statement expires March 28, 1994.

ADDRESSES: Send written comments to District Ranger, Priest Lake Ranger District, HCR 5, Box 207, Priest River ID 83856.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Kent Dunstan,

District Ranger; David Cobb, the Interdisciplinary Team Leader, or David Asleson, the District Planning Staff Officer, Priest Lake Ranger District, Idaho Panhandle National Forests, HCR 5 Box 207, Priest Lake ID 83856. Phone: (208) 443–2512.

SUMMARY: The notice is hereby given that the Forest Service has prepared a Draft Environmental Impact Statement (DEIS) documenting the environmental effects that proposed timber harvesting and watershed improvement activities would have in the Butch Creek project area. The area is located approximately 15 air miles northwest of Priest River, Idaho, and is approximately 7,270 acres in size.

Public participation is important. People may visit with Forest Service officials at any time prior to the decision, however, it is very important that public comment be made available to the Forest Service during review of this Draft EIS. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by June, 1994. The Forest Service will respond to the comments received from the DEIS in the FEIS.

The District Ranger is the responsible official for this EIS, and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

SUPPLEMENTARY INFORMATION: A very specific proposed action was developed for the area that includes timber harvest, reforestation and watershed rehabilitation activities. The proposed action and alternatives to the proposed action were developed within the framework of Ecosystem Management. This approach considers the management of all resources on large land areas with emphasis on sustaining the ecological systems present.

Five alternatives were developed, including a No-Action Alternative. Alternative C is the alternative preferred by the Forest Service. Under Alternative C, approximately 4.5 million board feet of green, dead and dying timber would be harvested within 23 harvest units. Harvest methods include commercial thinning, overstory removal, group selection, individual tree selection, sanitation/salvage, shelterwood with reserves and seed tree with reserves. Skyline and tractor yarding methods would be utilized to harvest trees within these areas. In addition to these timber management activities, approximately 69 acres would be precommercially thinned.

Access to these proposed harvest areas would require 0.9 mile of new road construction, 8.7 miles of road reconstruction and 0.8 mile of road reconditioning. All of these roads would be closed, either immediately following the timber harvesting or after the post sale activities (such as slash burning and planting) have been completed. The majority of the newly constructed roads would be obliterated immediately after the timber is harvested while the majority of the reconstructed roads would be closed following the post sale activities.

In addition to these road activities, improvements to the existing Forest Service Road 305 would be made over an 8-mile stretch within the project area to reduce the amount of sediment reaching the adjacent stream. To further improve the watershed conditions, structures would be placed into some headwater streams.

Management activities would be administered by the Priest Lake Ranger District of the Idaho Panhandle National Forests in Bonner County, Idaho. This DEIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area.

HOW TO RESPOND: The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. To ensure that these comments are considered in the final decision, comments must be postmarked or received within 45 days from the date that this notice is published in the **Federal Register**. Commenters should include: (1) Name, address, telephone number, organization represented, if any; (2) title of the document on which the comment is being submitted (Butch Creek DEIS); and (3) specific concerns and supporting reasons for the District Ranger to consider. Copies of the Record of Decision will be mailed to those people who have submitted comments either before or during the comment period and to those who request a copy.

Dated: January 25, 1994.

Kent L. Dunstan,

District Ranger, Priest Lake Ranger District, Idaho Panhandle National Forests.

[FR Doc. 94–2584 Filed 2–7–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020294A]

Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Permit Review Board will meet on February 22–24, 1994, in the Council Chamber on the main floor of 2000 SW. First Avenue, suite 420, Portland, OR. The meeting will begin each day at 8 a.m. The meeting will not adjourn until the business for each day is completed, and may go into the evening hours.

The purpose of the meeting is to review appeals on applications for West Coast groundfish limited entry permits which were denied by the National Marine Fisheries Service.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas Bigford on (206) 526–6140 at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Thomas Bigford, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA; 98115; telephone: (206) 526–6140.

Dated: February 2, 1994.

David S. Crestin,

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

[FR Doc. 94–2789 Filed 2–7–94; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

February 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: February 9, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 927–3715.

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).

In a Memorandum of Understanding (MOU) dated January 21, 1994 between the Governments of the United States and Pakistan, agreement was reached to amend and extend further 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, for two consecutive one-year periods beginning on January 1, 1994 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period beginning on January 1, 1994 and extending through December 31, 1994.

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).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 1, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to 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 (MOU) dated January 21, 1994 between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 9, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
Specific Limits	
219	5,885,000 square meters.
226/313	89,525,621 square meters.
237	286,225 dozen.
239	1,347,547 kilograms.
314	4,280,000 square meters.
315	60,563,779 square meters.
331/631	1,752,915 dozen pairs.
334/634	169,060 dozen.
335/635	261,080 dozen.
336/636	343,470 dozen.
338	3,857,571 dozen.
339	972,932 dozen.
340/640	457,960 dozen of which not more than 171,735 dozen shall be in dress shirts in Categories 340–D/640–D [2].
341/641	515,205 dozen.
347/348	506,742 dozen.
351/651	228,980 dozen.
352/652	572,450 dozen.
359–C/659–C [3]	1,030,410 kilograms.
360	1,998,637 numbers.
361	2,598,981 numbers.
363	35,881,062 numbers.
369–F [4]	1,144,900 kilograms.
369–P [5]	572,450 kilograms.
369–R [6]	8,014,300 kilograms.
369–S [7]	524,318 kilograms.
613/614	17,726,894 square meters.
615	18,858,395 square meters.
617	14,292,192 square meters.
638/639	337,080 dozen.
647/648	639,090 dozen.
Aggregate Designated Consultation Level (DCL)	
300, 301, 317, 326, 330, 332, 333, 342, 345, 349, 350, 353, 354, 359–O [8], 362 and 369–O [9], as a group.	81,000,000 square meters equivalent.
Within Aggregate DCL	
317	5,016,764 square meters.
Other DCL	
666	1,133,981 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045.

[5] Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[6] Category 369–R: only HTS number 6307.10.2020.

[7] Category 369–S: only HTS number 6307.10.2005.

[8] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C).

[9] Category 369–O: all HTS numbers except 6302.91.0045 (Category 369–F); 6302.60.0010, 6302.91.0005 (Category 369–P); 6307.10.2020 (Category 369–R); and 6307.10.2005 (Category 369–S).

Imports charged to these category limits for the period January 1, 1993 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement and the MOU dated January 21, 1994 between the Governments of the United States and Pakistan.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–2756 Filed 2–7–94; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94–C0008]

Walgreen Co., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Federal Hazardous Substances Act and the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Walgreen Co., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 23, 1994.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 94–C0008, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: (Attached).

Dated: January 31, 1994.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

1. Walgreen Co. (hereinafter, "Walgreen"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Walgreen knowingly caused the export of certain banned hazardous substances, namely toys, in violation of section 14(d) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1273(d), which is a prohibited act under section 4(i) of the FHSA, 15 U.S.C. 1263(i).

I. Jurisdiction

2. The Commission has jurisdiction over Walgreen and the subject matter of this Settlement Agreement pursuant to section 30(a) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2079(a), and sections 2 (f)(1)(D) and (s), 4 (a) and (i) and 5(c) of the Federal Hazardous Substances Act (hereinafter, "FHSA"), 15 U.S.C. 1261(f)(1)(D) and (s), 1263 (a) and (i) and 1264(c).

II. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Walgreen is a corporation organized and existing under the laws of the State of Illinois with its principal corporate offices located at 200 Wilmot Road, Deerfield, Illinois 60015. Walgreen is a retail drug chain and is engaged, in part, in the business of importing and selling domestically, children's toys and novelty items.

III. Allegations of the Staff

5. On June 2, 1992, Commission field staff collected samples of Walgreen's "Toy Center Musical Phone," item #874409, for evaluation under the FHSA.

6. In the staff's letter of July 8, 1992, Walgreen was advised that these toys are intended for children under three years of age and are subject to the Small Parts regulation at 16 CFR part 501. The toy phone had battery and antenna components that separated when tested under the use and abuse procedures outlined in 16 CFR 1500.52(c) and (f). The battery antenna components fit entirely within the small parts cylinder described at 16 CFR 1500.4. Therefore, the toys present a choking hazard to children under three years of age. As a result, the toy phones are hazardous substances as defined in section 2(f)(1)(D) and (s) of the FHSA and the regulations at 16 CFR 1500.18(a)(9), and are banned hazardous substances under section 2(q)(1)(A) of the FHSA.

7. In that same letter, Walgreen was supplied with the Regulated Products Handbook and referred to chapter 6. The letter and the handbook described, among other things, the procedures that must be followed if a firm elects to export banned products.

8. In Walgreen's response of September 1, 1992, they described their "stop sales" activity and informed Commission staff that the returned goods would be "held for return to the vendor."

9. On September 30, 1992, the Commission's Central Regional office received a letter from a firm, Atico Limited of Miami, Florida which represented itself as Walgreen's agent for disposal of these toys. Atico claimed to have revised the product so that it would comply with the FHSA and included revised samples for evaluation.

10. The staff's letter dated November 3, 1992, informed Atico that the revised toys were still not in compliance with the FHSA, and asked again for a final disposition of Walgreen's stock of these violative products. The letter again outlined the correct procedures to follow should Walgreen elect to reexport the products.

11. In January 1993, the staff was contacted by counsel, purportedly representing Atico, asking for additional guidance on the Commission's export requirements. He specifically inquired about possible export to Paraguay. The staff told him that Walgreen was the importer and should file a notice of export with the Commission.

12. In a phone conversation held April 26, 1993, the CPSC staff again asked Walgreen about the disposition of the violative toys. Walgreen advised that Atico would be handling the export on its behalf.

13. In a phone conversation held on April 27, 1993, Walgreen acknowledged that it had not filed the Notice to Export.

14. Subsequently, the staff learned that Walgreen had shipped 1,758 cartons of these toys back to its foreign supplier on March 29, 1993. The Commission never received the required Notice of Export from Walgreen or Atico.

15. Section 14(d) of the FHSA requires, in pertinent part, that any person who elects to export a banned hazardous product shall notify the

Commission of its intent to export at least 30 days prior to the date of exportation.

16. Walgreen's failure to provide the Commission with advance notice of its intent to export these toys is a violation of section 14(d) of the FHSA, 15 U.S.C. 1273(d), and is a prohibited act under section 4(i) of the FHSA, 15 U.S.C.

IV. Response of Walgreen

17. Walgreen denies the allegations of the staff that it has knowingly introduced or caused the introduction into commerce of the aforesaid banned hazardous toys, that it knowingly failed to comply with export notification requirements of the FHSA, or that it violated the FHSA in any way.

V. Agreement of the Parties

18. The Consumer Product Safety Commission has jurisdiction over Walgreen and the subject matter of this Settlement Agreement and Order under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

19. Walgreen agrees to pay to the Commission a civil penalty in the amount of fifty thousand and 00/100 dollars ($50,000) within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement. This payment is made in full settlement of the staff's allegations set forth in paragraphs five through sixteen above that Walgreen violated the FHSA.

20. The Commission does not make any determination that Walgreen knowingly violated the FHSA. The Commission and Walgreen agree that this Agreement is entered into for the purposes of settlement only.

21. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Walgreen knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Walgreen failed to comply with the FHSA as aforesaid, and (4) to a statement of findings of fact and conclusions of law.

22. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had been issued; and, the Commission may publicize the terms of the Settlement Agreement and Order.

23. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

24. The parties further agree that the Commission shall issue the attached Order, incorporated herein by reference; and that a violation of the Order shall subject Walgreen to appropriate legal action.

25. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

26. The provisions of the Settlement Agreement and Order shall apply to Walgreen and each of its successors and assigns.

Respondent Walgreen Co.

Dated: October 28, 1993.

Vernon A. Brunner,

Exec. Vice President, Walgreen Co., 200 Wilmot Road, Deerfield, IL 60015.

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Alan H. Schoem,

Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: November 9, 1993.

Melvin I. Kramer,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement entered into between respondent Walgreen Co., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Walgreen; and it appearing that the Settlement Agreement is in the public interest, it is

Ordered, That the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further ordered, That upon final acceptance of the Settlement Agreement, Walgreen Co. shall pay to the order of the Consumer Product Safety Commission a civil penalty in the amount of fifty thousand and 00/100 dollars ($50,000) within twenty (20) days after service of the Final Order and Decision in this matter.

In the Matter of Walgreen Co.

Provisionally accepted and Provisional Order issued on the 31st day of January, 1994.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–2873 Filed 2–7–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Final Programmatic Life-Cycle Environmental Impact Statement (EIS) for the Theater Missile Defense (TMD) Program

AGENCY: Ballistic Missile Defense Organization (BMDO), DOD.

ACTION: Notice of availability.

SUMMARY: The Proposed Action is to conduct research and development activities that would give the United States the capability to produce and deploy an integrated, comprehensive theater missile defense. The Proposed Action is necessary to improve the capability of the United States to defend its forward-deployed armed forces and its friends and allies against hostile theater missiles in any foreign theater of operations. TMD consists of three components: (1) Active Defense to destroy enemy missile in-flight; (2) Counterforce to destroy an enemy's ability to launch missiles and; (3) Passive Defense to evade detection and otherwise enhance survival from missile attack. A network of command, control, communications and intelligence (C^3I) elements would support each of the components individually and provide a means of managing and integrating the overall TMD system.

The EIS addresses, to the extent possible, the potential environmental impacts of the research, development and testing, production, basing (not deployment), and eventual decommissioning of the proposed TMD components. It also identifies any mitigation measures that could avoid or lessen those impacts. Environmental resource topics evaluated include air quality, noise, surface and ground water quality, hazardous materials and wastes, electromagnetic radiation, safety, land use, transportation, and biological and cultural resources.

Alternative to the Proposed Action analyzed in the EIS:

• Improve Active Defense Only—involving only Active Defense and related C^3I research, development, and testing activities. TMD system improvements would only occur in the area of intercepting and destroying in-flight theater missiles.

• Improve Counterforce Only—involving only Counterforce and related C^3I research, development, and testing activities. TMD system improvements would only occur in the areas of detecting, identifying, and destroying fixed and mobile launch platforms, support and storage facilities, and command and control nodes.

• Improve Passive Defense Only—involving only Passive Defense and related C^3I research, development, and testing activities. TMD system improvements would occur in the area of camouflage, cover, and deception; hardening of military assets; reductions in thermal, and electronic emissions; and mobility.

• No-Action Alernative—no research and development activities, no testing activities, and no production or basing would be undertaken that would result in an integrated and comprehensive TMD system. Normal improvements and maintenance of existing system (i.e., aircraft, missile, radars) would occur to assure their performance against traditional combatant forces.

FOR FURTHER INFORMATION CONTACT: Major Christine Queen, BMDO/DRE, room 1E1008, 7100 Defense Pentagon, Washington, DC, 20301–7100, (703) 695–8743.

Dated: February 2, 1994.

L.M Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–2757 Filed 2–7–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Tracked Vehicle Industrial Base

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Tracked Vehicle Industrial Base will meet in closed session on February 14, 1994 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the Congressional issues concerning the public and private industrial base for tanks and tank engines. The Task Force should study the viability of the tank and tank engine industrial base and propose a definitive plan of action, cost estimates, and cost effectiveness trade-off analyses and an implementation schedule for Congressional review.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: February 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–2795 Filed 2–7–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Acquiring Defense Software Commercially

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Acquiring Defense Software Commercially will meet in open session on February 25, 1994 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Suite 175, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology

on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will review current DoD software acquisition regulations, DoD acquisition experiences with selected software-intensive systems, and contractor acquisition experiences with DoD and commercial software-intensive systems.

Persons interested in further information should call Ms. Virginia Castor at (703) 614–0212.

Dated: February 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–2796 Filed 2–7–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Long Term Management Strategy for Savannah Harbor Navigation Project, Chatham County, GA and Jasper County, SC

AGENCY: U.S. Army Corps of Engineers, Savannah District, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Savannah District is conducting a Long Term Management Strategy (LTMS) to address the long term operational and management needs for the dredging and dredged material disposal needs for the Federally Authorized Savannah Harbor Navigation Project. Savannah Harbor is located approximately 75 miles south of Charleston, South Carolina, and 120 miles north of Jacksonville, Florida. Savannah Harbor includes the lower 21.3 miles of the Savannah River. An additional 11.4 miles of channel is maintained from the mouth of the harbor across the bar to the Atlantic Ocean. Annual maintenance of the Savannah Harbor Navigation Project requires dredging and disposal of approximately 6 million cubic yards of material.

The LTMS for the Savannah Harbor Navigation Project will focus on sound economic and environmental alternatives for the management of dredging and dredged material disposal for maintaining the Federally Authorized Navigation channel and additional material dredged under Department of the Army permits. Various alternative dredging schedules and dredging disposal schemes will be examined in an effort to minimize total dredging and disposal costs and identity environmentally sensitive and beneficial management practices. Analysis of potential impacts on endangered species, fisheries, birds, marine mammals, water quality, historic properties, etc., resulting from the various alternatives will be included in the EIS.

SCOPING PROCESS: Federal, State and local officials; conservation groups, and interested businesses, groups, and individuals are invited to comment on the proposed project. Comments received as a result of this notice will be used to assist in identifying potential impacts to the quality of the environment.

AVAILABILITY: The Draft Environmental Impact Statement will be made available to the public in October 1994.

ADDRESSES: Written comments may be forwarded to the District Engineer, U.S. Army Corps of Engineers, Savannah District, 100 W. Oglethorpe Ave., P.O. Box 889, Savannah, Georgia 31402–0889.

DATES: Comments should be received on or before March 10, 1994 to ensure timely consideration.

FOR FURTHER INFORMATION CONTACT: Questions concerning this proposal may be directed to Mr. Jamie Sykes, (912) 652–5178.

Kenneth L. Denton,

Army Federal Register Liaison Officer,

[FR Doc. 94–2831 Filed 2–7–94; 8:45 am]

BILLING CODE 4012–70–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94–109–000]

Transcontinental Gas Pipe Line Corp.; Intent to Prepare an Environmental Assessment for the Proposed 1995/1996 Southeast Expansion Project and Request for Comments on Environmental Issues

February 2, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of facilities proposed in the 1995/1996 Southeast Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether or not to approve the project.

Summary of the Proposed Project

TGPL wants Commission authorization to construct, operate, and modify the following facilities, on a phased basis. TGPL would use the facilities to transport up to 165,000 Mcfd of natural gas (115,000 Mcfd in 1995 [Phase I] and 50,000 Mcfd in 1996 [Phase II]) from the interconnection of TGPL's main line and its Mobile Bay Lateral near Butler in Choctaw County, Alabama, to certain points of delivery upstream of TGPL's Compressor Station No. 165 near Chatham, Virginia:

Phase I Facilities (1995)

- 12,600-horsepower (HP) compressor addition at Compressor Station No. 90 in Marengo County, Alabama.
- Two 7,000-HP electric drive units to replace two existing 5,620-HP steam turbines on Units 1 and 2 at Compressor Station No. 100 in Chilton County, Alabama.
- 15.13 miles of 42-inch-diameter loop on Main Line E in Chilton and Autauga Counties, Alabama.
- Modifications to existing compressor equipment at Compressor Station No. 110 in Randolph County, Alabama.
- 12,000-HP compressor addition at Compressor Station No. 120 in Henry County, Georgia.
- 12,600-HP compressor addition at Compressor Station No. 150 in Iredell County, North Carolina.

Phase II Facilities (1996)

- 6,500-HP compressor addition at Compressor Station No. 100 in Chilton County, Alabama.
- 12,000-HP compressor addition at Compressor Station No. 120 in Henry County, Georgia.

The general location of these facilities is shown in appendix 1.[2]

Land Requirements for Construction

The proposed loop would be built adjacent and parallel to existing rights-of-way. TGPL intends to use a 75-foot-wide construction right-of-way. About 15 feet of the planned 75-foot width would use existing right-of-way. Consequently, about 60 feet of new clearing would be required in most areas. Following construction, about 35 feet of the construction right-of-way would be allowed to revert to its former land use. In agricultural areas, a 100-foot-wide construction right-of-way is planned in order to segregate topsoil.

Also, additional working space would be required adjacent to the planned construction right-of-way at road and stream crossings.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by TGPL. Keep in mind that this is a preliminary list. The list of issues will be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The loop would cross within 50 feet of 5 residences and a church, and would cross 2 orchards.
- The pipeline would cross 9 perennial streams, 2 ponds, and 50 wetlands.
- The compressor stations are near residences.
- The project may potentially impact federally listed threatened or endangered species.
- The pipeline may cross or be near cultural resource/archeological sites.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns abut the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including

[1] Transcontinental Gas Pipe Line Corporation's (TGPL) application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE. Washington, DC 20426;
- Reference Docket No. CP94–109–000;
- Send a copy of your letter to: Mr. Philip Veres, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE. room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before March 3, 1994.

If you wish to receive a copy of the EA, you should request one from Mr. Veres at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available for Mr. Philip Veres, EA Project Manager, at (202) 208–1073.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2810 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

Docket Nos. TQ94–4–23–000 and TM94–6–23–000

Eastern Shore Natural Gas Co; Proposed Changes in FERC Gas Tariff

February 2, 1994

Take notice that on January 28, 1994 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff included in Appendix A attached to the filing. Such sheets are proposed to be effective February 1, 1994.

Eastern Shore states that the purpose of the instant filing is two fold: (1) to reflect changes in the demand and commodity sales rates; and (2) to track changes in Eastern Shore's pipeline supplier's storage service rates.

Eastern Shore states that it seeks to increase its CD Commodity sales rate and reduce its CD Demand sales rate by $0.2247 and $0.0134 per dt, respectively, as compared to those sales rates filed in Docket Nos. TQ94–3–23–000 and TM94–5–23–000. Such changes reflect higher prices being paid to Eastern Shore's suppliers under its market responsive gas contracts and lower prices being paid to Eastern Shore's upstream pipeline suppliers for firm transportation.

Eastern Shore states that copies of the filing have been served upon its 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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2801 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–12–007]

El Paso Natural Gas Co.; Tariff Filing

February 2, 1994.

Take notice that on January 25, 1994, El Paso Natural Gas Company (El Paso), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission (Commission) Regulations Under the Natural Gas Act and in compliance with the Commission's Order on Standards of Conduct issued December 23, 1993 (December 23 Order) at Docket No. MG88–17–001, et al., a revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1–A.

In light of the Commission's interpretation of an "operating employee" in Order No. 497–E, issued simultaneously with the December 23 Order, El Paso stated that its tendered revised tariff sheet reflects that El Paso and EPGM have no "shared operating employees."

El Paso requested the Commission accept the tendered revised tariff sheet for filing and permit it to become effective thirty (30) days from the date of the instant filing.

El Paso stated that copies of the filing were served upon all parties of record at Docket No. MG88–17–000, and interested state regulatory commissions.

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 protests should be filed on or before February 9, 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. 94–2815 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RS92–19–003, RS92–19–004, RS92–19–007, RS92–19–008, RS92–104–000, and RS92–131–000 (consolidated in part)

KN Energy, Inc.; Comment Period

February 2, 1994.

On January 28, 1994, KN Interstate Gas Transmission Company made its third revised compliance filing in response to the Commission's January 13 order (66 FERC ¶61,037). Comments

on this filing will be due on or before February 14, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2800 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–120–000]

Koch Gateway Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 2, 1994.

Take notice that on January 31, 1994, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing proposed changes to its FERC Gas Tariff, Fifth Revised Volume No. 1.

Koch Gateway states that this filing proposes changes to the rates for Koch Gateway's existing transportation services. This filing is being made in accordance with Section V(B) of the Joint Stipulation and Agreement entered into between the parties in Docket No. RP92–235 (62 FERC 61,290 (1993). The tariff is being revised to make those changes which are necessary to conform this tariff to meet the operational needs of both the customers and Koch Gateway.

Koch Gateway proposes an effective date of March 1, 1994, for the applicable tariff sheets, anticipating that the Commission will exercise its authority under Section 4(e) of the NGA to suspend the effectiveness of the sheets for the full five month statutory period so the applicable sheets are allowed to be made effective August 1, 1994.

Koch Gateway states that the rates reflected on the proposed tariff sheets are based on a cost of service of $195.7 million. This reflects the annual operating costs which Koch Gateway expects to incur utilizing a base period covering the twelve months ended September 30, 1993, adjusted for known and measurable changes anticipated to occur during the nine-month period ending June 30, 1994.

Koch Gateway's is proposing an overall rate of return of 12.55 percent based on a capital structure consisting of 31.47 percent debt and 68.53 percent equity and a claimed return on equity of 13.05 percent. The overall cost of service represents a $8.5 million increase in the cost of service which formed the basis of the rates approved by the Commission in Docket No. RS92–26.

In this filing, Koch Gateway proposes to use the same cost allocation methodology and rate design which the Commission approved in Docket No. RS92–26. This methodology includes the classification of fixed costs under the principles of Straight Fixed Variable ("SFV") rate design methodology, the utilization of seasonal maximum daily quantities ("MDQ's") for the No Notice Service ("NNS"), allocation of costs to the contract storage services, retainage of the six 100 mile rate types and designing ITS rates on a 125% load factor basis.

Koch Gateway is also proposing several changes to its tariff as a result of experience gained the first few months of operations under Order No. 636.

Any person desiring to be heard or to protest said filing should file a petition 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. All such petitions or protests must be filed on or before February 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2811 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL93–33–001]

Louisiana Energy and Power Authority v. Central Louisiana Electric Co.; Filing

February 2, 1994.

Take notice that on January 7, 1994, Louisiana Energy and Power Authority (LEPA) tendered for filing its compliance filing in the above-referenced docket pursuant to the Commission's order issued on December 23, 1993.

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 February 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2816 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–123–000]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 2, 1994.

Take notice that on January 31, 1994, Mississippi River Transmission Corporation (MRT) tendered for filing, as part its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 9, with a proposed effective date of March 1, 1994.

MRT stated that the purpose of this filing is to provide for the disposition of MRT's unrecovered Account No. 191 and 858 balances as of October 31, 1993 pursuant to Order 636, *et. seq.* and section 162 of the General Terms and Conditions of MRT's FERC Gas Tariff, Third Revised Volume No. 1.

MRT stated that copies of its filing are available for inspection at its business offices, located in St. Louis, Missouri, and have been mailed to all of its former jurisdictional sales customers and the State Commissions of Arkansas, Missouri and Illinois.

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 of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2807 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–122–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

February 2, 1994.

Take notice that on January 28, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 25, to be effective March 1, 1994.

Natural states that the filing is submitted to commerce recovering effective March 1, 1994, approximately $28 million in known and measurable gas supply realignment (GSR) costs which have been incurred by Natural as a consequence of Order No. 363.

Natural requested whatever waivers may be necessary to permit the tariff sheet as submitted herein to become effective March 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Natural states that it has reached a tentative settlement with members of the Natural Customer Group (NCG) regarding recovery from them of GSR costs. Members of the NCG may preserve their rights by filing an abbreviated protest which may be supplemented if the settlement is not finalized and approved.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 9, 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. 94–2808 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–121–000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

February 2, 1994.

Take notice that on January 28, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of March 1, 1994:

Second Revised Sheet No. 282
Third Revised Sheet No. 283

Northwest states that the purpose of this filing is to amend the Transition Cost Reservation (TCR) Surcharge Provision in Section 27 of the General Terms and Conditions of Third Revised Volume No. 1 of Northwest's FERC Gas Tariff. Northwest requests postponement of the Collection Period and asks that such period commence June 1, 1994, rather than March 1, 1994, as stated in the currently effective tariff provisions. The reason for the delay is to allow time for costs associated with further development of Northwest's Electronic Bulletin Board (EBB) to be properly included in the surcharge calculation.

Northwest states that a copy of this filing has been served upon all parties on the official service list as compiled by the secretary in this proceeding and upon Northwest's jurisdictional customers and affected state regulatory commissions.

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 Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 9, 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. 94–2809 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–5–021]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

February 2, 1994.

Take notice that on January 28, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of March 1, 1994:

Third Revised Volume No. 1

First Revised Sheet No. 1
Second Revised Sheet Nos. 5 and 5–A
First Revised Sheet Nos. 6 and 7
Second Revised Sheet No. 8
Original Sheet No. 8.1
First Revised Sheet Nos. 14 and 15
Third Revised Sheet Nos. 23 and 24
First Revised Sheet Nos. 40 through 45
First Revised Sheet Nos. 50 and 51
First Revised Sheet Nos. 53 through 55
First Revised Sheet No. 61
First Revised Sheet No. 65
First Revised Sheet Nos. 70 through 72
First Revised Sheet No. 74
First Revised Sheet Nos. 80 through 86
Sheet Nos. 87 through 89
Original Sheet Nos. 90 through 95
Sheet Nos. 96 through 99
Original Sheet Nos. 100 through 110
Sheet Nos. 111 through 114
Original Sheet Nos. 115 through 121
Sheet Nos. 122 through 199
First Revised Sheet Nos. 201 and 202
First Revised Sheet Nos. 226 through 232
First Revised Sheet No. 234
First Revised Sheet No. 236
Second Revised Sheet No. 239
First Revised Sheet No. 240
First Revised Sheet No. 242
First Revised Sheet No. 244
First Revised Sheet No. 246
First Revised Sheet Nos. 248 through 250
First Revised Sheet No. 253
First Revised Sheet Nos. 255 through 260
Second Revised Sheet No. 261
First Revised Sheet Nos. 262 through 265
Second Revised Sheet Nos. 266 and 267
First Revised Sheet Nos. 268 and 269
First Revised Sheet No. 271
First Revised Sheet No. 273
First Revised Sheet No. 275
First Revised Sheet No. 280
Second Revised Sheet No. 283
First Revised Sheet Nos. 325 through 328
First Revised Sheet No. 331
Second Revised Sheet No. 332
First Revised Sheet Nos. 333 and 333–A
First Revised Sheet Nos. 337 through 342
Original Sheet No. 343
Sheet No. 344
Original Sheet Nos. 345 and 346
Sheet Nos. 347 through 349
Original Sheet Nos. 350 through 358
Sheet No. 359
Original Sheet Nos. 360 through 362
Sheet Nos. 363 through 374
First Revised Sheet Nos. 375 through 378
Original Sheet No. 380.

Original Volume No. 2

Ninth Revised Sheet No. 1–A
Eighteenth Revised Sheet No. 2

Tenth Revised Sheet No. 2.1
Sixteenth Revised Sheet No. 2–A
Tenth Revised Sheet No. 2–A.1
Fifth Revised Sheet No. 1186
First Revised Sheet No. 1187 through 1189
Second Revised Sheet No. 1190 and 1191
First Revised Sheet No. 1192
Third Revised Sheet No. 1193
First Revised Sheet No. 1194 and 1195
Third Revised Sheet No. 1224
Second Revised Sheet No. 1225
First Revised Sheet No. 1226 through 1249
Second Revised Sheet No. 1250 and 1251
First Revised Sheet No. 1251–A through 1251–C
First Revised Sheet No. 1252 and 1253.

Northwest states that the purpose of this filing is to implement the joint offer of settlement (Settlement), filed with the Federal Energy Regulatory Commission (Commission) on July 2, 1993, as modified and approved by Commission order of December 23, 1993 (Order), in the above-referenced dockets.

Northwest states that a copy of this filing has been served upon all parties designated on the official service list as compiled by the secretary in this proceeding and upon all of Northwest's jurisdictional customers and affected state regulatory commissions.

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 Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 9, 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. 94–2813 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–128–000]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 2, 1994.

Take notice that on January 31, 1994, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective February 1, 1994:

First Revised Sheet No. 55
First Revised Sheet No. 55a
First Revised Sheet No. 55b

South Georgia states that the purpose of this filing is to offer an optional delivery point allocation methodology in its transportation tariff. This option would allow any party who owns and operates the downstream facilities at a delivery point on South Georgia's system to elect to have daily deliveries at such point allocated first to third-party transportation agreements nominating at that point. South Georgia has been requested to implement this "swing contract" option so that the downstream operator can choose to keep third-party shippers whole to the extent of metered flow. South Georgia has requested all waivers necessary to make these sheets effective February 1, 1994.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition 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 Sections 385.211 and 385.214). All such motions and protests should be filed on or before February 9, 1994. Protests will not be considered by the Commission in determining the 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. 94–2803 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–124–000]

Southern Natural Gas Co.; Refund Report

February 2, 1994.

Take notice that on January 31, 1994, Southern Natural Gas Company (Southern) tendered for filing a refund report pursuant to Section 35 of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1.

By this initial filing, Southern proposes to refund the credit balance in its Account 191 attributable to gas purchases made prior to November 1, 1993, in connection with the provision of its former bundled merchant service. Southern is proposing to refund to its customers a total balance of $1,114,434, comprised of a credit balance of $1,456,431 in the commodity subaccount and a debt balance in the demand subaccount of $341,997 which arose during the deferral period of December 1, 1992 through October 31, 1993.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Section 385.214 and 385.211). All such petitions or protests should be filed on or before February 9, 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 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. 94–2806 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–127–000]

Tennessee Gas Pipeline Co.; Proposed Adjustment Under FERC Tariff Provisions

February 2, 1994.

Take notice that on January 31, 1994, Tennessee Gas Pipeline Company (Tennessee) filed a limited application pursuant to Section 4 of the Natural Gas Act, 15 USC 717C (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover gas supply realignment costs (GSR Costs) incurred as a consequence of Tennessee's costs (GSR Costs) incurred as a consequence of Tennessee's implementation of Order No. 636. Tennessee proposes to file the following tariff sheets, to become effective March 1, 1994:

Second Revised Sheet No. 22,
Second Revised Sheet No. 24,
Fourth Revised Sheet No. 30.

Tennessee states that the purpose of the filing in this docket is to set forth the GSR Costs and the related rates that will be charged by Tennessee pursuant to Order No. 636 for the quarter commencing March 1, 1994. The GSR Costs sought to be recovered include costs associated with the reformation or termination of certain supply contracts as well as pricing differential costs associated with continuing to perform under certain gas supply contracts,

including the Great Plains Associates contract.

Tennessee stated that copies of this tariff filing were mailed to all affected customers of Tennessee and interested state commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 should be filed on or before February 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2804 Filed 2–7–94; 8:45am]

BILLING CODE 6717–01–M

[Docket No. RP94–125–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 2, 1994.

Take notice that on January 31, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to its FERC Gas Tariff, with a proposed effective date of March 3, 1994:

First Revised Sheet No. 224,
First Revised Sheet No. 225,
First Revised Sheet No. 226.

Texas Gas states that the revised tariff sheets are being filed as a limited Section 4(e) filing to implement direct billing of Texas Gas's Account No. 191 balance remaining after termination of its PGA pursuant to restructuring its services under Order No. 636. The amount to be direct billed to Texas Gas's former sales customers is $3,025,334.

Texas Gas notes that copies of the revised tariff sheets are being mailed to Texas Gas's affected former jurisdictional sales 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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 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. 94–2805 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–119–034]

Tennessee Gas Pipeline Co.; Refund Report

February 2, 1994.

Take notice that on January 25, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made in accordance with the Commission's orders issued April 10, 1992 and June 25, 1992, in Docket No. RP86–119, *et al.* The refund report reflects refunds due pursuant to the Stipulation and Agreement filed June 25, 1991 and as modified on May 7, 1992.

The Stipulation requires Tennessee to refund to its customers the accumulated value of take-or-pay payments received under prior recovery formulas in excess of allocated take-or-pay demand costs. The Stipulation provides that refund amounts in excess of $10 million, established as of the date of the Stipulation, will be made in three equal semi-annual installments.

Tennessee states that on January 25, 1994, Tennessee refunded $23,385,807.00, inclusive of interest, to Columbia Gas Transmission Corporation (Columbia). Tennessee states that this refund represents the final installment of refunds owed Columbia and reflects the balance as of January 25, 1994 in Columbia's Demand Transition Cost Subaccount.

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 protests should be filed on or before February 9, 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. 94–2814 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–56–004, RP93–86–003, RP93–139–003]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 2, 1994.

Take notice that on January 28, 1994 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective March 1, 1994:

106th Revised Sheet No. 5,
12th Revised Sheet No. 5A,
8th Revised Sheet No. 5A.01,
5th Revised Sheet No. 5A.05,
10th Revised Sheet No. 5B.

On July 30, 1993, the Commission issued an order accepting the filings in Docket Nos. RP93–56–001 and RP93–86–001 to be effective April 1, 1993 and accepting and suspending the tariff sheets in Docket No. RP93–139–000 to be effective August 1, 1993. By the same order, the Commission directed Commission Staff to convene a conference in Docket Nos. RP93–56–001, RP93–86–001, and RP93–139–000 and 001 to allow the parties an opportunity to settle the proposed allocation methodology for Transwestern's volumetric surcharge. This conference was subsequently held on August 27, 1993. On October 27, 1993, Transwestern filed a settlement in Docket Nos. RP93–56–003, RP93–86–003 and RP93–139–003. The settlement included pro forma tariff sheets reflecting the amount of the volumetric surcharge, by zone, agreed to by the parties to resolve the captioned take-or-pay proceedings. On January 18, 1994, the Commission issued its "Order Approving Uncontested Settlement" ("Order"). In the Order, the Commission instructed Transwestern to file tariff sheets in conformance with the Order.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

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. All such protests should be filed on or before February 9, 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. 94–2812 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–49–001]

Williston Basin Pipeline Co.; Compliance Tariff Filing

February 2, 1994.

Take notice that on January 31, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, in compliance with the Commission's letter order issued January 14, 1994, Second Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet No. 322,
Original Sheet No. 322A.

Williston Basin submitted these tariff sheets to include language to address the derivation of projected and actual system average costs of gas referenced in Section 38 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1, all as more fully explained in the filing which is on file with the Commission and open for public inspection.

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 protests should be filed on or before February 9, 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 the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2802 Filed 2–7–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement", under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/NO(SW)–21, for the transfer from Sweden to Norway of two fuel rod segments containing 400 grams of uranium containing 2 grams of the isotope uranium-235 and 6 grams of plutonium for cladding material experiments. After conclusion of the experiments, the material is to be returned to Sweden

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on February 2, 1994.

Edward T. Fei,

Action Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 94–2867 Filed 2–7–94; 8:45 am]

BILLING CODE 6450–01–M

Department of Energy

Office of Fossil Energy

[FE Docket No 94–03–NG]

Gulf Energy Marketing Co.; Order Granting Blanket Authorization To Import Natural Gas From Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Gulf Energy Marketing Company authorization to import up to 150 billion cubic feet of natural gas from Mexico over a two-year term beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 24, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–2866 Filed 2–7–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 93–131–NG]

Tenaska Washington Partners II, L.P.; Long-Term Authorization To Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tenaska Washington Partners II, L.P. authorization to import up to 21,433 MMBtu (approximately 21,433 Mcf) of Canadian natural gas per day for a period of 20 years, expected to begin in 1996. The gas would be supplied by Shell Canada Limited and consumed at a 248-megawatt electric power generation facility to be built in Pierce County, near Tacoma, Washington.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 24, 1994.

Clifford P. Tomaszewski

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–2864 Filed 2–7–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–02–NG]

UtiliCorp United, Inc.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting UtiliCorp United, Inc. authorization to import up to 100 Bcf of natural gas from Canada and to export up to 100 Bcf of natural gas to Canada over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 24, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–2865 Filed 2–7–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4835–8]

Black Forest Drums Site, Black Forest, El Paso County, CO; Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of Proposed Administrative Settlement; Request for Public Comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9622(i), as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given of a proposed Administrative Settlement concerning the Black Forest Drums Site in Black Forest, El Paso County, Colorado. The proposed Administrative Settlement resolves an EPA claim under Section 107 of CERCLA, 42 U.S.C. 9607 against the Estate of Herman Walsky and Walsky Construction Company, the settling parties for this site. The settlement requires the settling parties to pay $22,000.00 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at EPA Region VIII's Superfund Records Center, which is located on the 8th floor of the North Tower, at 999 18th Street, in Denver, Colorado.

DATES: Comments must be submitted by March 10, 1994.

ADDRESSES: The proposed Administrative Settlement and additional background information relating to the settlement are available for public inspection at EPA Region VIII's Superfund Records Center, at the address listed above. A copy of the proposed settlement may be obtained from Carol Pokorny (8HWM–ER), Enforcement Specialist, USEPA, 999 18th Street, suite 500, Denver, CO 80202–2466. Comments should reference the Black Forest Drums Site, Black Forest, CO, EPA Docket No. CERCLA–VIII–89–03, and should be addressed to Ms. Pokorny at the address given above.

FOR FURTHER INFORMATION CONTACT: Jessie Goldfarb, Office of Regional Counsel, at (303) 294–7592.

It Is So Agreed:

Kerrigan G. Clough,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 94–2849 Filed 2–7–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4835–7]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; In E.H. Schilling

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notice of *De Minimis* Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the remedial action at the E.H. Schilling, site Ironton, Ohio. The Department of Justice issused its approval for the proposed agreement on December 30, 1993.

DATES: Comments must be provided on or before March 10, 1994.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: E.H. Schilling Superfund Site in Ironton, Ohio, USEPA Docket No. V-W 94-C–225.

FOR FURTHER INFORMATION CONTACT: Monica Smyth, U.S. Environmental Protection Agency, Office of Regional Counsel, 77 W. Jackson, Blvd., Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: Below are listed the parties who have executed binding certifications of their consent to participate in the settlement:

List of Settlors

Associated Metals and Minerals Corporation; Matlack, Inc.

Matack Inc. will pay $39,200 and Associated Metal and Minerals Corporation ("ASOMA") will pay $197,463 to reimburse EPA for their fair share of EPA's response costs at the E.H. Schilling Site.EPA is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA. Section 122(g) authorizes settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with these parties for the reimbursement of USEPA's remaining response costs at the E.H. Schilling Site. These two parties are responsible for much less than one percent of the total volume of waste sent to the site between 1969 and 1980. The proposed settlement reflects, and was agreed to based on, conditions as known to the parties as of September 1, 1993. Settling Parties will receive a complete release from further civil or administrative liabilities at the Site.

The Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement or additional background information relating to the settlement is available for review and may be obtained in person or by mail from Monica Smyth, Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 77 W. Jackson, Mail Code CS–3T, Chicago, Illinois 60604.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–2846 Filed 2–7–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 1, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact July Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0444.

Title: 220 and 800 MHz Construction Letter.

Form Number: FCC Form 800A.

Action: Revision of a currently approved collection.

Respondents: Individuals or households and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 11,200 responses; 1 hour average burden per response; 11,200 hours total annual burden.

Needs and Uses: Licenses are required to provide the information listed on FCC Form 800A to verify a station has been placed into operation. PR Docket No. 92–210, effective 8/24/93, extends the maximum terms for slow growth systems from three to five years. Additionally, PR Docket No. 93–35, effective 12/27/93, provides for extended implementation in the 900 MHz (929–930) paging band to three years. The form has been revised to include these changes. The data is used by Commission staff to determine whether the licensee is entitled to their authorization to operate.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–2817 Filed 2–7–94; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

February 1, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0466.

Title: Section 74.1283, Station identification.

Action: Extension of currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 200 responses; .166 hour average burden per response; 33 hours total annual burden.

Needs and Uses: Section 74.1283(c)(1) requires an FM translator station whose station identification is made by the primary station to furnish current information of the translator's call letters and location (name, address and telephone number). This information is to be kept in the primary station's files. The information is used by the primary station licensee and/or FCC staff in field investigations to contact the translator licensee in the event of malfunction of the translator.

OMB Number: 3060–0473.

Title: Section 74.1251, Technical and equipment modifications.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 75 responses; .25 hour average burden per response; 19 hours total annual burden.

Needs and Uses: Upon the installation or modification of transmitting equipment for which prior FCC authority is not required under the provisions of § 74.1251(b)(1) the licensee shall place in the station records a certification that the new installation complies in all respects with the technical requirements of this part and the terms of the station authorization. Section 74.1251(c) requires FM translator licensees to notify the FCC, in writing, of changes in the primary FM station being retransmitted. The certification of the new installation is used by licensees to provide prospective users of the modified equipment with necessary information. If no such information exists, any future problems could provide difficult to solve and could result in electronic frequency interference for long periods of time. The notification of changes in the primary FM being retransmitted is used by FCC staff to keep records up-to-date and to ensure compliance with FCC rules and regulations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–2753 Filed 2–7–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

[Notice 1994–1]

Filing Dates for the Oklahoma Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Oklahoma has scheduled 1994 special elections on March 8, April 5 and May 10 to fill the vacant U.S. House seat in the Sixth Congressional District.

Committees required to file reports in connection with the Special Primary Election should file a 12-day Pre-Primary Report on February 24. Committees required to file reports in connection with a Special Runoff Election on April 5 must file a 12-day Pre-Runoff Report on March 24. Committees required to file reports in connection with the Special General Election to be held on May 10 must file a 12-day Pre-General Report on April 28 and a Post-General Report on June 9.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, NW., Washington, DC 20463, telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION

Principal Campaign Committees

Special Primary Only

All principal campaign committees of candidates *only* involved in the Special

Primary Election shall file a 12-day Pre-Primary Report on February 24, and an April Quarterly Report on April 15. (See the chart below for the closing date for each report).

Special Primary and General Without Runoff

Each party will hold a Special Primary Election to nominate a candidate for the Special General Election. Principal campaign committees of candidates *only* participating in the Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on February 24, an April Quarterly Report on April 15, a 12-day Pre-General Election Report on April 28, and a Post-General Election Report on June 9. (See the chart below for the closing date of each report).

Special Primary and Runoff Elections

In the event that one candidate does not achieve more than 50% of the vote in his/her party's Special Primary Election, the two top vote-getters in that party's primary will participate in a Special Runoff Election.

Principal campaign committees *only* participating in the Special Primary and Runoff Elections shall file a 12-day Pre-Primary Election Report on February 24, a 12-day Pre-Runoff Election Report on March 24, and an April Quarterly Report on April 15. (See the chart below for the closing date of each report.)

Special Primary, Runoff and General Elections

Principal campaign committees participating in the Special Primary, Runoff and General Elections must file a 12-day Pre-Primary Election Report on February 24, a 12-day Pre-Runoff Election Report on March 24, an April Quarterly Report on April 15, a 12-day Pre-General Election Report on April 28, and a Post-General Election Report on June 9. (See the chart below for the closing date of each report.)

Unauthorized Committees (PACs and Party Committees)

Quarterly Filers

All political committees filing on a quarterly basis are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Oklahoma Special Primary, Runoff or General Elections by the close of books for the applicable reports. (See the chart below for the closing date of each report).

Monthly Filers

Political committees filing on a monthly basis are not required to file pre- and post-election reports; however, these committees may have to file 24-hour reports on independent expenditures. See 11 CFR 104.4(b) and 104.5(g).

REPORTING DATES FOR OKLAHOMA SPECIAL ELECTIONS: MARCH 8 PRIMARY, APRIL 5 RUNOFF, AND MAY 10 GENERAL

Report	Close books [1]	Reg./cert. mailing date [2]	Filing date
Pre-Primary	2/16/94	[3] 2/21/94	2/24/94
Pre-Runoff	3/16/94	3/21/94	3/24/94
April Quarterly	3/31/94	4/15/94	4/15/94
Pre-General	4/20/94	4/25/94	4/28/94
Post-General	5/30/94	6/09/94	6/09/94

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
[3] The mailing date for the Pre-Primary Report is a federal holiday; nevertheless, the report must be received by the filing date.

Dated: February 1, 1994.

Trevor Potter,

Chairman, Federal Election Commission.

[FR Doc. 94–2760 Filed 2–7–94; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL TRADE COMMISSION

Cable Television Survey; Information Collection Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) for clearance of an information collection to gather information on cable television systems' advertising policies.

SUMMARY: OMB clearance is being sought for a survey to gather information on cable television systems' advertising policies.

A mail questionnaire to approximately 300 cable television systems is proposed to determine whether advertising time is sold in competition with broadcast television stations. Commission staff will use this information to analyze several aspects of competition in the cable television industry.

DATE: Comments on this clearance application must be submitted on or before March 10, 1994.

ADDRESSES: Send comments to FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503. Copies of the application may be obtained from the Public Reference Section, room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Vita, Deputy Assistant Director for Economic Policy Analysis, Federal Trade Commission, Washington, DC 20580, (202) 326–3493.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–2822 Filed 2–7–94; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C., as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration

and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 011094 AND 012194

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Cross Timbers Oil Company, Amoco Corporation, Amoco Production Company	94–0537	01/10/94
Jason Incorporated, DLTK, Inc, DLTK, Inc	94–0605	01/10/94
U S West, Inc., Sales & Compilation Company, Sales & Compilation Company	94–0620	01/10/94
G.T.C. Transcontinental Group, Ltd. (a Canadian co.), The Fuji Bank, Limited, AmerSig Graphics, Inc	94–0625	01/10/94
Dyersburg Corporation, United Knitting Acquisition Corp., United Knitting Acquisition Corp	94–0483	01/11/94
Hellman & Friedman Capital Partners II, L.P., Local Area Telecommunications, Inc., MobileMedia Corporation	94–0508	01/11/94
Tital Wheel International, Inc., Nieman's Ltd., Nieman's Ltd	94–0553	01/11/94
Archer-Daniels-Midland Company, Montedison S.P.A., Central Soya of Trinidad, Ltd	94–0573	01/11/94
The Restaurant Enterprises Group, Inc., Foodmaker, Inc., Chi-Chi's, Inc	94–0598	01/11/94
London Fog Corporation, GKH Investments, L. P. Pacific Trail, Inc	94–0610	01/11/94
GKH Investments, L.P., London Fog Corporation, London Fog Corporation	94–0611	01/11/94
McDermott International Inc., Halliburton Company, Brown & Root, Inc	94–0622	01/11/94
The Bank of New York Company, Inc., The First National Bank of Boston, BancBoston Financial Company	94–0490	01/13/94
3 Com Corporation, Synernetics Inc., Synernetics Inc	94–0536	01/13/94
VEBA AG, NEWCO, NEWCO	94–0548	01/13/94
Franklin Quest Co., Richard L. Shipley, Shipley Associates, a Utah corporation	94–0559	01/13/94
Mr. George Soros, FALRIG Offshore (USA), L.P., FALRIG Offshore (USA), L.P	94–0561	01/13/94
Ashland Oil, Inc., ENI S.P.A., Agipcoal Holding USA, Inc. & Agipcoal America, Inc	94–0563	01/13/94
Kerr-McGee Corporation, The Prudential Insurance Company of America, Kerr-McGee Federal Limited Partnership I–1981	94–0614	01/13/94
BancTec, Inc., Terminal Data Corporation, Terminal Data Corporation	94–0603	01/14/94
Society Corporation, Bank South Corporation, Bank South, N.A	94–0612	01/14/94
Valero Energy Corporation, Valero Natural Gas Partners, L.P., Valero Natural Gas Partners, L.P	94–0619	01/14/94
The Clayton & Dubilier Private Equity Fund IV Ltd., Westinghouse Electric Corp., Westinghouse Electric Supply Company	94–0621	01/14/94
St. Joseph Health Systems, Mission Viejo Medical Company, Limited Partnership, Mission Hospital Regional Medical Center	94–0555	01/19/94
Mitsubishi Corporation, Indiana Packers Corporation, (a newly formed j.v.), Indiana Packers Corporation, (a newly formed j.v.)	94–0601	01/19/94
Mitsubishi Corporation, Motedison S.P.A., Indiana Packers Co	94–0602	01/19/94
David C. Pratt, Bayer AG, Miles Inc	94–0618	01/19/94
The Liberty Corporation, American Funeral Assurance Company, American Funeral Assurance Company,	94–0560	01/21/94
AEW Partners L.P., Shimizu Corporation (a Japanese corporation), Camelback Esplanade Limited Partnership No. 1	94–0641	01/21/94
Grand Metropolitan Public Limited Company, PepsiCo, Inc., PepsiCo, Inc	94–0653	01/21/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contract Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–2821 Filed 2–7–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0460]

Wyeth-Ayerst Laboratories, et al.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of four new animal drug applications (NADA's) held by Wyeth-Ayerst Laboratories, Pharmachem Corp., Sanofi Animal Health, Inc., and Squire Laboratories, Inc. The sponsors notified the agency in writing that the animal drug products are no longer marketed and requested that approval of the applications be withdrawn. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing the entries which reflect approval of the NADA's.

EFFECTIVE DATE: February 18, 1994

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0749.

SUPPLEMENTARY INFORMATION: The sponsors of the NADA's listed in the table in this document have informed FDA that these animal drug products are no longer marketed or distributed and have requested that FDA withdraw approval of the applications.

NADA No.	Drug	Sponsor
10–783	Promazine hydrochloride tablets	Wyeth-Ayerst Laboratories P.O. Box 8299, Philadelphia., PA 19101
11–871	Iron dextran injectable	Pharmachem Corp., P.O. Box 1035, Bethlehem, PA 18018
132–137	Nitrofurazone solution	Sanofi Animal Health, Inc., 7101 College Blvd., suite 610, Overland Park, KS 66210
138–455	Nitrofurazone solution	Squire Laboratories, Inc., 100 Mill St., Revere, MA 02151

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 10–783, 11–871, 132–137, and 138–455 and all supplements and amendments thereto is hereby withdrawn, effective February 18, 1994.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the text of and reserving 21 CFR 520.1962(b) and amending 21 CFR 524.1580d(b) to reflect the withdrawal of approval of NADA's 10–783 and 138–455, respectively. It is unnecessary to amend the regulations to reflect withdrawal of approval of the other two NADA's because NADA 11–871 was never codified and the sponsor of NADA 132–137 (Sanofi) has been previously removed from the regulation.

Dated: January 31, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–2755 Filed 2–7–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Meeting of the Subcommittee To Evaluate the National Cancer Program, National Cancer Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health on February 23–24, 1994 at the Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland.

The meeting will be open to the public from 1:30 p.m. to recess on February 23; and from 8 a.m. to adjournment on February 24. Attendance by the public will be limited to space available. Discussions will address the evaluation and achievements of the National Cancer Program.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630M, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Ms. Cherie Nichols, Executive Secretary, Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Building 31, room 11A23, Bethesda, Maryland 20892 (301/496–5515), will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cherie Nichols on (301/496–5515) in advance of the meeting.

Dated: February 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–2868 Filed 2–7–94; 8:45 am]

BILLING CODE 4140–01–M

Withdrawal of Prospective Grant of Exclusive License: Adeno-Associated Virus (AAV) Vectors for Gene Therapy

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is no longer contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,797,368 (SN 06/712,236), entitled "Adeno-Associated Virus As Eukaryotic Expression Vector" to Theragen, Inc., of Ann Arbor, Michigan. Based upon written evidence and argument received in response to a **Federal Register** notice (Vol. 57, No. 169, Monday, August 31, 1992, page 39405), the NIH has established that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 and that U.S. Patent 4,797,368 should be licensed on a non-exclusive basis for the field of gene therapy. The patent rights in this invention have been assigned to the United States of America.

The patent describes a novel expression vector based on the parvovirus, adeno-associated virus (AAV), which is valuable for the stable maintenance or expression of DNA sequences or genes in eukaryotic cells. The use of many previously available virus-based eukaryotic expression vectors has been limited because they do not integrate foreign DNA into the host genome at high frequency and are not easily rescued from their host. This AAV-based expression vector is easily rescued from the host and allows the host to express the foreign DNA or genes at high frequency.

ADDRESSES: Requests for a copy of this patent, inquiries, comments and other materials related to obtaining a non-exclusive license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220.

Dated: January 21, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc 94–2869 Filed 2–7–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or

cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Demonstration and Education Research Applications
Dates of Meeting: February 15–16, 1994
Time of Meeting: 9:00 a.m.
Place of Meeting: Stouffer Concourse Hotel, Arlington, Virginia
Agenda: To evaluate and review grant applications.
Contact Person: Dr. Louise Corman, 5333 Westbard Avenue, Room 548, Bethesda, Maryland 20892, (301) 594–7452

Name of Panel: NHLBI SEP on Mechanisms of Vascular Change in Hypertension
Dates of Meeting: February 16–18, 1994
Time of Meeting: 7:30 p.m.
Place of Meeting: Holiday Inn, Bethesda, Maryland
Agenda: To evaluate and review grant applications.
Contact Person: Dr. Louis M. Ouellette, 5333 Westbard Avenue, Room 552, Bethesda, Maryland 20892, (301) 594–7474

Name of Panel: NHLBI SEP on In Utero Stem Cell Transplantation for Genetic Diseases
Dates of Meeting: March 3–4, 1994
Time of Meeting: 8:00 p.m.
Place of Meeting: Holiday Inn, Bethesda Maryland
Agenda: To evaluate and review grant applications.
Contact Person: Dr. Eric H. Brown, 5333 Westbard Avenue, Room 5A09, Bethesda, Maryland 20892, (301) 594–7484

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–2989 Filed 2–7–94; 8:45 am]

BILLING CODE 4140–01–M

Office of Inspector General

Delegation of Authority To Issue Subpoenas

AGENCY: Office of Inspector General, Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: This notice of the Inspector General's delegation of authority to issue subpoenas supersedes the prior delegation of authority that was published in the **Federal Register** on April 2, 1986 (51 FR 11347).

EFFECTIVE DATES: This notice is effective on February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, (202) 619–0089.

SUPPLEMENTARY INFORMATION: The Inspector General hereby delegates the authority to issue subpoenas to the Principal Deputy Inspector General, the Deputy Inspectors General, the Assistant Inspectors General and the Regional Inspectors General, in accordance with the authority set forth in section (6)(a)(4) of the Inspector General Act of 1978, Public Law 95–452, as amended by Public Law 100–504 (codified at 5 U.S.C. App.). Specifically, section 6(a)(4) authorizes the Inspector General to subpoena the production of all information, documents, reports, answers, records, accounts, papers and other data and documentary evidence necessary to perform the functions assigned to the Inspector General.

This delegation of authority does not limit the Inspector General's authority to issue subpoenas.

This delegation may not be redelegated.

Dated: January 24, 1994.

June Gibbs Brown,

Inspector General.

[FR Doc. 94–2758 Filed 2–7–94; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[WO–220–03–4320–12]

Grazing Administration—Exclusive of Alaska; Grazing Fee for the 1994 Grazing Year

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of establishment of grazing fee for the 1994 grazing year.

SUMMARY: The Secretary of the Interior hereby announces that the fee for livestock grazing for the 1994 grazing year is $1.98 per animal unit month on public lands administered by the Bureau of Land Management.

EFFECTIVE DATES: March 1, 1994, through February 28, 1995.

ADDRESSES: Any inquiries should be sent to: Director (220), Bureau of Land Management, Main Interior Bldg., rm. 5650, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Donald D. Waite, 202–452–7752.

SUPPLEMENTARY INFORMATION: Grazing fees for the use of public rangelands are established and collected under the authority of section 3 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), and Executive Order 12548 of February 14, 1986. The grazing fees are computed by the formula established in 43 CFR 4130.7–1.

Dated: February 1, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 94–2788 Filed 2–7–94; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

[AZ–040–4333–03–04]

Road Closure; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The road generally known as the Black Hills Back Country Byway will be closed on March 19, 1994 between the hours of 6 a.m. to 6 p.m. The road is within Graham and Greenlee Counties located in Southeast Arizona. Personnel will be on site to ensure the closure. This closure is authorized as per title 43 CFR § 8365.1–6; Supplementary Rules.

The legal description is within the following townships:

Gila and Salt River Meridian, Arizona

T. 5 S., R. 29 E.
T. 5 S., R. 30 E.
T. 6 S., R. 29 E.
T. 7 S., R. 29 E.

SUPPLEMENTARY INFORMATION: For further information, contact Matt Wohlberg, BLM Ranger, Safford District, 711 14th Avenue, Safford, Arizona 85546, telephone number (602) 428–4040.

Dated: January 26, 1994.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 94–2838 Filed 2–7–94; 8:45 am]

BILLING CODE 4310–32–M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of Environmental Documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the proceeding notice.

Activity/operator	Location	Date
Oryx Energy Company, three exploratory wells, SEA No. N-4547B.	High Island Area, East Addition, South Extension, Blocks A-385 and A-379, Leases OCS-G 10311 and 13808, 112 miles southeast of the nearest coastline on Galveston Island, Texas.	09/24/93
Amoco Production Company, exploratory wells, SEA No. S-2850	DeSoto Canyon Area, Block 133, Lease OCS-G 10444, 72 miles southeast of Plaquemines Parish, Louisiana.	02/02/93
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA Nos. ES/SR 90-075A and 90-076A.	East Cameron Area, Block 64, Lease OCS 089, 20 miles south of Cameron Parish, Louisiana.	06/10/93
UNOCAL Corporation, structure removal operations, SEA Nos. ES/SR 92-103 and 92-104.	East Cameron Area, Block 58, Lease OCS-G 3530, 16 miles south of Cameron Parish, Louisiana.	12/28/92
Murphy Exploration & Production Company, structure removal operations, SEA Nos. ES/SR 92-107A, 92-108A, 92-109A, 92-110A, 92-111A, 92-112A, 92-113A, 92-114A, 92-115A, 92-116A, 92-117A, 93-069A, 93-072A, 93-083A, and 93-093A.	Ship Shoal Area, Blocks 114, 120, and 136; South Pelto Area, Blocks 12, 19, and 20; Leases OCS 064, 038, 072, 073, 074, and OCS-G 3790; various distances of the Louisiana Coast.	07/20/93
Freeport-McMoRan Inc., structure removal operations, SEA Nos. ES/SR 92-138A and 92-139A.	Vermilion Area, Block 161, Lease OCS-G 1127, 45 miles south of Vermilion Parish, Louisiana.	08/18/93
Forest Oil Corporation, structure removal operations, SEA No. ES/SR 93-01/S.	Eugene Island Area, Block 346, Lease OCS-G 8696, 120 miles south-southeast of Intracoastal City, Louisiana.	04/30/94
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 93-02/S.	Ship Shoal Area, Block 193, Lease OCS-G 8711, 35 miles south of Terrebonne Parish, Louisiana.	06/11/93
Gulfstream Resources, Inc., structure removal operations, SEA No. ES/SR 93-03/S.	Eugene Island Area, Block 219, Lease OCS 808, 47 miles southeast of Terrebonne Parish, Louisiana.	07/07/93
Mobile Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 93-04/S.	West Cameron Area, Block 398, Lease OCS-G 13843, 72 miles south-southwest of Cameron, Louisiana.	07/01/93
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 93-05/S.	South Timbalier Area, Block 177, Lease OCS-G 1260, 35 miles south of Lafourche Parish, Louisiana.	08/02/93
The Louisiana Land and Exploration Company, structure removal operations, SEA No. ES/SR 93-06/S.	South Marsh Island Area, Block 80, Lease OCS-G 9537, 90 miles south-southeast of Intracoastal City, Louisiana.	09/15/93
AGIP Petroleum Company, Inc., structure removal operations, SEA No. ES/SR 93-009A.	West Delta Area, Block 89, Lease OCS-G 1088, 25 miles southeast of Venice, Louisiana.	01/29/93
Hall-Houston Oil Company, structure removal operations, SEA No. ES/SR 93-010.	Mustang Island Area, Block 756, Lease OCS-G 5986, 24 miles southeast of Port Aransas, Texas.	12/15/92
Elf Exploration Inc., structure removal operations, SEA No. ES/SR 93-011.	West Delta Area, Block 138, Lease OCS-G 1598, 38 miles south of Fourchon, Louisiana.	02/19/93
Enron Oil & Gas Company, structure removal operations, SEA No. ES/SR 93-012.	East Cameron Area, Block 65, Lease OCS-G 4416, 25 miles south of Cameron Parish, Louisiana.	01/19/93
Mobil Exploration & Producing U.S. Inc. structure removal operations, SEA No. ES/SR 93-013.	South Pelto Area, Block 10, Lease OCS-G 2925, 4 miles south of Terrebonne Parish, Louisiana.	03/15/93
Chevron U.S.A. Inc., structure removal operations, SEA Nos. ES/SR 93-014, 93-015, and 93-016.	West Cameron Area; Blocks 530, 549, and 638; Lease OCS-G 5019, 2849, and 2026; 71 to 93 miles south of Cameron Parish, Louisiana.	04/27/93
SCANA Petroleum Resources, Inc., structure removal operations, SEA No. ES/SR 93-017.	Matagorda Island Area, Block 619, Lease OCS-G 3086, 26 miles southeast of Port O'Conner, Texas.	02/17/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93-018.	Ship Shoal Area, Block 114, Leases OCS 064, 15 miles south of Terrebonne Parish, Louisiana.	02/09/93
Conoco Inc., structure removal operations, SEA Nos. ES/SR 93-019 and 93-020.	Ship Shoal Area Blocks 158 and 232, Lease OCS 0816 and OCS-G 3413, 29 miles south of Terrebonne Parish, Louisiana.	03/09/93
Roberts & Bunch Offshore, Inc., structure removal operations, SEA No. ES/SR 93-021.	Eugene Island Area, Block 287, Leases OCS-G 6721, 83 miles south of Freshwater City, Louisiana.	03/04/93
Murphy Exploration & Production Company, structure removal operations, SEA Nos. ES/SR 93-022, 93-023, and 93-024.	Ship Shoal Area, Blocks 93 and 114, Lease OCS 063 and 064, 15 miles south of Terrebonne Parish, Louisiana.	02/18/93
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 93-025.	South Marsh Island Area, Block 61, Lease OCS-G 1196, 61 miles south of Freshwater City, Louisiana.	02/25/93
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 93-026.	Vermilion Area, Block 250, Lease OCS-G 1149, 65 miles south of Vermilion Parish, Louisiana.	04/24/93
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 93-027.	South Timbalier Area, Block 152, Lease OCS 0464, 35 miles south of Lafourche Parish, Louisiana.	03/03/93
Murphy Exploration & Production Company, structure removal operations, SEA Nos. ES/SR 93-028 and 93-029.	Ship Shoal Area, Block 113 and South Pelto Area, Block 19; Leases OCS 067 and 073; 13 to 17 miles south of Terrebonne Parish, Louisiana.	02/19/93

Activity/operator	Location	Date
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–030A.	Ship Shoal Area, Block 114, Lease OCS 064, 15 miles south of Terrebonne Parish, Louisiana.	03/11/93
Chevron U.S.A. Inc., structure removal operations, SEA Nos. ES/SR 93–031 and 93–032.	South Marsh Island Area, Block 9, Lease OCS–G 1180, 48 miles south-southwest of St. Mary Parish, Louisiana.	03/04/93
Chevron U.S.A. Inc., structure removal operations, SEA Nos. ES/SR 93–033, 93–034, 93–035, 93–036, 93–037, 93–038, 93–039, and 93–040.	Ship Shoal Area, Blocks 99 and 108, Leases OCS–G 1007 and OCS 0184, 25 miles south Terrebonne Parish, Louisiana.	03/05/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–041A.	Ship Shoal Area, Block 134, Lease OCS–G 5201, 21 miles south of Terrebonne Parish, Louisiana.	03/11/93
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 93–042.	Vermilion Area, Block 245, Lease OCS–G 1146, 90 miles south-southwest of Freshwater City, Louisiana.	03/03/93
Amoco Production Company, structure removal operations, SEA Nos. ES/SR 93–043, 93–044, and 93–45.	South Timbalier Area, Block 156; Eugene Island Area, Block 224; South Marsh Area, Block 38; Leases OCS–G 5504, 2928, and 5456, 29 to 57 miles offshore the Louisiana Coast.	04/12/93
Amoco Production Company, structure removal operations, SEA Nos. ES/SR 93–043A, 93–044A, and 93–45A.	South Timbalier Area, Block 156; Eugene Island Area, Block 224; South Marsh Area, Block 38; Leases OCS–G 5504, 2928, and 5456, 29 to 57 miles offshore the Louisiana Coast.	06/28/93
Amoco Production Company, structure removal operations, SEA No. ES/SR 93–046A.	East Cameron Area, Block 221, Lease OCS–G 5383, 84 miles south of Cameron, Louisiana.	03/15/93
Flash Gas & Oil Southwest, Inc., structure removal operations, SEA No. ES/SR 93–047.	High Island Area, East Addition, Block A–170, Lease OCS–G 9103, 35 miles south of Sabine Pass, Texas.	03/19/93
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 93–048.	East Cameron Area, Block 64, Lease OCS 089, 24 miles south of Cameron Parish, Louisiana.	07/29/93
Chevron U.S.A. Inc., structure removal operations, SEA Nos. ES/SR 93–049 and 93–050.	South Timbalier Area, Blocks 176 and 177, Leases OCS–G 1259 and 1260, 28 miles south of Lafourche Parish, Louisiana.	03/24/93
Seagull Energy E&P Inc., structure removal operations, SEA Nos. ES/SR 93–051 and 93–052.	Galveston Area, Block 424, Lease OCS–G 4186, 32 miles southeast of Surfside, Texas.	03/11/93
Falcon Offshore Operating Company, structure removal operations, SEA No. ES/SR 93–053.	West Cameron Area, Block 236, Lease OCS–G 5183, 45 miles south of Cameron Parish, Louisiana.	03/26/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–054.	Ship Shoal Area, Block 113, Lease OCS 067, 12 miles south of Terrebonne Parish, Louisiana.	03/31/93
Kerr-McGee Corporation, structure removal operations, SEA Nos. ES/SR 93–055, 93–056, 93–057, 93–058, and 93–059.	South Timbalier Area, Blocks 34 and 50, Leases OCS–G 4842 and 4119, 9 miles south of Terrebonne Parish, Louisiana.	06/24/93
CNG Producing Company, structure removal operations, SEA No. ES/SR 93–060.	Ship Shoal Area, Block 295, Lease OCS–G 3999, 63 miles south of Terrebonne Parish, Louisiana.	03/31/93
Trunkline Gas Company, structure removal operations, SEA No. ES/SR 93–061.	Ship Shoal Area, Block 139, Lease OCS–G 8708, 18 miles south of Terrebonne Parish, Louisiana.	06/10/93
OXY USA Inc., structure removal operations, SEA No. ES/SR 93–062.	Main Pass Area, Block 91, Lease OCS–G 1365, 39 miles northeast of Venice, Louisiana.	04/19/93
Unocal Corporation, structure removal operations, SEA No. ES/SR 93–063.	West Cameron Area, Block 367, Lease OCS–G 5314, 57 miles southwest of Cameron Parish, Louisiana.	04/23/93
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA Nos. ES/SR 93–064 through 93–067.	West Cameron Area, Block 102, Lease OCS 0247, 10 miles south of Cameron Parish, Louisiana.	06/24/93
Texaco Exploration and Production, Inc., structure removal operations, SEA No. ES/SR 93–068.	East Cameron Area, Block 273, Lease OCS–G 2048, 85 miles south of Cameron Parish, Louisiana.	06/02/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–069.	South Pelto Area, Block 12, Lease OCS 072, 10 miles south of Terrebonne Parish, Louisiana.	05/13/93
CNG Producing Company, structure removal operations, SEA No. ES/SR 93–070.	Ship Shoal Area, South Addition, Block 248, Lease OCS–G 1029, 60 miles south of Terrebonne Parish, Louisiana.	04/29/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–071.	South Pelto Area, Block 19, lease OCS 073, 11 miles south of Terrebonne Parish, Louisiana.	05/07/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–072.	Ship Shoal Area, Block 120, Lease OCS 038, 28 miles south of Terrebonne Parish, Louisiana.	06/02/93
Union Pacific Resources Company, structure removal operations, SEA No. ES/SR 93–073.	Ship Shoal Area, Block 263, Lease OCS–G 10784, 50 miles south of Terrebonne Parish, Louisiana.	05/21/93
Murphy Exploration & Production Company, structure removal operations, SEA Nos. ES/SR 93–074 and 93–075.	Ship Shoal Area, Block 118; South Timbalier Area, Block 86; Leases OCS 068 and OCS–G 1555; 10 miles south of Terrebonne Parish, Louisiana.	06/24/93
Murphy Exploration & Production Company, structure removal operations, SEA Nos. ES/SR 93–076A, 93–080A, and 93–101A.	Main Pass Area, Blocks 106 and 113; South Timbalier Area, Block 86; Leases OCS–G 8749, 5695, and OCS 0605; 38 miles east-northeast of Plaquemines Parish, Louisiana.	08/05/93
Murphy Exploration & Production Company, structure removal operations, SEA Nos. ES/SR 93–076 and 93–082.	Main Pass Area, Blocks 106 and 113, Leases OCS–G 8749 and 5695, 38 miles east-northeast of Plaquemines Parish, Louisiana.	07/02/93
Murphy Exploration & Production Company, structure removal operations, SEA Nos. ES/SR 93–083, 93–084, 93–085, 93–086, and 93–087.	Ship Shoal Area, Block 114, Lease OCS 064, 30 miles south of Cocodrie, Louisiana.	05/27/93
Murphy Exploration & Production Company, structure removal operations, SEA Nos. ES/SR 93–088, 93–089, 93–090, and 93–091.	Ship Shoal Area; Blocks 93, 114, and 113; Leases OCS 063, 064, and 067; 15 miles south of Terrebonne Parish, Louisiana.	06/17/93
Murphy Exploration & Production Company, structure removal operations, SEA Nos. ES/SR 93–92 and 93–93.	Ship Shoal Area, Block 126, Lease OCS–G 3790, 17 miles south of Terrebonne Parish, Louisiana.	05/25/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–092A.	Ship Shoal Area, Block 136, Lease OCS–3790, 17 miles south of Terrebonne Parish, Louisiana.	07/28/93

Activity/operator	Location	Date
Pennzoil Exploration and Production Company, structure removal operations, SEA Nos. ES/SR 93–094 through 93–099.	South Marsh Island Area, Block 23, Lease OCS 0778, 27 miles south of the Shell Keys National Wildlife Refuge, off the coast of Iberia Parish, Louisiana.	06/24/93
Newfield Exploration Company, structure removal operations, SEA No. ES/SR 93–100.	Ship Shoal Area, Block 197, Lease OCS–G 11986, 34 miles southwest of Terrebonne Parish, Louisiana.	06/08/93
Newfield Exploration Company, structure removal operations, SEA No. ES/SR 93–100A.	Ship Shoal Area, Block 197, Lease OCS–G 11986, 34 miles southwest of Terrebonne Parish, Louisiana.	06/30/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–101.	South Timbalier Area, Block 86, Lease OCS 0605, 23 miles south of Lafourche Parish, Louisiana.	06/18/93
Chevron U.S.A. Inc., structure removal operations, SEA Nos. ES/SR 93–102 and 93–103.	South Timbalier Area, Block 21, Lease OCS 0263, 4 miles south of Lafourche Parish, Louisiana.	06/10/93
Unocal Corporation, structure removal operations, SEA Nos. ES/SR 93–104, 93–105, and 93–106.	Vermilion Area, Block 39, Lease OCS 0341, 45 miles south of Abbeville, Louisiana.	06/01/93
Union Oil Company of California, structure removal operations, SEA No. ES/SR 93–107.	South Timbalier Area, Block 144, Lease OCS–G 5604, 30 miles south of the Isles Dernieres of Lafourche Parish, Louisiana.	06/22/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–108.	Ship Shoal Area, Block 113, Lease OCS 067, 14 miles south of Terrebonne Parish, Louisiana.	05/21/93
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 93–109.	South Timbalier Area, Block 177, Lease OCS–G 1260, 23 miles south of Lafourche Parish, Louisiana.	06/18/93
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 93–110.	Ship Shoal Area, Block 242, Lease OCS 0832, 90 miles south-southeast of Morgan City, Louisiana.	06/17/93
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 93–111.	Main Pass Area, Block 111, Lease OCS–G 4263, 50 miles south of Jackson County, Mississippi.	08/11/93
Walter Oil and Gas Corporation, structure removal operations, SEA No. ES/SR 93–112A.	Galveston Area, Block 319, OCS–G 11315, 28 miles east-south-east of Galveston, Texas.	09/21/93
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 93–113.	Eugene Island Area, Block 188, Lease OCS 0443, 30 miles south of Terrebonne Parish, Louisiana.	07/27/93
PG&E Resources Offshore Company, structure removal operations, SEA No. ES/SR 93–114.	Vermilion Area, Block 153, Lease OCS–G 9495, 42 miles south of Vermilion Parish, Louisiana.	10/05/93
Texaco Exploration & Production Company, structure removal operations, SEA Nos. ES/SR 93–115 and 93–116.	South Marsh Island Area, Block 50, Lease OCS 788, 76 miles southwest of Morgan City, Louisiana.	07/23/93
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 93–117A.	East Cameron Area, South Addition, Block 240, Lease OCS–G 4101, 72 miles south of Cameron, Louisiana.	08/23/93
Amerada Hess Corporation, structure removal operations, SEA No. ES/SR 93–118.	West Cameron Area, South Addition, Block 589, Lease OCS–G 5352, 83 miles south of Cameron Parish, Louisiana.	08/06/93
Transcontinental Gas Pipe Line Corporation, structure removal operations, SEA No. ES/SR 93–119.	Vermilion Area, Block 71, Lease OCS 0248, 20 miles south of Vermilion Parish, Louisiana.	08/17/93
Gulfstream Resources, Inc., structure removal operations, SEA No. ES/SR 93–120.	Eugene Island Area, Black 89, Lease OCS 044, 26 miles southwest of Terrebonne Parish, Louisiana.	08/11/93
Texaxo Exploration and Production Inc., structure removal operations, SEA No. ES/SR 93–122.	West Cameron Area, South Addition, Block 487, Lease OCS–G 2847, 81 miles Southwest of Cameron Parish, Louisiana.	09/10/93
Mobile Exploration & Producing U.S. Inc., structure removal operations, SEA Nos. ES/SR 93–123 through 93–125.	Ship Shoal Area, Blocks 72 and 63, Leases OCS 057 and OCS–G 12348, 10 miles south of Terrebonne Parish, Louisiana.	09/01/93
Hall-Houston Oil Company, structure removal operations, SEA Nos. ES/SR 93–126 and 93–127.	Vermilion Area, Block 216; High Island Area, Block A–14; Leases OCS–G 5423 and 6177, 53–150 miles east-south-east of Galveston, Texas.	08/20/93
Hall-Houston Oil Company, structure removal operations, SEA No. ES/SR 93–127A.	High Island Area, Block A–14, Lease OCS–G 6177, 53 Miles southeast of Galveston, Texas.	09/13/93
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 93–128.	West Cameron Area, South Addition, Block 555, Lease OCS–G 5345, 100 miles south of Cameron Parish, Louisiana.	10/06/93
Amerada Hess Corporation, structure removal operations, SEA No. ES/SR 93–129.	West Cameron Area, South Addition, Block 494, Lease OCS–G 3519, 64 miles south of Cameron Parish, Louisiana.	09/01/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–130.	Ship Shoal Area, Block 113, Lease OCS 067, 15 Miles South of Terrebonne Parish, Louisiana.	08/24/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–131.	Ship Shoal Area, Block 93, Lease OCS 063, 10 Miles south of Terrebonne Parish, Louisiana.	08/24/93
Murphy Exploration & Production Company, structure removal operations, SEA No. ES/SR 93–132.	Ship Shoal Area, Block 117, Lease OCS 065, 15 miles south of Terrebonne Parish, Louisiana.	08/24/93
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR. 93–133.	Ship Shoal Area, Block 108, Lease OCS 0814, 60 miles West-southwest of Leeville, Louisiana 9/10/93.	
Samedan Oil Corporation, Structure removal operations, SEA No. ES/SR 93–134.	Vermilion Area, Block 76, Lease OCS 0249, 14 miles south of Vermilion Parish, Louisiana.	09/23/93
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 93–135.	Eugene Island Area, Block 189, Lease OCS 0423, 40 miles south of Terrebonne Parish, Louisiana.	09/10/93
Gulfstream Resources, Inc., structure removal operations, SEA Nos. ES/SR 93–136 through 93–139.	Eugene Island Area, Blocks 89 and 95, Leases OCS 044 and 046, 10–13 miles south of the Atchafalaya Bay Wildlife Management Area in St. Mary Parish, Louisiana.	09/16/93
Gulfstream Resources, Inc., structure removal operations, SEA No. ES/SR 93–140.	Eugene Island Area, Block 90, Lease OCS 0229, 25 miles south of St. Mary Parish, Louisiana.	10/05/93
Santa Fe Energy Resources, Inc., structure removal operations SEA No. ES/SR 93–141A.	West Cameron Area, Block 472, Lease OCS–G 8409, 90 miles south of Cameron Parish, Louisiana.	10/06/93
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 93–142.	Brazos Area, Block A–19, Lease OCS–G 3936, 89 miles southwest of Galveston, Texas.	10/01/93

Activity/operator	Location	Date
Unocal Corporation, structure removal operations, SEA No. ES/SR 93–143.	Main Pass Area, Block 254, Lease OCS–G 5055, 94 miles northeast of Venice, Louisiana.	11/16/93
Walter Oil & Gas Corporation, structure removal operations, SEA No. ES/SR 93–144.	Galveston Area, Block 351, Lease OCS–G 9047, 35 Miles south of Galveston County, Texas.	08/18/93
Texas Exploration and Production Inc., structure removal operations, SEA No. ES/SR 93–145.	South Marsh Island Area, Block 231, Lease OCS–G 4434, 11 miles south of the Louisiana State Wildlife Refuge in Vermilion Parish Louisiana.	11/02/93
NERCO Oil and Gas, Inc., structure removal operations, SEA No. ES/SR 93–145A.	East Cameron Area, South Addition, Block 237, Lease OCS–G 2860, 51 Miles South of Vermilion Parish, Louisiana.	12/18/92
Walter Oil and gas Corporation, structure removal operations, SEA No. ES/SR 94–001.	Brazos Area, Block 583, Lease OCS–G 8117, 30 miles south of Matagorda County, Texas.	10/15/93
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 94–002.	Main Pass Area, Block 92, Lease OCS–G 1500, 40 miles northeast of Venice, Louisiana.	11/24/93
ARCO Oil and Gas Company, structure removal operations, SEA No. ES/SR 94–003.	Main Pass Area, Block 128, Lease OCS–G 4009, 26 miles east of Plaquemines Parish, Louisiana.	11/03/93
Ivory Production Company, structure removal operations, SEA Nos. ES/SR 94–004 and 94–005.	Galveston Area, Blocks 288 and 296, Leases OCS 0709 and 0714, 27 miles southeast of Galveston, Texas.	01/07/94
LLECO Holdings, Inc., structure removal operations, SEA No. ES/SR 94–006.	High Island Area, Block A–154, Lease OCS–G 10285, 80 miles south of Jefferson County, Louisiana.	12/08/93
Pennzoil Petroleum Company, structure removal operations, SEA Nos. ES/SR 94–010, 94–011, and 94–012.	South Marsh Island Area, Block 23, Lease OCS 0778, 63 miles south of Intracoastal City, Louisiana.	12/20/93
Pennzoil Petroleum Company, structure removal operations, SEA Nos. ES/SR 94–13 and 94–14.	South Marsh Island, Block 41; East Cameron Area, Block 270; Leases OCS–G 1192 and 2045; 54–76 miles south of Vermilion Parish, Louisiana.	12/17/93
Shell Offshore Inc., NORM Disposal Operations, SEA No. I–1220	Eugene Island Area, Block 158, Lease OCS–G 1220, 35 miles south of the nearest landfall in St. Mary Parish, Louisiana.	08/07/91
Enron Oil and Gas Company, NORM Disposal Operations, SEA No. NORM–060.	West Cameron Area, Block 405, Lease OCS–G 3280, 63 miles south of Cameron Parish, Louisiana.	12/15/92
Texaco Exploration & Production Inc., NORM Disposal Operations, SEA No. NORM–062.	South Marsh Island Area, Block 50, Lease OCS 0788, 50 miles southwest of Terrebonne Parish, Louisiana.	02/22/93
Chevron U.S.A. Inc., NORM Disposal Operations, SEA No. NORM–063.	Grand Island Area, Block 85, Lease OCS–G 1492, 50 miles south of Lafourche Parish, Louisiana.	03/15/93
Chevron U.S.A. Inc., NORM Disposal Operations, SEA No. NORM–068.	South Timbalier Area, Block 176, Lease OCS–G 1259, 36 miles south of Lafourche Parish, Louisiana.	03/17/93
Phillips Petroleum Company, NORM Disposal Operations, SEA No. NORM–069.	South Marsh Island Area, Block 66, Lease OCS–G 1198, 50 miles southwest of Terrebonne Parish, Louisiana.	03/30/93
Shell Offshore, Inc., NORM Disposal Operations, SEA No. NORM–070.	Grand Isle, Main Pass, South Pass, and South Timbalier Areas; Leases OCS–G 4002, 1967, 7824, 1666, 1667, 4126, 1610, and 1870; various distances offshore the Louisiana Coast.	03/16/93
CNG Producing Company, NORM Disposal Operations, SEA No. NORM–071.	Ship Shoal Area, Block 295, Lease OCS–G 3999, 57 miles southwest of Terrebonne Parish, Louisiana.	04/30/93
Mesa Limited Partnership, NORM Disposal Operations, SEA No. NORM–072.	East Cameron, South Marsh, Ship Shoal, South Pelto, Vermilion, West Delta, Brazos, High Island, and Matagorda Island Areas; Leases OCS–G 2254, 4410, 2619, 3171, 2271, 3141, 3186, 4559, 4558, 2410, and 3306; various distances offshore the Louisiana coast.	05/10/93
Mobil Exploration & Producing U.S. Inc., NORM Disposal Operations, SEA No. NORM–074.	East Cameron Area, Block 64, Lease OCS 089, 25 miles south of Cameron Parish, Louisiana.	05/10/93
Amoco Production Company, NORM Disposal Operations, SEA No. NORM–076.	South Timbalier Area, Block 156, Lease OCS–G 2928, 35 miles south of Lafourche Parish, Louisiana.	05/14/93
Murphy Exploration & Production Company, NORM Disposal Operations, SEA No. NORM–077.	Ship Shoal Area, Blocks 93 and 117, Leases OCS 063 and 065, 16 miles south of Terrebonne Parish, Louisiana.	06/08/93
Mobil Exploration & Producing U.S. Inc., NORM Disposal Operations, SEA No. NORM–078.	East Cameron Area, Block 64, Lease OCS 089, 23 miles south of Cameron Parish, Louisiana.	05/28/93
Chevron U.S.A. Inc., NORM Disposal Operations, SEA No. NORM–080.	South Marsh Island Area, Block 9, Lease OCS–G 1180, 42 miles southwest of St. Mary Parish, Louisiana.	06/30/93
Union Oil of California, NORM Disposal Operations, SEA No. NORM–081.	Ship Shoal Area, Block 209, Lease OCS 0827, 33 miles south of Terrebonne Parish, Louisiana.	06/11/93
Union Oil of California, NORM Disposal Operations, SEA No. NORM–081A.	Vermilion Area, Block 67, Lease OCS 0560, 14 miles south of Vermilion Parish, Louisiana.	06/24/93
Chevron U.S.A. Inc., NORM Disposal Operations, SEA No. NORM–085.	South Timbalier Area, Block 176, Lease OCS–G 1259, 36 miles south of Lafourche Parish, Louisiana.	07/16/93
Elf Exploration, Inc., NORM Disposal Operations, SEA No. NORM–086.	West Cameron Area, Block 146, Lease OCS–G 1996, 22 miles south of Cameron Parish, Louisiana.	08/02/93
Texaco Exploration & Production, Inc., NORM Disposal Operations, SEA No. NORM–088.	West Cameron Area, Block 487, Lease OCS–G 2847, 81 miles south of Cameron Parish, Louisiana.	08/16/93
Anadarko Petroleum Corporation, NORM Disposal Operations, SEA No. NORM–089.	Matagorda Island Area, Block 487, Lease OCS–G 4996, 15 miles southeast of Matagorda County, Texas.	08/19/93
Anadarko Petroleum Corporation, NORM Disposal Operations, SEA No. NORM–090.	East Cameron Area, Block 359, Lease OCS–G 2567, 107 miles south of Cameron Parish, Louisiana.	08/19/93
Freeport McMoRan Oil & Gas, Inc., NORM Disposal Operations, SEA No. NORM–094.	Grand Isle Area, Block 83, Lease OCS–G 3793, 29 miles south of Lafourche Parish, Louisiana.	10/05/93
Pennzoil Exploration and Production Company, NORM Disposal Operations, SEA No. NORM–095.	South Marsh Island Area, Block 128, Lease OCS–G 2587, 74 miles south of Terrebonne Parish, Louisiana.	10/19/93

Activity/operator	Location	Date
Koch Exploration Company, NORM Disposal Operations, SEA No. NORM–096.	East Cameron Area, Block 83, Lease OCS 0187, 27 miles south of Cameron Parish, Louisiana.	10/22/93
Shell Offshore, Inc., NORM Disposal Operations, SEA No. NORM–097.	Eugene Island Area, Block 158, Lease OCS–G 1220, 35 miles south of the nearest landfall in St. Mary Parish, Louisiana.	11/08/93
Sonat Exploration Company, NORM Disposal Operations, SEA No. NORM–100.	East Cameron Area, Block 23, Lease OCS–G 2853, 3 miles south of Cameron Parish, Louisiana.	12/01/93
Chevron U.S.A. Inc., NORM Disposal Operations, SEA No. NORM–101.	West Delta Area, Block 41, Lease OCS–G 1073, 14 miles southwest of Plaquemines Parish, Louisiana.	12/17/93
Mobil Exploration & Producing U.S. Inc., NORM Disposal Operations, SEA No. NORM–102.	Grand Isle Area, Block 93, Lease OCS–G 2628, 37 miles southeast of Lafourche Parish, Louisiana.	01/03/94
Shell Offshore, Inc., NORM Disposal Operations, SEA No. NORM–103.	Mississippi Canyon Area, Block 194, Lease OCS–G 2638, 15 miles south of Plaquemines Parish, Louisiana.	12/15/93

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT:

Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: January 31, 1994.

Chris C. Oynes,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 94–2784 Filed 2–7–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Maine Acadian Culture Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, February 18, 1994. The meeting will convene at 7 p.m. in the gymnasium of the Eagle Lake Elementary School, Eagle Lake, Aroostook County, Maine.

The eleven-member Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to the development and implementation of an interpretive program of Acadian culture in the state of Maine; and the selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary report of the meeting held November 17, 1993.
2. Approval of the Maine Acadian Culture Preservation Commission's annual report (FY 1993).
3. Reports of the following Maine Acadian Culture Preservation Commission working groups: Cooperating Organizations and Public Involvement.
4. Report of the National Park Service planning team.
5. Opportunity for public comment.
6. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting by writing to Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, or call (207) 288–5472.

Dated: January 31, 1994.

John C. Reed,

Acting Regional Director.

[FR Doc. 94–2765 Filed 2–7–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 29, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 23, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Cochise County

Apache Powder Historic Residential District, (Benson, MPS), 100 & 200 Blocks, E. 3rd St., Benson, 94000078

Benson Railroad Historic District, (Benson, MPS), 200 & 300 Blocks, W. 6th St., Benson, 94000079

Hi Ho Company Grocery, (Benson, MPS), 398 E. 4th St., Benson, 94000074

Martinez, W. D., General Merchadise Store, (Benson, MPS), 180 San Pedro St., Benson, 94000073

Oasis Court, (Benson, MPS), 363 W. 4th St., Benson, 94000072

Redfield—Romine House, (Benson, MPS), 146 E. 6th St., Benson, 94000076

Smith-Beck House, (Benson, MPS), 425 Huachuca St., Benson, 94000077

Treu, Max, Territorial Meat Company, (Benson, MPS), 305 E. 4th St., Benson, 94000075

Yuma County

Yuma Main Street Historic District, 170—387 S. Main St., 10—29 W. Third St., Yuma, 94000068

ILLINOIS

St. Clair County

Scott Field Historic District, Roughly bounded by Scott Dr. and Hanger Rd., O'Fallon vicinity, 94000060

IOWA

Cass County

Chicago, Rock Island & Pacific Railroad Depot, (Advent & Development of Railroads in Iowa MPS), Jct. of 1st and Chesnut Sts., Atlantic, 94000087

Pocahontas County

Saints Peter and Paul Catholic Church, 16 Second Ave. NW, Pocahontas, 94000086

KANSAS

Clay County

Mugfler Lodge Site, Address Restricted, Clay Center vicinity, 94000069

MISSISSIPPI

Winston County

Masonic Hall, Old, 311 W. Park St., Louisville, 94000065

Smyth, Benjamin Franklin, House, 207 Smyth Rd., Louisville, 94000064

NEBRASKA

Otoe County

Grand Army of the Republic (G.A.R.) Memorial Hall, 908 1st Corso, Nebraska City, 94000067

Pawnee County

Pawnee City Historic Business District, Roughly bounded by 5th, 7th, F and G Sts., Pawnee City, 94000066

NEW YORK

Kings County

Lott, Hendrick I., House, Address Restricted, Brooklyn vicinity, 83004645

Suffolk County

Miss Amelia's Cottage, N side Main St., at the jct. of Windmill La., Town of East Hampton, Amagansett, 94000070

NORTH CAROLINA

Duplin County

Grady, B. F., School, N side NC 11, 0.3 mi. W of jct. with NC 111, Kornegay, 94000085

Pasquotank County

Elizabeth City State Teachers College Historic District (Elizabeth City, MPS), Roughly bounded by Parkview and Hollowell Drives, Elizabeth City, 94000083

Elizabeth City Water Plant (Elizabeth City, MPS), N. end of Wilson St., 100 block, Elizabeth City, 94000082

Norfolk Southern Passenger Station (Elizabeth City, MPS), 109 S. Hughes Blvd., Elizabeth City, 94000080

Northside Historic District (Elizabeth City, MPS), Vic. North Rd., N. Poindexter, Broad, and Pearl Sts., Elizabeth City, 94000081

PUERTO RICO

Vieques Municipality

Vieques Pharmacy, Jct. of Carlos LeBrun and Victor Duteil Sts., Isabel Sequnda, 94000061

SOUTH CAROLINA

Georgetown County

Black River Plantation House, SW side SC 51, 0.5 mi. NW of Peters Creek, Georgetown vicinity, 94000062

Saluda County

Strother Place, Old, E side Fruit Hill Rd., 0.3 mi, N of the jct. with Chappells Ferry Rd., Saluda vicinity, 94000063

VIRGINIA

Giles County

Newport Historic District, Area surrounding Geenbriar Branch Rd. and VA 42, Newport, 94000059

In order to assist in the preservation of the following property, the commenting period has been shortened to five days:

PUERTO RICO

San German Municipality

San German Historic District Roughly bounded by Luna, Estrella, Concepcion, Javilla, and Ferrocarril Sts. San German, 94000084.

[FR Doc. 94–2874 Filed 2–7–94; 8:45 am]

BILLING CODE 4310–70–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, 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 and to the Office of Management and Budget, Paperwork Reduction Project (1029–0038), Washington, DC 20503, telephone 202–395–7340.

Title: Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, 30 CFR 783

OMB Number: 1029–0038

Abstract: Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Underground Coal Mining Operators.

Estimated Completion Time: 50 hours.

Annual Responses: 150.

Annual Burden Hours: 7,448.

Bureau clearance officer: John A. Trelease, (202) 343–1475.

Dated: October 28, 1993.

Gene E. Krueger,

Chief, Division of Technical Services.

[FR Doc. 94–2841 Filed 2–7–94; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32415]

Fremont Group, Inc.—Control Exemption—Yellowstone Trucking, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts Fremont Group, Inc., which indirectly controls a 10.5-mile rail line, from the requirements of 49 U.S.C. 11343–44 for the reacquisition from a voting trust of indirect control of Yellowstone Trucking, Inc., a motor carrier subject to Commission regulation.

DATES: This exemption will be effective on March 10, 1994. Petitions to stay must be filed by February 18, 1994. Petitions to reopen must be filed by February 28, 1994.

ADDRESSES: Send pleadings, referring to Finance Docket No. 32415 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Karl Morell, suite 210, 919 Eighteenth Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: January 24, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–2842 Filed 2–7–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–213 (Sub 4)]

Canadian Pacific Limited—Abandonment—Line Between Skinner and Vanceboro, ME

The Commission's Section of Environmental Analysis (SEA) hereby notifies all interested parties that SEA will prepare a Draft Environmental Impact Statement (DEIS) and conduct scoping meetings in this proceeding. The Canadian Pacific Limited (CP) filed an application for authority to abandon and discontinue all freight and passenger operations over 201.2 miles of rail line between Skinner and Vanceboro, in Franklin, Somerset, Piscataquis, Penobscot, Aroostook and Washington Counties, Maine. Because of the proposed abandonment's potential for significant environmental impacts, SEA has determined that preparation of a DEIS is necessary.

The DEIS will address the environmental impacts associated with this proposed abandonment and will be served on all the parties to the proceeding and made available to the public. There will be a 45 day comment period from the date the DEIS is served to allow the public opportunity to comment. After assessing all of the comments to the DEIS, SEA will then issue a Final Environmental Impact Statement that will include SEA's final recommendations to the Commission.

SEA will conduct scoping meetings prior to the preparation of the DEIS. The purpose of the scoping process is to identify significant environmental issues and determine the scope of issues to be addressed in the DEIS. Persons that cannot attend the scoping meetings, may submit questions and comments in writing up to 30 days after the scoping meetings. The public will be notified of the time and location of the scoping meetings at least 20 days prior to the scheduled date.

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball (202) 927–6213 or Elaine K. Kaiser, Chief, Section of Environmental Analysis (202) 927–6248. TDD for hearing impaired: (202) 927–5721.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94–2843 Filed 2–7–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

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 February 18, 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 February 18, 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, DC 20210.

Signed at Washington, DC this 18th day of January, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition	Articles produced
Shell Western E & P, Inc (Co)	Bakersfield, CA	01/18/94	01/10/94	29,397	Oil and gas.
Shell Development Co (Co)	Martinez, CA	01/18/94	01/10/94	29,398	Oil and gas.
Jefferson Smurfit Corp (UPW)	Lancaster, NY	01/18/94	01/05/94	29,399	Shipping containers.
True Temper Hardware (USWA)	Harrisburg, PA	01/18/94	12/22/93	29,400	Workmate products.
Swingster Co. (Wkrs)	Ocean Springs, MS	01/18/94	01/04/94	29,401	Sport jackets.
Special Products of Oregon (Wkrs)	Phoenix, OR	01/18/94	01/07/94	29,402	Pine Cutstock.
Johnson Controls, Globe Battery (UAW)	Bennington, VT	01/18/94	01/03/94	29,403	Automatic batteries.
Jackhill Oil Company (Co)	Ann Arbor, MI	01/18/94	12/20/93	29,404	Oil and gas.
General Motors Corp., Inland Fisher (UAW).	Syracuse, NY	01/18/94	01/05/94	29,405	Interior and exterior plastic auto parts.
Inland Steel Company (USWA)	E. Chicago, Indiana	01/18/94	12/20/93	29,406	Coke used in steel production.
Digicon Geophysical Corp (Wkrs)	Houston, TX	01/18/94	01/15/94	29,407	Marine seismic acquisition (exploration).
Cupples Paper Bag Co (GAIU)	Clackamas, OR	01/18/94	12/30/93	29,408	Paper bags and sacks.
Coordinated Apparel Group, Inc (Wkrs)	Schuylkill Haven, PA.	01/18/94	12/21/93	29,409	Knit, dye and finish fabrics.
A. O. Smith Electrical Products (IBEW)	Upper Sandusky, OH.	01/18/94	01/05/94	29,410	Horsepower motors.
Allied Signal (Wkrs)	Livermore, CA	01/18/94	12/29/93	29,411	Enriched uranium demonstration project.
Allison Bros. Drilling Co (Wkrs)	Denver, CO	01/18/94	12/30/93	29,412	Natural gas.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition	Articles produced
Adobe Mining Co (Co)	Kittanning, PA	01/18/94	11/18/93	29,413	Coal.
Adobe Mining Co (Co)	Midland, TX	01/18/94	11/18/94	29,414	Coal.

[FR Doc. 94–2853 Filed 2–7–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,086]

Sundstrand Electrical Power Systems Lima, OH; Negative Determination Regarding Application for Reconsideration

By an application dated January 6, 1994, Local #724 of the International Union of Electrical, Radio and Machine Workers (IUE) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on December 9, 1993 and was published in the **Federal Register** on December 28, 1993 (58 FR 68668).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that some production of generators, small motors and converters formerly produced at Lima were produced in Puerto Rico.

Investigation findings show that the Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of Sundstrand Electrical Power Systems major declining customers shows that none of the respondents reported purchasing imported generators, small motors or converters during the relevant period.

Further, Puerto Rico is within the U.S. Customs boundary, accordingly, and production in Puerto Rico is considered domestic production and is not an import.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of January 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–2854 Filed 2–7–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94–010)]

NASA Advisory Council (NAC), Life and Microgravity Sciences and Applications Advisory Committee, Space Station Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Space Station Science and Applications Advisory Subcommittee.

DATES: February 15, 1994, 7:30 a.m. to 5:30 p.m.; February 16, 1994, 8 a.m. to 5:30 p.m.; and February 17, 1994, 8 a.m. to 12:30 p.m.

ADDRESSES: Center for Advanced Space Studies, Lunar and Planetary Institute, 3600 Bay Area Boulevard, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code US, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2560.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Office of Life and Microgravity Sciences and Applications Overview and Strategic Planning
—Shuttle Manifest Planning
—Mir Utilization Program
—Space Station Issues: Design, Partner Elements Capabilities, Organization, and Utilization
—Life Science and Microgravity Science Program Traffic Models
—Payload Operations Integration Center/U.S. Operations Center/ Training Status and Plans
—Status of Express and International Standard Payload Racks.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 1, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–2761 Filed 2–7–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice (94–011)]

Aerospace Safety Advisory Panel; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: March 23, 1994, 1:30 p.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Frank L. Manning, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–0914).

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will present its annual report to the NASA

Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of manned flight. The major subjects covered will be the Space Shuttle, Space Station, and Aeronautical Operations. The Aerospace Safety Advisory Panel is chaired by Norman R. Parmet and is composed of 8 members and 5 consultants. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including members of the Panel).

Type of Meeting: Open.

Agenda:

Wednesday, March 23

1:30 p.m.—Presentation of the findings and recommendations of the Aerospace Safety Advisory Panel

3 p.m.—Adjourn.

All attendees will be requested to sign an attendance register.

Dated: February 1, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–2762 Filed 2–7–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CIVILIAN COMMUNITY CORPS

Establishment of NCCC and Associated Public Programs

AGENCY: National Civilian Community Corps.

ACTION: Public Notice of Program.

SUMMARY: This public notice announces the establishment of the National Civilian Community Corps (NCCC) and associated public programs. NCCC's mission is to promote civic pride and responsibility through community service. National Civilian Community Corps members, in collaboration with community representatives will under take community projects with agreed upon and measurable results. Participants shall be ethnically, economically, and socially diverse youth and receive innovative and structured training programs that combine the best of military training techniques, Civilian Conservation Corps values, and service learning models.

ADDRESSES: National Civilian Community Corps, 1100 Vermont Avenue NW. (11th floor), Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: For general information, call 800–942–2677 and ask about NCCC. For more specific details, contact Greg Knight at (202) 606–5000 ext. 144; Maurice Salth at (202) 606–5000 ext. 103; or (202) 606–5256 (TDD).

SUPPLEMENTARY INFORMATION:

Background

The National and Community Service Trust Act (Act), signed by President Clinton on September 21, 1993, amended the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.). Under Subtitle E of the Act, NCCC was directed to accomplish the following:

1. Determine whether residential service programs administered by the Federal Government can significantly increase the support for national service and community service by the people of the United States.

2. Determine whether such programs can expand the opportunities for young men and women to perform meaningful, direct, and consequential act of community service in a manner that will enhance their own skills while contributing to their understanding of civic responsibility in the United States.

3. Determine whether retired members and former members of the Armed Forces of the United States, members and former members of the Armed Forces discharged or released from active duty in connection with reduced Department of Defense spending, members and former members of the Armed Forces discharged or transferred from the Selective Reserve of the Ready Reserve in connection with reduced DOD spending, and other members of the Armed Forces not on active duty and not actively participating in a reserve component of the Armed Forces can provide guidance and training under such programs that contribute meaningfully to the encouragement of national and community service.

4. Determine whether domestic national service programs can serve as a substitute for the traditional option of military service in the Armed Forces of the United States which, in times of reductions in the size of the Armed Forces, is a diminishing national service opportunity for young Americans.

Under the provisions of Subtitle E, the NCCC is developing two residential programs, the National Service Program and the Summer National Service Program. Both programs combine the best of the Civilian Conservation Corps values, military training techniques, and innovative service learning models. The NCCC strategy includes accomplishment of the following activities:

1. Implement the residential programs for 1000 young men and women at four regional sites located in the Northeast, Southeast, Midwest, and West by 4th quarter FY94.

2. Operate a Summer National Service program on a military base in the Northeast region during FY94.

3. Expand enrollment and establish 4 additional camps by 4th quarter FY95.

4. Plan for a yearly capacity of 6000 corps members by FY2001.

5. Obtain corporate funding for half of FY95 program and for each year thereafter.

6. Implement a prototype recruiting and selection process using existing federal agencies.

7. Perform community service activities that help solve unmet needs in the education, environment, human service, and public safety areas. All community service projects must meet an identifiable public need, provide meaningful community benefits for service learning and skill development, encourage work to be done in teams of diverse individuals, and include continued educational and training for corps members in various technical fields.

National Service Program

Young people aged 18–24 are eligible to participate as corps members. Four regional campuses are being established; one in the Northeast, one in the South, one in the Midwest, and one in the West. Each campus will be located on a military installation. Corps members will be recruited and will enter into agreement to participate for a period of eleven months. The campus experience will be divided into two phases. During phase I, corps members will receive approximately six weeks of initial training. Phase II will include continued personal development, training, education, and the performance of community service projects. The corps members will be a diverse group reflecting the population of the United States. Corps members will represent almost all ethnic groups, cultures, genders, and come from both urban and rural areas.

To the extent practicable, at least 50 percent of the corps members will be economically disadvantaged youths. Corps members will receive a living allowance, during the eleven month program and will also receive a post-service benefit upon successful completion.

Summer National Service Program

The Summer National Service program will be a residential program for youth 14–17 years of age. Summer corps members shall enter into agreement to participate for a period of eight weeks. Participants will receive approximately two weeks of training followed by six weeks of community service projects. The FY94 summer campus will be located on a military base in the Northeast and focus on public safety and environmental projects. Summer camp participants

will represent the same diverse group explained under the National Service Program, receive a living allowance and will also receive a post-service benefit upon successful completion.

NCCC Program Benefits

NCCC programs benefit individuals, communities, and the nation. Programs benefit individuals by providing educational opportunities, assisting transitioning military personnel, and helping to establish a work ethic in young adults. Communities benefit through the completion of community projects that would otherwise not be done. Our nation benefits by improved social and racial relationships, maximized use of existing federal resources, and increased public awareness of environmental, education, human services, and public safety issues.

Concept Papers

Interested organizations and individuals are encouraged to submit concept papers in support of the above NCCC programs. Submissions will be reviewed and maintained on file by category to assist the NCCC staff in program development. Submitters may be contacted during the developmental and implementation phases for further details or possible collaboration to accomplish program elements.

This notice does not obligate the NCCC to enter into any grants or contracts as a result of this notice.

Dated: February 3, 1994.

Frederick Peters,

Deputy Director of Training, Education & Military Affairs.

[FR Doc. 94–2852 Filed 2–7–94; 8:45 am]

BILLING CODE 4430–61–M

NATIONAL ENDOWMENT FOR THE ARTS

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Arts on Radio Section) to the National Council on the Arts will be held on February 17, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

Portions of this meeting will be open to the public from 9 a.m. to 9:30 a.m. for opening remarks and from 5 p.m. to 5:30 p.m. for a guidelines discussion.

The remaining portion of this meeting from 9:30 a.m. to 5 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: February 2, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations National Endowment for the Arts.

[FR Doc. 94–2766 Filed 2–7–94; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions A Section) to the National Council on the Arts will be held on February 22–25, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. on February 22, 1994 for opening remarks and policy discussion.

The remaining portions of this meeting from 10 a.m. to 5:30 p.m. on February 22, 1994 and from 9 a.m. to 5:30 p.m., on February 23–25, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5439.

Dated: February 2, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–2768 Filed 2–7–94; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions B Section) to the National Council on the Arts will be held on March 1–4, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. for opening remarks and a policy discussion.

The remaining portions of this meeting from 10 a.m. to 5:30 p.m. on March 1, 1994, and from 9 a.m. to 5:30 p.m. on March 2–4, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant

applicants. In accordance with determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: February 2, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations National Endowment for the Arts.

[FR Doc. 94–2767 Filed 2–7–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register.** Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1992 and ending September 30, 1993.

Name and Title

Richard L. Ahearn—Regional Director, Region 3
Robert E. Allen—Associate General Counsel, Advice
Frank V. Battle—Deputy Director of Administration
Harold J. Datz—Chief Counsel to Board Member
Yvonne T. Dixon—Acting Deputy General Counsel
Frederick Freilicher—Chief Counsel to Board Member
John E. Higgins—Solicitor
Peter B. Hoffman—Regional Director, Region 34
Susan Holik—Chief Counsel to Board Member
Gloria Joseph—Director of Administration
Nicholas E. Karatinos—Acting Associate General Counsel, Enf. Lit.
Barry J. Kearney—Deputy Associate General Counsel, Advice
Joseph E. Moore—Deputy Executive Secretary
W. Garrett Stack—Associate General Counsel, Operations-Management
Elinor H. Stillman—Chief Counsel to the Chairman
Berton B. Subrin—Director, Office of Representation Appeals
John C. Truesdale—Executive Secretary

Dated: Washington, DC, February 2, 1994.

By Direction of the Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 94–2759 Filed 2–7–94; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; Establishment of a System of Records

AGENCY: National Science Foundation (NSF).

ACTION: Notice of establishment of a Privacy Act system of records.

SUMMARY: Notice is hereby given that the Office of Polar Programs (OPP) of the NSF is establishing a system of records. This action covers records in the agency's Antarctic Conservation Act Files.

EFFECTIVE DATES: This action will be effective without further notice on March 10, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Interested persons may submit written comments to Herman Fleming, Division of Contracts, Policy and Oversight, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Herman Fleming, Privacy Act Officer, at (703) 306–1243.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that the NSF proposes to establish a system of records identified as:

NSF–56—Antarctic Conservation Act Files

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be provided a 30-day comment period in which to comment on a new record system.

Dated: January 26, 1994.

Herman G. Fleming,

Reports Clearance and Privacy Act Officer, National Science Foundation.

NSF–56

SYSTEM NAME:

Antarctic Conservation Act Files.

SYSTEM LOCATION:

Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for permits pursuant to the Antarctic Conservation Act, and/or individuals who have been contacted regarding Antarctic Conservation Act compliance. This includes but is not limited to individuals who have sought Antarctic Conservation Act permits.

CATEGORIES OF RECORDS IN THE SYSTEM:

All documents and correspondence related to the individual's contact with the Antarctic Conservation Act system, including the permitting process, and investigations pertaining to compliance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 2401, *et seq.* (Pub. L. 95–452, as amended, 5 U.S.C. app.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

(1) Federal agencies involved in enforcing or implementing the Antarctic Conservation Act;

(2) A court, administrative or other adjudicative body, involved in enforcement of the Antarctic Conservation Act;

(3) Federal, state, or local agencies, or foreign governments, where disclosure is necessary in order to obtain records in connection with an investigation of the Office of Polar Programs;

(4) Other Federal agencies in response to the issuance of a security clearance, the award of a contract, or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the record is relevant;

(5) A Federal agency where the records are relevant to an agency decision with regard to disciplinary or other administrative action concerning their employee;

(6) The Merit Systems Protection Board (including the Office of the Special Counsel), in order to carry out its agency's functions;

(7) Persons, including witnesses, who may have information, documents or knowledge relevant to an Antarctic Conservation Act investigation or enforcement proceeding;

(8) Grantee institutions in the event that Antarctic Conservation Act violations are alleged against the institution or researchers in connection with investigation or enforcement proceedings;

(9) Contractors, in the event an Antarctic Conservation Act violations is alleged against the contractor, its employees, or its subcontractors in connection with investigation or enforcement proceedings;

(10) Contractors performing duties on behalf of the agency when relevant to the performance of their duties;

(11) To parties who have lawfully subpoenaed these records;

(12) To the Department of Justice for consultation in processing Freedom of Information Act requests;

(13) In the event of litigation where the defendant is (a) any component of the NSF, or any employee of the NSF acting in official capacity; (b) the United States, where the NSF determines that the claim, if successful, is likely to affect directly the operations of the NSF, or any NSF components, or (c) any NSF employee acting in official capacity where the Department of Justice and/or the Office of General Counsel of the NSF have agreed to represent such an employee, these records may be disclosed to assist in the preparation of an effective defense; or

(14) To a congressional office in response to an inquiry from the congressional office made at the request of the individual whose records are sought.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file cabinets; automated data, if any, is stored in the Office of Polar Program's Office, which is secured.

RETRIEVABILITY:

The records are retrieved by the name of the subject, or by a unique control number assigned to each investigation or permit application.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked file cabinets at other times.

RETENTION AND DISPOSAL:

The files are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Thomas F. Forhan, Polar Coordination and Information Section, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, room 740, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

To determine whether this system of records contains a record pertaining to the requesting individual, write to the system manager at the above address.

RECORD ACCESS PROCEDURES:

See notification procedure.

CONSENTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in this system of records should write to the system manager at the above address.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from applicants for permits, NSF staff and NSF records, and from non-NSF persons and records, to the extent necessary to carry out the duties described in the Antarctic Conservation Act. Individuals to be interviewed and records to be examined are selected according to the criteria described explicitly and implicitly in the Antarctic Conservation Act.

[FR Doc. 94–2787 Filed 2–7–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–352]

Philadelphia Electric Co., Limerick Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Section III.D.1.(a) of Appendix J to 10 CFR part 50, issued to Philadelphia Electric Company (the licensee), for the Limerick Generating Station, Unit 1, located at the licensee's site in the Chester and Montgomery Counties, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from 10 CFR part 50, Appendix J, Section III.D.1.(a) which requires a set of three Type A tests (i.e., Containment Integrated Leakage Rate Test (CILRT)) to be performed at approximately equal intervals during each 10-year service period and specifies that the third test of each set shall be conducted when the plant is shutdown for the performance of the 10-year plant inservice inspection (ISI). The exemption would allow a one-time 15-month extension of the 40 +/− 10-month interval between the Unit 1 second and third Type A test required by Technical Specifications (TS) Surveillance Requirement 4.6.1.2.a. Hence, this one-time exemption would allow the third, Unit 1, Type A test to be performed during the sixth Unit 1 refueling outage scheduled to begin in January 1996, approximately 65 months after the last Unit 1 test, thereby coinciding with the 10-year plant ISI refueling outage.

The proposed action is in accordance with the licensee's application for exemption dated November 30, 1993.

Need for the Proposed Action

The proposed exemption from Appendix J is required in order to allow the third Type A test to be performed during the sixth Unit 1 refueling outage scheduled to begin in January 1996, thereby coinciding with the 10-year ISI refueling outage, instead of requiring the performance of a Type A test during both the fifth and sixth Unit 1 refueling outages. This one-time extension of the Type A test interval would also result in the third Type A test being performed 20 months after the end of the Unit 1 first 10-year service period specified in 10 CFR part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Reactors" (i.e., August, 1994). In this way the third Type A test would be performed during the sixth Unit 1 refueling outage which would align the start of the second 10 CFR part 50, Appendix J, 10-year service period with the start of the second 10-year ISI period.

Environmental Impacts of the Proposed Action

The Commission has completed the evaluation of the proposed exemption and concludes that this action would not significantly increase the probability or amount of expected primary containment leakage; hence, the containment integrity would be maintained. The current requirement in Section III.D.1.(a) of Appendix J in 10 CFR part 50 to perform the three Type A tests would continue to be met, with the exception of the time interval between the second and the third Type

A tests would be extended from 40 +/ − 10 months to 65 months. The third Type A test would be performed approximately 65 months after the second Type A test and approximately 20 months after the end of the first 10 year service period. Based on the information presented in the licensee's application, the proposed extended test interval would not result in a non-detectable leakage rate in excess of the value established by 10 CFR part 50, Appendix J, or in any changes to the containment structure or plant systems. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed exemption otherwise affect radiological plant effluents. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concluded that there are no measurable environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This proposed action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Limerick Generating Station, Units 1 and 2, dated April 1984.

Agencies and Persons Consulted

The staff consulted with the State of Pennsylvania regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated November 30, 1993, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 2nd day of February 1994.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–2792 Filed 2–7–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 61st meeting on Wednesday and Thursday, February 23 and 24, 1994, in Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 23, 1994—8:30 a.m. until 6 p.m.

Thursday, February 24, 1994—8:30 a.m. until 6 p.m.

During this meeting the Committee plans to consider the following:

A. *HLW Topical Report Position Paper*—Hear a briefing by and hold discussions with representatives of the NRC staff on its approach to reviewing the DOE's topical reports on issue resolution in high-level waste management, including the staff's protocol and methodology in the Topical Report Position Paper.

B. *Agreement States Compatibility*—Discuss with the staff the issues of Agreement States' adequacy and compatibility with NRC regulatory programs necessary to protect public health and safety. ACNW focus will be on low-level waste disposal facilities.

C. *Yucca Mountain Exploratory Studies Facility (ESF)*—Discuss with the staff DOE's response to recent staff concerns regarding design control issues related to ESF.

D. *Pneumatic Pathways*—Hear NRC staff's views on pneumatic pathway concerns raised by the State of Nevada.

E. *Volcanism Related to a High-Level Waste Repository*—Review the current status of NMSS and RES staff work (including efforts at the Center) on volcanism related to an HLW repository.

F. *Natural Analog Studies*—Review results from natural analog studies and examine their use as input to performance assessment evaluations of an HLW repository.

G. *Design Basis Event for the Geologic Repository Operations Area*—Discuss with the staff issues related to the definition of "important to safety" that arise from the design basis event for the geologic repository operations area. This will be an initial discussion for orientation.

H. *Future Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

I. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. The ACRS Office is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the ACRS Office as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: February 2, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–2793 Filed 2–7–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would revise Surveillance Requirement 4.4.10, "Structural Integrity," by replacing the current reactor coolant pump flywheel inspection frequency and examination methods with an alternate program.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 10, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard Counselors at Law City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 22, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 2nd day of February 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–2791 Filed 2–7–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would modify the technical specifications to increase the maximum nominal fuel enrichment allowed to be stored in both the new fuel storage racks and the spent fuel pool to a nominal 5.0 weight-percent (w/o) U–235. To support this proposed amendment Technical Specification Section 5.6, "Fuel Storage," subsections 5.6.1.1.b, 5.6.1.2.a, and 5.6.1.2.b will be revised and Specifications 1.38, 1.39, 3.9.13, and 3.9.14 will be added.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 10, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for

amendment dated January 6, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 2nd day of February 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-2790 Filed 2-7-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-08681-MLA-2; ASLBP No. 94-688-01-MLA-2]

UMETCO Minerals Corp.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register,** 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials Licensing proceeding.

In the matter of, UMETO Minerals Corporation, P.O. Box 1029, Grand Junction, Colorado 81502. Source Materials License No. SUA-1358.

The Presiding Officer is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register,** 54 FR 8269 (1989). This action is in response to a request for a hearing submitted by Envirocare of Utah, Inc. (Envirocare). Envirocare desires a hearing concerning NRC staff approval on August 2, 1993 of an amendment to UMETO Minerals Corporation's Source Materials License covering its White Mesa Mill located near Blanding, Utah.

The presiding officer in this proceeding is Administrative Judge James P. Gleason.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Thomas D. Murphy to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Gleason and Judge Murphy in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge James P. Gleason, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 2nd day of February 1994.

B. Paul Cotter, Jr.

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94-2794 Filed 2-7-94; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch

Budget Enforcement Act Preview Report

AGENCY: Office of Management and Budget.

ACTION: Notice of Transmittal of Budget Enforcement Act Preview Report to the President and Congress.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Budget Enforcement Act Preview Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Alicia Kolaian, Budget Analysis Branch—202/395-4575.

Dated: January 25, 1994.

James C. Murr,

Associate Director for Legislative Reference and Administration.

[FR Doc. 94-2839 Filed 2-7-94; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee Scheduled for Thursday, February 17, 1994, has been cancelled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415, (202) 606-1500.

Dated: February 2, 1994.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 94-2764 Filed 2-7-94; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33561; File No. SR-Amex-93-15]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to an Extension of Its Pilot After-Hours Trading Facility

February 1, 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 April 21, 1993, 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 and II below, which Items have been prepared by the self-regulatory organization. On January 4, 1994, the Amex amended the filing to request that the pilot program for its After-Hours Trading facility be extended for a three-month period, until April 30, 1994, while the Commission considers the Exchange's request for permanent approval of the pilot program.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] As originally filed, File No. SR-Amex-93-15 requested permanent approval of Amex's pilot After-Hours Trading facility. On January 4, 1994, the Amex amended the filing with an additional request for a three-month extension of the pilot in order to give the Commission adequate time to consider the request for permanent approval and requested that the extension be granted accelerated approval. *See* letter from William Floyd-Jones, Jr., Amex, to Sandra Sciole, Special Counsel, Commission, dated December 23, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its pilot After-Hours Trading ("AHT") facility through April 30, 1994. The current pilot program was scheduled to expire on January 31, 1994.

The Exchange requests accelerated approval of the proposed rule change. The Exchange believes that accelerated effectiveness is appropriate since it would permit the Exchange's existing AHT facility to continue operating while the Commission considers permanent approval of the facility. The proposal to extend the AHT pilot, therefore, does not raise any new questions for the commission's consideration.

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 self-regulatory organization 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 III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In August 1991, the Commission partially approved the Exchange's AHT facility on a temporary basis.[4] This facility permits the execution of coupled and single-sided closing price orders after the close of the 9:30 a.m. to 4 p.m. trading session. Commencing at 4:15 p.m., single-sided round lot orders for equity securities can be entered through the Exchange's PER system or left with the specialist or the specialist's authorized representative for matching and execution at 5 p.m. at the Exchange's last closing regular way price. Coupled buy and sell round lot, odd lot and partial round lot orders also can be entered through the PER system, or left with the specialist for execution at 5 p.m. against each other at the Exchange's last regular way price. Members are permitted to designate good 'til cancelled ("GTC") limit orders entered during the regular trading session as eligible for execution in the AHT session. Such orders are marked "GTX" and migrate to the AHT facility for possible execution.[5]

The Commission stated in its order approving the AHT facility that it would review the operation of the facility during the temporary approval period. In this regard, the Commission asked the Exchange to assemble data on the operation of the facility which the Exchange submitted under separate cover. It is the Exchange's opinion that the system has functioned well during the temporary approval period and that the operation of the system has not had any adverse effects upon the development of the national market system. The Exchange, therefore, seeks a three month extension for its AHT facility.[6]

2. Statutory Basis

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, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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 of the proposed rule change.

III. 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 at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the 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–93–15 and should be submitted by March 1, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the reasons set forth below, the Commission finds that approval of the Exchange's proposed rule change, for a temporary period ending on April 30, 1994, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6 and 11A of the Act.[7] The Commission believes that the Amex proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communications systems and execution of investors' orders in the best market.

In the Commission's release approving the New York Stock Exchange's ("NYSE") Off-Hours Trading ("OHT") facility, the Commission noted the benefits that would accrue to

[4] See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991) (order approving File No. SR–Amex–91–15) (Amex AHT Approval Order).

[5] The Commission notes that the Amex's AHT facility enables members, not including specialists, to enter both proprietary and agency orders in any Exchange traded equity security, including stocks, rights, warrants, primes and scores, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price.

[6] File No. SR–Amex–93–15 also requested Commission approval for specialist participation in the AHT facility for investment trust securities listed pursuant to Section 118B of the Exchange's Listing Guidelines. This order approves on an accelerated basis until April 30, 1994, only that portion of File No. SR–Amex–93–15 which establishes the AHT facility and which allows members, not including specialists, to enter proprietary and agency orders in Exchange-traded equities. The Commission is not approving the portion of the proposed rule change which allows specialists to participate in any way for their own accounts in the AHT facility. See File No. SR–Amex–93–15. See also letter amendment dated December 23, 1993, *supra* note 3.

[7] 14 U.S.C. §§ 78f and 78k–1 (1988). See Amex AHT Approval Order, *supra* note 4, for a complete description of the AHT procedures and the Commission's rationale for approving the proposal on a pilot basis. The discussion in that order is incorporated by reference into this order.

investors through the development of an after-hours trading session.[8] By allowing Amex members to enter single-sided and coupled orders into an after-hours facility, as well as permitting the migration of certain limit orders (GTX orders) from the regular 9:30 a.m. to 4 p.m. trading session for possible execution in the AHT facility, the Amex is providing a mechanism for maintaining its own individual marketplace on a competitive level with the NYSE and the regional exchanges.[9] Accordingly, the Commission believes that the proposed rule change which enables members to enter both proprietary and agency orders in Exchange-traded equity securities, including stocks, rights, warrants, primes and scores, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price should be extended until April 30, 1994.

In its orders approving and extending the Amex AHT pilot program, the Commission requested that the Amex provide the Commission with specific data and a report regarding the operation of the Amex's AHT pilot.[10]

The Amex has reported to the Commission, on a monthly basis, the number of trade and share volume of orders executed after the close pursuant to the pilot procedures. In addition, on May 21, 1993, and September 30, 1993, the Exchange filed with the Commission reports which address the Exchange's experience with the AHT pilot through September 1, 1993.[11] The Commission expects the Exchange to submit to the Commission by March 15, 1994, an updated report concerning pilot activity through February 28, 1994.[12]

The Commission believes that it is reasonable to extend the pilot program in order to provide the Amex and Commission with additional time to review the pilot program. The pilot extension also will provide the Commission with an opportunity to study the reports supplied by the Amex. During the pilot extension, the Commission expects that the Amex will continue to monitor the operation of the AHT pilot program. In addition, the Commission continues to request that the Exchange keep the Commission apprised of any technical problems or patterns of manipulation or trading abuses which may arise regarding the operation of the new rule.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** The Commission believes that accelerated approval of the proposal is appropriate in order to allow the Amex procedures to remain in place on an uninterrupted basis. This will permit the Amex to continue to compete with the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[13] that a portion of the proposed rule change (Amex–93–15), as discussed above, is hereby approved on a pilot basis through April 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

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[8] See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (approving File Nos. SR–NYSE–90–52 and SR–NYSE–90–53).

[9] Concurrently with this order, the Commission is also approving proposals submitted by the NYSE, the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Philadelphia Stock Exchange, Inc. ("Phlx") and the Pacific Stock Exchange, Inc. ("PSE"), to extend, through April 30, 1994, the respective pilot programs in place on those exchanges which provide for executions of securities during after-hours trading sessions. See Securities Exchange Act Release Nos. 32362 (May 25, 1993) (order approving File No. SR–NYSE–93–23); 32365 (May 25, 1993) (order approving File No. SR–BSE–93–10); 32368 (May 25, 1993) (order approving File No. SR–MSE–93–06); 32364 (May 25, 1993) (order approving File No. SR–Phlx–93–16); and 32367 (May 25, 1993) (order approving File No. SR–PSE–93–6).

In 1991, the Commission approved proposals submitted by the BSE, CHX, Phlx, and PSE which require their specialists to provide primary market protection to limit orders, designated as executable after the close of the regular trading session, based on volume that prints in the primary market's after-hours session. See Securities Exchange Act Release Nos. 29301 (June 13, 1991) 56 FR 28182 (granting temporary accelerated approval to File No. SR–BSE–91–04; 29297 (June 13, 1991), 56 FR 28191 (granting temporary accelerated approval to File No. MSE–91–11); 29300 (June 13, 1991), 56 FR 28212 (granting temporary partial approval to File No. SR–Phlx–91–26) and 29749 (September 27, 1991), 56 FR 50405 (order granting temporary accelerated approval to File No. SR–Phlx–91–32); 29305 June 13, 1991), 56 FR 28208 (granting partial temporary accelerated approval to File No. SR–PSE–91–21); and 29543 (August 9, 1991), 56 FR 40929 (order granting accelerated approval to File No. SR–PSE–28). On May 25, 1993, the Commission approved extensions of the Amex, NYSE, CHX, BSE, PSE, and Phlx pilots until January 31, 1994. See Securities Exchange Act Release No. 32365 (May 25, 1993), 58 FR 31560 (June 3, 1993) (order granting accelerated approval to File No. SR–BSE–93–10); Securities Exchange Act Release No. 32363 (May 25, 1993), 58 FR 31558 (June 3, 1993) (order granting accelerated approval to File No. SR–Amex–93–19); Securities Exchange Act Release No. 32368 (May 25, 1993), 58 FR 31563 (June 3, 1993) (order granting accelerated approval to File No. SR–MSE–93–6); Securities Exchange Act Release No. 32367 (May 25, 1993), 58 FR 31570 (June 3, 1993) (order granting accelerated approval to File No. SR–PSE–93–6); Securities Exchange Act Release No. 32364 (May 25, 1993), 58 FR 31574 (June 3, 1993) (order granting accelerated approval to File No. SR–Phlx–93–16) and Securities Exchange Act Release No. 32362 (May 25, 1993), 58 FR 31565 (June 3, 1993) (order granting accelerated approval to File No. SR–NYSE–93–23). All of the after-hours pilot programs were scheduled to expire January 31, 1994.

[10] Among other things,the Commission requested that the Amex monitor and report on GTX, single-sided and coupled order executions in its trading floor to ensure that Amex specialists are not taking unfair advantage of information derived regarding which orders on their books are designated GTX and the priority among those orders. In addition, the Commission requested that the following information (broken down by month) be included in the Amex report: trading volume (trades and number of shares) in after-hours session; the number, if any, of (1) single-sided orders; (2) coupled buy and sell orders; and (3) GTX orders executed in the after-hours session; the number, if any, of single-sided and coupled orders comprised of primes and scores or comprised of equity derivative products that are executed in the after-hours session; the number, if any, of (1) single-sided orders; and (2) single-sided GTX orders that remained unexecuted at the end of the after-hours session; the number and percentage of GTC orders on the book that were designated "GTX"; the number of member firms participating in the after-hours session; whether the Amex marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the after-hours session; whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the after-hours session; whether there was a diminution in the number of block transactions during the last hour after the initiation of the after-hours session; and the degree to which transactions were entered in the after-hours session to avoid the restrictions of the short sale rule in the 9:30 a.m. to 4 p.m. trading session. Furthermore, the Amex's report should also indicate: (1) How its after-hours facility could link with the NYSE's OHT facility and any other systems approved during the 16-month period; (2) how orders entered on the other marketplaces could interact with orders in the Amex's after-hours facility; and (3) how the intermarket issues discussed in the Commission's order approving the AHT pilot would be addressed. In this connection, however, the Commission underscored its strong belief that resolution of intermarket issues would not be solely a responsibility of the Amex, but would fall equally upon all self-regulatory organizations proposing after-hours sessions.

In addition, the Commission stated that it expects the Amex, through use of its surveillance procedures, to monitor for, and report to the Commission any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Specifically, the Commission requested that the Amex monitor closely the trading of primes and scores and equity derivative products in the AHT facility to ensure that trading in these issues is not subject to any patterns of manipulation or trading abuses or unusual trading activity. Finally, the Commission requested that the Amex keep the Commission apprised of any technical problems which may arise regarding the operation of the pilot program, such as difficulties in order execution or order cancellation.

[11] See letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Diana Luka-Hopson, Esq., Branch Chief, Commission, dated May 21, 1993, and letter from William Floyd-Jones, Jr., Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Diana-Luka-Hopson, Branch Chief, Commission, dated September 30, 1993.

[12] See *supra* note 10 for the information required to be provided in the updated reports.

[13] 15. U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 94–2771 Filed 2–7–94; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–33562; File Nos. SR–CHX–93–23; SR–BSE–93–18; SR–PSE–94–1; SR–Phlx–94–7]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc., et al.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to an Extension of Pilot Program Which Provides Price Protection of Limit Orders Executable After the Close of Regular Trading Hours

February 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the Chicago Stock Exchange, Inc. ("CHX"), Boston Stock Exchange, Inc. ("BSE"), Pacific Stock Exchange, Inc. ("PSE"), and Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, the "Regional Exchanges") have filed with the Securities and Exchange Commission ("Commission") proposed rule changes to extend the effectiveness of their respective pilot programs relating to price protection of limit orders.[3] The Exchanges have requested accelerated approval of their respective proposals. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Regional Exchanges propose to extend their respective pilot programs relating to price protection of limit orders until April 30, 1994. The rule changes provide primary market protection to certain limit orders trading at the limit price in a primary market's after-hours trading session.[4]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] The CHX and BSE filed amendments to their respective proposed rule changes requesting that the Commission approve a three month extension of their pilot programs on an accelerated basis. See letter from David T. Rusoff, Attorney, Foley & Lardner, to Louis A. Randazzo, Attorney, Branch of Exchange Regulation, Commission, dated December 21, 1993; letter from Karen A. Aluise, Assistant Vice President BSE, to Louis A. Randazzo, Attorney, Branch of Exchange Regulation, Commission, dated December 21, 1993. In addition, the Regional Exchanges have filed for permanent approval, as have the New York Stock Exchange and the American Stock Exchange. See File Nos. SR–CHX–93–23; SR–BSE–93–24; SR–PSE–94–2; SR–Phlx–94–8; SR–NYSE–93–50; and SR–Amex–93–15.

[4] On June 13, 1991, the Commission approved, on a pilot basis File Nos. SR–MSE–91–11 (in 1991, the CHX was named the Midwest Stock Exchange or MSE), SR–BSE–91–04, SR–PSE–91–21, and SR–Phlx–91–26, which amended the Exchange's respective Rules relating to price protection of limit orders. See Securities Exchange Act Release No. 29297 (June 13, 1991), 56 FR 28191 (June 19, 1991) (order approving File No. SR–MSE–91–11)(MSE Approval Order); Securities Exchange Act Release No. 29301 (June 13, 1991), 56 FR 28182 (June 19, 1991) (BSE Approval Order); Securities Exchange Act Release No. 29305 (June 13, 1991), 56 FR 28208 (June 19, 1991) (PSE Approval Order); and Securities Exchange Act Release No. 29300 (June 13, 1991), 56 FR 28212 (June 19, 1991) (Phlx Approval Order). At that time, the New York Stock Exchange ("NYSE") had initiated its Off-Hours trading ("OHT") sessions. The NYSE OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing price orders and crosses of single-stock closing price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. *See* Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (approving File Nos. SR–NYSE–90–52 and NYSE–90–53). On August 2, 1991, The Commission approved a proposed rule change by the American Stock Exchange, Inc. ("Amex") to establish a pilot extending its trading hours to establish an after-hours trading facility that would permit the execution of: (1) Single-sided closing-price orders; and (2) crosses of closing-price buy and sell orders. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991) (approving File No. SR–AMEX–91–15). The Exchange's procedures provide primary market protection for customer GTX orders (good until cancelled, executable in the afternoon session) in securities listed both on the NYSE and on the Amex. The Commission approved extensions of the NYSE, Amex and CHX pilots, as well as pilots by the PSE, Phlx and BSE until January 31, 1994. See Securities Exchange Act Release No. 32365 (May 25, 1993), 58 FR 31560 (June 3, 1993) (order granting accelerated approval to File No.SAR–BSE–93–10); Securities Exchange Act Release No. 32363 (May 25, 1993), 58 FR 31558 (June 3, 1993) (order granting accelerated approval to File No. SR–Amex–93–19); Securities Exchange Act Release No. 32368 (May 25, 1993), 58 FR 31563 (June 3, 1993), (order granting accelerated approval to File No. SR–MSE–93–6); Securities Exchange Act Release No. 32367 (May 25, 1993), 58 FR 31570 (June 3, 1993) (order granting accelerated approval to File No. SR–PSE–93–6); Securities Exchange Act Release No. 32364 (May 25, 1993), 58 FR 31574 (June 3, 1993) (order granting accelerated approval to File No. SR–Phlx–93–16) and Securities Exchange Act Release No. 32362 (May 25, 1993), 58 FR 31565((June 3, 1993) (order granting accelerated approval to File No. SR–NYSE–93–23).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule change and discussed any comments they received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organizations have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Regional Exchanges are requesting a three month extension of their respective pilot programs relating to price protection of limit orders based on after-hours prints in a primary market. The pilot programs require Exchange specialists to provide primary market protection for those limit orders entered during an Exchange's primary trading session which are designated as executable after the close of the regular Exchange auction market trading session, known as "GTX" orders ("good until cancelled, executable in the afternoon session").

The Regional Exchanges have provided the Commission with updated reports describing their experience with the new rules.[5] The Commission will be reviewing those reports and new reports during the three-month extension of the pilots.[6]

[5] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Diana Luka-Hopson, Branch Chief, Commission, dated September 30, 1993; letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated September 17, 1993; letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Diana Luka-Hopson, Branch Chief, Commission, dated January 6, 1994; letter from William W. Uchimoto, Vice President and General Counsel, Phlx, to Louis A. Randazzo, Attorney, Commission, dated January 13, 1994.

[6] In its orders approving the pilot programs, the Commission requested that the Exchanges provide the Commission with specific data regarding the operation of their respective after-hours pilots. The Commission requested that the Exchanges report on, among other things, GTX executions on its trading floor to ensure that their specialists are not taking unfair advantage of information derived regarding which orders on their books are designated GTX and the priority among those orders. In addition, the Commission requested that the Exchanges submit a report to the Commission describing their experiences with the new rule during the pilot period. The Commission requested that the following information (broken down by month) be included in the reports: (1) Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders; (2) whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders; (3) the number, if any, of GTX orders executed after the close of the regular auction trading session pursuant to the new rule; (4) the number, if any, of GTX orders that remain unexecuted after the specialist has fulfilled his or her obligations in connection with the new rule; (5) the number and percentage of good until cancelled orders on the book that were designated "GTX" and thus eligible to be filled; (6) whether the marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading sessions after the initiation of the new rule; (7) whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m.to 4 p.m. trading session after the initiation of the new rule; and (8) whether the Exchange or

2. Statutory Basis

The proposed rule changes are consistent with Sections 6(b)(5) and 11A of the Act in that they are designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The exchanges believe that no burdens will be placed on competition as a result of the proposed rule changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received on the proposed rule changes.

III. 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 at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal offices of the CHX, BSE, PSE and Phlx. All submissions should refer to File Nos. SR–CHX–93–23, SR–BSE–93–18, SR–PSE–1 and SR–Phlx–94–7, and should be submitted by March 1, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Regional Exchanges' proposals to extend their respective pilot programs, until April 10, 1994, to provide price protection of limit orders executable after the close of regular trading hours is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposals are reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges. For these reasons, as discussed in more detail below and in the original approval orders, the Commission finds that approval of the proposed rule changes, for a temporary period ending on April 30, 1994, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6 of the Act.[7]

In the Commission's release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through the development of an after-hours trading session.[8] Although the Regional Exchanges' proposals did not establish after-hours sessions identical to that of the NYSE, the Commission believes that they provide a reasonable competitive response. By allowing GTX orders that would be executed on the NYSE to receive a similar fill on the Exchanges, the proposal is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market.[9]

In the original approval and extension orders, the Commission requested reports on the pilot programs, as well as weekly data.[10] The Commission expects the Regional Exchanges to submit to the Commission by March 15, 1994, updated reports concerning pilot activity through February 28, 1994.[11]

The Commission continues to expect the Regional Exchanges, through use of their surveillance procedures, to monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity resulting from these pilot programs. In addition, the Commission continues to request that the Exchanges keep the Commission apprised of any technical problems which may arise regarding the operation of the pilot programs, such as difficulties in order execution or order cancellation.

The Commission believes that it is reasonable to extend the pilot programs until April 30, 1994, in order to provide the Commission with an opportunity to continue to review the reports submitted by the Exchanges. The Commission also will be considering the various requests for permanent approval of these programs during the three-month extensions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the Exchanges' procedures to remain in place on an uninterrupted basis. This will permit the Exchanges to continue to compete with Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[12] that the CHX, BSE, PSE, and Phlx proposed rule changes (CHX–93–23, BSE–93–18, PSE–94–1, and Phlx–94–7) are hereby approved on a pilot basis until April 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2769 Filed 2–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33564; File No. SR–NYSE–93–27]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Addition of Rules 72(b) and 410A to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A" and Amending Minor Rule Violation Enforcement and Reporting Plan

February 1, 1994.

Pursuant to Sections 19 (b)(1) and (d)(1) of the Securities Exchange Act of

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any specialist has given any special guarantees to execute GTX orders over and above the requirements of the new rule.

[7] 15 U.S.C. 78f (1988).

[8] See Securities Exchange Act Release No. 29237, *supra* note 4.

[9] In addition to extending the after-hours GTX pilot programs, the Commission today is also approving proposals submitted by the NYSE and Amex to extend, through April 30, 1994, their respective pilot programs which provide for executions of securities during after-hours trading sessions. Each of these pilot programs were scheduled to expire on January 31, 1994. See File Nos. SR–NYSE–93–51 (filed on December 23, 1993) and SR–Amex–93–15 (filed on April 21, 1993).

[10] See original approval orders and extension orders, *supra* note 4.

[11] See *supra* note 6 for the information required to be provided in the updated report.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1993).

1934 ("Act")[1] and Rules 19b–4 and 19d–1(c)(2) thereunder[2] notice is hereby given that on May 27, 1993, the New York Stock Exchange, Inc. ("NYSE" 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 self-regulatory organization ("SRO"). On June 9, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] On January 3, 1994, the Commission received from the NYSE Amendment No. 2 to the proposed rule change.[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

This proposal would revise the Rule 476A Violations List for imposition of fines for minor violations of rules and/or policies by adding to the list violations of Exchange Rule 410A and the provision in Rule 72(b) which prohibits proprietary participation in a cross transaction.[5] The Exchange proposes to adopt the following amendment:[6]

List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A

- Rule 72(b) requirements for "clean" agency crosses which cannot be broken up at the cross price[7]
- Rule 410A requirements for automated submission of trading data

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Rule 476A[8] provides that the Exchange may impose a fine, not to exceed $5,000, or any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.[9]

The purpose of Rule 476A procedure is to provide for a response to a rule violation when a meaningful sanction is appropriate but when initiation of a disciplinary proceeding under Rule 476 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation.[10] Rule 476A provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures. The list of rules which are eligible for 476A procedures specifies those rule violations which may be the subject of fines under the rule and also includes a schedule of fines.

In SR–NYSE–84–27, which initially set forth the provisions and procedures of Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of Rule 476A as experience with it was gained.[11]

The Exchange is presently seeking approval to add the following Exchange Rules to the List of Rules subject to possible imposition of fines under Rule 476A procedures:

- Rule 72(b) which establishes conditions under which "clean" agency crosses of 25,000 shares or more cannot be broken at the cross price;[12]

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[1] 15 U.S.C. 78s (b)(1) and (d)(1) (1988).

[2] 17 CFR 240.19b–4 and 19d–1(c)(2) (1991).

[3] See letter from Donald Siemer, Director, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, submitted on June 9, 1993 by which the NYSE made corrections to its current Rule 476A Violations List.

[4] See letter from Robert J. McSweeney, Senior Vice President, Market Surveillance, to Sandra Sciole, Special Counsel, Commission, dated December 23, 1993. Amendment No. 2 withdrew Rule 401 from the list of proposed additions to the Rule 476A list of minor rule violations and limited the violations of Rule 72(b) that would be eligible to be fined under Rule 476A to instances of proprietary participation with the cross.

[5] The NYSE also has requested approval, under Rule 19d–1(c)(2), 17 CFR 240.19d–1(c)(2), to amend its Rule 19d–1 Minor Rule Violation Enforcement and Reporting Plan ("Plan") to include Rules 72(b), 401 and 410A. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Exchange and Options Regulation, Division of Market Regulation, Commission, dated May 26, 1993. Subsequent to this request, the Exchange amended the proposal to withdraw Rule 401 from the list of minor rule violations and to add violations of Rule 72(b) involving instances of proprietary participation with the cross to the list of minor rules. See Amendment No. 2, *supra* note 4.

[6] With respect to the following amendment, italicizing indicates new material and brackets indicate material to be deleted.

[7] As noted above, the minor rule list would include only the section of Rule 72(b) which prohibits instances of proprietary participation with the cross transaction. See Amendment No. 2, *supra*, note 4.

[8] Rule 476A was approved by the Commission on January 25, 1985. See Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985). Subsequent additions of rules to the Rule 476A Violations List were made in: Securities Exchange Act Release No. 22037 (May 14, 1985); 50 FR 12213 (May 21, 1985); Securities Exchange Act Release No. 22496 (October 2, 1985), 50 FR 41084 (October 8, 1985); Securities Exchange Act Release No. 23104 (April 11, 1986), 51 FR 13307 (April 18, 1986); Securities Exchange Act Release No. 24985 (October 22, 1987), 52 FR 23820 (October 29, 1987); Securities Exchange Act Release No. 25763 (May 27, 1988), 54 FR 20925 (June 7, 1988); Securities Exchange Act Release No. 27878 (April 4, 1990), 55 FR 13345 (April 10, 1990); Securities Exchange Act Release No. 28003 (May 9, 1990), 55 FR 20004 (May 14, 1990), Securities Exchange Act Release No. 28505 (October 2, 1990), 55 FR 41288 (October 10, 1990); Securities Exchange Act Release No. 28995 (March 28, 1991), 56 FR 12967 (March 28, 1991); Securities Exchange Act Release No. 30280 (January 22, 1992), 57 FR 34522 (January 29, 1992); Securities Exchange Act Release No. 30536 (March 31, 1992), 57 FR 12357 (April 9, 1992); and Securities Exchange Act Release No. 32421 (June 7, 1993), 58 FR 32973 (June 14, 1993).

[9] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838 (June 8, 1984). Pursuant to paragraph (c)(1) of Rule 19d–1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by an SRO for a violation of an SRO rule that has been designated a minor rule violation pursuant to the Plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic, as opposed to immediate, basis.

[10] NYSE Rule 476 sets forth procedures for disciplinary proceedings involving charges against members, member organizations, allied members, approved persons or employees.

[11] See Securities Exchange Act Release No. 21688, *supra* note 8.

[12] As amended, the minor rule list would include only the section of Rule 72(b) which prohibits instances of proprietary participation with cross transaction. See *supra* notes 4 and 7. NYSE Rule 72(b) states that when a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of 25,000 shares or more and are for the accounts of persons who are not members or member organizations, the member may "cross" those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 76, and another member may trade with either the bid or offer side of the cross

• Rule 410A which requires members and member organizations to submit certain information concerning transactions in an automated format as requested by the Exchange;[13]

The purpose for the proposed change to Rule 476A is to facilitate the Exchange's ability to induce compliance with all aspects of the above-named Rules.

The Exchange believes failure to comply with the requirements of these Rules should be addressed with an appropriate sanction and seeks Commission approval to add violations of these requirements to the Rule 476A List.

(b) Statutory Basis

The proposed rule change will advance the objectives of Section 6(b)(6) of the Act in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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 communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–27 and should be submitted by March 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. No member may break up the proposed cross transaction, in whole or in part, at the cross price.

[13] See NYSE Rule 410A for the list of trade data elements required to be submitted to the NYSE under this Rule.

[Release No. 34–33563; File No. SR–NYSE–93–51]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Off-Hours Trading Facility and Matched MOC Order Procedures

February 1, 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 December 23, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has requested accelerated approval of the proposal. 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 Commission's order approving the Exchange's Off-Hours Trading ("OHT") facility contained a two-year "sunset" provision.[3] The Commission later extended the "sunset" date until January 31, 1994.[4] The proposed rule change seeks to extend (i) that "sunset," and (ii) the concurrent end of the pilot program for procedures regulating matched market-on-close ("MOC") orders, to April 30, 1994.[5]

The Exchange requests accelerated approval of the proposed rule change. Accelerated approval would enable the Exchange to continue Crossing Session I and Crossing Session II, and the matched MOC pilot program, as described below, on an uninterrupted basis.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

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[3] See Securities Exchange Act Release No. 29237 (May 31, 1991), 56 FR 24853 (June 3, 1991) (File Nos. SR–NYSE–90–52 and SR–NYSE–90–53 ("OHT Approval Order").

[4] See Securities Exchange Act Release No. 32362 (May 25, 1993), 58 FR 31565 (June 3, 1993) (order granting accelerated approval to File No. SR–NYSE–93–23).

[5] The Commission initially approved the matched MOC order procedures on a pilot basis in June, 1990. In that order, the Commission also granted an exemption from its short sale rule, Rule 10a–1, for matched MOC orders that are part of a program trading strategy. See Securities Exchange Act Release No. 28167 (June 29, 1990), 55 FR 28117 (order granting temporary approval to File No. SR–NYSE–89–10) and letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President and Secretary, NYSE, dated July 2, 1990. The original one-year pilot program was temporarily extended by the Commission for an additional six months, until September 30, 1991, in order to give the Exchange the opportunity to contrast the use of matched MOC orders with certain program trading transactions effected in the Exchange's then recently implemented Crossing Session II. See Securities Exchange Act Release No. 29393 (July 1, 1991), 56 FR 30954 (order granting temporary accelerated approval to File No. SR–NYSE–91–22). Subsequently, the Commission granted accelerated approval to an Exchange proposal to extend the pilot period until November 30, 1991. See Securities Exchange Act Release No. 29761 (September 30, 1991), 56 FR 50743 (order granting temporary accelerated approval to File No. SR–NYSE–91–34). Thereafter, the Commission extended the matched MOC order pilot program through May 24, 1993. See Securities Exchange Act Release No. 30004 (November 27, 1991), 56 FR 63533 (order granting temporary approval to File No. SR–NYSE–91–35). On May 25, 1993, the Commission approved extensions of the NYSE pilots until January 31, 1994. See Securities Exchange Act Release No. 32362 (May 25, 1993), 58 FR 31565 (June 3, 1993).

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 self-regulatory organization 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 III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) *OHT facility.* By order dated May 24, 1991,[6] the Commission approved for a two-year temporary period the OHT facility by which the Exchange offers its two off-hours trading sessions. "Crossing Session I" permits the execution of single-stock, single-sided closing-price orders and crosses of single-stock, closing-price buy and sell orders. "Crossing Session II" allows the execution of crosses of multiple-stock (portfolios of 15 or more securities) aggregate price buy and sell orders.

The Exchange began offering the two sessions on June 13, 1991. On May 25, 1993, the Commission approved an extension of the Pilot until January 31, 1994 ("Extension Order").[7] The proposed rule change seeks to extend approval of the pilot until April 30, 1994. The Exchange has submitted to the Commission contemporaneously with this proposed rule change a second proposed rule pursuant to which the Exchange has requested permanent approval of both Crossing Session I and Crossing Session II ("Permanent Approval Filing").[8] The Exchange therefore requests this extension until April 30, 1994, to provide for the continuity of the crossing sessions, pending Commission action on the Permanent Approval Filing.

(b) *Matched MOC Orders.* In File No SR–NYSE–91–35, the Exchange requested that procedures for using matched MOC orders and the exemption from SEC Rule 10a–1 (relating to short sales of securities)[9] for such orders (which had originally been filed as part of the pilot extending expiration Friday pricing procedures for MOC orders for every trading day) run concurrently with the temporary period for the Exchange's OHT facility. In its order approving this filling, the Commission stated that "it is appropriate to allow the Exchange additional time to compare and contrast the matched MOC procedures with Crossing Session II."[10] On May 25, 1993, the Crossing Session II approved an Exchange request to extend the pilot program for matched MOC procedures until January 31, 1994.[11]

The Exchange has reviewed program trading activity by its member firms through December 17, 1993, but has not found any instances of firms entering matched MOC orders up to that point. As with Crossing Session I and II, the Exchange has included in the Permanent Approval Filing a request for permanent approval of the matched MOC order procedures.[12] The Exchange requests an extension until April 30, 1994, so as to provide for the continuity of those procedures, pending Commission action on the Permanent Approval Filing.

2. Statutory Basis

The basis under the Act for the Exchange's OHT facility and the matched MOC order procedures, and for this extension of approval of the facility and those procedures, is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. 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 at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–51 and should be submitted by March 1, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the reasons discussed below, the Commission finds that the NYSE's proposal to extend, through April 30, 1994, the pilot program providing for the Exchange's OHT facility and the pilot program for procedures regulating matched MOC orders is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[13] and in particular, with the requirements of section 6(b)(5).[14] The Commission believes that the NYSE's proposal to extend the OHT facility pilot, comprised of Crossing Sessions I

[6] See OHT Approval Order, *supra* note 3.

[7] See Securities Exchange Act Release No. 32362, *supra* note 4.

[8] See File No. SR–NYSE–93–50, filed with the Commission on December 23, 1993.

[9] Pursuant to Rule 10a–1 under the Act, 17 CFR 240.10a–1 (1991), and Exchange Rule 440B, a short sale on the Exchange may not be effected at a price either (1) below the last reported price or (2) at the last reported price unless that price is higher than the last reported price.

[10] See Securities Exchange Act Release No. 30004, *supra* note 5.

[11] See *supra* note 5.

[12] See File No. SR–NYSE–93–50, *supra* note 8.

[13] See OHT Approval Order, *supra* note 3, and Securities Exchange Act Release Nos. 28167, 29393, 29761, and 30004, *supra* note 5, for a complete description of the NYSE OHT facility, the NYSE matched MOC order procedures, and the Commission's rationale for approving the proposals on a pilot basis. The discussions in those orders are incorporated by reference into this order.

[14] 15 U.S.C. 78f(b)(5) (1988).

and II, is reasonably designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and remove impediments to and perfect the mechanism of a free and open market and a national market system. For the reasons discussed below, the Commission is also approving a three-month extension for matched MOC orders.

(1) OHT Procedures for Crossing Sessions I and II

In the Commission's order approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through the development of an after-hours trading session.[15] The Commission stated its belief that Crossing Session I would provide investors whose orders were not executed during the 9:30 a.m. to 4 p.m. session with another opportunity to have their orders executed at the NYSE closing price. Crossing Session I also would provide investors the flexibility to decide whether they want a particular order to participate in this Session. With respect to good til cancelled ("GTC") orders entered for execution during the 9:30 a.m. to 4 p.m. trading session, a customer would have the option of deciding whether to designate that order as a GTX (good til cancelled, executable through crossing session) order, thus allowing the order to migrate to Crossing Session I for possible execution. In addition, a customer would have the option of cancelling any order entered into Crossing Session I at any time prior to its execution at 5 p.m. These benefits would accrue to both individual and institutional investors. Moreover, the Commission stated its belief that Crossing Session I may help recapture overseas order flow by enabling firms to facilitate a number of portfolio trading strategies involving small programs of stocks to achieve executions at the NYSE closing price.

Similarly, the Commission stated its belief that Crossing Session II would benefit the investing public by offering members the opportunity to enter aggregate-price crossing portfolio orders with their customers after-hours to be executed against each other. The Commission recognized that Crossing Session II could help to recapture overseas trades of U.S. stocks by providing a mechanism by which portfolio trades arranged off the floor can be effected in an exchange trading system. While the Commission recognizes that Crossing Session II does not provide an auction market for portfolio trades, the reality of the marketplace is that these portfolio trades currently are being effected off-exchange and, frequently, overseas. Bringing institutional trades that currently are being exported overseas for execution within the purview of U.S. regulatory bodies should benefit the marketplace overall, as well as help to protect the investing public.

Although the Commission discussed these prospective benefits of the OHT program in its order approving the pilot program procedures, the Commission also voiced concern regarding certain issues concerning the NYSE OHT facility, particularly with regard to Crossing Session II and certain National Market System ("NMS") concerns. In order to address these concerns, the Commission approved the OHT facility on a pilot basis, and requested that the Exchange submit a report concerning various aspects of the pilot, including information regarding the ability of customers to cancel orders entered into the OHT facility.[16]

In the order extending the pilot program, the Commission requested that the Exchange submit another report which discusses all those elements described above. The Exchange submitted a report to the Commission on September 30, 1993, which contained an analysis of trading activity in the OHT facility since its inception.[17] The Commission expects the Exchange to submit to the Commission by March 15, 1994, an updated report concerning pilot activity through February 28, 1994.[18] In addition, the Exchange continues to submit trade and share volume of OHT activity to the Commission on an on-going, weekly basis.

(2) Matched MOC Orders

In its original order approving the matched MOC pilot program, and in the subsequent orders which have extended the pilot program through May 24, 1993 and January 31, 1994, the Commission voiced concern that, under the pilot procedures, matched MOC orders would be executed without the opportunity for order exposure or interaction with the trading crowd. Because these procedures were in contravention of traditional auction market procedures, the Commission was concerned that customer orders on the list order book or in the trading crowd could be by-passed. The Commission, however, initially approved these procedures for a pilot period, because these procedures could aid in attracting order flow being executed overseas back to the NYSE which has the advantage of Commission and Exchange oversight pursuant to the Act, trade reporting, and consolidated surveillance.

The Commission has extended the pilot program primarily to give the Exchange the opportunity to contrast the use of matched MOC orders with certain program trading transactions effected in the Exchange's Crossing Session II. In the order extending the matched MOC pilot program through May 24, 1993, the Commission stated that it was extending the pilot program, not because its original concerns

[15] See OHT Approval Order, *supra* note 3.

[16] Specifically, the Commission requested that the Exchange provide the following information, broken down by month: trading volume (trade, share and dollar value) in both Crossing Session I and Crossing Session II; the number, if any, of: (1) Single-stock single-sided orders; (2) single-stock paired buy and sell orders; and (3) GTX orders executed in Crossing Session I; the number, if any, of: (1) single-sided orders; and (2) single-sided GTX orders that remained unexecuted at the end of Crossing Session I; the number and percentage of GTC orders on the book that were designated "GTX" and thus migrated to Crossing Session I; the number of member firms participating in Crossing Session I and those participating in Crossing Session II; whether the NYSE marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the OHT facility; whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the OHT facility; whether there was a diminution in the number of block transactions during the last hour after the initiation of the OHT facility; and the degree to which transactions were entered in Crossing Session II to avoid the restrictions of the short sale rule in the 9:30 a.m. to 4 p.m. trading session. The Commission also requested that, because at the time of the Commission's approval of the OHT facility, at least one other marketplace had proposed a system comparable to the NYSE's OHT facility, the NYSE's report should indicate: (1) How its OHT facility could link with any other systems approved during the 18-month pilot period; (2) how orders entered on the other marketplaces could interact with orders in the OHT; and (3) how the intermarket issues discussed in the Commission's order approving the OHT pilot would be addressed (the Commission emphasized that the resolution of intermarket issues would not be solely a responsibility of the NYSE, but would fall equally upon the regional exchanges or the National Association of Securities Dealers proposing an after-hours system).

In addition to the above information, the Commission further expected the NYSE to monitor carefully the composition of aggregate-price orders in Crossing Session II to ensure that firms do not enter aggregate-price orders where one stock dominates the basket. In addition, the Commission expected the NYSE, through use of its surveillance procedures, to monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity in the two crossing sessions. Finally, the Commission expected the NYSE to keep the Commission apprised of any technical problems which may arise regarding the operation of the OHT, such as difficulties in order execution or order cancellation.

[17] See letter from Catherine R. Kinney, Executive Vice President, Equities/Audit, NYSE, to Brandon Becker, Director, Division of Market Regulation, Commission, dated September 30, 1993.

[18] See supra note 16 for the information required to be provided in the updated reports.

regarding the possible displacement of customer orders had been alleviated, but because the Commission found it reasonable to extend the pilot period in light of the NYSE's desire to contrast its use with that of the recently instituted after-hours trading system.[19]

The stock exchanges continually are developing new trading procedures and products in an attempt to facilitate the trading of portfolios of securities. The matched MOC order pilot procedures and the NYSE's OHT facility are but two examples of such developments. Thus, due to the NYSE's ongoing attempt to understand how trades of member firms and their customers could be most efficiently facilitated, the Commission believes that it is appropriate to allow the Exchange additional time to compare and contrast the matched MOC procedures with Crossing Session II.

The Commission finds it reasonable to extend the pilot program for matched MOC orders and the exemption from SEC Rule 10a–1 in order to give the Commission and Exchange the necessary time to evaluate the matched MOC order procedures. In addition, the Commission continues to emphasize that, during the course of the pilot program, the Exchange is under a continued obligation to inform the Commission of its members' use, if any, of the matched MOC procedures and to assess the impact of matched MOC orders on overall market quality and on any possible displacement of orders on the specialist's book or in the trading crowd.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** The Commission believes that accelerated approval of the proposal is appropriate in order to allow the OHT and MOC procedures to remain in place on an uninterrupted basis, which in turn should benefit investors and promote competition among markets.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[20] that the proposed rule change (SR–NYSE–93–51) is hereby approved on a pilot basis through April 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

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[19] See Securities Exchange Act Release No. 30004, *supra* note 5. As previously noted, the Commission granted a limited exemption from Rule 10a–1 under the Act for a MOC order entered as part of a paired MOC order. See supra note 5 and note 6 in securities Exchange Act Release No. 29393 (July 1, 1991), 56 FR 30954. The effectiveness of this exemption was scheduled to terminate on January 31, 1994, concurrent with the expiration of the MOC pilot period. Pursuant to this order, the Commission is granting, until April 30, 1994, an extension of the relief from Rule 10a–1 regarding a MOC order to sell short that is entered by a member firm where (1) the member firm also has entered an MOC order to buy the same amount of stock, and (2) the MOC order is part of a program trading strategy by the member firm, and the orders are identified as such. As indicated in the order approving the MOC procedures for a one-year pilot period (see note 5, *supra*), the Commission believes that matched MOC orders that are part of a program trading strategy do not raise the same concerns that are applicable to transactions in individual stocks, and that it is appropriate to exempt such transactions in individual stocks, and that it is appropriate to exempt such transaction from the operation of the short sale rule.

[20] 25 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–33571; File No. SR–CHX–94–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Chicago Stock Exchange, Inc. Relating to the Capital Requirement for the Designated Primary Market Maker in the Chicago Stock Basket

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 January 22, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The CHX has requested accelerated approval of the proposal. 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 amend Interpretation and Policy .01 to Rule 3 of Article XXXVI that describes the capital requirement for the Designated Primary Market Maker ("DPM") of the Chicago Stock Basket ("CXM").[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The Commission notes that the CXM is a standardized basket product consisting of twenty-five shares of each of the stocks included in the Chicago Mercantile Exchange's futures contract that is based on the American Stock Exchange's Major Market Index ("MMI"). The MMI is a broad-based price-weighted index of twenty stocks listed on the New York Stock Exchange. See Securities Exchange Act Release No. 33053 (October 15, 1993), 58 FR 54610 (October 22, 1993) (File No. SR–CHX–93–18) ("CXM Approval Order"). the DPM acts as the specialist in the basket and is required to quote continuously a two-sided market in four CXM contracts. The DPM must be an Exchange member registered as a specialist in securities underlying the basket. *Id.*

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 self-regulatory organization 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 III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reduce the capital requirement of the DPM for the CXM, and clarify that the excess capital[4] required to be maintained by the DPM is not excess *net* capital[5] and therefore does not include haircuts. Specifically, the proposed rule change would reduce the DPM's excess capital requirement to $150,000 from $250,000. Because of the low trading volume in the CXM, the Exchange believes that the current capital requirement is too burdensome and not commensurate with the risk involved.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designated to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[4] The text of the proposed rule would specify that this capital is to be maintained in excess of the DPM's required regulatory capital levels, i.e., as set forth in SEC Rule 15c3–1 and Article XI, Rule 3(b) (Specialist Capital Requirement) of the CHX rules.

[5] Under SEC Rule 15c3–1, the term "net capital" typically is deemed to mean the net worth of a broker-dealer adjusted by, among other things, deducting a specified percentage of the value of each securities position (i.e., the "haircut").

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were solicited or received.

III. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–01 and should be submitted by March 1, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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).[6] 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.

In its order approving the CXM,[7] the Commission found that, in comparison to other methods of portfolio trading, basket products, such as the CXM, are an efficient means to make investment decisions based on the direction of standardized measures of stock market performance, and may enhance the market's ability to absorb program trading. As part of its review, the Commission evaluated, among other things, the trading structure for market basket contracts and, in particular, the responsibilities assigned to the DPM[8] and Exchange oversight of the DPM's performance. The Commission concluded that the CHX's financial standards, including the requirement that the DPM set aside an extra cushion of capital above that otherwise required for a specialist under relevant Commission and Exchange rules,[9] should help to ensure that the DPM has sufficient resources to perform his or her market making obligations effectively.

To the extent that trading volume in the CXM may be lower than originally was forseen, the Exchange argues that the current capital requirements is too burdensome for the DPM and should be lowered to a level that is more commensurate with the DPM's actual exposure to risk. After careful review of the proposed rule change, the Commission continues to believe that the DPM should have adequate capital to conduct his or her market making activities. Accordingly, in these particular circumstances, the Commission believes that it is not inconsistent with the Act for the CHX to reduce the DPM's capital requirement that is set forth in the Exchange rules governing basket trading.

In reaching the above conclusion, however, the Commission placed great weight on the CHX's representations regarding the depth and liquidity of the prevailing market for the CXM. The Commission expects and the Exchange has agreed that, if there is a significant increase in basket trading volume, then the CHX will reconsider the adequacy of its reduced capital requirement and, if appropriate, submit another proposed rule change to the Commission.[10]

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of this proposal should allow a regulatory burden to be reduced immediately, thereby facilitating the efficient allocation of market making capital.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act[11] that the proposed rule change (File No. SR–CHX–94–01) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2824 Filed 2–7–94; 8:45 am]

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[6] 15 U.S.C. 78f(b) (1988).

[7] See CXM Approval Order, *supra*, note 3.

[8] See *supra*, note 3.

[9] See *supra*, note 4.

[10] Telephone conversation between David T. Rusoff, Foley & Larnder, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on February 1, 1994.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–33557; File Nos. SR–OCC–93–04 and SR–ICC–93–03]

Self-Regulatory Organizations; The Options Clearing Corporation and The Intermarket Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Acceptance of Mutual Funds as Margin Deposits

January 31, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 26, 1993, and on November 9, 1993, The Options Clearing Corporation ("OCC") and The Intermarket Clearing Corporation ("ICC"), respectively, filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by OCC and ICC. On November 11, 1993, and on December 29, 1993, OCC filed amendments to the proposed rule changes.[2] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes will expand the acceptable forms of margin collateral which clearing members may deposit with OCC and ICC to include mutual fund shares that are

[1] 15 U.S.C. 78s (1988).

[2] The November 11, 1993, amendment sets forth Global Settlement Fund's ("GSF") agreement to advise OCC on a daily basis the total asset value of each portfolio whose shares OCC accepts as margin collateral. The December 29, 1993, amendment presents OCC's representation that with respect to GSF portfolios that are denominated in other than U.S. dollars, OCC will not accept more than 50% of the total value of each such portfolio for margin purposes. The amendment also includes a resolution by GSF's Board of Directors whereby the investment advisor of each portfolio denominated in other than U.S. dollars will seek to insure that at least 50% of the portfolio's assets will be invested in securities for which the settlement time is not longer than the time for redeeming shares in the normal course.

denominated in either U.S. dollars or in a foreign currency designated by OCC and ICC.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, OCC and ICC included statements concerning the purposes of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. OCC and ICC have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of this rule change is to expand the acceptable forms of margin collateral to include shares of mutual funds that are denominated in either U.S. dollars or in a foreign currency designated by OCC and ICC. In order to be eligible as a form of margin collateral mutual fund shares must meet the standards prescribed in proposed OCC Rule 604(b)(2) and ICC Rule 502(a)(5). Pursuant to these proposed rules, OCC and ICC will accept redeemable mutual fund shares that are issued by an open-end management investment company that is registered with the Commission under the Investment Company Act of 1940 ("1940 Act").[3] Approval of each mutual fund as an eligible form of margin deposit will be made on a case-by-case basis by each of OCC's and ICC's board of directors, and such approval may be refused or revoked at any time for any reason. This reservation reflects OCC's and ICC's right to determine whether a particular fund is acceptable to OCC or ICC and to ensure that OCC and ICC may act expeditiously in the event a change in the financial or operational condition of a particular fund puts OCC or ICC at risk.

A fund whose shares are denominated in U.S. dollars will be required to maintain its portfolio investments in accordance with the provisions of proposed OCC Rule 604(b)(2)(A)(1) and ICC Rule 502(a)(5)(A)(1), which incorporate the conditions of paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of Commission Rule 2a–7 under the 1940 Act.[4] Paragraph (c) of Commission Rule 2a–7 generally sets forth the formulas that may be used in calculating the current price per share for purposes of distribution and redemption. Paragraph (c)(1) specifies that a fund's board of directors must determine that it is in the best interest of the fund to maintain a stable net asset value and paragraph (c)(2) requires the fund to limit the maturity of its portfolio investments to the terms set forth therein. Paragraph (c)(3) requires that a fund's portfolio investments be limited to instruments that present minimal credit risks and, with certain exceptions enumerated in paragraph (c)(3), be "eligible securities"[5] at the time of their acquisition. Paragraph (c)(4) limits to 5% the percentage of the fund's total assets that may be invested in the securities of a single issuer (except for U.S. government securities).[6]

By incorporating the foregoing standards in proposed OCC Rule 604(b)(2) and ICC Rule 502(a)(5), OCC and ICC intend for the present time to limit their acceptance of U.S. dollar-denominated mutual fund shares to those which qualify as money market funds under Rule 2a–7. OCC and ICC believe that the foregoing standards are well-founded in that they are based on the Commission's rule governing money market funds and thereby create reasonable and prudent safeguards for OCC's and ICC's protection.

A fund whose shares are denominated in a designated foreign currency will be required to maintain its portfolio investments in accordance with proposed OCC Rule 604(b)(2)(A)(2) and ICC Rule 502(a)(5)(A)(2), which have been adapted from Commission Rule 2a–7.[7] Consistent with the valuation method imposed on U.S. dollar-denominated funds, a non-U.S. dollar-denominated fund will be required to maintain a stable net asset value. The average portfolio maturity of such fund will be no more than thirty days. Accordingly, the fund's portfolio should be invested in frequently maturing assets for the purposes of, among other things, funding redemptions.

In addition, the portfolio investments of a non-U.S. dollar-denominated fund will be limited to the following assets: (1) Short-term government securities that are denominated in the designated foreign currency, provided that such government securities are issued or guaranteed by a sovereign government whose standard unit of official medium of exchange is the designated foreign currency; (2) debt securities of supranational organizations;[8] (3) fully-collateralized repurchase agreements;[9] or (4) instruments in the form of bankers' acceptances, certificates of deposit, or demand or other deposits that are denominated in the designated foreign currency.[10] Any issuer of such instruments must have shareholders' equity in excess of $200,000,000.[11]

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[3] 15 U.S.C. 80a (1988).

[4] 17 CFR 270.2a–7(c)(1)–(4) (1992). Rule 2a–7(b) [17 CFR 270.2a–7(b) (1992)] establishes parameters pursuant to which a registered investment company must operate in order to hold itself out as a "money market fund" or the equivalent thereof. Specifically, Rule 2a–7(b) requires an investment company to meet the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of Rule 2a–7. OCC and ICC will require such investment companies to also meet the requirements of paragraph (c)(1).

[5] Under Rule 2a–7(a)(5) of the 1940 Act [17 CFR 270.2a–7(a)(5) (1992)] the term "eligible security" means a security with a specified remaining maturity that is rated or is issued by an issuer that is rated with respect to its short-term debt obligations in one of the two highest rating categories for short-term debt obligations by the requisite nationally recognized statistical ratings organizations ("requisite NRSROs"). Under Rule 2a–7(a)(13) (17 CFR 270.2a–7(a)(13) (1992)), the term requisite NRSROs means (i) any two NRSROs that have issued a rating with respect to a security or debt obligation of an issuer or (ii) if only one NRSRO has issued a rating with respect to such security or issuer at the time the fund purchases or rolls over the security, that NRSRO.

[6] Under Rule 2a–7(c)(4)(i), a repurchase agreement is deemed to be an acquisition of the underlying security, provided that the obligation of the seller is collateralized fully, as that term is defined in Rule 2a–7(a)(3). For a discussion of the term "collateralized fully," refer to note 9 below and accompanying text.

[7] Rule 2a–7(c)(3) of the 1940 Act restricts money market fund portfolio investments to U.S. dollar-denominated instruments. Therefore, OCC and ICC will impose substantially similar requirements upon foreign currency-denominated mutual fund investments as OCC and ICC impose on U.S. dollar-denominated funds.

[8] Such securities must be denominated in the designated foreign currency and must be rated in one of the two highest rating categories by the requisite NRSROs.

[9] Under Rule 2a–7(a)(3) (17 CFR 270.2a–7(a)(3) (1992)) collateralized fully, in the case of a repurchase agreement, generally means that: the value of the securities collateralizing the agreement are at least equal to the resale price provided for in the agreement, the fund or its custodian has possession of the collateral or the collateral is registered by book-entry in the name of the fund or its custodian, the fund has retained the unqualified right to possess and sell the collateral in the event of a default, and the collateral consists entirely of Government securities or securities rated in the highest rating category by the requisite NRSROs. To adapt this definition to mutual funds that are denominated in a designated foreign currency, the proposed rules require that repurchase agreements may only be secured by government securities that are denominated in the designated foreign currency, provided that such government securities are issued or guaranteed by a sovereign government whose standard unit of official medium of exchange is the designated foreign security and provided further that such government securities have no more than two years remaining to maturity.

[10] Such instruments must have a remaining maturity of no more than sixty days from the date of their acquisition by the fund and must be rated or issued by an issuer who is rated in one of the two highest rating categories by the requisite NRSROs.

[11] As the issuers of such instruments will be banking institutions, OCC and ICC have incorporated their shareholder equity standards applicable to non-U.S. issuers of letters of credit. Refer to section .01(b) of the Interpretations and Policies to OCC Rule 604. The types of assets in which a foreign currency denominated mutual fund

OCC Rule 604(b)(2) and ICC Rule 502(a)(5) also specify a diversification requirement for a designated foreign currency fund's portfolio investments. Specifically, as of the last day of each fiscal quarter, no more than 25% of a fund's total portfolio investments may be held in the securities of a single issuer and with respect to 50% of the fund's total portfolio investments, no more than 5% of such assets may be invested in the securities of a single issuer.[12] OCC and ICC believe that these standards create reasonable and prudent safeguards as they have been adapted from the Commission's rule applicable to money market funds.

The current market value of deposited shares of each fund will be calculated by multiplying the number of deposited shares by the fund's last reported net asset valuation. That amount, less any "haircut" and, in the case of mutual funds denominated in a designated foreign currency, exchange rates that OCC or ICC apply for their protection, will represent the amount of margin credit given to a clearing member with respect to such shares.

OCC Rule 604(b)(2)(B) and ICC Rule 502(a)(5)(B) contain other provisions that also are intended for OCC's and ICC's protection. OCC and ICC will be permitted to establish a limitation on the amount of the margin requirement in an account of a clearing member which may be met by depositing shares of any one fund. The chairman or president (or their designee) also will be authorized to limit the amount of margin credit given to each clearing member that has deposited shares of a particular fund to an account of OCC or ICC.[13] OCC and ICC further will be authorized to redeem or otherwise order the disposition of deposited shares at any time without prior notice to the clearing member regardless of whether or not the clearing member has been suspended.

OCC and ICC contemplate that the shares of mutual funds will be uncertificated securities and that shares acquired by a clearing member will be deposited with OCC or ICC via book-entry. The shares will be registered in OCC's or ICC's name to secure the obligations of the depositing clearing member to OCC or ICC. Consistent with other OCC and ICC rules, all gain or dividends accrued on such shares (prior to their redemption or disposition) will belong to the depositing clearing member.

In considering whether to accept mutual fund shares as a qualified form of margin collateral, OCC and ICC became aware of the Global Settlement Fund ("GSF"). GSF is an open-end investment company registered with the Commission. Based upon information presented by GSF concerning the portfolios that it offers, OCC's and ICC's boards have approved the acceptance of GSF shares. A complete description of GSF policies and operations is contained in its registration statement and amended prospectus, which are incorporated by reference herein.[14] The following paragraphs summarize the portions of GSF's prospectus on which OCC and ICC rely in accepting GSF shares.

GSF currently is designed to offer three individual portfolios, each of which is represented by a separate series of common stock of GSF. The three portfolios are denominated in U.S. dollars ("U.S. dollar portfolio"), British pound sterling ("pound portfolio"), and Japanese yen ("yen portfolio"). At this time, GSF only offers shares in the U.S. dollar portfolio.

Each portfolio is authorized to invest in specific instruments. The investments in the U.S. dollar portfolio are limited to U.S. Treasury securities with maturities of ninety days or less and repurchase agreements covering U.S. Treasury securities. Such repurchase agreements must be secured by U.S. Treasury securities having no more than two years remaining to maturity.[15] The average portfolio maturity of the U.S. dollar portfolio is fifty days. The pound and yen portfolios will be limited to investments in the short-term obligations of the British and Japanese governments, respectively, and certain short-term certificates of deposit, and demand or time deposits of British and Japanese banks, respectively, with credit ratings in one of the two highest rating categories of two NRSROs. In addition, the pound and yen portfolios will invest in the short-term debt securities of supranational organizations which have a credit rating in the highest rating category of two NRSROs. The yen portfolio also will invest in repurchase agreements secured by direct obligations of the Japanese government which have a remaining term to maturity of no more than two years. The average term to maturity of securities in the pound and yen portfolios is thirty days. Accordingly, the investment activities of the U.S. dollar, pound, and yen portfolios meet the applicable standards of proposed OCC Rule 604(b)(2) and ICC rule 502(a)(5).

OCC, TCC, and their clearing members will interface with GSF through what is termed the GlobeSet System. The GlobeSet System entails use of specialized software on a personal computer along with a modem and encryption device. Additional security for the GlobeSet System will include the use of identification codes and passwords. Purchase, redemption, transfer, and other instructions will be transmitted to GSF through the GlobeSet System. In addition, it may be used to review account balances and transaction histories and to access and make entries on GSF's electronic bulletin board.[16] In the event that the GlobeSet System is unavailable due to operational difficulties, instructions may be sent to GSF via facsimile transmission. GSF will only accept such instructions if, among other things, they are signed by authorized individuals who previously submitted a signature specimen and GSF has verified the contents of the instruction with such individual.

Operationally, OCC, ICC, and their clearing members will each execute shareholder agreements with GSF which will provide, among other things, that shares in the funds acquired by an OCC or ICC clearing member will be deposited in OCC's or ICC's primary account via book-entry.[17] OCC or ICC

may invest under ICC's proposed Rule 502(a)(5) are broader than those currently permitted under an order dated October 2, 1992, issued by the CFTC that approved rule amendments proposed by the Chicago Mercantile Exchange.

[12] OCC and ICC have been advised that the portfolios of such funds would be considered diversified under the requirements of the U.S. Internal Revenue Code ("Code"). The Code's 25% limitation on investments in the securities of a single issuer applies to non-U.S. government securities.

[13] For example, should the number of transferred shares of a particular mutual fund represent in OCC's or ICC's view a disproportionate number of the fund's outstanding shares, this authority could be relied on to limit the total percentage of shares given margin credit by OCC or ICC. With this authority, OCC and ICC may be able to take precautionary measures in order to limit their liquidation risks. This authority is premised on a similar provision contained in OCC Rule 1106(e), which was approved by the Commission in Release No. 34–27104.

[14] The registration statement by which GSF is offering its securities was declared effective by the Commission on March 13, 1992. GSF's prospectus was amended on September 4, 1992.

[15] According to GSF's prospectus, the U.S. dollar portfolio will not enter into a repurchase agreement with an issuer if, as a result of such repurchase agreement, the portfolio will have invested more than 10% of its total assets in repurchase agreements with that issuer.

[16] GSF's electronic bulletin board may be used to identify counterparties (i.e., other GSF shareholders) for purposes of selling fund shares or effecting a matched transfer of fund shares.

[17] Specifically, OCC and ICC will execute two separate forms of shareholder agreements. One shareholder agreement will provide for the establishment of a primary account in the name of OCC or ICC and for subaccounts in the name of each clearing member that desires to deposit shares in OCC or ICC. All deposited shares will be held

Continued

will hold such shares as the "registered owner" (within the meaning of Article 8 of the Uniform Commercial Code) as security for the obligations of the depositing clearing member in accordance with OCC's and ICC's rules. Upon receipt of a margin withdrawal request made by a clearing member in accordance with OCC's or ICC's rules, OCC or ICC will transfer the shares back to the clearing member via book-entry transfer after the clearing member's margin requirement ends or the clearing member deposits other collateral.

Liquidation of shares in each GSF portfolio may be accomplished by one of four means: (i) Redeeming shares for payment in the designated currency;[18] (ii) redeeming shares for payment in securities held by the portfolios (subject to the approval of GSF's investment adviser); (iii) selling shares to a counterparty identified through GSF's electronic bulletin board; or (iv) effecting a matched transfer with a counterparty identified through GSF's electronic bulletin board. GSF will fund liquidations accomplished by the means specified in (i) and (ii) above from payments received on the sale of shares issued by a portfolio, proceeds from maturing portfolio securities, proceeds from the sale of portfolio securities, and proceeds of borrowings by a portfolio that are collateralized by portfolio securities.

OCC and ICC believe the proposed rule changes are consistent with the requirements of Section 17A of the Act because the proposed rule changes will accommodate clearing members by providing them another alternative by which to meet their margin requirements because OCC's and ICC's portfolio of margin collateral will be further diversified.

in OCC's or ICC's primary account with the subaccounts being used for accounting purposes. The other shareholder agreement will establish a secondary account in OCC's or ICC's name into which OCC or ICC will transfer shares from their primary accounts in order to redeem shares from GSF or in order to effect a disposition of shares with a counterparty identified through GSF's electronic bulletin board. OCC and ICC will limit the value of the margin deposits to 50% of the total value of each non-U.S. dollar-denominated portfolio.

[18] While OCC or ICC may order the redemption of shares at any time, share redemption occurs at each next asset valuation. The proceeds therefrom, however, will be transferred to OCC and ICC only during the times that the local bank wire system for a particular portfolio is in operation. Accordingly, proceeds of share redemptions from the U.S. dollar portfolio will be paid during the applicable banking hours on the banking days on which the Fedwire is operational. Proceeds of share redemptions from the pound portfolio will be paid during the applicable banking hours on the banking days on which CHAPS is operational. Proceeds of share redemptions from the yen portfolio will be paid during the banking hours on the applicable banking days on which BOJNET is operational.

B. Self-Regulatory Organizations' Statement on Burden on Competition

OCC and ICC do not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and non have been received.

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 the proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organizations.

All submisisons should refer to file Nos. SR–OCC–93–04 and SR–ICC–93–03 and should be submitted by March 1, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2825 Filed 2–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20049; 812–8516]

Pilgrim Institutional Trust, et al.; Application

February 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Pilgrim Institutional Trust (formerly, Pilgrim State Tax-Free Trust (the "Trust")), Pilgrim Magnacap Fund, Pilgrim GNMA Fund, Pilgrim Global Investment Series (on behalf of Pilgrim Short-Term Multi-Market Income Fund and Pilgrim Short-Term Multi-Market Income Fund II), Pilgrim Corporate Utilities Fund, and Pilgrim Strategic Investment Series (on behalf of Pilgrim High Yield Trust) (collectively with the Trust, the "Existing Pilgrim Funds"); Pilgrim Management Corporation (the "Adviser"); and Pilgrim Distributors Corp. (the "Distributor").

RELEVANT ACT SECTIONS: Amended order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants previously received relief permitting the Trust and the Existing Pilgrim Funds to issue two classes of shares, and permitting the Trust to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on one of those classes (the "Prior Order").[1] In addition, the Existing Pilgrim Funds previously received exemptive relief to assess and waive a CDSC under certain circumstances.[2] Applicants request an amendment of the previous orders to permit applicants (a) to issue and sell multiple classes of shares representing interests in the same portfolio of investments, and (b) to assess and waive a CDSC on certain redemptions of shares not already covered by the

[1] Investment Company Act Release Nos. 19025 (Oct. 14, 1992) (notice) and 19087 (Nov. 10, 1992) (order). The relief requested by the application is in addition to that granted by the Prior Order, which remains in full force and effect.

[2] Investment Company Act Release Nos. 17957 (Jan. 24, 1991) (notice) and 18007 (Feb. 20, 1991) (order).

previous orders. Applicants request that any relief granted pursuant to this application also apply to any open-end management investment company, including any series thereof, for which the Adviser or the Distributor may in the future become, respectively, the investment adviser or principal underwriter.[3] The individual series of the Trust and of other registered open-end management investment companies that would rely on the requested order are referred to collectively, in whole or in part as the context requires, as the "Funds."

FILING DATE: The application was filed on July 30, 1993 and amended on October 15, 1993 and December 13, 1993. Counsel, on behalf of the applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further 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 February 24, 1994, and should be accompanied by proof of service on the 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 NW., Washington, DC 20549. Applicants, 10100 Santa Monica Boulevard, Los Angeles, California 90067.

FOR FURTHER INFORMATION CONTACT: Felicia Kung, Senior Attorney at (202) 504–2803 or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (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.

[3] All investment companies relying on any order granted in connection with the application will comply with the representations and conditions set forth in the application.

Applicants' Representations

1. The Trust and the Existing Pilgrim Funds are registered open-end management investment companies. The Adviser, a wholly-owned subsidiary of Pilgrim Group, Inc., provides investment management services to the Trust and the Existing Pilgrim Funds. The Distributor, a wholly-owned subsidiary of Pilgrim Group, Inc. and a registered broker/dealer, acts as principal underwriter for the Trust and the Existing Pilgrim Funds.

2. Under the Prior Order, the Existing Pilgrim Funds currently offer two classes of shares ("Class A" shares and "Class B" shares). Class A (or the "Front-End Load Option") shares are subject to a front-end sales load and an annual fee of up to .25% of the average daily net asset value of such shares under a distribution plan adopted under rule 12b–1 of the Act ("12b–1 Plan"). Class B shares are subject to a CDSC ranging from 3% to 5% (but which may be higher or lower) for a period of up to six years. Class B shares also are subject to an annual fee of up to 1% of the average daily net asset value of such shares under a 12b–1 Plan. All references to Class A shares and Class B shares are to such classes of shares currently offered under the Prior Order.

3. Applicants propose to amend the Prior Order to enable the Funds to offer a multiple class distribution system as described below (the "Multi-Class System"). Under the Multi-Class System, in addition to the Class A and Class B shares, applicants will offer a third class of shares ("Class C"). Class C shares would have a higher minimum initial purchase amount, and would be subject to a CDSC expected to be equal to 1% during the first year after the initial purchase, and no CDSC thereafter. Class C shares also would be subject to an annual fee of up to 1% of the average daily net asset value of such shares under a 12b–1 Plan (collectively with Class B, the "Deferred Option").

4. The 1% distribution fee applicable to Deferred Option shares is a combination of asset-based sales charges and service fees assessed under a 12b–1 Plan. In all cases applicants will comply with Article III, Section 26 of the National Association of Securities Dealers, Inc. Rules of Fair Practice as it relates to the maximum amount of asset-based sales charges and service fees that may be imposed. See Securities Exchange Act Release No. 30897 (July 7, 1992).

5. Under the Multi-Class System, applicants also from time to time may create one or more additional classes of shares, the terms of which may differ from the Class A shares, Class B shares, and Class C shares only in the following respects: (a) Each class may bear different fees payable under the applicable 12b–1 Plans, or different fees payable under a non-rule 12b–1 shareholder services plan ("Shareholder Services Plan"), (b) each class may bear different Class Expenses, as defined below, (c) each class will vote separately with respect to a Fund's 12b–1 Plan, (d) each class may have different exchange privileges, and (e) each class may have a different designation. Shares of different classes may be sold under different sales arrangements (including, for example, subject to a front-end sales charge, a CDSC, or no sales load).

6. Each class of shares of the Funds will bear, *pro rata* based on the relative net asset value of the respective classes, all of the expenses of the Funds except that each class will bear different Class Expenses and the holders of Deferred Option shares will bear a proportionately higher share of the distribution fee than the holders of the Front-End Load Option shares. Class Expenses shall be limited to: (i) Transfer agency fees (including the incremental cost of monitoring a CDSC applicable to a specific class of shares), (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class, (iii) SEC and blue sky registration fees incurred by a class of shares, (iv) the expenses of administrative personnel and services as required to support the shareholders of a specific class, (v) litigation or other legal expenses relating to a specific class of shares, (vi) trustees'/directors' fees incurred or expenses incurred as a result of issues relating to a specific class of shares, (vii) accounting fees and expenses relating to a specific class of shares, and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order.

7. Because of the additional expenses that will be borne solely by the Deferred Option shares, the net income attributable to and the dividends payable on the Deferred Option shares for financial statement reporting purposes is expected to be lower than the net income attributable to and the dividends payable on Class A shares. For tax purposes, however, the difference between the distribution fees payable by Deferred Option shares and the distribution fees payable by Class A shares (*i.e.*, up to .75%) is not deductible and will be charged to the

Deferred Option shares' paid-in-capital. As a result, Deferred Option shares will be receiving dividends which in part can be considered return of capital under the SEC's financial reporting rules. It is therefore expected that the net asset value per share of the multiple classes will diverge over time. Assuming no change in existing tax laws or relevant interpretations of the SEC's financial reporting rules, any Fund that issues two or more classes of shares similarly will capitalize rule 12b–1 fees for tax purposes.

8. The Funds will offer exchange privileges to shareholders in each of their classes as described in the application and in each Fund's prospectus. All exchanges will comply with section 11(a) of the Act or rule 11a–3 thereunder.

9. The Funds may offer classes of shares to one or more of the following five limited categories of investors ("Institutional Investors"): (a) Unaffiliated benefit plans such as qualified retirement plans, other than individual retirement accounts ("IRA"s) and self-employed retirement plans, with total assets in excess of $10 million or such other amounts as the Funds may establish and with such other characteristics as the Funds may establish; (b) tax-exempt retirement plans of the Adviser and its affiliates, including the retirement plans of the Adviser's affiliated brokers; (c) banks and insurance companies purchasing for their own accounts; (d) investment companies not affiliated with the Adviser; and (e) endowment funds of non-profit organizations. These shares ("Institutional Shares") may be offered under a variation of the Front-End Load Option, the Deferred Option or a no-load option, and may be subject to shareholder services fees under a Shareholder Services Plan.

10. In addition, the Funds may offer classes of shares to institutions not included in the categories of Institutional Investors, such as corporations, foundations, and financial institutions, designed to meet the needs of such institutions ("Financial Shares"). Class A, Class B, and Class C shares and any future classes of shares which are not Institutional Shares or Financial Shares are referred to collectively as "Non-Institutional Shares."

11. The unaffiliated benefit plans in category (a) of paragraph 9 above will have several common features. Such plans will have total assets in excess of $10 million or such other amounts as applicants may establish, a separate trustee for the plan who is vested with investment discretion as to plan assets, certain limitations on the ability of plan beneficiaries to access their plan investments without incurring adverse tax consequences, and such other characteristics as the Funds may establish. Applicants will exclude self-directed plans from this category.

12. The tax-exempt retirement plans in category (b) of paragraph 9 above will consist of qualified defined contribution plans maintained, pursuant to Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by the Adviser or its affiliates for the benefit of employees. Under such plans, the assets are held in trust by a trustee and employees have limited pre-retirement access to the assets.

13. The entities included in categories (c), (d), and (e) of paragraph 9 above will not be affiliated with the Adviser. These offerees will have in common the essential features of substantial assets under management and investment decisionmaking by institutional management on behalf of the entity with respect to the purchase of Institutional Shares of a Fund. Banks and insurance companies typically employ professional staff to manage the investment of cash assets, and portfolio managers make investment decisions on behalf of investment companies. Likewise, an endowment fund of a non-profit organization is professionally managed and individual donors to such endowment funds exercise no investment discretion on behalf of the endowment fund, nor would such an individual donor consider a direct investment in shares of a Fund as an investment alternative in lieu of a donation. Thus, no possibility exists that an individual investor would be able to use these entities as a conduit for individual investing in the Institutional Shares.

14. Only Institutional Investors will be eligible to invest in Institutional Shares. All other investors will be eligible to invest solely in Non-Institutional Shares and/or Financial Shares. There will be no overlap between the investors eligible to invest in Institutional Shares and investors eligible to invest in Non-Institutional Shares and Financial Shares of any Fund.

15. Pursuant to the existing orders, applicants may assess and under certain circumstances, waive a CDSC on certain redemptions of shares. Applicants seek exemptive relief to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of any class of Deferred Option shares of the Funds, and to waive or reduce the CDSC with respect to certain types of redemptions.

16. The amount of any CDSC will depend on the number of years since the investor made the purchase payment from which an amount is being redeemed and the net asset value of the shares at the time of redemption as set forth in a Fund's prospectus.[4]

17. No CDSC will be imposed on (a) redemptions of shares purchased more than a specified period prior to their redemption or (b) Deferred Option shares derived from reinvestment of distributions. Further, no CDSC will be imposed on any amount representing an increase in the value of a shareholder's account due to capital appreciation. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital gain distributions, and finally of shares held by the shareholder for the longest period of time.

18. The Funds request the ability to waive or reduce the CDSC in the following instances: (a) On redemptions following the death or disability of a shareholder, as defined in Section 72(m)(7) of the Code; (b) in connection with mandatory distributions from an IRA or other qualified retirement plan; (c) on redemptions pursuant to the Funds' right to liquidate accounts or charge an annual small account fee; and (d) upon the liquidation or dissolution of a Fund. If the Funds waive or reduce the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified.

19. If a Fund discontinues any waiver described above, the disclosure in the Fund's prospectus will be appropriately revised. Any Deferred Option shares purchased prior to the termination of such waiver would be able to have the CDSC waived as provided in such Fund's prospectus at the time of the purchase of such shares.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of multiple classes of shares representing interests in the Funds might be deemed: (a) To result in the issuance of a "senior security" within the meaning of section 18(g) and thus be prohibited by section 18(f)(1);

[4] Under proposed rule 6c–10 (Investment Company Act Release No. 16619 (Nov. 2, 19988)), a CDSC payable upon redemption is based on the lesser of the amount that represents a specified percentage of net asset value of the shares at the time of purchase or the amount that represents the same or a lower percentage of the net asset value of the shares at the time of redemption.

and (b) to violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed Multi-Class System would better enable the Funds to meet the competitive demands of today's financial services industry. Applicants assert that the proposed arrangement would permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. Moreover, applicants state that owners of shares may be relieved under the Multi-Class System of a portion of the fixed costs normally associated with mutual funds since such costs would, potentially, be spread over a greater number of shares than would otherwise be the case.

3. Applicants believe that the proposed Multi-Class System does not raise any of the legislative concerns that section 18 of the Act was designed to address. The Multi-Class System will not increase the speculative character of the shares of the Funds. The proposed arrangement does not involve borrowing, nor will it affect the Funds' existing assets or reserves.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences among the classes of shares of the same Fund will relate solely to: (a) the differences in the distribution fees payable by a Fund to the Distributor attributable to each class pursuant to the 12b–1 Plans adopted and proposed to be adopted by the Fund, or differences in fees payable by each class under a Shareholder Services Plan that may be adopted and operated in the future in the manner prescribed by condition 16 below; (b) each class may bear different Class Expenses which shall be limited to: (i) Transfer agency fees (including the incremental cost of monitoring a CDSC applicable to a specific class of shares), (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class, (iii) SEC and blue sky registration fees incurred by a class of shares, (iv) the expenses of administrative personnel and services as required to support the shareholders of a specific class, (v) litigation or other legal expenses relating to a specific class of share, (vi) trustees'/directors' fees or expenses incurred as a result of issues relating to a specific class of shares, (vii) accounting fees and expenses relating to a specific class of shares, and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (c) each class will vote separately with respect to a Fund's 12b–1 Plan; (d) each class may have different exchange privileges; and (e) the designation of each class of shares of a Fund.

2. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees, including a majority of the Trustees which are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the Board of Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

3. The Trustees of each of the Funds, including a majority of the independent Trustees, will approve the subsequent creation of any additional class of shares. The minutes of the meetings of the Trustees of the Fund regarding the deliberations of the Trustees with respect to the approval necessary to implement the Multi-Class system will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interests of both the Funds and their respective shareholders.

4. On an ongoing basis, the Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts of interest among any outstanding classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

5. The Trustees of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or service of a particular class of shares will be used to justify any distribution or service fee charged to that class. Expenditures not related to the sale or service of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution and service payments relating to any particular class of shares will be borne exclusively by that class and except that any Class Expenses will be borne exclusively by the applicable classes of shares.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert (the "Expert"). The Expert has rendered a report to the applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 39(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to make), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report

on policies and procedures placed in operation," and the ongoing reports will be "reports on the policies and procedures placed in operation and test of operating effectiveness" as defined and described in SAS No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among such classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

9. The prospectus for each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

10. The Distributor will adopt compliance standards as to when shares of each class may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Fund to agree to conform to such standards. Such compliance standards will require that all investors eligible to purchase Institutional Shares will be sold only Institutional Shares, and all investors eligible to purchase Non-Institutional Shares or Financial Shares will be sold only Non-Institutional Shares or Financial Shares.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the Trustees.

12. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares other than Institutional Shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Institutional Shares will be offered solely pursuant to a separate prospectus. The prospectus for Institutional Shares will disclose the existence of the Fund's other classes, and the prospectus for the Fund's other classes will disclose the existence of Institutional Shares and will identify the persons eligible to purchase Institutional Shares. Each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares, except Institutional Shares. Advertising materials reflecting the expenses or performance data for Institutional Shares will be available only to those persons eligible to purchase Institutional Shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares, except Institutional Shares, separately.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to their 12b–1 Plans or any Shareholder Services Plans in reliance on the exemptive order.

14. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (see Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

15. Applicants will comply with section 19(a) and rule 19a–1 under the Act, including the provisions requiring dividend payments that include a return of capital to be accompanied by a written statement clearly indicating that investors are receiving a return of capital and identifying what portion of the payment is a return of capital.

16. If in the future any investment company adopts a shareholder services plan that is not a 12b–1 Plan, such shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

For the SEC, by the Division of Investment Management under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2829 Filed 2–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20048; No. 811–1671]

The Travelers Fund B–1 For Variable Contracts February 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the investment Company Act of 1940 (the "1940 Act").

APPLICANT: The Travelers Fund B For Variable Contracts ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on December 8, 1993 and amended on January 26, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 January 28, 1994, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestors' interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Applicant, One Tower Square, Hartford, Connecticut 06183.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, on (202) 272–2676, or Michael V. Wible, Special Counsel, on (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

APPLICANT'S REPRESENTATIONS:

1. Applicant, a diversified open-end management company, is a Separate Account formed under Connecticut insurance laws by The Travelers Insurance Company ("Travelers"), a life insurance company domiciled in Connecticut.

2. On June 10, 1968, Applicant filed a Notice of Registration on Form N–8B–1 under Section 8(b) of the 1940 Act (File No. 811–2583) and a Registration Statement on Form S–5 under the Securities Act of 1933 (File No. 2–54173) to register units of interest of variable annuity contracts ("Contracts"). Applicant's Registration Statement became effective on December 18, 1968 and the initial public offering commenced on that date.

3. On November 19, 1993, the Contracts were exchanged for another Travelers' variable annuity contract ("New Contract") pursuant to an offer of exchange extended by Travelers to Contractowners on September 10, 1992. All Contractowners contacted either consented to the offer to exchange or surrendered their contracts. The New Contract has as an investment option The Travelers Growth and Income Stock Account for Variable Annuities ("Account GS"). Account GS is an investment company with identical investment objectives, adviser and management fees as the Applicant. The charges under the New Contract are equal to or lower than those under the existing Contract. All units in Applicant held under the existing contracts were exchanged for units of equal value in Account GS under the New Contract. The offer of exchange was made in compliance with Rule 11a–2 under the 1940 Act. All portfolio securities of the Applicant were transferred to Account GS, valued on the basis of net asset values of the securities as determined in accordance with the methods set forth in the Statement of Additional Information of the Applicant and Account GS. No brokerage commissions were paid. The transfer of portfolio securities was made pursuant to a Commission order under section 17(b) granting an exemption from Section 17(a) of the 1940 Act. (Release No. 1C–19232, File No. 812–8172.)

4. As of November 18, 1993, Applicant had 1,769,541.5358 units of interest outstanding and net assets of $13,238,482.89, representing 7,467170 Contracts issued prior to December 23, 1983 and 7.289487 Contracts issued subsequent to that date.

5. Any expenses connected with the offer of exchange of the liquidation of the Applicant will be paid by Travelers.

6. Applicant has no remaining assets, and no debts or liabilities remain outstanding. No distributions were made to Applicant's securityholders. Applicant is not a party to any litigation or administrative proceeding. There are no securityholders of Applicant.

7. Applicant 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.

8. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of Applicant.

9. Travelers intends to notify the Connecticut and New York Insurance Departments, each having approved the transfer of assets, that it no longer intends to utilize the Applicant as a separate account.

10. Applicant has made on a timely basis all filings on Form N–SAR required under the 1940 Act. Applicant's last filing on Form N–SAR for the period ended June 30, 1993, was made on or before August 30, 1993.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2828 Filed 2–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33558; File No. SR–NSCC–93–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Extending a Pilot Program Relating to the Handling of Physical Securities and Paper Transactions for Participants Located in New York City

January 31, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 23, 1993, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by NSCC. On January 27, 1994 NSCC filed an amendment to the proposal.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through January 31, 1995. This approval order supersedes a previous order that approved the pilot program until April 30, 1994.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow NSCC (1) to continue to operate the pilot program relating to the handling of physical securities and paper transactions for participants located in New York City and (2) to expand the program to offer limited money settlement services to two participants.

II. Self-Regulatory Organization's Statement on 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 Statutory Basis for, the Proposed Rule Change

1. Background

On April 26, 1993, the Commission approved until April 30, 1994, NSCC's proposed rule change that established its pilot program to provide direct clearing type services for participants located in New York City ("New York Window" or "NYW").[4] NSCC was asked by several participants to provide such services because New York City participants have been experiencing a

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] As explained below, the amendment modified the proposal to seek approval to offer the limited money settlement services to two participant. Letter from Karen L. Saperstein, Vice President/Director of Legal and Associate General Counsel, NSCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (January 27, 1994).

[3] Securities Exchange Act Release No. 32221 (April 26, 1993), 58 FR 26570 [File No. SR–NSCC–93–03] (order approving pilot program on a temporary basis until April 30, 1994).

[4] For a detailed description of the NYW program and a discussion of the various legal, regulatory, and operational issues, refer to Securities Exchange Act Release No. 32221 *supra* note 3.

continual decline in their activities associated with the processing of physical securities. This decline in activities is a result of the increasing depository eligibility of securities that previously had been settled physically. Consequently, these participants no longer find it desirable to maintain their own window operations. NSCC originally requested approval of the NYW program on a pilot basis because NSCC was seeking to operate the individual participants' window programs at NSCC. After operating the pilot for a period of time, NSCC was to evaluate the program to determine whether any changes should be made and whether to expand and standardize the operations. NSCC is still in the process of evaluating the NYW program and at this time is not ready to implement a standardized, proprietary program to replace the individual participants' operations.[5] Therefore, NSCC is requesting that the NYW pilot program be extended.

2. Limited Money Settlement Service

At the request of a participant, NSCC studied the feasibility of providing limited money settlement services. NSCC found that it is feasible to provide such services and, therefore, will provide the following limited money settlement services to two participants on a limited basis.[6]

To the extent that the NYW processes "receives" that result in next-day funds debits for each participant, NSCC will issue a check in payment of such debits. NSCC will not issue such checks until it has verified the receipt of same-day funds from each participant in an amount equal to the gross amount of each participant's payment obligations for that day. To the extent that the NYW processes "deliveries" that result in next-day funds credits for each participant, NSCC will pay each participant the aggregate amount of all checks received and deposited by NSCC for the participant each day. The payments will be made in same-day funds on the day following receipt and deposit by NSCC of the checks. To the extent that receives or deliveries processed by the NYW result in same-day funds debits and credits, the wire transfers will continue to be made directly between the NYW participants and the other parties to the transactions.

NSCC has stated that the proposed rule change will be implemented consistent with NSCC's statutory obligation under section 17A of the Act to safeguard securities and funds in NSCC's custody or control.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe a burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(a)(1)(B) of the Act sets forth Congress findings that inefficient procedures for clearance and settlement of securities transactions impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.[7] The Commission reasserts its belief, as stated in the previous New York Window approval order, that NSCC's proposed pilot program should help minimize inefficient procedures employed by individual New York City participants by concentrating these operations in one centralized facility.[8] In addition, the Commission also believes that the limited money settlement service should provide a more efficient mechanism by which the two participants can settle their debits and credits generated by the NYW processing.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[9] The Commission believes that the safety procedures established for the pilot program and approved in the previous New York Window approval order [10] continue to enable NSCC to meet its obligations under the Section 17A of the Act. In addition, the Commission believes the safeguards NSCC will employ in providing limited money settlement services to the two participants also enable NSCC to fulfill its safeguarding obligations. For example, NSCC will not make any payment on behalf of or to the limited money settlement services participants until NSCC has received funds sufficient to cover the amount of NSCC's payment.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because the Commission has previously published notice of and has approved the NYW pilot program. NSCC's previous proposed rule change did not generate any comment letters, and none are expected on this proposal. The limited money settlement services have not been previously noticed or approved; however, the Commission does not believe the services raised any controversial issues. In addition, accelerated approval will allow the two participants to begin utilizing the new service immediately and to begin benefitting from the efficient and centralized payment procedures provided by NSCC. During the temporary approval period, NSCC will continue to evaluate the New York Window program and the limited money settlement services.

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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549, and at the principal offices of NSCC. All submissions should refer to File No. SR–NSCC–93–14 and should be submitted by March 1, 1994.

[5] NSCC is planning to implement a proprietary New York Window program during the third quarter of 1994, which will necessitate the filing of a proposed rule change under section 19(b)(2) of the Act. Telephone conversation between Karen Saperstein, Vice President/Director of Legal and Associate General Counsel, NSCC, and Jerry W. Carpenter, Branch Chief, and Peter R. Geraghty, Attorney, Division of Market Regulation, Commission (January 26, 1994).

[6] Prior to its January 27, 1994, amendment, NSCC had requested that it be allowed to offer limited money settlement services to one participant. Refer to note 2 and accompanying text.

[7] 15 U.S.C. 78q-1(a)(1)(B).

[8] *Supra* note 3.

[9] 15 U.S.C. 78q-1(b)(3)(F).

[10] *Supra* note 3.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–NSCC–93–14) be, and hereby is, approved until January 31, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2827 Filed 2–7–94; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12) (1992).

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

The following form has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form—404

Title: Potential Board Member Information Sheet.

Need and/or Use: Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service System.

Respondents: Potential board members.

Burden: A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, Arlington, VA 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, room 3235, Washington, DC 20503.

Dated: February 1, 1994.

G. Huntington Banister,

Acting Director.

[FR Doc. 94–2832 Filed 2–7–94; 8:45 am]

BILLING CODE 8015–01–M

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement; Integrated Resource Plan

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an Environmental Impact Statement (EIS) on its Integrated Resource Plan (IRP) in concert with the preparation of the IRP. The IRP will establish TVA's long-range energy strategy and will meet the requirements of section 113 of the Energy Policy Act, Public Law No. 102–486. The IRP will evaluate the means of providing electric energy services, including demand-side management programs, to meet the demand for future electric energy services by TVA's customers. The EIS will consider the potential environmental impacts of alternative energy resource strategies. TVA is inviting comments on the scope of the EIS analyses.

DATES: Comments on the scope of the EIS must be received on or before December 5, 1994. A number of public meetings will be held to obtain comments on the scope of the EIS and to provide information about TVA's IRP process. The locations and times for these meetings will be announced later. TVA encourages those wishing to provide comments to do so as early as possible.

ADDRESSES: Written comments should be sent to Dale Wilhelm, Manager of NEPA/IRP, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Lynn Maxwell, Manager of Resource Planning, Tennessee Valley Authority, 1101 Market Street, MR 5D, Chattanooga, Tennessee 37402, telephone (615) 751–2539.

SUPPLEMENTARY INFORMATION:

TVA Power System

TVA is an agency and instrumentality of the United States, charged by Congress with promoting the proper use and conservation of the resources of the Tennessee Valley region. One component of TVA's regional development program is the generation, transmission, and sale of electric energy. TVA operates one of the largest electric power systems in the country, producing four to five percent of all the electricity in the Nation.

TVA's power system serves about eight million people in a seven-State region. The TVA Act requires the TVA power system to be self-supporting and operated on a nonprofit basis and directs TVA to sell power at rates as low as are feasible.

Dependable capacity on the TVA power system is about 25 million kilowatts, and consists of approximately 58 percent coal, 21 percent hydro (including the pumped storage unit and certain units operated by the U.S. Army Corps of Engineers), 13 percent nuclear, and 8 percent combustion turbines. TVA expects to initiate operations at Unit 1 of its Watts Bar Nuclear Plant and to recommence operations at Unit 3 of its Browns Ferry Nuclear Plant in the near future. TVA transmits electricity it generates over 16,000 miles of transmission lines to 160 local municipal and rural cooperative electric systems ("distributors" of TVA power) which in turn retail the power to individual consumers (homes, factories, schools, hospitals, etc.). TVA also directly serves 68 large industries and Federal installations. Like other utility systems, TVA has power interchange agreements with the utilities surrounding its region, and it purchases and sells power on an economy basis almost daily.

Previous Energy Planning Activities

TVA has employed a largely internal integrated resource planning and study process for many years. Information from this process has been used to propose energy resource decisions. Under the 1992 Energy Policy Act, TVA is directed to continue employing an integrated planning process. This Act also requires TVA to provide distributors of TVA power an opportunity to participate in the process.

TVA prepares individual environmental reviews under the National Environmental Policy Act (NEPA) for proposed energy decisions. As appropriate, information from TVA's IRP analyses is used in these environmental reviews. TVA has committed to employing a public IRP process and has decided that use of the EIS process under NEPA would be an appropriate means of obtaining public involvement in the planning and decisionmaking processes. Preparing an IRP EIS will also promote consideration of the environmental impacts of alternatives, and will allow TVA to use the IRP/EIS with other NEPA reviews for future specific energy decisions or projects.

Proposed IRP/EIS

An "IRP" is simply a plan which broadly identifies the actions a utility anticipates undertaking to meet demands for electric service and to

achieve its long-term objectives or goals. The most important objective for TVA's IRP is to maintain and enhance its competitiveness. TVA views "competitiveness" broadly and believes it has a number of components, including charging rates for the electricity it generates that will be among the lowest in the Nation, providing reliable service that meets its customers' needs, ensuring that its activities are cost effective and produce value for its customers, promoting sustainable economic growth in the TVA region, and accomplishing all of the above consistent with TVA's goal of being an environmental leader.

In general, TVA expects the IRP/EIS to address the demand for power on the TVA system (how much electricity TVA will be called upon to provide in the future), the value of various resource options to TVA's customers, the means of meeting that demand (alternatives), and the potential environmental, economic, and operating effects of those means. The IRP/EIS will project future energy demands over at least a 25-year period. These projections will be made through "load forecasts" and the IRP/EIS will explain how these are conducted. In addition, the IRP will include a short-term action plan that will identify actions or activities which should be undertaken to meet IRP milestones or preserve energy options.

The IRP/EIS will identify and address the energy resources on the TVA system including existing resources and those which are currently under construction. Based on the results of the IRP/EIS, TVA may, for example, decide to operate an existing resource differently or not operate it, or may decide to accelerate, modify, or cancel ongoing energy resource construction projects. In the interim, TVA will continue to serve its customers.

At this time, we anticipate that the IRP/EIS process will focus on at least three important areas: (1) Demand-side management measures and electrotechnologies that will promote more efficient use of energy; (2) generating resources, including restart of Browns Ferry Unit 1, completion of TVA's Watts Bar Nuclear Plant Unit 2 and Bellefonte Nuclear Plant Units 1 and 2, and major improvement projects at fossil and hydro plants; and (3) new technologies on both the supply and demand side such as clean coal technologies, biomass generation, improved lighting, more efficient motors, and electric vehicles. The IRP/EIS will consider such things as the potential effects of non-utility generation and dispersed power, the Clean Air Act Amendments of 1990 and other significant legislation, fuel prices, and conservation penetration rates.

Environmental effects of a range of alternative energy strategies will be addressed in the IRP/EIS and compared to one another. Because of the programmatic nature of the proposal and review process, TVA anticipates that the environmental effects which are examined will be those that are regional national, or global in scale or which are generic. This would include such potential environmental effects and issues as emissions of greenhouse gases, acid rain, other air quality concerns, water quality effects, waste generation and disposal, and pollution prevention. Socioeconomic impacts within the region that may result from alternative energy strategies would also be considered. The more site-specific effects (those which depend on the specific location of a proposed action such as the construction of a new generating facility) will not be addressed in detail or not at all. This would include such things as potential effects on wetlands, floodplains, prime farmlands, threatened and endangered species, and cultural resources.

Scoping Process

TVA is interested in receiving comments on the areas and issues identified above, and the scope of the IRP/EIS. TVA specifically requests comments on: (1) TVA's overall approach to the IRP process, (2) the kinds of alternatives which should be evaluated in the IRP/EIS, (3) the significant environmental impacts and issues which should be assessed in the IRP/EIS, and (4) the environmental impacts and issues which should be considered unimportant or insignificant for the IRP/EIS.

It is important the TVA's customers and all of those interested in planning the energy future of the Tennessee Valley region participate in the IRP/EIS process. As part of both the scoping and draft EIS review processes, TVA intends to seek out the views of and meet regularly with representatives of "stakeholder" groups interested in the energy and environmental future of the Valley. In addition, numerous opportunities will be made available to the general public to provide input into and comments on the IRP/EIS as it proceeds.

Following completion of scoping, a Draft IRP/EIS will be prepared and released for public review and comment. Notice of the availability of this draft will be announced, comments on the draft solicited, and information about additional public meetings/hearings will be published at a future date. TVA contemplates releasing a Final EIS and IRP in late 1995.

Dated: January 31, 1994.

Ronald L. Ritschard,

Vice President/Senior Scientist.

[FR Doc. 94–2524 Filed 2–7–94; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 28, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49386.

Date filed: January 26, 1994.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Mail Vote 668 Amend Rounding Procedure for China.

Proposed Effective Date: February 1, 1994.

Docket Number: 49387.

Date filed: January 27, 1994.

Parties: Members of the International Air Transport Association.

Subject: TC12 Fares 0425 dated January 25, 1994 Reso 015h, USA Add-Ons.

Proposed Effective Date: April 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–2780 Filed 2–7–94; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 28, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49383.

Date filed: January 24, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 22, 1994.

Description: Application of Air Pacific Limited, pursuant to Section 402 of the Act and Subpart Q of the Regulations requests amendment of its foreign air carrier permit authorizing it to engage in foreign air transportation with respect to persons, property and mail between points in the United States and Points in Fiji.

Docket Number: 43430.

Date filed: January 24, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 22, 1994.

Description: Application of Trans World Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for renewal of that authority listed in its certificate of public convenience and necessity Route 147 that is scheduled to expire on September 17, 1994.

Docket Number: 45810.

Date filed: January 28, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 25, 1994.

Description: Amendment of Qantas Airways Limited to its Application for Amendment of its Foreign Air Carrier Permit to perform foreign transportation between the United States and Australia.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–2781 Filed 2–7–94; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

DATES: January 31, 1994.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on January 31, 1994:

DOT No: 3884.

OMB No: 2130–0534.

Administration: Federal Railroad Administration.

Title: Grade Crossing Signal System Safety Regulations.

Need for Information: The Rail Safety Improvement Act of 1988 required the issuance of rules, regulations, orders and standards to ensure the safe maintenance, inspection and testing of signal systems and devices at railroad highway grade crossings.

Proposed Use of Information: The information will provide accurate data regarding instances of grade crossing activation failures, and will be used by FRA to craft better solutions to the problems of grade crossing device malfunctions.

Frequency: On occasion, one time, recordkeeping.

Burden Estimate: 218,762 hours.

Respondents: Railroads.

Form(s): FRA–F–6180.83 and FRA–F–6180.87.

Average Burden Hours Per Response: 17 minutes reporting; 299 hours recordkeeping.

DOT No: 3885.

OMB No: 2106–0015.

Administration: Office of the Secretary.

Title: Airline Employee Protection Program.

Need for Information: Section 43 of the Airline Deregulation Act of 1978 established an employee protection program. After a determination by DOT that an air carrier has undergone a qualifying dislocation, the Secretary of Labor gives financial assistance to certain employees of the carrier.

Proposed Use of Information: The information will be used to determine if a qualifying dislocation has occurred and to assess an applicant's eligibility for benefits.

Frequency: One time.

Burden Estimate: 45 hours.

Respondents: Former and present airline employees.

Form(s): None.

Average Burden Hours Per Response: 3 hours reporting.

DOT No: 3886.

OMB No: 2137–0047.

Administration: Research and Special Programs Administration.

Title: Information Collection Requirements for Hazardous Liquid and Carbon Dioxide Pipeline Operators.

Need for Information: Title 49 CFR part 195 prescribes operation and maintenance procedures for hazardous liquid and carbon dioxide pipeline operators.

Proposed Use of Information: The information will be used by RSPA and State inspectors to determine operator compliance with pipeline safety standards.

Frequency: On occasion, recordkeeping.

Burden Estimate: 49,567 hours.

Respondents: Pipeline operators.

Form(s): DOT F 7000–1.

Average Burden Hours Per Response: 1 hour and 6 minutes reporting; 235 hours recordkeeping.

DOT No: 3887.

OMB No: 2137–0049.

Administration: Research and Special Programs Administration.

Title: Recordkeeping Requirements for Gas Pipeline Operators.

Need for Information: Title 49 CFR part 192 prescribes the operation and maintenance procedures for natural and other gas pipeline facilities.

Proposed Use of Information: The information will be used by RSPA and State inspectors to evaluate operator compliance with pipeline safety standards.

Frequency: Recordkeeping.

Burden Estimate: 1,143,517 hours.

Respondents: Gas pipeline operators.

Form(s): None.

Average Burden Hours Per Response: 497 hours and 11 minutes recordkeeping.

DOT No: 3888.

OMB No: 2120–0571.

Administration: Federal Aviation Administration.

Title: Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities.

Need for Information: The information is needed to respond to regulations promulgated in accordance with the Omnibus Transportation Employee Testing Act of 1991, enacted on October 28, 1991.

Proposed Use of Information: The information will be used to monitor industry implementation and compliance with the FAA Alcohol Misuse Prevention Program. The information will also be used to evaluate the effectiveness of the program.

Frequency: One time, on occasion, annually.

Burden Estimate: 29,250 hours.

Respondents: Specified aviation employers.

Form(s): FAA Alcohol Testing MIS Data Collection EZ Form; FAA Alcohol Testing MIS Data Collection Form, DOT Breath Alcohol Testing Form.

Average Burden Hours Per Response: 1 hour and 48 minutes reporting; 2 hours and 23 minutes recordkeeping.

DOT No: 3889.

OMB No: 2137–0587.

Administration: Research and Special Programs Administration.

Title: Alcohol Misuse Prevention Program.

Need for Information: The potential harmful effect of alcohol misuse on safe pipeline operators warrants imposing comprehensive alcohol misuse testing regulations on the pipeline industry. Title 49 CFR part 199 requires information collection in the form of an alcohol misuse prevention plan and recordkeeping.

Proposed Use of Information: The information will be used by RSPA and State agencies to monitor alcohol misuse programs and to address compliance and enforcement issues.

Frequency: Annual, recordkeeping.

Burden Estimate: 26,354 hours.

Respondents: Pipeline operators.

Form(s): RSPA Alcohol Testing MIS Data Collection EZ Form; RSPA Alcohol Testing MIS Data Collection Form, DOT Breath Alcohol Testing Form.

Average Burden Hours Per Response: 3 hours and 6 minutes reporting; 3 hours recordkeeping.

DOT No: 3890.

OMB No: 2125–0543.

Administration: Federal Highway Administration.

Title: Controlled Substance and Alcohol Testing.

Need for Information: Title 49 CFR part 382 prescribes the requirements for drug and alcohol testing of commercial motor vehicle drivers.

Proposed Use of Information: The information will be used by the FHWA to obtain summary reports of drug and alcohol tests from motor carriers in an effort to eliminate drug and alcohol abuse in the motor carrier industry.

Frequency: Annually, recordkeeping.

Burden Estimate: 2,900,717 hours.

Respondents: Motor carriers.

Form(s): FHWA Drug and Alcohol Testing MIS Data Collection Form; FHWA Drug and Alcohol Testing MIS Zero Positive Data Collection Form; Drug Testing Custody and Control Form; DOT Breath Alcohol Testing Form.

Average Burden Hours Per Response: 2 hours reporting; 5 hours and 12 minutes recordkeeping.

DOT No: 3891.

OMB No: 2105–0517.

Administration: Office of the Secretary.

Title: Transportation Acquisition Regulation.

Need for Information: In accordance with the Federal Acquisition Regulation, this information is needed to solicit, negotiate, award and administer DOT contracts.

Proposed Use of Information: The information will be used by contracting officers and supporting technical/program and contract management personnel to evaluate bids and proposals; ensure mandatory public policy provisions; ensure appropriate cost controls under contracts; detect and minimize conditions conducive to fraud, waste and abuse; form a database for Congressional reports; and meet all requirements imposed by the Federal Acquisition Regulation.

Frequency: On occasion.

Burden Estimate: 56,375 hours.

Respondents: Businesses, contractors.

Form(s): DOT F 4220.4; DOT F 4220.7; DOT F 4220.43; DOT F 4220.44; DOT F 4220.45; DOT F 4220.46; Form DD 882.

Average Burden Hours Per Response: 1 hour and 22 minutes reporting.

DOT No: 3892.

OMB No: 2105–0520.

Administration: Office of the Secretary.

Title: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Need for Information: Title 49 CFR part 18 prescribes uniform administrative requirements for grants and cooperative agreements to State and local governments.

Proposed Use of Information: The information will be used to administer and manage the grants program.

Frequency: Recordkeeping.

Burden Estimate: 199,500 hours.

Respondents: Grantees.

Form(s): SF–269, SF–272, SF–270, SF–271, SF–424.

Average Burden Hours Per Response: 70 hours recordkeeping.

DOT No: 3893.

OMB No: 2120–0049.

Administration: Federal Aviation Administration.

Title: Agricultural Aircraft Operations—FAR part 137.

Need for Information: FAR part 137 prescribes the standards for the operation of agricultural aircraft and for the dispensing of chemicals, pesticides, and toxic substances. Information collected shows applicant compliance and eligibility for certification by FAA.

Proposed Use of Information: The information on FAA Form 8710–3, Agricultural Aircraft Operator Certificate Application, is required from applicants who wish to be issued a commercial or private agricultural aircraft operator certificate. Inspectors in FAA Flight Standards District Offices review the submitted information to determine certificate eligibility. If the information was not collected, the FAA could not discharge its responsibilities directed to the safety of agricultural aircraft operations and the dispensing of materials during such operations.

Frequency: On occasion.

Burden Estimate: 13,990 hours.

Respondents: Agricultural Aircraft Operators.

Form(s): FAA Form 8710–3.

Average Burden Hours Per Response: 30 minutes reporting.

4 hours and 30 minutes recordkeeping.

DOT No: 3894.

OMB No: 2115–0092.

Administration: U.S. Coast Guard.

Title: Barge Fleeting Facility Records.

Need for Information: This information collection requirement is needed to ensure that persons in charge of barge fleeting facilities maintain records of barge activities and hazardous cargo in and out of these facilities. These records will assure that barge facilities are in compliance with the regulatory authority and may also be used for enforcement purposes.

Proposed Use of Information: Coast Guard will use these records to ensure

that inspections of barge moorings and movements are being conducted by the barge fleeting facilities.

Frequency: Twice daily; recordkeeping.

Burden Estimate: 11,032 hours.

Respondents: Owners or operators of barge fleeting facilities.

Form(s): None.

Average Burden Hours Per Response: 283 hours recordkeeping.

DOT No: 3895.

OMB No: New.

Administration: National Highway Traffic Safety Administration.

Title: Drinking and Driving Target Identification Study.

Need for Information: The information is needed to identify and target subgroups of drinking drivers.

Proposed Use of Information: The primary purpose of this study is to obtain data to describe in detail the people and situations involved in drinking and driving and defining characteristics that would be useful for developing, refining, and targeting countermeasures to specific drinking-driving subpopulations.

Frequency: One time.

Burden Estimate: 3,479 hours.

Respondents: Individuals.

Form(s): None.

Average Burden Hours Per Response: 12 minutes reporting.

DOT No: 3896.

OMB No: 2132–0556.

Administration: Federal Transit Administration.

Title: Prevention of Prohibited Drug Use in Transit Operations.

Need for Information: The Omnibus Transportation Employee Testing Act of 1991 requires any recipient of Federal financial assistance under Sections 3, 9 or 18 of the Federal Transit Act, as amended, and any recipient of Federal financial assistance under Section 103(e) of Title 23 of the U.S. Code, to establish a program designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform safety-sensitive functions.

Proposed Use of Information: The information collected will be used to build a database to determine any necessary modifications or the continuing need for the rule; and to monitor the effectiveness of the program and compliance with the regulation.

Frequency: Annually, recordkeeping.

Burden Estimate: 42,799 hours.

Respondents: State and local governments, businesses or other for-profit institutions, non-profit institutions, and small businesses or organizations.

Form(s): FTA Drug Testing MIS Data Collection Form; FTA Drug Testing MIS Data Collection EZ Form; Drug Testing Chain of Custody Form.

Average Burden Hours Per Response: 8 hours reporting; 18 hours and 30 minutes recordkeeping.

DOT No: 3897.

OMB No: 2132–0557.

Administration: Federal Transit Administration.

Title: Control of Alcohol Misuse in Transit Operations.

Need for Information: The Omnibus Transportation Employee Testing Act of 1991 requires any recipient of Federal financial assistance under Sections 3, 9 or 18 of the Federal Transit Act, as amended, and any recipient of Federal financial assistance under Section 103(e) of Title 23 of the U.S. Code to establish a program designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions.

Proposed Use of Information: The information collected will be used to build a database to determine any necessary modifications or the continuing need for the rule; and to monitor the effectiveness of the program and compliance with the regulation.

Frequency: Annually, recordkeeping.

Burden Estimate: 32,479 hours.

Respondents: State and local governments, businesses or other for-profit institutions, non-profit institutions, and small businesses or organizations.

Form(s): FTA Alcohol Testing MIS Data Collection Form; FTA Alcohol Testing MIS Data Collection EZ Form; DOT Breath Alcohol Testing Form.

Average Burden Hours Per Response: 8 hours reporting; 12 hours recordkeeping.

DOT No: 3898.

OMB No: 2130–0526.

Administration: Federal Railroad Administration.

Title: Control of Alcohol and Drug Use in Railroad Operations.

Need for Information: The FRA's Final Rule on Control of Alcohol and Drug Use in Railroad Operations (49 CFR Part 219), dated February 10, 1986, and FRA's Notice of Proposed Rulemaking (57 FR 59608), dated December 15, 1992, proposing to amend and expand the current annual reporting requirements, prescribe the terms and conditions necessary to ensure safety in railroad operations.

Proposed Use of Information: FRA and the railroad industry will use the information to determine the extent of alcohol and drug problems, and to curtail the widespread use of alcohol and drugs.

Frequency: Annually, on occasion, recordkeeping.

Burden Estimate: 177,189 hours.

Respondents: Railroads.

Form(s): FRA–F–6180.73, FRA–F–6180.74 and FRA–F–6180.91, FRA–F–6180.94a, FRA–F–6180.94b, FRA–F–6180.95a, FRA–F–6180.95b, Drug Testing Chain of Custody Form, Breath Alcohol Testing Form.

Average Burden Hours Per Response: 15 hours and 20 minutes reporting; 799 hours and 47 minutes recordkeeping.

DOT No: 3899.

OMB No: 2106–0023.

Administration: Office of the Secretary.

Title: Procedures and Evidence Rules for Air Carrier Authority Applications.

Need for Information: Title 14 CFR parts 201, 204 and 291 set forth the application procedures and filing requirements for carriers seeking certificate or commuter authority.

Proposed Use of Information: The information will be used to determine the initial fitness of all applicants and to modify, suspend or revoke an air carrier's authority if it is no longer fit, willing, and able to operate, or if it fails to file the reports needed to monitor its continuing fitness.

Frequency: On occasion.

Burden Estimate: 8,073 hours.

Respondents: U.S. air carriers and applicants for air carrier authority.

Form(s): None.

Average Burden Hours Per Response: 38 hours and 36 minutes reporting.

DOT No: 3900.

OMB No: New.

Administration: Federal Railroad Administration.

Title: Railroad Police Officers.

Need for Information: Title 49 CFR Part 207 implements the Crime Control Act of 1990 by requiring notice to State officials, after designation of railroad police officers, of the States in which the railroads intend to have railroad police officers protecting railroad property, personnel, passengers, and cargo.

Proposed Use of Information: The information will provide a mechanism whereby States can determine which railroad police officers have authority to act in their States.

Frequency: On occasion, recordkeeping.

Burden Estimate: 1,550 hours.

Respondents: Railroads.

Form(s): None.

Average Burden Hours Per Response: 5 hours reporting; 1 hour and 36 minutes recordkeeping.

DOT No: 3901.
OMB No: New.
Administration: Federal Aviation Administration.
Title: Antidrug Program for Personnel Engaged in Specified Aviation Activities.
Need for Information: The information is needed to ensure compliance with the Omnibus Transportation Employee Testing Act of 1991, enacted on October 28, 1991.
Proposed Use of Information: The information submitted is intended to be the basis for monitoring industry implementation of, and compliance with, the FAA antidrug rule. The information will also be used to evaluate the effectiveness of the program.
Frequency: Annually, one time.
Burden Estimate: 11,993 hours.
Respondents: Specified aviation employers.
Form(s): None.
Average Burden Hours Per Response: 1–10 hours reporting; 1 hour recordkeeping.

Issued in Washington, DC, on January 31, 1994..

Paula R. Ewen,
Chief, Information Management Division.
[FR Doc. 94–2779 Filed 2–7–94; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

RTCA, Inc.; Formation of New Special Committee 182

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 the formation of a new Special Committee.

A new Special Committee has been established by the RTCA Technical Management Committee to develop Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource (ACR). This document is to be prepared by Special Committee 182 (SC–182). This activity will consider that the ACR shall be generic resource, which will combine with specific, partitioned software at the time of aircraft system design to perform one or more specific aircraft functions.

Mr. Robert A. Patterson, Rockwell International Corporation, was appointed Chairman of SC–182, and will conduct the first meeting March 8–9, 1994 at RTCA.

Additional information concerning this Special Committee and other RTCA Special Committees may be obtained from RTCA Inc., 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339 (telephone) (202) 833–9434 (facsimile).

Issued in Washington, DC, on February 2, 1994.

Joyce J. Gillen,
Designated Officer.
[FR Doc. 94–2835 Filed 2–7–94; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 182; Minimum Operational Performance Standard for an Avionics Computer Resource; Meeting

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 182 meeting to be held March 8–9, starting at 9 a.m. The meeting will be held at the RTC Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Review committee terms of reference, RTCA Paper No. 12–94/TMC–117 (enclosed); (4) Identify goals, develop work program and examine milestones; (5) Assign tasks; (6) Other business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. 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 February 2, 1994.

Joyce J. Gillen,
Designated Officer.
[FR Doc. 94–2834 Filed 2–7–94; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 31, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0137.
Form Number: None.
Type of Review: Extension.
Title: Declaration of Person Who Performed Repairs.
Description: This declaration is used by Customs to insure duty-free status for entries covering articles repaired abroad. It must be filed by importers claiming duty-free status.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 10,236.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,236 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 94–2830 Filed 2–7–94; 8:45 am]
BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy; Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on February 9 in room 600, 301 4th Street, SW., Washington, DC from 9:45 a.m. to 12 p.m.

At 9:45 a.m. the Commission will meet with Mr. Douglas Wilson, Director of Congressional and Intergovernmental Affairs to discuss State/USIA Authorization and pending Congressional issues. At 10:30 a.m. the Commission will meet with Mr. Jaroslav

Verner, former PAO, USIS Tashkent to discuss establishing USIS posts in the NIS. At 11:15 a.m. the Commission will meet with Mr. Don Hamilton, Director, Office of American Republic Affairs to discuss area issues.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: February 3, 1994.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 94–2872 Filed 2–7–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 26
Tuesday, February 8, 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).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, February 17, 1994.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at East Providence Community Center—Pawtucket Ave., East Providence, RI, for the following reasons:

Agenda:

1. Signage Status
2. Acitiviting opportunities in East Providence
3. Budget Review

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James R. Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 730, Uxbridge, MA 01569, Tel.: (508) 278–9400.

Further information concerning this meeting may be obtained from James R. Pepper, Executive Director of the Commission at the aforementioned address.

James R. Pepper,
Executive Director.

[FR Doc. 94–3013 Filed 2–7–94; 3:55 pm]

BILLING CODE 4310–70–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, February 14, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any 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: February 4, 1994.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 94–3015 Filed 2–4–94; 3:55 pm]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 10 a.m., Tuesday, February 15, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Sections 202 and 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).
3. Appeal from Credit Union of Determination Under Part 701, NCUA's Rules and Regulations. Closed pursuant to exemption (8).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,
Secretary of the Board.

[FR Doc. 94–3025 Filed 2–4–94; 3:54 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, February 15, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

Agenda

6266
Aviation Incident Report: China Airlines Flight CI–012, McDonnell Douglas MD–11, Taiwan Registration B–150, 10 Miles East of Japan, December 7, 1992.

6264
Recommendations to FAA: Wake Vortex of Boeing 757s and ATC Issues Related to Wake Vortex Separation Criteria in Heavy Airplanes.

6083A
Highway Accident Report: Gasoline Tank Truck/Amtrak Train Collision and Fire in Fort Lauderdale, Florida, March 17, 1993.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 4, 1994.

Bea Hardesty,
Federal Register Liaison Officer.

[FR Doc. 94–2964 Filed 2–4–94; 1:02 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 7, 14, 21, and 28, 1994.

PLACE: Commissioners' Conference room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 7

Tuesday, February 8

2:00 p.m.
Briefing by Agreement States on Their Activities (Public Meeting)
(Contact: Richard Bangart, 301–504–3340)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, February 10

9:30 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)

Week of February 14—Tentative

Monday, February 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 21—Tentative

Thursday, February 24

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, February 25

10:00 a.m.
Briefing by Advisory Committee on Medical Uses of Isotopes (Public Meeting)
(Contact: Sally Merchant, 301–504–2637)

Week of February 28—Tentative

Monday, February 28

2:00 p.m.
Briefing by Commonwealth Edison (Public Meeting)

Tuesday, March 1

10:00 a.m.
Briefing on Proposed Changes to Part 100 (Public Meeting)
(Contact: Leonard Soffer, 301–492–3916
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Wednesday, March 2

10:00 a.m.
Briefing by NARUC (Public Meeting)
(Contact: Spiros Droggitis, 301–504–2367)

ADDITIONAL INFORMATION:

By a 4–0 vote on January 28, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management Issues" (Closed—Ex. 2 and 6) be held on January 31, and on less than one week's notice to the public.

By a 3–0 vote (Commissioner Remick was not present) on February 3, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing on Investigative Matters" (Closed—Ex. 5 and 7) be held on February 3, and on less than one week's notice to the public.

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: William Hill, (301) 504–1661.

Dated: February 4, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–3014 Filed 2–4–94; 3:55 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
February 8, 1994

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Determination of Critical Habitat for the Mojave Population of the Desert Tortoise; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC01

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Mojave Population of the Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) designates critical habitat for the Mojave population of the desert tortoise (*Gopherus agassizii*), a species federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). Located primarily on Federal land, and to a lesser extent on State, private, and Tribal lands, this critical habitat designation provides additional protection under section 7 of the Act with regard to activities that require Federal agency action. As required by section 4 of the Act, the Service considered economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat.

EFFECTIVE DATE: March 10, 1994.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Nevada Field Office, Ecological Services, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502. The complete file for this rule will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Harlow, Field Supervisor, Nevada Field Office, U.S. Fish and Wildlife Service, at the above address (702/784–5227).

SUPPLEMENTARY INFORMATION:

Background

The Mojave population of the desert tortoise, referred to herein as desert tortoise or tortoise, is one of three species in the genus *Gopherus* found in the United States. The Berlandier's tortoise (*G. berlandieri*) is found in northeastern Mexico and southern Texas. The gopher tortoise (*G. polyphemus*) is found in the hot, humid portions of the southeastern United States. *G. agassizii* is relatively large, with adults measuring up to 15 inches in shell length, and inhabits the Mojave, Colorado, and Sonoran Deserts in the southwestern United States and adjacent Mexico. The species is divided into the Sonoran and Mojave populations. The Sonoran population occurs south and east of the Colorado River in Arizona and Mexico, and the Mojave population occupies those portions of the Mojave and Colorado Deserts north and west of the Colorado River in southwestern Utah, northwestern Arizona, southern Nevada, and southern California.

For a thorough discussion of the ecology and life history of the desert tortoise, see the Draft Recovery Plan for the Desert Tortoise (Mojave Population) (U.S. Fish and Wildlife Service 1993) and the April 2, 1990, final rule listing the desert tortoise as a threatened species (55 FR 12178). These documents incorporate the majority of current biological information on the desert tortoise used to develop this rule.

The Endangered Species Act of 1973, as amended (Act) requires the Service to designate critical habitat to the maximum extent prudent and determinable concurrently with listing a species as endangered or threatened. On August 20, 1980, the Service listed the Beaver Dam Slope population of the desert tortoise (*Gopherus agassizii*), in southwestern Utah, as a threatened species and designated 35 square miles of critical habitat (45 FR 55654). On September 14, 1984, the Service received a petition from the Environmental Defense Fund, Natural Resources Defense Council, and Defenders of Wildlife to list the desert tortoise in Arizona, California, and Nevada as endangered. In September 1985, the Service determined that the listing was warranted but precluded by other listing actions of higher priority under authority of section 4(b)(3)(iii) of the Act (50 FR 49868). The Service made annual findings of warranted but precluded from 1985 through 1989 under section 4(b)(3)(C) of the Act. On May 31, 1989, the same three environmental organizations provided substantial new information and petitioned the Service to list the desert tortoise as endangered throughout its range in the United States under the expedited emergency provisions of the Act. As a result of the new information, on August 4, 1989 (54 FR 32326), the Service listed the Mojave population, excluding the Beaver Dam Slope population in Utah, as endangered by emergency rule. The Mojave population was designated in the emergency rule as all tortoises occurring north and west of the Colorado River, in California, Nevada, Arizona, and Utah. The Mojave population was then proposed under normal listing procedures on October 13, 1989 (54 FR 42270), and listed as threatened on April 2, 1990 (55 FR 12178).

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. At the time of listing, the Service found that critical habitat was not determinable because the specific size and spatial configuration of essential habitats, as well as vital linkages connecting areas necessary for ensuring the conservation of the Mojave desert population throughout its range, could not be determined without further information.

On January 8, 1993, several plaintiffs filed a motion in *Desert Tortoise et al.* v. *Lujan et al.*, Civ. No. 93–0114 MHP (N.D. Cal.) seeking to stop the transfer of public land to the State of California for construction of a low-level nuclear waste disposal facility in Ward Valley located in southern California. The plaintiffs contended that the Service violated the Act by failing to designate critical habitat for the desert tortoise and sought an injunction prohibiting transfer of the site until critical habitat was designated and a new section 7 biological opinion that addressed the effects of the transfer on critical habitat was completed.

On January 27, 1993, the Natural Resources Defense Council and other environmental groups sued to compel designation of critical habitat for the Mojave population of the desert tortoise, alleging that the Secretary had failed to meet the designation deadline under section 4(b)(6)(C)(ii) of the Act (*Natural Resources Defense Council* v. *Babbitt*, No. C–93–0301 MHP (N.D. Cal.)). Plaintiffs further requested the court to prohibit the Service from issuing any further biological opinions for the tortoise under section 7 of the Act until critical habitat was designated.

On May 21, 1993, the plaintiffs, in both cases, and the Secretary agreed on a stipulation requiring the defendants to propose critical habitat for the desert tortoise by August 1, 1993, and to designate critical habitat by December 1, 1993. On July 30, 1993, the plaintiffs agreed to an extension of these deadlines to August 29, 1993, for a proposal and December 15, 1993, for a final decision.

On March 30, 1993, the Service announced the availability of the Draft Recovery Plan for the Desert Tortoise (Mojave Population) (Draft Recovery Plan) (58 FR 16691). The Draft Recovery Plan (U.S. Fish and Wildlife Service 1993) divides the range of the desert tortoise into 6 recovery units and recommends establishment of 14 Desert Wildlife Management Areas (DWMAs) within the recovery units. Within each DWMA, the Draft Recovery Plan recommends specific management actions to effect recovery of desert tortoises. The public comment period on the Draft Recovery Plan closed on June 30, 1993.

The Service published a proposed rule to designate critical habitat for the desert tortoise on August 30, 1993 (58 FR 45748). The August 30 proposal requested comments from all interested parties on the proposed determination and associated economic analysis. This final rule represents the Service's final decision on this issue. However, the Service may revise critical habitat in the future if land management plans, recovery plans, or other conservation strategies that are developed and fully implemented reduce the need for the additional protection provided by critical habitat designation.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as "(i) the specific areas within the geographic area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination * * * that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the Act, means "* * * to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary," i.e., the species is recovered and removed from the list of endangered and threatened species. Section 3 further states that in most cases the entire range of a species should not be encompassed within critical habitat.

Role in Species Conservation

Use of the term "conservation" in the definition of critical habitat indicates that its designation should identify lands that may be needed for a species' eventual recovery and delisting. However, when critical habitat is designated at the time a species is listed, the Service frequently does not know exactly what may be needed for recovery. In this regard, critical habitat serves to preserve options for a species' eventual recovery.

The designation of critical habitat will not, in itself, lead to recovery, but is one of several measures available to contribute to a species' conservation. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) regardless of whether or not they are currently occupied by the listed species, thus alerting the public to the importance of an area in the conservation of a listed species. Critical habitat also identifies areas that may require special management or protection. Critical habitat receives protection under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. The added protection of these areas may shorten the time needed to achieve recovery. Aside from the added protection provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Designating critical habitat does not create a management plan, it does not establish numerical population goals, it does not prescribe specific management actions (inside or outside of critical habitat), nor does it have a direct effect on areas not designated as critical habitat. Specific management recommendations for critical habitat are more appropriately addressed in recovery plans, management plans, and section 7 consultations.

In addition to considering biological information in designating critical habitat, the Service also considers economic and other relevant impacts of designating critical habitat. The Service may exclude areas from critical habitat when the benefits of such exclusion outweigh the benefits of including the areas within critical habitat, provided that the exclusion will not result in the extinction of a species.

Critical habitat identifies specific areas essential to the conservation of a species. Areas not currently containing all of the essential features, but with the capability to do so in the future, may also be essential for the long-term recovery of the species, particularly in certain portions of its range, and may be designated as critical habitat. However, not all areas containing the features of a listed species' habitat are necessarily essential to the species' recovery. Areas not included in critical habitat that contain one or more of the essential elements are still important to a species' conservation and may be addressed under other facets of the Act and other conservation laws and regulations. All designated areas may also be of considerable value in maintaining ecosystem integrity and supporting other species, although that is not a consideration in designating critical habitat.

The process of designating critical habitat for the desert tortoise consisted of three steps that are explained in this document. The first step was to determine the elements and areas essential to the tortoise's conservation. This step was completed in the proposal process and is summarized in the sections of this rule entitled "Primary Constituent Elements" and "Criteria for Identifying Critical Habitat." The second step was to determine the potential costs of the proposed designation, which was completed in the proposal process and is summarized in this rule in the section entitled "Economic Summary of the August 30 Proposal." The final step was to consider whether any areas should be excluded based upon economic and other relevant impacts and to determine the costs associated with the final designation. This step is discussed in the sections entitled "Summary of the Exclusion Process," "Effects of the Designation," "Economic Impacts of the Final Designation," and "Available Conservation Measures." A section on biodiversity is included to highlight the importance of that issue and its relationship to the desert tortoise.

Designation of critical habitat may be reevaluated and revised, at any time, when new information indicates that changes are warranted. The Service may revise critical habitat if land management plans, recovery plans, or other conservation strategies are developed and fully implemented, reducing the need for the additional protection provided by critical habitat designation. For example, after the Desert Tortoise Recovery Plan is finalized, land management agencies may implement increased protection for the desert tortoise. If protection measures are implemented, the Service may revise its critical habitat designation in the future. With increased protection, some components of environmental variability threatening tortoise populations (or contributing to the variance of growth rates) may be reduced, thus lessening the need for large populations. In such an event, a population viability analysis—considering population trends based on

the variance of population growth rates—might suggest that smaller, viable, populations would require less habitat (i.e., smaller DWMAs and less need for critical habitat designation). Therefore, critical habitat units (CHUs) could be decreased in size, increased in size, or eliminated based on changes in certain environmental variables, in land status, or tortoise populations.

Primary Constituent Elements

In determining the areas to designate as critical habitat, the Service considers those physical and biological attributes that are essential to a species' conservation. In addition, the Act stipulates that the areas containing these elements may require special management considerations or protection. Such physical and biological features, as stated in 50 CFR 424.12, include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring; and

(5) Generally, habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service is required to base critical habitat designations upon the best scientific and commercial data available (50 CFR 424.12). In designating critical habitat for the desert tortoise, the Service has reviewed its overall approach to the conservation of the desert tortoise undertaken since its emergency listing in 1989. In addition, the Service reviewed all available information that pertains to habitat requirements of this species, including material received during the public comment period from State and Federal agencies, other entities, and members of the public.

Inherent difficulties in designating critical habitat for wide-ranging threatened species, such as the desert tortoise, make it unlikely that all habitat within the range of the species would be included in the designation. In fact, section 3(5)(C) of the Act states that, in most cases, critical habitat should not encompass the entire range of the species. Based upon the parameters discussed below, the Service determined the appropriateness of including specific areas.

Habitat Characteristics

The Service has determined that the physical and biological habitat features (referred to as the primary constituent elements) that support nesting, foraging, sheltering, dispersal, and/or gene flow are essential to the conservation of the desert tortoise. These elements were determined from studies on desert tortoise habitat preferences (e.g., habitat structure and use, forage requirements) throughout the range of the species (U.S. Fish and Wildlife Service 1993). Desert tortoise habitat consists of the following primary constituent elements: Sufficient space to support viable populations within each of the six recovery units and provide for movements, dispersal, and gene flow; sufficient quantity and quality of forage species and the proper soil conditions to provide for the growth of such species; suitable substrates for burrowing, nesting, and overwintering; burrows, caliche caves, and other shelter sites; sufficient vegetation for shelter from temperature extremes and predators; and habitat protected from disturbance and human-caused mortality.

Designated critical habitat for the desert tortoise encompasses portions of the Mojave and Colorado Deserts that contain the primary constituent elements and focuses on areas that are essential to the species' recovery. The CHU boundaries are based on proposed DWMAs in the Draft Recovery Plan. Because the boundaries were drawn to conform with accepted principles of conservation biology (U.S. Fish and Wildlife Service 1993), the areas may contain both "suitable" and "unsuitable" habitat. The term "suitable" generally refers to habitat that provides the constituent elements of nesting, sheltering, foraging, dispersal, and/or gene flow.

Ecological Considerations

The range of the Mojave population of the desert tortoise includes portions of the Mojave Desert and the Colorado Desert division of the Sonoran Desert (Colorado Desert) and spans portions of four States. The Mojave Desert is located in southern California, southern Nevada, northwestern Arizona, and southwestern Utah. It is bordered on the north by the Great Basin Desert, on the west by the Sierra Nevada and Tehachapi ranges, on the south by the San Gabriel and San Bernardino Mountains and the Colorado Desert, and on the east by the Grand Wash Cliffs and Hualapai Mountains of Arizona. This area includes parts of Inyo, Kern, Los Angeles, San Bernardino, and Riverside Counties in California; the northwestern part of Mohave County in Arizona; Clark County, and the southern parts of Esmeralda, Nye, and Lincoln Counties in Nevada; and part of Washington County in Utah. The Colorado Desert is located south of the Mojave Desert, east of California's Peninsular Ranges, and west of the Colorado River. This area includes Imperial County and parts of San Bernardino and Riverside Counties, California.

The desert tortoise is most commonly found within the desert scrub vegetation type, primarily in creosote bush scrub vegetation, but also in succulent scrub, cheesebush scrub, blackbush scrub, hopsage scrub, shadscale scrub, microphyll woodland, and Mojave saltbush-allscale scrub. Within the desert microphyll woodland, the desert tortoise occurs in blue palo verde-ironwood-smoke tree woodland. The desert tortoise also occurs in scrub-steppe vegetation types of the desert and semidesert grassland complex (U.S. Fish and Wildlife Service 1993).

Within these vegetation types, desert tortoises potentially can survive and reproduce where their basic habitat requirements are met. These requirements include a sufficient amount and quality of forage species; shelter sites for protection from predators and environmental extremes; suitable substrates for burrowing, nesting, and overwintering; various plants for shelter; and adequate area for movement, dispersal, and gene flow. Throughout most of the Mojave Region, tortoises occur most commonly on gently sloping terrain with soils ranging from sand to sandy-gravel and with scattered shrubs, and where there is abundant inter-shrub space for growth of herbaceous plants. Throughout their range, however, tortoises can be found in steeper, rockier areas (U.S. Fish and Wildlife Service 1993).

The size of desert tortoise home ranges varies with respect to location and year. Females have long-term home ranges that are approximately half that of the average male, which range from 10 to 80 hectares (Berry 1986).

Although desert tortoise populations are not generally known to inhabit elevations much above 4,000 feet, tortoise burrows have been located at 4,800 feet in the Providence and Clark Mountains of the eastern Mojave (Luckenbach 1982; W. Yumiko, pers. comm., 1992). Reliable sources have recorded desert tortoises at 7,300 feet in Death Valley National Monument, California (Luckenbach 1982); at 4,800 feet in the Goodsprings Mountains (R. Marlow, pers. comm.) and the Spring Range, Nevada (C. Stevenson, pers.

comm.); at 5,000 feet in the East Pahranagat Range, Nevada (C. Stevenson, pers. comm.); and at 5,200 feet on the Nevada Test Site (B. Burge, pers. comm.). In addition, numerous anecdotal reports place desert tortoises as high as 7,000 feet on Mount Charleston, Nevada, and in the Clark Mountains, California. Fossil remains from the Pleistocene to late Holocene (12,000 to 1,000 years before present) indicate the preferred habitat of the desert tortoise included elevations far exceeding those of today, perhaps in response to arid climatic episodes that occurred during this epoch (Morafka and Brussard, in prep.; Schneider and Everson 1989). This fossil evidence indicates that the species may have spent less than 10 percent of its taxonomic life span in the contemporary warm creosote bush desert, the remainder having been spent in more mesic, equable, and productive climates and ecosystems. This implies that contemporary tortoise populations in most of the Mojave region are likely to be vulnerable to adverse climatic conditions and to regional climate change (Morafka and Brussard, in prep.).

Throughout its geographic distribution, the desert tortoise exhibits trait variations in behavior, ecology, genetics, morphology, and physiology (Weinstein and Berry 1988, Germano 1989, Lamb *et al.* 1989, Brussard 1992, Brussard and Britten 1992). For example, three basic shell shapes (phenotypes) are indicative of desert tortoise populations in distinct geographic areas within their range (Weinstein and Berry 1988). Tortoises occurring in California and southern Nevada exhibit a boxlike, high-domed shell phenotype; Beaver Dam Slope tortoises have a short plastron (underside) and a low-domed shell phenotype; and Sonoran Desert tortoises have a pear-shaped, low-domed shell phenotype (Weinstein and Berry 1988). Furthermore, identification of the three phenotypes parallels results of mitochondrial DNA (mtDNA) studies that also "type" desert tortoises into the same three populations based on genetics (Lamb *et al.* 1989). It is because of such variability that six recovery units representing six distinct population segments of the Mojave population have been proposed in the Draft Recovery Plan (U.S. Fish and Wildlife Service 1993). These population segments should not be confused with subspecies or recognized populations, e.g., the Mojave or Sonoran populations. The six recovery units within the range of the desert tortoise, as outlined in the Draft Recovery Plan, mirror the biotic and abiotic variability found in the desert tortoise habitat.

The objective of the Draft Recovery Plan is the recovery and delisting of the Mojave population of the desert tortoise. Desert tortoise populations have declined substantially throughout the Mojave Region in the last 2 decades, primarily due to habitat loss. These populations grow slowly, and significant improvement in the status of the Mojave population will be a very long process, measured in decades or centuries in most parts of the Mojave Region. Nevertheless, delisting of the desert tortoise may be considered if the following criteria are met:

(1) As determined by a scientifically credible monitoring plan, the population within a recovery unit exhibits a statistically significant upward trend toward target density or remains stationary at target density for at least 12 years (one-half of a desert tortoise generation);

(2) Enough habitat is protected within a recovery unit and/or the habitat and desert tortoise populations are managed intensively enough to ensure long-term population viability;

(3) Regulatory mechanisms or land management commitments have been implemented that provide for adequate long-term protection of desert tortoises and their habitat; and

(4) The population is unlikely to need protection under the Act in the foreseeable future.

Even though the Draft Recovery Plan has not been approved, it represents the best available biological information on the conditions needed to bring the Mojave population of the desert tortoise to the point where listing under the Act is no longer necessary (i.e., recovery).

The Service would delist the Mojave population of the desert tortoise if the delisting criteria were met because protection under the Act would be unnecessary. With the delisting criteria met, the desert tortoise and its habitat would continue to be protected under other regulatory mechanisms outlined in a final recovery plan. Upon delisting, the interim protection afforded by the Act in the designation of critical habitat would be eliminated.

Management Considerations

Current and historic desert tortoise habitat loss, deterioration, and fragmentation is largely attributable to urban development, military operations, and multiple-uses of public land, such as off-highway vehicle (OHV) activities and livestock grazing. Historically, habitat reduction and fragmentation have not been uniform throughout the desert tortoise's range, but have been concentrated around populated areas, such as Mohave, Boron, Kramer Junction, Barstow, Victorville, Apple Valley, Lucerne Valley, and Twentynine Palms, California. Similar patterns are evident near Las Vegas, Laughlin, and Mesquite, Nevada; and St. George, Utah.

Human "predation" (taking desert tortoises out of their natural populations either by death (accidental or intentional) or by removal) is also a major factor in the decline of the desert tortoise. People illegally collect desert tortoises for pets, food, and commercial trade. Some immigrants to the United States have collected desert tortoises for medicinal or other cultural purposes (U.S. Fish and Wildlife Service 1993).

Desert tortoises are often struck and killed by vehicles on roads and highways, and mortality of desert tortoises due to gunshot and OHV activities is common in many parts of the Mojave Region, particularly near cities and towns. In the western Mojave Desert of California, 14.3 percent of the carcasses found on 11 permanent study plots showed evidence of gunshot (Sievers *et al.* 1988). At one plot, 28 percent of the carcasses had evidence of gunshot. Loss of tortoises from vandalism has also been reported in northwestern Arizona. Approximately 10 percent of shell remains from a tortoise study plot near Littlefield, Arizona, had gunshot wounds.

OHV use in the desert has increased and proliferated since the 1960s (U.S. Fish and Wildlife Service 1993). As of 1980, OHV activities affected approximately 25 percent of all desert tortoise habitat in California, as well as substantial portions in southern Nevada (U.S. Fish and Wildlife Service 1993). Negative effects range from minor habitat alteration to total denudation of extensive areas. While direct effects are immediate (mortality from crushing, collection, and vandalism), indirect effects can be either immediate (disruption of soil integrity; degradation of annual plants, grasses, and perennial plants; and/or destruction of desert tortoise shelter sites), delayed, and/or cumulative (soil loss due to erosion, soil compaction and its effects on annual and perennial plants, water pollution, and litter and refuse) (Biosystems Analysis 1991).

Impacts of roads within desert tortoise habitat extend significantly beyond the tracks that are created. Fewer tortoise signs are found closer to roads, suggesting reduced populations (Nicholson 1978). Thus, well-used OHV areas often result in depressed tortoise populations extending beyond the

immediate boundaries of the directly disturbed habitat.

The use of OHVs appears to have a significant effect on tortoise abundance and distribution. Although road closures have been implemented in some areas, illegal vehicle route proliferation has also occurred in many areas and can result in a significant cumulative loss of habitat. Human access increases the incidence of tortoise mortality from collecting, gunshot, and crushing by vehicles.

Domestic livestock grazing has occurred in desert tortoise habitat since the mid-1800s, with an increase in intensity near the turn of the century to the mid-1930s (Biosystems Analysis 1991). Possible direct impacts from grazing include trampling of both tortoises and shelter sites; possible indirect impacts include loss of plant cover, reduction in number of suitable shelter sites, change in vegetation, compaction of soils, reduced water infiltration, erosion, inhibition of nitrogen fixation in desert plants, and the provision of a favorable seed bed for exotic annual vegetation (U.S. Fish and Wildlife Service 1991, 1993). Habitat destruction and degradation are especially evident in livestock watering, bedding, loading, and unloading areas (U.S. Fish and Wildlife Service 1991).

The degree and nature of impacts from livestock grazing are dependent upon the local ecosystem, grazing history, seasons of use, stocking rates, annual rainfall, and density of the tortoise population. Desert ecosystems require decades to recover from disturbances, and desert tortoise populations are incapable of rapid growth, even under optimum conditions.

Desert tortoises, particularly hatchlings and juveniles, are preyed upon by several native species of mammals, reptiles, and birds. Domestic and feral dogs are a new source of mortality.

Common raven (*Corvus corax*) populations in the southwestern deserts have increased significantly since the 1940s, presumably in response to expanding human use of the desert. Sewage ponds, landfills (authorized and unauthorized), power lines, roads, and other human uses have increased available foraging, roosting, and nesting opportunities for ravens. Over the last 20 years, raven populations in the western Mojave Desert have increased 1528 percent between 1968 and 1988 (about 15 percent per year) and increased in the Colorado-Sonoran Deserts 474 percent (over 9 percent per year). While not all ravens may include tortoises as significant components of their diets, these birds are highly opportunistic in their feeding patterns and concentrate on easily available seasonal food sources, such as juvenile tortoises. Increased mortality of young desert tortoises (in part due to predation by ravens), combined with drastically lowered survivorship of adults, is likely responsible for observed catastrophic population declines (U.S. Fish and Wildlife Service 1993).

An upper respiratory tract disease (URTD) is prevalent in captive desert tortoises and has been identified in wild desert tortoises in many localities in the western Mojave Desert and in limited localities elsewhere. URTD appears to be spreading and may have been introduced to wild populations through illegal releases of diseased captive desert tortoises. Wild desert tortoises with signs of URTD are commonly found near cities and towns with concentrations of captive desert tortoises (Marlow and Brussard 1993). Disease has contributed to high mortality rates in the western Mojave Desert in the last 4 years (Avery and Berry 1990, U.S. Fish and Wildlife Service 1993).

Recent studies have demonstrated *Mycoplasma agassizii* sp. nov. as the causative agent of URTD. Predisposing factors, such as habitat degradation, poor nutrition, and drought, are likely involved in increasing the susceptibility of individual animals to disease (Jacobson *et al.* 1991). Drought and concomitant poor nutrition have the potential to compromise desert tortoises immunologically and, therefore, make them more susceptible to URTD and other diseases. Controlling human-related spread of URTD, improving habitat conditions, and monitoring health status of desert tortoise populations are some of the more important management tools that can be used in controlling URTD in wild populations of the desert tortoise (U.S. Fish and Wildlife Service 1993).

A shell disease has also been observed in the Chuckwalla Bench population in the eastern Colorado Desert (Jacobson *et al.* 1992). A variety of mineral and metal deficiencies, as well as various toxicants, are known to cause integumentary pathology in mammals, suggesting disease or toxicosis may be responsible for these observed shell abnormalities (U.S. Fish and Wildlife Service 1993). Another shell disease, osteopenia, occurs in desert tortoise populations on the Beaver Dam Slope and may be related to poor nutrition (Jarchow and May 1989).

Criteria for Identifying Critical Habitat

The maintenance of stable, self-sustaining, and well-distributed populations of desert tortoises throughout their range is dependent upon habitat quality and its ability to support viable populations. The biological and physical characteristics of the desert ecosystem that support nesting, foraging, sheltering, dispersal, and/or gene flow are essential for this purpose. The Service based its designation of critical habitat on those areas recommended for recovery of the desert tortoise in the Draft Recovery Plan.

The Draft Recovery Plan proposes 14 DWMAs within 6 recovery units within the range of the desert tortoise. The Service used the DWMAs as the basis for CHUs because:

(1) The Draft Recovery Plan's conservation strategy is based upon the best available information on desert tortoises gathered and analyzed over the past 20 years;

(2) The Draft Recovery Plan represents an in-depth analysis of the conservation needs of the desert tortoise;

(3) The areas recommended as DWMAs were proposed by experts familiar with the species and its habitat based on the principles of conservation biology; and

(4) Use of the DWMAs is consistent with the Service's other conservation efforts (e.g., it has been the focus in section 7 consultations and conservation planning).

The Service's identification of areas consistent with the proposed DWMAs containing the primary constituent elements described above was based on the seven principles of conservation biology used in the Draft Recovery Plan:

(1) Reserves should be well-distributed across a species' native range;

(2) Reserves should contain large blocks of habitat with large populations of the target species;

(3) Blocks of habitat should be close together;

(4) Reserves should contain contiguous rather than fragmented habitat;

(5) Habitat patches should contain minimal edge to area ratios;

(6) Blocks should be interconnected by corridors or linkages containing protected, preferred habitat for the target species; and

(7) Blocks of habitat should be roadless or otherwise inaccessible to humans.

Critical habitat is based on the framework of the Draft Recovery Plan. Should a final approved recovery plan

vary significantly from the draft, or significantly change the assumptions underlying this critical habitat designation, then the Service may reevaluate critical habitat boundaries.

Differences From the Draft Recovery Plan

Designation of critical habitat does not accomplish the same goals or have as dramatic an effect upon tortoise conservation as does a recovery plan because critical habitat does not apply a management prescription to designated areas. Because critical habitat designation is not a management plan, there was not a limitation on the size of the areas designated, although the designation is consistent with recommendations of the Draft Recovery Plan.

Adjustments to Legally Described Boundaries

The regulations require that the Service define "* * * by specific limits using reference points and lines as found on standard topographic maps" those areas designated as critical habitat (50 CFR 424.12 (c)). After selecting DWMAs as the starting point, the Service made several types of adjustments. To facilitate legal definition, CHU boundaries were adjusted to adjacent section lines, depending upon the amount and quality of habitat within the adjacent sections. The boundaries generally follow the 4,100-foot elevation contour line, except where excluding higher elevations would compromise reserve design principles. When adjacent to cities or towns, critical habitat boundaries were drawn on ½ or ¼ section lines to remove as much unsuitable habitat as possible.

In addition to adjusting DWMA boundaries to meet the requirements to define critical habitat boundaries, the Service made other changes. Some CHUs represent more precisely described desert tortoise habitat within the DWMA boundary, and thus, encompass a much smaller area. For example, portions of DWMAs were not included in critical habitat if unsuitable habitat was identifiable on available maps and the exclusion would not affect the size or configuration recommendations made by the Draft Recovery Plan. Conversely, some critical habitat boundaries were expanded beyond DWMA boundaries to include additional habitat based on information made available to the Service during preparation of the rule.

In addressing the above factors, the Service considered existing suitable habitat and desert tortoise populations that were not included in existing DWMAs and areas where additional protection should be considered to reduce the risk to recovery. When including other areas, the Service considered factors similar to those outlined in the Draft Recovery Plan on contiguity, shape, habitat quality, and spacing. Areas with minimal fragmentation were selected over areas with more extensive fragmentation.

The desert tortoise requires large, contiguous areas of habitat to meet its life requisites. Human activities have reduced much of the habitat in some areas to small, fragmented, and isolated areas that are not expected to support viable populations over time. In some cases, those areas were designated as critical habitat when they were needed to promote future development of large contiguous habitat areas in the future.

Lands Outside of Critical Habitat

Not all suitable desert tortoise habitat was included in critical habitat. The Service recognizes the importance of all lands, but did not incorporate all habitat within CHUs, primarily because most of these lands did not meet the designation criteria (i.e., were not associated with an area recommended in the Draft Recovery Plan, were too small to maintain a stable population of tortoises over time, or were already protected). This does not mean that lands outside of critical habitat do not play an important role in the tortoise's conservation. These lands are also important to providing nesting, foraging, sheltering, dispersal, and/or gene flow habitat for tortoises.

Previously Protected Areas

The current management policies of the Desert National Wildlife Range, Joshua Tree National Monument, and the Desert Tortoise Natural Area provide adequate protection against potential habitat-altering activities because they are primarily managed as natural ecosystems. The Service considered their relative contribution to the tortoise's conservation but did not include them in critical habitat because of their current classification. These lands are essential to the conservation of the species because they provide important links and contain large areas of contiguous habitat.

By themselves, these previously protected areas are not large enough and do not contain sufficient population levels to support viable populations. They will be considered in developing recovery areas for the desert tortoise, in addition to surrounding public lands with desert tortoise habitat.

Management Planning

The Service's intent in designating critical habitat for the desert tortoise is to provide protection for habitat that contains constituent habitat elements in sufficient quantities and quality to maintain a stable population of desert tortoises throughout their range. The emphasis for future management will be on maintaining or developing habitat that has the characteristics of suitable tortoise habitat and to avoid or reduce the adverse effects of current management practices.

Although critical habitat is not a management plan, the areas selected for inclusion play a role in maintaining a stable and well-distributed population of tortoises. Identification of these areas concluded the first step in the designation of critical habitat for the desert tortoise.

Economic Summary of August 30 Proposal

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and to consider the economic effects and other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude areas from critical habitat if he determines that the benefits of such exclusions outweigh the benefits of specifying such areas as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such areas as critical habitat will result in the extinction of the species concerned.

The economic effects of designating critical habitat for the desert tortoise are the incremental impacts over and above those impacts that occurred as a result of implementation of management plans, such as Federal land management plans, habitat conservation plans that have already been implemented, and previous events, including the listing of the desert tortoise. The economic analysis considers the critical habitat impacts to be those incremental impacts that are expected as a result of the critical habitat.

The Service analyzed the economic effects of the August 30, 1993, proposal to designate critical habitat (Schamberger *et al.* 1993). A summary of that analysis was provided in the proposed rule (58 FR 45748). That analysis examined how designation of critical habitat was expected to affect the use of Federal lands or State or private activities with some Federal involvement, and the economic costs or benefits that would ensue in the four-

State area. These were the regional economic effects of the designation that were over and above those expected to result from previous actions, including the listing of the desert tortoise as threatened. The economic analysis assumed those values that were in place prior to critical habitat (e.g., final Bureau of Land Management (BLM) plans, section 7 jeopardy standard, the Clark County short-term habitat conservation plan, and section 9 prohibitions) as the baseline for this analysis. As a result, critical habitat effects were those incremental impacts that would occur solely as a result of the critical habitat proposal above and beyond the effects of these other actions.

The critical habitat covers a broad geographic area in four States and includes Federal, State, private, and Tribal lands. Because the designation affects only Federal agency actions under section 7, it is assumed that any ensuing economic impacts of the designation would occur only on Federal lands or on non-Federal lands where there is Federal involvement. The Service concluded that the impacts on Federal lands would be largely limited to livestock grazing, mining, and recreational activities that may affect tortoise habitat.

As a result of that analysis, the Service concluded that the August 30 proposal would affect 51 Federal grazing permits that provide about 59,500 animal unit months (AUMs). The maximum potential reduction in regional employment was estimated to be 425 jobs (340 direct jobs; 85 indirect jobs). The profitability of ranches in the seven counties is estimated to fall by $4,470,000 due to critical habitat designation. That is the estimated permanent decrease in ranch profits, capitalized at 10 percent for a 50-year period, in accordance with the methodology of Rice *et al.* (1978). Reduced grazing fees in the seven-county region from Federal allotments was estimated to total $170,000 annually. Half of this amount ($85,000) was returned to the grazing programs for range improvements, the U.S. Treasury received a maximum 37.5 percent ($63,750) of the fees, and local governments received a minimum of 12.5 percent ($21,250). The effect of reduced grazing on Federal land is expected to vary among counties. The designation of critical habitat is not expected to have significant economic effects within any of the seven counties.

Designation of critical habitat will not affect ongoing mining operations, as the ground disturbances typical of mineral extraction make mine sites unsuitable for tortoise habitat. Expansion of existing mines or development of new mines will require section 7 consultation with the Service. Most of the CHUs include surface areas on which mining claims have been filed. The economic impact of critical habitat designation cannot be determined at the present time due to the uncertainty of economically feasible mineral extraction. Mining claims allow exploration but do not assure exercise of exploration rights, nor do they ensure economic profits to the owner.

The Service was unable to identify significant economic impacts to recreation activities due to critical habitat designation.

Conservation of the desert tortoise and its habitat through designation of critical habitat will result in a wide range of benefits, including recreation values, watershed protection, and others, as well as the values that society places on conservation of the tortoise and its ecosystem. However, it was not possible to place dollar estimates on these values.

As a result of this analysis, the Service concluded that the economic impacts that would be incurred from critical habitat designation would not be significant to either the regional (seven-county) or national economy. The Service did not recommend any exclusions based on economic effects.

Summary of the Exclusion Process

To determine whether or not to exclude areas from the designation of critical habitat pursuant to section 4(b)(2) of the Act requires determinations of:

(1) The benefits of excluding an area as critical habitat,

(2) The benefits of including an area, and

(3) The effects of exclusions on the probability of species extinction.

This process consists of estimating the benefits of retaining or excluding CHUs, weighing those benefits, and determining if exclusion of an area or areas will lead to the extinction of the species. If the exclusion of an area or areas from critical habitat will result in eventual species extinction, then the exclusion would be prohibited under the Act.

Extinction

Critical habitat consists of areas with habitat characteristics that are essential to the conservation of a listed species. However, the exclusion process focuses upon a threshold for species extinction. Conservation (recovery) and extinction are separate standards. Recovery and extinction are at opposite ends of a continuum, with the likelihood of a species' continued survival increasing the closer the species is to the recovery end of the continuum. It may be more difficult to predict the point at which extinction would be inevitable than to determine where recovery may occur.

Each such determination may be different for different species and may vary over the range of a species. It may be related to a number of factors, such as the number of individuals, amount of habitat, condition of the habitat, and reproductive success. Extinction of a wide-ranging species such as the desert tortoise would most likely occur as a result of increased fragmentation of its habitat (affecting quality). Portions of the species' range would no longer support tortoises before the species would become extinct. Cumulatively, reductions in range would inevitably lead to the species' extinction. The focus of the analysis was on those factors that pertain to these issues and included consideration of the condition and location of habitat.

Criteria and Decision

The Act specifically prohibits consideration of economic effects when listing species as threatened or endangered, but requires an analysis of the economic and other relevant impacts of designating critical habitat. Therefore, economic costs and benefits of critical habitat designation were defined as the economic effects that:

(1) Exceed those that resulted from listing the desert tortoise as a threatened species in April 1990; and

(2) Are above those economic effects resulting from the previous implementation of tortoise protection measures by Federal land management agencies.

In evaluating the designation of critical habitat to determine whether or not to exclude areas because of concerns over economic effects, the Service used the following process:

(1) Areas were identified that are essential to the conservation of the species based upon the criteria described in this document; and

(2) An economic analysis was conducted to ascertain the anticipated economic consequences of designating areas as critical habitat, using the county as the basic level of economic analysis.

Exclusion

After considering the economic and other factors that may be pertinent to any decision to exclude areas from designation as critical habitat, the Secretary of the Interior has determined that no exclusions are appropriate.

Biological Modifications to Boundaries

Based on information received during the proposal process, the Service refined boundaries of six CHUs based on biological information that these areas did not contain constituent elements and that deletion of them from critical habitat would not compromise the function of the CHU or its reserve design. These areas included:

(1) Approximately 2,000 acres in the Chocolate Mountains in the Chuckwalla CHU in California;

(2) Approximately 20,800 acres within and adjacent to the Twentynine Palms Marine Corps Base in the Ord-Rodman CHU in California;

(3) Approximately 13,200 acres in the Newberry Mountains in the Piute-Eldorado CHU in Nevada;

(4) Approximately 76,300 acres on both the northern and southern borders of the Mormon Mesa CHU in Nevada;

(5) Approximately 80,757 acres around the Gold Butte-Pakoon CHU in Arizona; and

(6) Approximately 8,100 acres north of St. George, Utah in the Upper Virgin River CHU in Utah.

In addition, based on information and a request submitted from the BLM, the Service included an additional 1,920 acres on the southern border of the Beaver Dam Slope CHU in Arizona. This request was accommodated because:

(1) It was made by the landowner and will not affect other landowners,

(2) The proposed inclusion constitutes an insignificant change from the proposed rule, and

(3) It will allow the BLM's desert tortoise study plots to be included within desert tortoise habitat.

Effects of the Designation

The proposed rule for the designation of critical habitat for the desert tortoise published on August 30, 1993, identified 12 areas encompassing a total of approximately 6.6 million acres. It included eight CHUs totaling 4.8 million acres in California, four CHUs totaling 1.3 million acres in Nevada, two CHUs totalling 137,200 acres in Utah, and two CHUs totaling 417,400 acres in Arizona. This included 5 million acres of BLM land, 247,400 acres of military lands, 151,200 acres of National Park Service land, 170,100 acres of State lands, 1,600 acres of Tribal lands, 1,079,500 acres of private lands, and 100 acres of Forest Service land. A summary of changes in acreage between the proposed rule and this final rule are provided in Table 1.

TABLE 1.—SUMMARY OF CHANGES IN ACREAGE BETWEEN PROPOSAL AND FINAL CRITICAL HABITAT DESIGNATIONS

[Figures are rounded to the nearest hundred]

	Total acre reduction
Reductions:	
Bureau of Land Management	204,900
Military	5,200
National Park Service	3,900
State	4,000
Tribal	0
Increases:	
Private	[1]18,900

[1] An increase in private land acreage resulted from a correction in land status in the Mormon Mesa CHU; the BLM land sold to Aerojet-General Corporation through the Nevada-Florida Land Exchange Act of 1988 was originally shown as BLM.

Total Acres Included in Critical Habitat

As a result of boundary revisions based on new biological information, the Service is designating approximately 199,100 acres less than proposed in the August 30, 1993 proposal. The final rule for the designation of critical habitat for the desert tortoise identifies 12 areas, encompassing a total of 6.4 million acres. The Service has designated eight units totaling 4.8 million acres in California, four units totaling 1.2 million acres in Nevada, two units totaling 129,100 acres in Utah, and two units totaling 338,700 acres in Arizona. The final designation encompasses approximately 4,790,600 acres of BLM land, 242,200 acres of military land, 147,200 acres of National Park Service land, 166,200 acres of State land, 1,600 acres of Tribal land, and 1,098,400 acres of private land (see Tables 2 and 3). Three CHU boundaries span more than one State—Piute-Eldorado (California and Nevada), Gold Butte-Pakoon (Nevada and Arizona), and Beaver Dam Slope (Nevada, Arizona, and Utah).

TABLE 2.—APPROXIMATE ACREAGE OF CRITICAL HABITAT DESIGNATED FOR THE DESERT TORTOISE BY CRITICAL HABITAT UNIT

[Figures are rounded to the nearest hundred]

Critical habitat unit	Acres
California:	
Chemehuevi	937,400
Chuckwalla	1,020,600
Fremont-Kramer	518,000
Ivanpah Valley	632,400
Pinto Mountains	171,700
Ord-Rodman	253,200
Piute-Eldorado	453,800
Superior-Cronese	766,900
Nevada:	
Beaver Dam Slope	87,400
Gold Butte-Pakoon	192,300
Mormon Mesa	427,900
Piute-Eldorado	516,800
Utah:	
Beaver Dam Slope	74,500
Upper Virgin River	54,600
Arizona:	
Beaver Dam Slope	42,700
Gold Butte-Pakoon	296,000

TABLE 3.—APPROXIMATE ACREAGE OF CRITICAL HABITAT DESIGNATED FOR THE DESERT TORTOISE BY LANDOWNERSHIP

[Figures are rounded to the nearest hundred]

	California	Nevada	Utah	Arizona	Total
Bureau of Land Management	3,327,400	1,085,000	89,400	288,800	4,790,600
Military	242,200	0	0	0	242,200
National Park Service	0	103,600	0	43,600	147,200
State	132,900	0	27,600	5,700	166,200
Tribal	0	0	1,600	0	1,600
Private	1,051,500	35,800	10,500	600	1,098,400
Total	4,754,000	1,224,400	129,100	338,700	6,446,200
Number of critical habitat units	8	4	2	2	*12

*Two areas overlap two States, one area overlaps three States.

Developed areas, such as towns, airports, and roads, and dry lakes, active mining operations, and water bodies will not be affected by the designation because they will never contain primary constituent elements. To the extent possible, these areas were deleted from critical habitat. If these areas were found along the periphery of CHUs, boundaries were redrawn to physically exclude them from the final maps. This was not possible for areas imbedded within individual units. Acreage totals were adjusted where possible to reflect their exclusion.

The majority of desert tortoises and suitable desert tortoise habitat (i.e., for nesting, sheltering, foraging, dispersal, and gene flow) are found on BLM land. Much of the private land included in the critical habitat boundaries results from checkerboard landownership patterns along railroads. The final designation of critical habitat includes the areas that contain the best remaining desert tortoise habitat.

Economic Impacts of the Final Designation

The economic analysis (Schamberger *et al.* 1993) provides the Service's conclusions on the potential impacts of the areas selected for final designation as critical habitat. This analysis served as a decision document in evaluating economic consequences of the action leading to the final decision to designate critical habitat.

Consistent with the requirements of section 4 of the Act, the economic analysis reviews the final economic impact of designating critical habitat. Only these incremental costs and benefits of designation may be considered in determining whether to exclude lands from designation. The economic analysis examined the costs and benefits of precluding or limiting specific land uses within portions of critical habitat beyond those restrictions that have already been implemented either for the benefit of the desert tortoise through the listing process or for some other reason. Incremental analysis was the appropriate method to use because the designation of critical habitat is the only action for which the Service now has decision authority. The economic costs of listing the species have already been incurred, and the economic effects of actions taken by other Federal or State agencies are outside the purview of the Service. The analysis was cast in a "with" critical habitat versus a "without" critical habitat framework and measures the net change in various categories of benefits and costs when the critical habitat designation was imposed on the existing baseline. The analysis evaluated national economic, or efficiency, costs and benefits that reflect changes in social welfare. The standard measure of those costs and benefits is economic surplus in the form of economic rents and consumer surplus.

The costs of designating an area as critical habitat are the net economic costs of precluding or restricting certain land uses over the period of analysis. Costs are measured as the difference between the resource's value in its economically best use without critical habitat and its next best use (opportunity cost) when that use is precluded or restricted by critical habitat. Economic effects include a mixture of efficiency and equity measures.

The economic efficiency effects of designation include those that result in changes in social welfare. Regional economic impacts often represent transfers among people, groups, and/or geographic regions. For simplicity, economic efficiency effects are referred to as benefits and costs, and distributional effects are cited as economic impacts. National economic efficiency effects may include, but are not restricted to:

(1) Net change in aggregate value of capital (e.g., lands) due to critical habitat designation;

(2) Wage earnings foregone from a significant number of employees permanently displaced through critical habitat designation;

(3) Opportunity costs of foregone or precluded economic activities (e.g., curtailed or terminated land development); and

(4) Benefits of retaining genetic and biological diversity through specific species protection measures.

Regional (distributional) economic impacts may include:

(1) Changes in specific county tax revenues due to changes in land use (e.g., developed real estate versus raw, undeveloped land); and

(2) Regional social costs and benefits from factors such as transient unemployment, job training, or redistribution of existing job-mix categories (e.g., transitioning from underemployment in seasonal range or mine work to full employment in other sectors).

The analysis of effects of critical habitat designation combines national economic efficiency effects and regional (distributional) impacts. These include effects on the net returns of local ranch operations, foregone grazing fees, compensation to allottees for permanent improvements to land leased from the Federal government for grazing, changes in total employment, and the portion of grazing fees that would be shared with local governments.

These consequences are presented in the context of size, relative to the value added, of the seven counties in which the grazing impacts would be realized. These consequences illustrate the relative magnitude of critical habitat designation economic effects.

Economic Baseline

In assessing the economic impacts of the critical habitat designation, the Service has used the expected economic situation consistent with restrictions that were in place at the time of proposing critical habitat. The principal land use restrictions that were already in place were the BLM's Management Framework Plans, Resource Management Plans, and habitat management plans; the BLM's Rangewide Plan; National Park Service land management policies; military land-use policies; and the listing of the desert tortoise as a threatened species (section 7 jeopardy standard and section 9 prohibitions).

Industry (e.g., grazing and mining) and recreation-related effects of designating critical habitat concern primarily those activities not already affected by earlier decisions. For all activities, however, it is the incremental effects of avoiding adverse modification of critical habitat and the marginal changes in ensuing benefits and costs that are the appropriate measures of the effects of critical habitat designation.

Desert tortoise management and curtailment of the activities that threatened the species began when the BLM established the Desert Tortoise Preserve in 1973 in the Western Mojave Desert (Brussard *et al.* 1993). The preserve was expanded and formally designated a Research Natural Area and an Area of Critical Environmental Concern (ACEC) by 1980 (U.S. Fish and Wildlife Service 1993). In 1988, the BLM published its Rangewide Plan (Spang *et al.* 1988), which is based on the categorization of desert tortoise habitat on BLM land into three categories based on:

(1) Importance of the habitat to maintaining viable populations,

(2) Resolvability of conflicts,

(3) Desert tortoise density, and

(4) Desert tortoise population status (stable, increasing, or decreasing).

Category 1 lands are the most important to desert tortoises for survival and recovery, and category 3 lands are the least important. The Rangewide Plan provides management goals and objectives for each form of authorized multiple use within each of the

categories on Federal land managed by the BLM, including livestock grazing, mining, and OHV activities. All CHUs in this final rule minimally include category 1 and/or 2 habitats. Additionally, CHUs contain some category 3 habitats, uncategorized habitats, and lands managed by other Federal entities.

The Service has assumed a distinction exists between the effects of listing the species and the incremental effects of designating critical habitat. The differences between listing and designation of critical habitat vary within each CHU based on existing management.

Eight CHUs, or portions thereof, are designated in California (Chemehuevi, Chuckwalla, Pinto Mountain, Piute-Eldorado (includes Fenner DWMA), Ivanpah, Fremont-Kramer, Ord-Rodman, and Superior-Cronese). All are managed primarily by the BLM according to guidance provided in the California Desert Conservation Area Plan of 1980, as amended (Desert Plan), and the 1992 California Statewide Desert Tortoise Management Policy (Tortoise Management Policy). The Desert Plan defines four classes of land use with differing management goals and prescriptions. Classes include controlled use (wilderness and areas recommended for wilderness), limited use, moderate use, and intensive use (vehicle travel restrictions range from designated routes only in limited-use areas to no vehicular restrictions in intensive use areas). The Tortoise Management Policy designates three categories of desert tortoise habitat in which varying levels of protection are afforded to the desert tortoise and its habitat. Additional management guidance is provided in livestock allotment management plans (AMPs), habitat management plans (HMPs) for desert tortoises and other wildlife species, the East Mojave National Scenic Area Plan, and management plans for specific ACECs.

The West Mojave Coordinated Management Plan and the Eastern Colorado Desert HMP are BLM management plans currently in preparation that will have an important effect on desert tortoise management in California. The West Mojave Coordinated Management Plan will be the basis for a programmatic section 7 consultation for BLM activities in the western Mojave Desert and may serve as a basis for habitat conservation plan(s) for local governments in the section 10(a)(1)(B) permit process. The Eastern Colorado Desert HMP will address all BLM activities in the Chuckwalla Bench area and will provide a framework for a programmatic section 7 consultation.

The Chuckwalla CHU is managed by the BLM and the Navy (Chocolate Mountains Aerial Gunnery Range). Parts of the Superior-Cronese CHU are managed by the Army (National Training Center at Ft. Irwin) and the Navy (China Lake Naval Air Weapons Station). The Fremont-Kramer CHU includes a portion of Edwards Air Force Base. Portions of the Piute-Eldorado and Ivanpah CHUs in California are within the boundaries of the East Mojave National Scenic Area, which affords special protection to the area's natural, scenic, and other values (BLM 1980).

Several programmatic and other biological opinions have resulted in additional regulation of activities within desert tortoise habitat in California. Biological opinions have limited grazing of sheep to category 3 habitats. Programmatic consultations have been completed for land use plans at the Naval Air Weapons Station and the Rand-Fremont Valley areas. The Service has also completed a biological opinion concerning the on-going mission for the Army's National Training Center at Ft. Irwin. Programmatic consultations also exist that define standard terms and conditions for mining operations disturbing less than 10 acres, for non-competitive vehicle races, such as poker runs, which occur on designated routes in some desert tortoise areas, and for the four OHV management areas within the western Mojave Desert.

The Service and the BLM are currently developing a programmatic approach to long-term pipeline maintenance. The Service and the Navy are also informally consulting on a programmatic consultation for training activities at the Marine Corps Air Ground Combat Center (MCAGCC) and within the Chocolate Mountains Aerial Gunnery Range.

In Nevada, the majority of the desert tortoise habitat is managed by the BLM under the Clark County Management Framework Plan. The Stateline Resource Area of the Las Vegas District has prepared a draft Resource Management Plan that proposes designation of ACECs for desert tortoises; however, this document has not yet been finalized. Livestock grazing in Nevada is restricted to the period of June 15 to March 1, in accordance with the BLM's proposed livestock grazing program and the Service's biological opinion that analyzed that proposal. However, as of this date, the BLM's decision to implement this seasonal restriction has been stayed by an Administrative Law Judge. Although Interior Board of Land Appeals Administrative Law Judges have the authority to review land use decisions made by Interior agencies, they lack jurisdiction needed to review biological opinions issued by the Service. In southern Clark County, portions of the Piute-Eldorado CHU are also managed by the National Park Service (Lake Mead National Recreation Area).

In 1991, the Piute-Eldorado Valley was established as a Tortoise Management Area (TMA), as mitigation for the incidental take of desert tortoises in the Las Vegas Valley, pursuant to section 10(a)(1)(B) of the Act. The Short-Term Habitat Conservation Plan for the Desert Tortoise in the Las Vegas Valley, Clark County, Nevada (Regional Environmental Consultants 1991), which described this mitigation, provides land-use control measures for this area. These measures include prohibition of competitive and commercial events, except in some portions of Eldorado Valley, placing livestock grazing areas into non-use status, and designation of roads and trails.

The majority of the lands within the Gold Butte-Pakoon and Beaver Dam Slope CHUs in Arizona are managed by the BLM under the Arizona Strip Management Plan. This plan designates the Beaver Dam Slope ACEC and includes management prescriptions designed to minimize impacts to desert tortoises and their habitat. All desert tortoise habitat in Arizona is within the area managed by the Virgin River-Pakoon Basin Habitat Management Plan, a cooperative Sikes Act document written by the BLM and the Arizona Game and Fish Department. Additionally, desert tortoise habitat occurring in wilderness areas in Arizona is managed according to the Paiute-Beaver Dam Wilderness Management Plan and the Grand Wash Cliffs Wilderness Management Plan. Grazing is administered according to the Cedar Wash, Highway, Beaver Dam Slope, Mormon Well, Littlefield Community, Mesquite Community, Mosby-Nay, Pakoon Springs, Pakoon, Cottonwood, Mud and Cane, and Tassi Allotment Management Plans. In addition to prescriptions set forth in these allotment management plans, a Service biological opinion on livestock grazing limited grazing to the period from June 1 to March 15.

In Utah, the Beaver Dam Slope CHU is primarily managed by the BLM. In the Castle Cliffs allotment, a 3,040-acre exclosure encompassing the historic Woodbury-Hardy study area and several other important tortoise shelter site areas was established to serve as a natural study area to enhance the

tortoise population. However, the exclosure was never completely operational or effective in eliminating grazing in the area. The BLM reduced the exclosure to 1,500 acres, where grazing was completely excluded. The Dixie Resource Area developed a resource management plan for the area, but the final document was rejected and the process has been reinitiated. Currently, BLM management in the Beaver Dam Slope CHU is conducted under the Habitat Management Plan adopted in 1980.

The BLM and the State of Utah are the primary managers of the Upper Virgin River CHU. Smaller amounts of habitat are owned by private entities and by the Paiute Indians. Several consultations have been initiated regarding grazing, housing development, horse racing, and energy pipeline developments, for which the Service has prepared draft biological opinions. Also, Washington County is pursuing development of a habitat conservation plan for the area encompassing the Upper Virgin River CHU, and the Service is providing guidance for development of this plan. The BLM is pursuing land exchanges with the State of Utah for consolidation of desert tortoise habitat within the Upper Virgin River CHU for ease of management and for long-term conservation of the desert tortoise and other desert species. The BLM's Dixie Resource Area is currently preparing a Resource Management Plan to guide land management on BLM lands encompassing the Upper Virgin River CHU. Because of the area's small size and its proximity to an expanding urban population center, the Service has maintained that any significant losses of habitat within this area would likely jeopardize the continued existence of desert tortoises within the Upper Virgin River Recovery- Unit.

Limitations of the Analysis

The regional economy includes the full economic activity of each county in which proposed CHUs are located. CHUs generally are located in remote areas containing a very small fraction of the human population and total economic activity within a county. The entire county economy may not be affected by establishing CHUs; thus, the size of the relevant regional economy may be overstated. Likewise, important activities in rural areas may appear to be insignificant when compared to the entire regional economy. For example, mining does not appear to be an important employer in the seven counties, but may contribute to the economic stability of small rural communities that offer few other employment opportunities.

Costs of Critical Habitat Designation

The following sections summarize the results of the Service's analysis of data and identify the potential costs associated with the final designation of critical habitat.

Regional Effects to Livestock Industry

Public lands in the four States in 1990 furnished nearly 3,000 operators with cattle grazing permits that provided more than 3 million AUMs (Table 4). The designation of critical habitat may partially or totally affect 51 cattle permits that provided 59,000 AUMs. Nearly all sheep grazing was eliminated from most CHUs prior to critical habitat designation; therefore, sheep grazing was not an activity examined in the economic analysis. The effect of CHU restrictions on the availability of Federal land for grazing varies widely among the States, from 0.6 percent of cattle AUMs in Nevada to 9.6 percent of cattle AUMs in California. Across the four States, CHUs may affect 1.7 percent of cattle and sheep grazing AUMs (note these effects apply to the States rather than the seven-county region, for which comparable data were not available).

The economic consequences of reduced cattle grazing on Federal lands to establish the proposed CHUs includes three effects. Ranch profits in the seven counties are estimated to fall by $4,470,000. This amount is the estimated permanent decrease in ranch profits, capitalized at 10 percent for a 50 year period, in accordance with the methodology of Rice *et al.* (1978). The Federal government will compensate allottees with a one-time payment estimated at $376,000 for the loss of permanent improvements to grazing lands (pending BLM administrative decisions of partially affected allotments). Discontinuing grazing leases will result in an annual reduction of $170,000 in collected grazing fees that are divided among range improvements, the U.S. Treasury, and local governments. The $170,000 is not a "net" annual reduction in that it does not include the reduced costs of grazing program administration.

TABLE 4.—CATTLE GRAZING AFFECTED BY CRITICAL HABITAT UNITS

State	Grazing permits on CHUs	AUMs on CHUs [a]	AUMs Statewide [a]	Percent
Arizona	12	10,580	514,674	2.1
California	13	28,240	295,676	9.6
Nevada	17	11,790	1,821,875	0.6
Utah	9	8,870	770,143	1.2
Total	51	59,480	3,402,368	1.7

[a] Includes cattle and sheep.

Source: U.S. Bureau of Land Management 1991. U.S. Bureau of Land Management, district offices, personal communications, 1993.

Regional Effects of Mining Industry

The Service does not anticipate disruption to current mining operations from designation of critical habitat. The Service notes that active or previously disturbed mine sites typically do not provide suitable habitat for desert tortoises. Those areas, such as currently operating mine sites, lacking primary constituent elements are not considered critical habitat.

Expansion of mining sites on public land would require section 7 consultation to determine whether the expansion would likely destroy or adversely modify critical habitat. In cases where habitat is likely to be adversely modified, the Service may recommend reasonable and prudent alternatives, including relocation of roads or recovery of disturbed mine sites. Mining claims provide rights to explore and develop mineral deposits but there is no assurance that deposits can be developed economically.

Claims may never be developed if market conditions do not warrant or if reserves prove insignificant. The uncertainty involved in mining claims

and mineral reserves precludes accurate estimation of economic effects from designation of critical habitat.

Reductions in County Revenues

Potential revenue loss to the seven counties examined in the economic analysis due to reduced use of existing Federal leases and/or permits is not precisely calculable due to several factors, including (but not limited to):

(1) The aggregate number of leases for grazing that have been issued under section 15 of the Taylor Grazing Act of 1934, and from which a 50 percent revenue-sharing basis exists, as opposed to section 3 permits that carry a basis of 12.5 percent revenue sharing with the affected county;

(2) The final administrative decision by the BLM to partly or completely terminate certain permits/leases for grazing predicated upon their location, existing ingress/egress to other lands, etc.; and

(3) The percentage mixture of the above two types of permits issued by the BLM and its attendant fee structure.

Although it is known that certain grazing fees in each of the counties will be reduced and/or foregone, it is not possible to estimate accurately the dollar impact on the specific county level until the BLM has concluded its administrative decision process. The effect to the seven counties is expected to total approximately $21,000 (the minimum 12.5 percent local share of the $170,000 grazing fees collected on allotments affected by critical habitat designation).

Net Economic Effect to U.S. Treasury

The U.S. Treasury's portion of grazing fees collected by the BLM in fiscal year 1989 was insufficient to cover the direct costs of administering grazing programs in eight BLM districts in the hot deserts of the southwest. According to a 1991 report from the U.S. General Accounting Office (GAO), the BLM collected grazing fees totaling $3.97 million from the eight BLM desert districts. Half of this amount ($1.98 million) was returned to the grazing programs for range improvements, the U.S. Treasury received a maximum 37.5 percent ($1.49 million) of the fees, and local governments received a minimum of 12.5 percent ($496,000). The U.S. Treasury thus received no more than $1.49 million, 53 percent of the $2.79 million expense for grazing management in the eight BLM districts. According to GAO:

"Critics of livestock grazing could argue that the costs of managing livestock grazing * * * exceeded the funds available to the Treasury to offset these management costs. Proponents could counter that * * * grazing fees more than offset * * * management costs and provided funds for State and county projects as well as for range improvements.

No matter how costs are analyzed, the resources currently being spent on range management * * * are insufficient to perform all essential tasks. [I]nsufficient funding and staffing have been instrumental in the BLM's inability to restore degraded riparian areas, deal with overstocked grazing allotments, and detect livestock grazing trespass. Consistent with our findings, the BLM has concluded that its current budget is inadequate to perform all needed land management tasks throughout the public lands" (U.S. General Accounting Office 1991).

Based on the GAO's findings, the U.S. Treasury may realize a net financial gain from discontinuing or reducing Federal grazing programs in the hot desert (assuming administrative costs were reduced accordingly and not reassigned). Although the potential savings to the U.S. Treasury was not evaluated in the Draft Economic Analysis, it is reasonable to assume that discontinuation of grazing on the public lands designated as critical habitat for the desert tortoise may contribute to those savings.

Employment Effects

Designation of critical habitat for the desert tortoise is expected to result in the loss of no more than 425 jobs in the seven-county region (Table 5). This estimate includes 340 jobs lost directly in ranching and 85 jobs lost indirectly in other industries. This job loss, due to the reduction of Federal grazing permits in CHUs, is an insignificant proportion of the 1,535,100 workers employed in the seven counties in 1990. Specific employment losses cannot be estimated for each county until the BLM decides on how to handle partially affected grazing allotments. This total job loss will be reduced if there is replacement of affected permits by permits on unaffected lands (Federal or private) or if those laborers transfer to jobs on unaffected ranch lands. These estimated employment losses will not be permanent for most laborers, as it is anticipated that over 85 percent will be reemployed within 2 years.

Critical habitat designation is not expected to result in lost jobs in the mining sector because current mining operations will not be affected by designation. The impact on future employment in the mining sector cannot be calculated reliably because of the uncertainty of future expansion and development of claims.

TABLE 5.—REGIONAL EMPLOYMENT LOSSES FROM CRITICAL HABITAT DESIGNATION COMPARED WITH TOTAL REGIONAL EMPLOYMENT

State	Direct ranching employment loss	Employment multiplier	Total employment loss	Total employees
Arizona	35–60	1.21	40–75	36,600
California	40–80	1.25	50–100	1,031,900
Nevada	45–120	1.14	50–135	446,800
Utah	40–80	1.44	55–115	19,800
Total	160–340	.....	195–425	1,535,100

Source: Estimated direct employment losses supplied by BLM offices in affected areas. Employment multiplier estimated by IMPLAN.

Summary of Potential Impacts

The economic consequences of designating critical habitat includes reduced ranch profits in the seven counties of $4,470,000 (this amount is the estimated permanent decrease in ranch profits capitalized at 10 percent for a 50-year period, in accordance with the methodology of Rice *et al.* (1978)). The Federal government will compensate allottees with a one-time payment estimated at $376,000 for the loss of permanent improvements to grazing lands (pending BLM administrative decisions of partially affected allotments). Discontinuing grazing will result in an annual reduction of $170,000 in collected grazing fees that are divided among range improvements, the U.S. Treasury, and local governments.

Critical habitat designation should result in the loss of fewer than 425 total jobs in the seven counties. These

include 340 direct ranching jobs and 85 indirect jobs in other industries. The estimated employment loss will not be permanent because over 85 percent of laborers will be reemployed within 2 years.

Benefits of Critical Habitat Designation

Conservation of the desert tortoise and its habitat through designation of critical habitat may result in a wide range of benefits. These benefits include preservation of recreation and existence values that will increase the benefits for most affected activities. Scenic beauty contributes to the quality of desert recreational experiences. Many of the CHUs are adjacent to or within Wilderness Study Areas or in designated Wilderness Areas. Habitat conservation will enhance the wilderness values of these adjacent or contiguous areas. Habitat preservation also provides for improved water quality, scenic and air quality, biological diversity, and other environmental benefits.

Many of the resource services provided by critical habitat are not marketed. The lack of market prices makes it difficult to value them in dollar terms, as compared to some cost impacts, such as impacts to livestock grazing. As a result, this analysis currently focuses on the cost impacts, primarily related to livestock grazing. No comprehensive estimate of the benefits of designating critical habitat is feasible with available data. Rather, the analysis provides a discussion of the kinds of benefits that are expected to ensue, with empirical data and examples as available. Existence values represent an additional category of non-use benefit, albeit one that remains difficult to measure. Furthermore, society places preservation benefits on endangered species for the option of future recreational use, with the knowledge that the desert tortoise's natural ecosystem exists and is protected, and the satisfaction from its bequest to future generations. Many of these benefits are expected to increase in relative value over time. As human activities continue to reduce desert ecosystems, the remaining areas will become less available and more valuable. Habitat protection for the desert tortoise clearly benefits other species, as well as the human use and enjoyment of these species.

Dividing the sum of benefits between the various parts by which gains are generated is a delicate task. If preservation of a species is accomplished wholly through designating critical habitat, then the full value of benefits could be attributed to that action. Typically, however, preservation is attained through a set of interactive management actions, each of which is essential to success and no one of which can be singled out as the sole means by which a species is preserved (Walsh 1992). Given the information at hand, and without better understanding the network of consequences from management alternatives, it is not possible to disaggregate the sum of benefits to identify that portion directly attributable to critical habitat designation.

Biodiversity Benefits

Designation of critical habitat for the desert tortoise will contribute to the protection of the biotic diversity of the arid Southwest. The tortoise's habitat includes components that make it useful to a variety of other desert species whose existence is enhanced through retention of original characteristics of their habitat. Modification or elimination of activities that would adversely modify the natural ecology of the region will conserve the desert tortoise, as well as other animal and plant species.

Recreational Use Benefits

Direct, non-consumptive recreational use of the desert tortoise (i.e., tortoise watching) occurs, although it is limited by the desert tortoise's burrowing habits and its relatively dispersed populations. Some recreational activities may be relocated or restricted due to critical habitat designation, particularly OHV use.

Intrinsic Values

Users and non-users of natural resources place value on knowing that resources will exist in the future. Benefits, which may be substantial, reside in the form of ensured future existence and availability for use and in the ability to preserve the resource for future generations. By designating critical habitat for the desert tortoise, land managers will assure the retention of option and bequest values, potentially providing benefits far outside the designated habitat region.

Long-Term Effects of Critical Habitat Designation

The analysis of economic impacts of critical habitat designation was based primarily on data that are both current and calculable. Long-term economic impacts, especially on a county-level basis, explicitly have not been addressed. For example, although there may be a very low level of temporary unemployment (less than 0.1 percent) of those laborers on any given Federal allottee's lease/permit, it is normally anticipated that those workers will be reemployed within 2 years or be shifted to other private ranch lands in the short-term.

A given county's receipt of grazing fees will be based on final administrative decisions by the surface managing agencies on the number of issued/reissued permits and their percentage revenue sharing base (cited in Schamberger *et al.* 1993).

Mining may be impacted over the long term, but only to the extent that surface expansion is limited explicitly to avoid adverse modification to critical habitat. If such limitations do occur, they would also be predicated on governmental administrative decision at that time (by the BLM, military, tribal councils), but reasonably would be expected to be minimal both in percent and dollar-level impacts.

Available Conservation Measures

The purpose of the Act, as stated in section 2(b), is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and to provide a program for the conservation of listed species. Section 2(c)(1) of the Act declares that "* * * all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act."

The Act mandates the conservation of listed species through different mechanisms, such as: Section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat); section 9 (prohibition of taking of listed species); section 10 (wildlife research permits and habitat conservation planning on non-Federal lands); section 6 (cooperative State and Federal grants); land acquisition; and research. Other Federal laws also require conservation of endangered and threatened species, such as the Federal Land Policy Management Act, National Environmental Policy Act, and various other State and Federal laws and regulations.

The Service's intent in designating critical habitat is to provide habitat that contains primary constituent elements in sufficient quantities to maintain viable populations of desert tortoises within the six recovery units. Critical habitat designation will help reduce the risk associated with the near-term reduction in desert tortoise numbers

and cumulative loss of habitat anticipated from on-going management plans. Critical habitat offers additional protection through section 7, but it does not replace the management recommendations provided by the Draft Recovery Plan. Designation of critical habitat will, however, provide regulatory protection and help retain options until long-term conservation plans are accepted and fully implemented.

Other Protections

The States of Nevada, California, Arizona, and Utah have established laws that provide varying levels of protection for individual desert tortoises. The State of Nevada affords limited protection to the desert tortoise, having established it as a protected reptile under section 501.110.1(d) of the Nevada Revised Statutes, protected and rare outside of the urban areas of Clark County (Las Vegas) under section 503.080.2 of the Nevada Administrative Code, and unlawful to transport across State lines without the written consent of the Nevada Department of Wildlife. Nevada does not have any laws that regulate the degradation of desert tortoise habitat.

The California Fish and Game Commission listed the desert tortoise as a State threatened species on June 22, 1989, amending the California Code of Regulations, section 670.5(b)(4) of title 14. California has also designated the desert tortoise as its official State reptile.

The Arizona Game and Fish Commission extended full protection from take to the desert tortoise, effective January 1, 1988, through Commission Order 43: Reptiles. Also prohibited is the sale of desert tortoises and their importation to the State, as well as the release of captive tortoises into the wild. There is no State authority in Arizona to regulate the modification of desert tortoise habitat.

In Utah, the desert tortoise is considered a "prohibited reptile," protecting it from collection, importation, transportation, possession, sale, transfer, or release because it poses unacceptable disease, ecological, environmental, or human health or safety risks. No State regulations exist to stop the loss or degradation of desert tortoise habitat through land development or other actions (U.S. Fish and Wildlife Service 1990).

Recovery Planning and Section 7 Consultation

Recovery planning under section 4(f) of the Act is the "umbrella" that eventually guides all of the Act's activities and promotes a species' conservation and eventual delisting. Because critical habitat designation was based on recommendations provided in the Draft Recovery Plan, final critical habitat will be incorporated as part of the final recovery plan for the desert tortoise. The Service has worked closely with the Recovery Team and other efforts to ensure consistency and will reevaluate the need for critical habitat after completion and implementation of the recovery plan or at any time that new information indicates that changes may be warranted. The Service may also reassess critical habitat designation if other land management plans or conservation strategies, which may reduce the need for the additional protection provided by critical habitat designation, are developed and fully implemented.

Although critical habitat is not intended as a management or conservation plan, association with the Draft Recovery Plan leaves the perception that critical habitat is a form of that plan. The Draft Recovery Plan, critical habitat, and other conservation processes are working with the same land base containing the same specific locations of desert tortoise populations within recovery units; it is therefore inevitable that these processes overlap. Critical habitat is based upon the recommendations of the Draft Recovery Plan because it lays out a framework for identifying and evaluating habitat that is founded on scientific principles. Designation of critical habitat does not offer specific direction for managing desert tortoise habitat. That type of direction, as well as any change in direction, will come through administration of other facets of the Act (e.g., section 7, section 10, and recovery planning) or through development of land management plans addressing the desert tortoise.

The final DWMA boundaries will be determined by land management agencies, in consultation with the Service, through a planning process that is coordinated with local government and interested members of the public. The Service intends that critical habitat for the Mojave desert tortoise population conform to the DWMA boundaries determined through the recovery planning and implementation process. Because the agency planning process for determining the DWMA boundaries will not be completed until after critical habitat for the Mojave desert tortoise population is initially designated, adjustments to critical habitat may need to be made in subsequent rulemaking documents to make critical habitat correspond to the DWMAs. As soon as the agency planning process for delineating DWMA boundaries is completed, the Service will consider publishing a proposed rule to effect appropriate adjustments in the critical habitat boundaries for the affected recovery unit(s).

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies ensure their actions do not jeopardize the continued existence of any listed species. Regulations implementing this interagency cooperation provision of the Act are found at 50 CFR part 402. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or critical habitat. Thus, the requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review to evaluate jeopardy and incidental take of the species.

Jeopardy is defined at 50 CFR 402.02 as any action that would be expected to appreciably reduce the likelihood of both the survival and recovery of a species. Destruction or adverse modification of critical habitat is defined at 50 CFR 402.02 as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. The regulations also clearly state that such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Survival and recovery, mentioned in both the definition of adverse modification and jeopardy, are directly related. Survival may be viewed as a linear continuum between recovery and extinction of the species. The closer one is to recovery, the greater the certainty in the species' continued survival. The terms "survival and recovery" are thus related by the degree of certainty that the species will persist over a given period of time. Survival relates to viability. Factors that influence a species' viability include population numbers, distribution throughout the range, stochasticity, expected duration, and reproductive success. A species may be considered recovered when there is a high degree of certainty for the species' continued viability.

The Act's definition of critical habitat indicates that the purpose of critical habitat is to contribute to a species' conservation, which by definition equates to recovery. Section 7 prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of the listed species, thus providing a regulatory means of ensuring that Federal actions within critical habitat are considered in relation to the goals and recommendations of a recovery plan. As a result of the link between critical habitat and recovery, the prohibition against destruction or adverse modification of the critical habitat should provide for the protection of the critical habitat's ability to contribute fully to a species' recovery. Thus, the adverse modification standard may be reached closer to the recovery end of the survival continuum, whereas the jeopardy standard traditionally has been applied nearer to the extinction end of the continuum.

Basis for Analysis

Designation of critical habitat focuses on the primary constituent elements within the defined units and their contribution to the species' recovery, based on consideration of the species' biological needs and factors that contribute to recovery (e.g., distribution, numbers, reproduction, and viability). The evaluation of actions that may affect critical habitat for the desert tortoise should consider the effects of the action on any of the factors that were the basis for determining the habitat to be critical, including the primary constituent elements of nesting, foraging, sheltering, dispersal, and/or gene flow, as well as the contribution of the area to recovery. The Service will focus on a proposed action's effect on the eventual recovery of the tortoise in a CHU (e.g., the type of activities that led to the tortoise's listing, such as habitat loss, degradation, and fragmentation). The Service would issue an adverse modification opinion if it determined that a proposed action was likely to preclude recovery of the tortoise in a particular unit.

The range of the desert tortoise has been divided into six recovery units in the Draft Recovery Plan. These areas are based on genetic, morphological, ecological, and physiological differences among the desert tortoises. The designated CHUs are intended to provide for viable populations of desert tortoises representing this variation in traits. The basis for an adverse modification opinion should follow the recommendations in the recovery plan for maintaining viable populations and variation throughout the range. Should the Recovery Team redefine these parameters in the final recovery plan, then the basis for analysis under section 7 will follow that basis.

For a wide-ranging species such as the desert tortoise, where multiple CHUs are designated, each unit has both a local role and a rangewide role in contributing to the conservation of the species. The loss of a single unit may not jeopardize the continued existence of the species but may significantly reduce the ability of critical habitat to contribute to recovery.

Present conditions vary throughout the range of the desert tortoise, with the result that some areas may be less able to sustain continuing impacts than others at any given time. The level of disturbance a CHU could withstand and still fulfill its intended purpose is variable throughout the tortoise's range and will need to be reviewed in the context of its current status, condition, and location.

Each project will need review as to its impacts at all levels. When determining whether any particular action would appreciably diminish the value of the habitat for the survival and recovery of the tortoise, the baseline condition and expected role for the individual unit and those within the same recovery unit must be considered. Among the factors to be considered are the extent of the proposed action, the present condition of the habitat (e.g., percent of the area containing the primary constituent elements, degree of fragmentation, size of the unit), the existing density of desert tortoises in the unit, the expected time to regenerate sufficient habitat to support an effective population in a particular area, consistency of the action with the intent of the recovery plan, geographic consideration, and local and regional problems. The analysis should also consider the effect of the action on critical habitat from actions planned outside the designated area. Analysis of impacts to individual units must consider the effects to the local area, the recovery unit in which it resides, and the overall range of the listed species.

Consultation Process

Section 7 consultation for critical habitat will focus on the effects of actions on tortoise habitat whether or not it is currently occupied. The presence or absence of tortoises will not factor into the determination of actions that trigger section 7. Any action that may affect critical habitat will trigger section 7 consultation.

The requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review necessary to evaluate jeopardy and incidental take. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or its critical habitat. Federal agencies are responsible for determining whether or not to consult with the Service and should consider a number of factors when determining if a proposed action may affect critical habitat. To the extent possible, agencies should consult on a programmatic basis.

The Service will consider the effect of the proposed action on the primary constituent elements along with the reasons why that particular area was determined to be critical habitat. The trigger to initiate section 7 consultation (under adverse modification) is any action that may affect any of the five primary constituent elements of critical habitat or reduce the potential of critical habitat to develop these elements—this is independent from any action that would affect known individuals. The evaluation should also take into consideration what happens outside of critical habitat because such projects may also impact habitat within critical habitat. It should also consider what effects the action may have on other adjacent CHUs, the recovery unit, and the overall range of the desert tortoise.

Examples of Proposed Actions

Section 4(b)(8) of the Act requires, for any final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Activities that disturb or remove the primary constituent elements within designated CHUs might adversely modify the tortoise's critical habitat. These activities may include actions that would reduce the area of a recovery unit below that which can sustain a viable population or provide for movements, dispersal, and gene flow; reduce the quantity and quality of forage species, either directly or through soil modifications, thereby affecting the tortoise's nutritional requirements; reduce the suitability of substrates for

burrowing, nesting, and overwintering; reduce the number and availability of burrow sites, caliche caves, and other shelter sites; appreciably modify the function and/or availability of vegetation to provide shelter from temperature extremes and predators; and increase the potential for future habitat disturbance and human-caused mortality.

A number of Federal agencies or departments fund, authorize, or carry out actions that affect lands that the Service designates as critical habitat. Among these agencies are the BLM, Department of Defense (DOD), Bureau of Mines, Corps of Engineers, Bureau of Reclamation, Bureau of Indian Affairs (BIA), Federal Energy Regulatory Commission, National Park Service, Federal Highway Administration, and Department of Housing and Urban Development. Federal agencies and the Service are currently consulting on numerous activities proposed within the range of the desert tortoise. These activities include Federal land management plans; Bureau livestock grazing operations; road, trail, and utility construction and maintenance; mining plans of operation; land sales, leases, and exchanges; Federal housing loans; BLM recreation and public purpose leases; permits for OHV activities; military operations; sand and gravel operations; rights-of-way; landfills; and a number of smaller actions. The economic analysis provides more details on specific projects affected by critical habitat designation.

The Service expects that proposed actions that are inconsistent with land management recommendations for DWMA's in the Draft Recovery Plan would likely be considered to adversely modify critical habitat. Proposed actions that are consistent with the recommendations within the Draft Recovery Plan would not be likely to result in destruction or adverse modification of critical habitat.

Areas designated as critical habitat support a number of existing and proposed commercial and non-commercial activities. Commercial activities that may affect desert tortoise critical habitat include, but are not limited to, livestock grazing, sand and gravel extraction, mining, OHV activities, military operations, landfills, rights-of-way, and utility corridors. Commercial activities not likely to destroy or adversely modify critical habitat include various site-specific activities such as scenic tours. Conducting desert tortoise surveys would not likely destroy or adversely modify critical habitat. Non-commercial activities are largely associated with recreation and are not considered likely to adversely affect critical habitat, provided they do not involve use of vehicles off of designated roads. Such activities include hiking, camping, hunting, and various activities associated with nature appreciation. In certain CHUs where more intensive management is needed (e.g., the Upper Virgin River CHU), the effects of recreational activities will be evaluated on a case-by-case basis.

Some activities could be considered to be of benefit to desert tortoise habitat and, therefore, would also not be expected to destroy or adversely modify critical habitat. Examples of activities that could be of benefit to critical habitat include protective measures such as some forms of fire suppression and restoration of disturbed areas. Further research may support or refute any potential benefits from such actions. At this time, they will be evaluated on a case-by-case basis.

In general, activities that do not remove or degrade constituent elements of habitat for desert tortoises are not likely to destroy or adversely modify critical habitat. Each proposed action would be examined pursuant to section 7 of the Act in relation to its site-specific impacts. Thus, proposed actions may or may not destroy or adversely modify critical habitat, depending on the type and extent of the action and the pre-project condition of the area in relation to desert tortoise habitat needs. The involved Federal agencies can assist the Service in its evaluation of proposed actions by providing detailed information on the habitat configuration of a project area, habitat conditions of surrounding areas, and information on known locations of desert tortoises.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the desert tortoise. Lands outside of critical habitat are important for providing nesting, sheltering, foraging, gene flow, and dispersal habitat for desert tortoises. Federal activities outside of critical habitat are still subject to review under section 7 if they may affect the desert tortoise. The Service expects that management activities outside of critical habitat on Federal lands would be managed as recommended by a final recovery plan, Federal land management plans, or other valid plans.

Reasonable and Prudent Alternatives

In cases where it is concluded that an action would likely result in the destruction or adverse modification of critical habitat, to the extent possible, the Service is required to provide reasonable and prudent alternatives to the proposed action in its biological opinion. By definition, reasonable and prudent alternatives allow the intended purpose of the proposed action to go forward and remove the conditions that would adversely modify critical habitat—alternatives may vary according to local conditions, project size, or other factors. The Service recommends that the agencies initiate discussions early enough in the planning process to preserve a greater number of options to reduce impacts.

Under this scenario, if adverse modification was anticipated, examples of possible reasonable and prudent alternatives that may be provided in a biological opinion include:

(1) Relocating the planned action to another location,

(2) Modifying the action to minimize fragmentation, and/or

(3) Modifying the action to implement land management practices that are known to be compatible with maintaining primary constituent elements for the desert tortoise.

For some actions, the Service may propose minor modifications to the project design that may avoid adverse modification of critical habitat. In the case of a proposed upgrade of a powerline right-of-way corridor, for example, the Service may recommend that the corridor be expanded on one side of the existing corridor versus the other side to avoid impacts to habitat where the primary constituent elements are of higher quality. For projects that may result in more severe impacts, substantial project changes may be necessary. The Service would propose reasonable and prudent alternatives to the agency's proposed action. Reasonable and prudent alternatives, by definition, would allow the intended purpose of the project to go forward without adversely modifying critical habitat.

No reasonable and prudent alternatives may be available for some proposed actions. For example, due to the size of a unit or high levels of existing fragmentation, no level of habitat disturbance may be possible without resulting in the destruction or adverse modification of critical habitat. In these situations, the Service would issue an adverse modification biological opinion with no reasonable and prudent alternatives. The Service recommends that agencies initiate discussions at the earliest opportunity to help avoid this type of situation.

Research on desert tortoises and their habitat may negatively affect critical habitat. Wherever possible, research

should be conducted outside of CHUs, coordinated throughout the listed range of the tortoise, and based upon an approved long-term strategy.

Conservation Measures on Non-Federal Lands

State, private, and Tribal lands have been included within the designation of critical habitat. Critical habitat designation will not affect non-Federal lands except for actions that are authorized, funded, or carried out by a Federal agency. Actions on State and private lands will continue to be subject to section 9 of the Act, requiring an incidental take permit pursuant to section 10(a)(1)(B) of the Act for any actions that may result in take of desert tortoises. This provision also will apply to actions on Tribal lands without a Federal nexus. Those with a Federal nexus will be subject to section 7 consultation under the Act.

Section 9 of the Act prohibits intentional and non-intentional "take" of listed species and applies to all landowners regardless of whether or not their lands are within critical habitat. The term "take," as defined by the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harass" is defined as an intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which includes breeding, feeding, or sheltering. "Harm" in the definition of "take" means any action, including habitat modification, which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR part 17).

Section 10(a)(1)(B) authorizes the Service to issue permits for the taking of listed species incidental to otherwise lawful activities, such as housing development. Incidental take permit applications must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement to conserve the species. A key element of the Service's review of an HCP is a determination of the plan's effect upon the long-term conservation of the species. An HCP would be approved and a section 10(a)(1)(B) permit issued if it would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of survival and recovery of that species in the wild.

Due to limited Federal involvement, the Service expects that few, if any, formal section 7 consultations would be initiated for State lands that are included in critical habitat. The States are subject to the "take" prohibitions under section 9 of the Act, however, and may enter into the section 10 HCP process where appropriate.

Desert tortoises occurring on lands outside critical habitat boundaries are still subject to section 9 prohibitions. The Service envisions that the role of desert tortoise habitat in the conservation of the species will be addressed through section 7, the HCP process, the recovery planning process, and other appropriate State and Federal laws. On these lands, it is expected that recovery goals will be achieved through the use of other conservation mechanisms available to the Service and other landowners (e.g., land exchanges, conservation and development easements).

Summary of Comments and Recommendations

In the August 30, 1993, proposed rule and associated notifications, the Service requested all interested parties to submit factual reports or information that might contribute to the development of this final rule. The public comment period was open from August 30, 1993, to October 29, 1993. During that period, the Service conducted three public hearings on this issue at the following locations: Riverside, California, on October 6, 1993; Las Vegas, Nevada, on October 12, 1993; and St. George, Utah, on October 14, 1993. The Service accepted testimony from the public from 1 to 4 p.m. and from 6 to 8 p.m on each of those days. The Service announced the dates, times, and locations of the public hearings in the August 30, 1993, proposed rule (58 FR 45748). Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and asked to comment. In addition, the Service published notices in the Kingman Daily Miner, Las Vegas Review Journal, Las Vegas Sun, Barstow Desert Dispatch, The Sun, and the Press Enterprise on September 23, 1993, and in the Daily Spectrum on September 16, 1993, announcing the publication of the proposed rule and the dates, times, and locations of the public hearings.

During the 60-day comment period, the Service received approximately 270 written comments. In addition, 147 people testified at the three public hearings. The Service received comments from the BLM, the Bureau of Mines, other Federal agencies, military installations, State and county agencies, town boards, environmental organizations, the mining industry, recreational enthusiasts, and the ranching industry. Comments are part of the administrative record and are available for public review. Issues raised during the public comment period announced in the August 30, 1993, proposal, whether written or oral, are discussed below.

Issue 1: One respondent requested that the Service adjust the boundaries of CHUs to reflect the boundaries proposed for the East Mojave National Park, as depicted in Senate Bill 21.

Service Response: The Service cannot assume that the legislation for the East Mojave National Park will pass or what form it will take. The boundaries proposed for the East Mojave National Park in Senate Bill 21 reflect the balancing of a variety of concerns, both biotic and abiotic, and should not be expected to resemble boundaries reflecting habitat critical to the recovery of a single species. Should the East Mojave National Park be established, the Service will reevaluate the designation of critical habitat, if appropriate.

Issue 2: The Service received several comments regarding the presence of unsuitable habitat within proposed CHUs. Examples of areas already developed that were included in the proposal were golf courses, buildings, towns, and existing mining operations. Many stated that these areas should not be included even for the ease of writing legal descriptions.

Service Response: The Service identified large contiguous blocks of tortoise habitat containing the primary constituent elements that support nesting, foraging, sheltering, dispersal, and/or gene flow, primarily on Federal lands. To the extent possible, the Service adjusted boundaries to exclude peripheral areas that do not support primary constituent elements. However, it was not possible to exclude all areas of non-habitat via boundary revisions. In some cases, CHUs contain small towns, farms, or human-made structures. These areas, although physically located within the boundaries of critical habitat, are not included in critical habitat designation because they do not contain any of the primary constituent elements of desert tortoise habitat. Areas not currently containing all of the essential features, but with the capability to do so in the future, may still be needed for the long-term conservation of the species, particularly in certain portions of the range.

Issue 3: Some respondents stated that the Service should use natural landmarks for critical habitat boundaries and legal descriptions rather than section lines. Use of section lines instead of natural or human-made boundaries will make enforcement difficult, if not impossible. One letter stated that, in a majority of cases (according to the BLM), documented sheep trespasses during the 1993 grazing season occurred where there were ambiguous boundary lines.

Service Response: In designating critical habitat, the Service is required to legally define boundaries. In this effort, the Service has primarily used section lines. The Service also used major roads to legally define some of the CHUs.

Issue 4: Many commenters suggested removing specific areas from the proposal. Such suggestions typically reflected concerns over inclusion of private lands in the proposal or were based on potentially conflicting uses, especially mining areas. Some letters provided additional biological information to support site-specific deletions from critical habitat.

Service Response: The Service has reviewed the individual requests and determined whether the critical habitat boundaries should be modified to avoid non-tortoise habitat. Where possible, considering restraints of the map scale with which the Service was working, boundary lines have been modified. Areas suggested for deletion on the basis of perceived land-use conflicts were deleted if they did not meet the criteria for inclusion or did not provide important benefits to the species. Areas suggested for deletion because of poor habitat were re-examined in terms of value to tortoises. In some key areas, habitat currently in poor condition was retained because of its important location and high potential for contribution to recovery.

Issue 5: A number of commenters stated that critical habitat should not be designated because existing reserved lands, such as national parks and wildlife refuges, provide sufficient land for the tortoise.

Service Response: The Service determined that the tortoise should be listed as a threatened species in 1990 (55 FR 12178) partly because insufficient habitat is protected within congressionally protected areas to adequately conserve desert tortoises. In addition, the Draft Recovery Plan recognizes that areas of sufficient size to support self-sustaining tortoise populations do not exist in already protected habitats. Critical habitat is primarily designated for areas identified in the Draft Recovery Plan as necessary for recovery of the desert tortoise.

Issue 6: Many commenters stated that the Service had proposed to designate too much habitat for the desert tortoise.

Service Response: The Service proposed critical habitat designation for those areas that met certain criteria. The proposed and final designations include at least one CHU within each of the six recovery units outlined in the Draft Recovery Plan. The size of these areas is based primarily on the requirements to support self-sustaining populations. Land management agencies, in consultation with the Service, may establish desert wildlife management areas in which the desert tortoise will receive special consideration. Upon establishment of these areas, the Service may reevaluate the critical habitat designation.

Issue 7: Several respondents stated that the designation should include other important desert tortoise habitats, especially the southern portion of Ft. Irwin, Joshua Tree National Monument, the Desert Tortoise Natural Area (DTNA), and the Desert National Wildlife Range. They stated that Congressional withdrawal of public lands within the DTNA from the general mining and mineral laws must be renewed after 20 years (year 2000). If mineral extraction is allowed after that time, designation of the DTNA as critical habitat may be the only way to protect this habitat from the effects of mining. Some respondents questioned why management plans developed for the DTNA and Joshua Tree National Monument are sufficient to preclude critical habitat designation, yet the BLM's Conservation Plan of 1980 is ignored. One letter said that such inconsistencies degrade the Service's contention that the DTNA is protected so well that it need not be included in the critical habitat designation.

Service Response: The critical habitat designation includes the southern 2 mile-strip of Ft. Irwin, which is south of where most existing military operations have already degraded or eliminated desert tortoise habitat. Joshua Tree National Monument, the DTNA, and the Desert National Wildlife Range were not included in the designation of critical habitat because the designation would not afford these areas any additional benefit. The mandates of the Service and the National Park Service provide for ecosystem management, and those of the BLM are for multiple use of public lands. The DTNA is managed specifically for the benefit of the desert tortoise as both a research natural area and an Area of Critical Environmental Concern. The specified areas are considered important for recovery of the desert tortoise in the Draft Recovery Plan and will be considered in establishing desert wildlife management areas. If, in the future, mineral extraction or other actions that may adversely affect critical habitat are proposed to be allowed within these areas, the Service may reevaluate whether additional critical habitat should be designated.

Issue 8: Several people were concerned that critical habitat would restrict access to their private lands or mining operations.

Service Response: The Service anticipates being able to work with other Federal agencies to minimize effects on private landowners. Section 7 consultation requirements on Federal rights-of-way applications may, in some limited cases, result in additional mitigation requirements or modified access to private lands, but the Service cannot quantify the economic effects.

Issue 9: A few letters stated that the critical habitat designation should include the Pahrump/Amargosa Valley.

Service Response: The Service based its critical habitat proposal on those areas recommended for recovery in the Draft Recovery Plan. The Pahrump/Amargosa Valley was not one of those areas, and, therefore, it was not included in the proposed designation.

Issue 10: A few respondents requested inclusion of additional areas as critical habitat for the desert tortoise. One letter suggested that inclusion of previously disturbed areas will provide buffer zones while recovery of the habitat occurs, thereby minimizing edge effects of incompatible land uses and providing smooth-edged boundaries that are preferable in minimizing the boundary-to-area ratio.

Service Response: The Administrative Procedure Act requires Federal agencies to provide appropriate notification of proposed actions prior to making final determinations. Therefore, the Service cannot adopt a final rule that is significantly different from the proposed rule without first offering the public an opportunity to comment on the differences. Departmental policy is to waive notice and public comment only in special cases such as emergencies or instances where a proposed amendment makes only minor technical changes in a rule. The only addition to critical habitat in the final rule for desert tortoise critical habitat was the inclusion of 3 square miles of BLM land on the southern boundary of the Beaver Dam Slope CHU in Arizona. This request for inclusion came from the BLM, as the landowner, to ensure that its desert tortoise study plot was within

desert tortoise critical habitat. No other landowners will be affected by this inclusion. Other requests for inclusions were considered significant and were not requested by the landowner. In order to meet the court-mandated schedule for designation of critical habitat, the Service was not able to prepare a second proposal including any of these areas for public review. Such inclusions may be considered during any future reevaluation of the designated critical habitat boundaries.

Issue 11: The BIA opposes designation of any critical habitat on any tribal lands. The critical habitat proposal included lands within Paiute Indian Tribe of Utah-Shivwits Band (Paiute-Shivwits) lands. The BIA maintains that formal consultation under the section 7 jeopardy standard of the Act provides adequate protection for the desert tortoise.

Service Response: The Service expects that all landowners, regardless of their status, will comply with the Act and will contribute to the conservation of the desert tortoise. Low, medium, and high density desert tortoise habitat exists on Utah tribal lands. Tribal lands were not excluded from final designation because no new biological or economic information was provided, and tribal lands contain desert tortoise habitat necessary for recovery of the Upper Virgin River Recovery Unit. This recovery unit is unique in that it contains some of the highest densities of desert tortoises known throughout the species' range, and it is the smallest recovery unit, requiring more intensive management to ensure long-term survivability and ultimate recovery of the unit. Desert tortoise habitat necessary for recovery within the Upper Virgin River Recovery Unit is not distinguished by landownership boundaries, and it includes Federal, State, private, and Tribal lands. Following Service approval and implementation of a Washington County HCP, the Service will reevaluate the critical habitat boundaries and may propose to modify critical habitat, if appropriate.

Issue 12: The Service received several comments concerning the Washington County HCP process, an effort that has been on-going for more than 2 years. The final critical habitat designation should reflect the final Desert Habitat Preserve, to be proposed under a Washington County HCP.

Service Response: Washington County, Utah, is preparing an HCP under section 10 of the Act, as part of its application for a permit to take desert tortoises incidentally. To issue a section 10(a) permit, the Service must determine that, to the maximum extent practicable, the applicant will minimize and mitigate the impacts of the taking. The mitigation for the Washington County permit includes establishment of a Desert Habitat Preserve, primarily for desert tortoise survival and recovery. Washington County has not yet submitted an application for a section 10(a) permit or an HCP to the Service. This final designation of critical habitat for the desert tortoise reflects in large part the habitat conservation planning process to date that, if successful, will result in a desert habitat preserve of sufficient size and configuration to provide for survival and recovery of desert tortoises in this recovery unit. If the Service approves a Washington County HCP and issues a permit to take desert tortoises incidentally, the Service may reevaluate critical habitat, and propose revisions, if appropriate.

Issue 13: The designation of critical habitat will create "dumping grounds" for desert tortoises.

Service Response: Handling (e.g., "dumping") of desert tortoises is prohibited by the Act, which defines "take" to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed species. Critical habitat provides an extra layer of protection for desert tortoise habitat, but has no effect upon the other protections provided by the Act.

Issue 14: The Desert Habitat Preserve boundary line north of the city of Washington was "agreed upon" by members of the Washington County HCP Steering Committee, and that exact line should be reflected in final designation of critical habitat.

Service Response: The Service has not reviewed that "agreed upon" line, nor has it approved any aspect of a Washington County HCP to date. That line will be reviewed in the context of a Desert Habitat Preserve established under a Washington County HCP, as part of the mitigation for incidental take of desert tortoises and their habitat.

Issue 15: Some respondents perceived critical habitat designation for the desert tortoise as a means by which the Federal government can seize and "federalize" public and private lands. One person saw designation of critical habitat as a Federal conspiracy. The Service has a hidden political agenda, is deliberately misinforming the public, and is attempting to control private property, much in the same regard as if under a communist regime.

Service Response: Designation of critical habitat does not, in and of itself, impose additional legal restrictions on private lands except for actions that are authorized, funded, or carried out by Federal agencies on those lands. Non-Federal, as well as Federal lands, with or without designated critical habitat, are still subject to the prohibitions against take of listed species on their land, pursuant to section 9 of the Act. Designation of critical habitat is not a conspiracy, but rather is a requirement of the Endangered Species Act for threatened and endangered species.

Issue 16: Numerous comments were received from DOD agencies, requesting that military installations be excluded from designation of critical habitat. The agencies cited concern over their ability to use existing facilities, the existence of desert tortoise management plans, the increased cost of managing critical habitat, and existing regulatory mechanisms that make the designation of critical habitat unnecessary.

Service Response: Numerous ongoing activities occur on Federal lands managed by the military. The Service has issued section 7 biological opinions on many of these activities. These opinions contain terms and conditions, which were usually developed in coordination with the military, to reduce the take of desert tortoises. Many ongoing activities and existing uses, such as the bombing ranges at Edwards Air Force Base (EAFB), the Naval Air Weapons Station (NAWS) at China Lake, the Chocolate Mountains Air Gunnery Range, the communications facilities at the National Aeronautics and Space Administrations' Goldstone Deep Space Communications Complex, and the rocket test area at Leuhmann ridge on EAFB, have already resulted in the removal of the constituent elements of desert tortoise habitat and would not be affected by a designation of critical habitat. Therefore, military agencies would not be required to relocate existing facilities to areas outside of critical habitat.

Issue 17: Several DOD agencies were concerned that expansion of existing facilities or the siting of new facilities would be prohibited by designation of critical habitat.

Service Response: In the case of new or expanded facilities that may affect desert tortoises or designated critical habitat, the DOD agencies will be required to consult with the Service pursuant to section 7 of the Act. Through the consultation process, the Service will determine if the proposed action is likely to jeopardize the continued existence of the desert tortoise or destroy or adversely modify designated critical habitat. The DOD provided no economic data for such future developments by which the Service could consider the economic

costs of designating critical habitat in these areas.

Issue 18: The NAWS and National Training Center at Ft. Irwin cited the existence of desert tortoise management plans on their lands and the increased costs of managing critical habitat as reasons for excluding these lands from critical habitat designation.

Service Response: The Service fully acknowledges the positive efforts on behalf of the desert tortoise already implemented by the Navy and the Army. Such plans should be considered in establishing recovery areas for the desert tortoise, as recommended by the Draft Recovery Plan. The DOD should work closely with the BLM and the Service in determining where these recovery areas will be located and what actions will be implemented within them to effect recovery of the desert tortoise. Following establishment of recovery areas, the Service will reevaluate its designation of critical habitat.

Issue 19: EAFB expressed concern that designation of critical habitat would prevent use of supersonic corridors in the desert.

Service Response: The primary potential adverse effects of supersonic flight on the desert tortoise would be to the tortoises themselves, as potential harm or harassment. Supersonic flight is not expected to destroy or adversely modify desert tortoise habitat.

Issue 20: The Marine Corps requested that Twentynine Palms Air Ground Combat Center be removed from critical habitat designation in the Ord-Rodman CHU.

Service Response: The Service has reevaluated the desert tortoise habitat within the Twentynine Palms Air Ground Combat Center. Off-road travel by armored vehicles, bombing and strafing with live ammunition, and emergency disposal of ordnance and fuel from aircraft have resulted in deterioration of habitat quality over large contiguous areas. Based on this reevaluation, the Service has refined the boundaries of the Ord-Rodman CHU to remove the Twentynine Palms Air Ground Combat Center from designation as critical habitat.

Issue 21: A few commenters responded that there is no substantive evidence that directly links the decline in tortoise numbers with livestock grazing, nor is there any evidence that tortoises have suffered because their habitat has been grazed.

Service Response: The Service is currently consulting informally with the BLM regarding impacts of livestock grazing on desert tortoise critical habitat. Although no definitive studies on the relation between livestock grazing and the welfare of desert tortoises have yet been completed, there is a significant amount of scientific literature on the adverse effects of livestock grazing on desert ecosystems, in terms of vegetation changes, soil compaction and erosion, and reduction of microorganisms in the soil. The Service will continue discussions with the BLM and the Desert Tortoise Recovery Team on this issue.

Issue 22: Some letters stated that utility corridor expansion, road proliferation from illegal OHV activity, legal mineral exploration, and current grazing practices are existing activities that degrade tortoise habitat. Stopping these uses that are destructive to existing critical habitat is the answer to protecting the tortoise.

Service Response: As stated previously, designation of critical habitat does not create a land management plan. Federal agencies will enter into consultation pursuant to section 7 of the Act with the Service for all activities that they authorize, fund, or carry out. Through that consultation, the Service will determine if the actions are likely to jeopardize the continued existence of the species or destroy or adversely modify critical habitat. The Federal land management agencies will address the multiple uses on lands under their administration in the process of establishing desert wildlife management areas to implement recovery actions for the desert tortoise.

Issue 23: Some people questioned the existence of scientific data that reflects a true depiction of the distribution of desert tortoises in the West Mojave or elsewhere.

Service Response: Although not every square inch of land in the Mojave Desert has been inventoried for the presence of desert tortoises, the BLM and other agencies and biologists have spent considerable time and effort conducting desert tortoise surveys throughout the range of the desert tortoise. Such information has been compiled into the BLM's category and density maps for the desert tortoise, which are used by many of the agencies involved in desert tortoise management. This information was also used in preparing the Draft Recovery Plan. *Issue 24:* Some people stated that the Service should consider the custom and culture and the continued quality of existence of the human species. The customs and culture of the people should have the same consideration as biology and economics in determining critical habitat for the desert tortoise.

Service Response: The designation of critical habitat is mandated by the Endangered Species Act and is based on the best scientific data available after taking into consideration the economic impact and any other relevant impact of specifying an area as critical habitat. In developing DWMAs, land management agencies will have the opportunity to consider local custom and culture in their decision processes.

Issue 25: One respondent stated that the Service's statements about increasing OHV use as of 1980 statistics did not address the extent of lands made unavailable between the years 1980 and 1993. Currently less than 2 percent of the California desert is accessible for motorized recreation.

Service Response: Although more roads have been closed since 1980, between 1980 and 1988, there were more open areas and limited access areas and fewer closed areas (Biosystems Analysis 1991). In addition, the impact of OHVs on tortoises has increased over the last decade due to changes in BLM zoning, increases in OHV use, and the proliferation of illegal roads, a factor that results in serious environmental impacts and a difficult management issue for the BLM.

Issue 26: One letter stated that organized OHV activities in the West Mojave are regulated by section 7 permits issued by the Service through consultation with the BLM. Because OHVs have abided by these stipulations, expansive designation of critical habitat is not necessary in light of the protection available through the permitting/stipulation process.

Service Response: Through section 7 of the Act, the Service consults with Federal agencies that authorize, fund, or carry out actions that may affect a listed species. With the listing of a species, the Service determines through these consultations whether an action is likely to jeopardize the continued existence of a species. The adverse modification standard may be applied when an action would likely preclude recovery of a listed species. Thus critical habitat provides additional protection to a species and its habitat through section 7 of the Act. After designation of critical habitat, the Service will also determine if an action is likely to destroy or adversely modify critical habitat. Following designation of critical habitat, all current activities for which a Federal agency maintains discretionary action must undergo reinitiation of consultation to analyze whether or not they are likely to destroy or adversely modify critical habitat. OHV activities within the designated critical habitat are not the only activities that may adversely affect the desert tortoise and its habitat.

Issue 27: Some letters objected to the general statements that OHV activity results in negative impacts on desert tortoise habitat without quantifying such effects.

Service Response: The negative impacts of OHV activity on desert tortoise habitat have been quantified extensively since the early 1970s. Tortoises are adversely affected by OHVs through loss of forage and vegetative cover; increased mortality from crushing, collection, and vandalism; and soil compaction and loss of burrow sites. Because the use of OHVs in desert areas is a highly charged issue, much attention has been placed on the review of studies and the appropriate use of statistical tests in the quantifying the resultant data.

Issue 28: Some respondents said that the BLM has already addressed protection of the desert tortoise in the Western Mojave Coordinated Management Plan and other management plans previously approved and implemented under the Federal Land Policy and Management Act. Further protection is not necessary.

Service Response: The Western Mojave Coordinated Management Plan is still in the planning stages and, therefore, does not yet afford the desert tortoise any protection. Upon its finalization and implementation, the Service may reevaluate the critical habitat designation.

Issue 29: One respondent said that the Service, as a government agency, has an obligation to the general public it serves to consider its actions that, in conjunction with the proposed rule, will affect all of the public, including those that engage in OHV recreation. There are no areas to which these activities can be relocated or restricted.

Service Response: Protection measures were implemented by the BLM in 1988 through its Rangewide Plan to reduce OHV use throughout the range of the desert tortoise in category I and II habitats. As stated in the Draft Economic Impact Analysis, in its off-highway users guide, California listed 24 OHV recreational areas managed by Federal, State, and other agencies in Imperial, Riverside, and San Bernardino Counties. Four sites in the guide lie just outside proposed CHUs. Critical habitat designation as proposed will not affect OHV use at these four sites. The other three States also offer areas for use by OHV enthusiasts.

Issue 30: One letter stated that hiking, camping, and birdwatching are listed in the proposed rule as examples of non-consumptive uses. All of these activities necessitate a vehicle, in most instances off of a paved road, therefore, acting as OHVs. Also, OHV activities are not "commercial," but rather "recreational." The Service should reevaluate this classification.

Service Response: Any use of vehicles off of designated roads and trails, for whatever the reason, can negatively impact the desert ecosystem. The Service is not singling out organized OHV user groups in this assessment. However, the actions of hiking, camping, and birdwatching, provided they do not involve use of vehicles off of designated roads and trails, are not likely to adversely modify critical habitat. The Service recognizes that most recreational activity is not commercial. However, most OHV races involve profits for the promoters, which is considered a commercial enterprise.

Issue 31: Many respondents were concerned that designation of critical habitat would restrict all motorized access into these areas. Some stated that OHV recreation and desert tortoise protection are not mutually exclusive.

Service Response: The Service anticipates that, although Federal land managers may close some roads as a result of critical habitat designation, there will still be opportunities for scenic touring and other motorized uses on designated roads and trails within CHUs.

Issue 32: One letter stated that the management decision to set aside millions of acres violates the Federal Land Policy and Management Act because it exceeds 100,000 acres and requires approval of Congress within 90 days thereafter. Therefore, the designation of critical habitat has no force and effect.

Service Response: Designation of critical habitat is not a land withdrawal nor a land management action, but rather an action required by section 4 of the Endangered Species Act. Land-use actions authorized, funded, or carried out by Federal agencies must undergo section 7 consultation, whereby the Service will determine if such actions are likely to jeopardize the continued existence of the desert tortoise or destroy or adversely modify its critical habitat. Exclusion of activities is not automatic upon the designation of critical habitat.

Issue 33: One letter stated that designation of critical habitat may severely limit the ability of State game agencies to travel off-highway to develop wildlife enhancement projects involving construction of roads or other facilities.

Service Response: Designation of critical habitat will not prohibit construction and maintenance of wildlife developments. Each such development will be evaluated on a case-by-case basis through section 7 consultation between the Federal land management agency and the Service. Although the land management agency may restrict off-road travel within critical habitat, delivery of construction materials can most often be accomplished by other means, such as by foot, horseback, or helicopter.

Issue 34: Some letters recommended that areas that have traditionally been heavily used for recreation should be excluded, as enforcement will be costly and ineffective.

Service Response: The Service has included those areas containing constituent elements consistent with recommendations in the Draft Recovery Plan. In the final rule, the Service, where practicable, has deleted areas that do not contain constituent elements. No such information was provided for the recreation areas described. Land management agencies can consider these recreation areas during their establishment of recovery areas for desert tortoises.

Issue 35: Several people were concerned that designation of critical habitat would preclude the recreational use of lands that their families have used for generations, and they strongly opposed its designation.

Service Response: Designation of critical habitat is not synonymous with setting aside wilderness, locking up the lands within, or prohibiting all uses. The Service anticipates that the land management agencies will designate roads and trails within critical habitat, and that they will close some roads that are secondary and not necessary for access to private lands or mines. Also, designation of critical habitat could increase certain types of recreational use. Many people enjoy areas that show fewer signs of human activity. Activities considered not likely to adversely affect critical habitat include hunting, picnicking, casual horseback riding (on designated roads and trails), camping, birdwatching, bike riding (on designated roads and trails), hiking, and motor vehicle use on designated roads.

Issue 36: Some local agencies and utility companies were concerned that designation of critical habitat would affect their ability to access, use, and maintain existing facilities, rights-of-way, and fee property. Some stated that existing utility corridors should be excluded from critical habitat designation. Several agencies were concerned that critical habitat designation would either exclude or significantly increase the cost of future public works projects.

Service Response: Designation of critical habitat should not interfere with on-going maintenance of existing roads and utilities. These structures do not normally contain primary constituent elements, and they would, therefore, not be affected by the designation. Routine maintenance operations on existing pipelines, buried fiber-optic lines, and electrical transmission line rights-of-way are generally covered under existing section 7 consultations and are not likely to constitute adverse modification of critical habitat. Any expansion, addition, or modification within the rights-of-way or fee property will be subject to section 7 consultation if authorized, funded, or carried out by a Federal agency. Through such consultation, the Service will determine if the proposed action is likely to jeopardize the continued existence of the desert tortoise or destroy or adversely modify its critical habitat.

Issue 37: Several individuals requested that the final rule contain a discussion of how CHUs will be managed. Other members of the public were concerned that critical habitat designation forces creation of a management plan, establishes population goals, or prescribes specific management actions.

Service Response: The designation of critical habitat does not create a management plan for the listed species. It is the responsibility of land management agencies to ensure that actions they authorize, fund, or carry out do not destroy or adversely modify designated critical habitat. Several Federal agencies charged with management of the public's lands are preparing or already implementing management plans that include actions that will benefit the desert tortoise. Development of such land use plans should focus on recommendations provided in the desert tortoise recovery plan.

Issue 38: Some people commented that the Service should prepare an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA) on the proposed designation of critical habitat prior to publishing a final rule.

Service Response: The decision in *Pacific Legal Foundation* v. *Andrus*, 675 F.2d 829 (6th Cir. 1981), held that as a matter of law, an Environmental Impact Statement is not required for listings under the Act. The decision noted that preparing Environmental Impact Statements on listing actions does not further the goals of NEPA or the Act. The Service believes that, under the reasoning of this decision, preparing an Environmental Impact Statement on the proposed critical habitat designation would not further the goals of NEPA or the Act and is not legally required. NEPA documentation will be required for BLM plans and activities that involve critical habitat. The Service published a notice outlining this determination on October 25, 1983 (48 FR 49244). The decision in *Douglas County* v. *Babbitt*, 810 F.Supp. 1470 (D. Ore. 1992), which held that the Service must comply with NEPA in designating critical habitat, has been stayed pending appeal of the decision to the Ninth Circuit Court of Appeals.

Issue 39: One letter stated that final designation should include more definitive guidelines and specific examples for measuring adverse modification of critical habitat.

Service Response: It is difficult for the Service to anticipate all activities that may be proposed within critical habitat. In addition, the Service should avoid prejudging the outcome of section 7 consultations. The Service will make a determination, on a case-by-case basis, if the proposed action is likely to jeopardize the continued existence of the species or destroy or adversely modify critical habitat.

Issue 40: A number of organizations and individuals requested that the Service include within critical habitat the proposed site for the low-level radioactive waste repository (LLRWR) in Ward Valley (Chemehuevi CHU). Commenters provided a variety of reasons for inclusion of the LLRWR site, including potential threats to the desert tortoise should the LLRWR leak radionuclide-contaminated fluids, leachate contamination of the aquifer underlying the LLRWR site, the potential for contamination of the Colorado River and subsequent adverse effects to listed species that inhabit the Colorado River, and the alleged poor operating record of the proposed licensee. Some commenters stated that allowing the proposed LLRWR in Ward Valley would violate sections 2, 4(b)(2), and 7(a)(1) of the Endangered Species Act.

Service Response: The Service has determined that the Ward Valley LLRWR facility site should be included in this critical habitat designation. Following designation of critical habitat, all current activities for which a Federal agency maintains discretionary action must undergo reinitiation of consultation to analyze whether or not they are likely to destroy or adversely modify critical habitat. As a result, the BLM will need to reinitiate consultation under section 7 to determine if its proposed transfer of lands to the State of California for the proposed LLRWR facility is likely to result in the adverse modification of critical habitat.

Issue 41: One group stated that the Service must consider the cultural value to native peoples of lands within critical habitat. Specifically, these individuals stated that the cultural values of Ward Valley should be considered in the decision to include or exclude from critical habitat the proposed LLRWR site in Ward Valley.

Service Response: The Service designated critical habitat based on biological information regarding whether or not an area contains the primary constituent elements of desert tortoise habitat, after taking into account the economic costs of designating that area. Although the Service recognizes that Ward Valley is important culturally to indigenous peoples of the region, the Act does not address inclusion of areas within critical habitat for cultural reasons.

Issue 42: Some respondents stated that critical habitat should not be designated because species like the tortoise that cannot adapt should be allowed to become extinct.

Service Response: In section 2 of the Act, Findings, Purposes, and Policy, Congress found that numerous species of fish, wildlife, and plants had become extinct and that other species had become so depleted in numbers that these species were in danger of, or threatened with, extinction due to a lack of concern for their conservation. Furthermore, Congress found that these species of fish, wildlife, and plants are intrinsically valuable to the Nation and its people. These findings are the basis of the Endangered Species Act, the purpose of which is to conserve threatened and endangered species and the ecosystems on which they depend. The designation of critical habitat is one mechanism provided under the Act to facilitate the recovery of listed species. It would be contrary to the Act and the mission of the Service to allow the desert tortoise to become extinct without taking all reasonable preventative actions.

Issue 43: Some respondents stated that the Service had not protected enough critical habitat, because even full implementation of the draft recovery plan gives the tortoise only a 50/50 chance of surviving 500 years.

Service Response: The CHUs proposed by the Service were based on recommendations provided in the Draft Recovery Plan because those areas are necessary for the recovery of the desert tortoise. Some areas are larger than those recommended in the Draft Recovery Plan based on new biological information. The Draft Recovery Plan

pointed out that implementation of recovery actions can increase the probability of survival of the species.

Issue 44: One respondent stated that designation of critical habitat above that required or suggested by the Act as mitigation against threatened additional litigation is improper. Section 4(b)(2) of the Act defines the methodology to be used in the determination of critical habitat, as exemplified by the actions of the Recovery Team. However, the boundaries of the proposed CHUs extend beyond that recommended by the Desert Tortoise Recovery Plan for DWMAs. The Service should not arbitrarily designate additional acreage that is "unsuitable" or excessive. Critical habitat should not include the entire range of the species. The Service neither identifies nor makes available the content or source of the additional information upon which these expansions are based so that the reviewing public has an opportunity to base its comments upon the same information. The proposed rule increased the number of DWMAs in California from four to eight.

Service Response: The Service based its designation of critical habitat on biological information and recovery recommendations provided by the Draft Recovery Plan. The Draft Recovery Plan provided general areas in which recovery is necessary to ensure maintenance of viable populations of desert tortoises in each of the six recovery units. The Act requires that critical habitat boundaries be defined by legal metes and bounds. To refine the Draft Recovery Plan recommendations, the Service held regional meetings of desert tortoise biologists and agency personnel during preparation of the proposed rule. Information gathered during these meetings was evaluated and incorporated into the critical habitat boundaries, which were generally drawn to the nearest section line. Final designation of critical habitat also included an economic analysis of the costs of designating critical habitat.

The Draft Recovery Plan recommends eight DWMAs within four recovery units in California. These include Chemehuevi DWMA (Northern Colorado Recovery Unit); Chuckwalla and part of Joshua Tree DWMAs (Eastern Colorado Recovery Unit); Ord-Rodman, Superior-Cronese, Fremont-Kramer, and part of Joshua Tree DWMAs (Western Mojave Recovery Unit); and Fenner and Ivanpah DWMAs (Eastern Mojave Recovery Unit). The Fenner DWMA is incorporated into the Piute-Eldorado CHU, which extends into Nevada. Joshua Tree National Monument, although still considered important for recovery, was not designated as critical habitat because such designation would not afford the desert tortoise any additional benefit due to the National Park Service's ecosystem management of the area. However, the BLM land north of the Joshua Tree National Monument was designated critical habitat, and was given the new name of the Pinto Mountains CHU.

Issue 45: One letter disagreed with the use of recovery units as legally and biologically accepted subpopulations of the Mojave population. Behavioral, physiological, and ecological uniqueness have not been linked to the genetic and morphologic variability described for Nevada populations. The bounds of adaptive plasticity for the desert tortoise have not been determined.

Service Response: The Service based the critical habitat designation on recommendations provided in the Draft Recovery Plan, which is the most comprehensive source of information on the desert tortoise at this time. Should the recommendations in the final recovery plan differ significantly from that of the draft, the Service will reevaluate the critical habitat designation.

Issue 46: One respondent stated that the proposed critical habitat designation focused attention only on activities that impair vegetation, soil structure, or other physical attributes of the habitat, and considered this analysis to be too narrow. The criteria should also include rectifying biological imbalances that result from habitat alteration (e.g., ravens and non-native plant species). Feral predators, such as dogs, should be considered in the same way as feral horses and burros. Surface disturbances caused by such activities as utility rights-of-way, road construction, and real estate development should be included.

Service Response: The Service already addresses those actions that may increase feral predators or ravens through section 7 of the Act to determine if such actions are likely to jeopardize the continued existence of the desert tortoise. The Service agrees that habitat imbalances negatively affect desert tortoises and should be avoided within critical habitat. Such imbalances often result in increased exotic species, such as weedy vegetation, and have contributed toward the increase of ravens in the Mojave Desert. The final rule discusses road and utility construction and issuance of Federal housing loans as requiring consultation pursuant to section 7 of the Act to determine, on a case-by-case basis, whether or not such proposed actions are likely to adversely modify or destroy critical habitat.

Issue 47: Several letters stated that desert tortoises are not native to the Upper Virgin River Recovery Unit (nor CHU); they were imported into the area by humans. Therefore, critical habitat designation is really land acquisition, not a designation of natural habitat.

Service Response: Listing of the Mojave population of desert tortoises as a threatened species affords it protection under the Act, regardless of speculation on the origin of populations.

Issue 48: Several commenters pointed out that areas proposed as critical habitat within the Upper Virgin River CHU included areas that do not have desert tortoises present (e.g., developed areas, high elevations).

Service Response: The Service has used readily recognizable land features and legal descriptions to define the boundaries of desert tortoise critical habitat. Only the land within those boundaries that is suitable desert tortoise habitat (i.e., contains the primary constituent elements) is treated as critical habitat. Although the Service has adjusted boundary lines to exclude non-habitat to a great extent in this final designation, it remains mechanically impossible for the Service to specifically identify all non-habitat by legal description, particularly because many of these lands are less than 40 acres in size. Actions proposed within areas without the primary constituent elements of desert tortoise habitat will not be subject to section 7 of the Act, unless such actions may affect nearby critical habitat.

In the case of unoccupied, suitable desert tortoise habitat, the Act states clearly that areas in need of special management (inside or outside of the current range of the species) can be included in designation of critical habitat. Recovery of the desert tortoise within the Upper Virgin River Recovery Unit is dependent upon maintenance and improvement in the quantity, quality, and/or arrangement of habitat.

Issue 49: One letter stated that critical habitat designated on Tribal land in Utah is insufficient to support a viable population of desert tortoises.

Service Response: Population viability analysis is appropriate only at the population level. Therefore, the Service does not evaluate population viability of separate portions of a CHU. Although it requires more intensive management as it is a smaller population, the Upper Virgin River Recovery Unit, as recommended by the Desert Tortoise Recovery Team, is a viable and recoverable population of desert

tortoises. The Tribal lands within Utah are considered part of this recovery unit. The Upper Virgin River CHU corresponds to this recovery unit.

Issue 50: Several letters stated that the importance of mining and grazing in rural communities was not adequately addressed in the economic analysis.

Service Response: The smallest subdivision with standard, meaningful economic data normally is an individual county; thus, economic impacts are based upon county data for regional effects, whereas statewide or nationwide data and effects are addressed only if they become economically relevant.

Issue 51: A few people were concerned that inclusion of their private land within critical habitat boundaries would negate Ft. Irwin's desire to purchase their land for future expansion, and they asked if the Service was going to compensate them for their loss of revenue. In addition, some people submitted comments asking the government to compensate them for reductions in land values due to their inclusion within critical habitat boundaries.

Service Response: The National Training Center at Ft. Irwin revised its expansion proposal in response to the Service's concerns for desert tortoises prior to the proposal of critical habitat.

Therefore, designation of critical habitat would not affect private lands that were in the original proposed expansion area. In the future, the Federal government may pursue acquisition of private lands within the CHUs on a willing seller/willing buyer basis to further the conservation of the desert tortoise.

Neither the Act nor any other law administered by the Service authorizes compensation for perceived decreases in land value as suggested by the comments. Consequently, this issue is a matter for other agencies and Congress to consider.

Issue 52: Some respondents stated that the Service is underestimating economic impacts by separating impacts from the listing process and the designation of critical habitat. The economic analysis addresses only incremental impacts associated with designation of critical habitat and omits impacts resulting from previous management plans and consultations.

Service Response: The Endangered Species Act specifies that the listing of species should be based solely upon the best biological information available. However, the Act specifies that the Service should consider economic and other relevant impacts in the designation of critical habitat. Listing a species provides protection under the jeopardy standard and incidental take; designating critical habitat provides additional protection through the adverse modification standard. These are intended to be separate standards to be addressed through section 7 consultation. The economic analysis clearly distinguishes between the costs and benefits of these independent and incremental actions and is not an effort to underestimate costs. The total cost of conserving the desert tortoise is greater than the cost of designating critical habitat alone, and it includes the costs of prior tortoise protection measures under other laws and costs resulting from listing under the Act, as well as the cost of designating critical habitat.

Issue 53: A few respondents stated that the section 7 decisions to restrict grazing are currently under litigation and a stay of these decisions has been issued. Therefore, the economic analysis should be based on current (prelisting) grazing practices.

Service Response: The Service based its economic baseline on the biological opinions rendered by the Service and the decisions issued by the BLM on livestock grazing in desert tortoise habitat. The Interior Board of Land Appeals may review land use decisions by Interior Department agencies, but lacks jurisdiction needed to review biological opinions issued by the Service. Therefore, the Interior Board of Land Appeals Judge's stay of these decisions does not alter the economic baseline.

Issue 54: One respondent stated that no attempt to quantify the benefits of critical habitat designation was made by the Service. This is needed to balance the costs, even if found not be significant. The Economic Analysis (page 60) states, "To properly compare benefits and costs, the full range of each must be considered." The study fails to do this; therefore, the existing study cannot be used to exclude any of the proposed critical habitat areas.

Service Response: Conducting a quantitative study of species benefits is a costly and lengthy process that was not possible within the court-mandated deadlines. Even with results of such a study, allocating the benefits of preservation and recovery of an endangered species between the various actions required is an extremely difficult task. If species preservation were accomplished entirely through designation of critical habitat, then the full value of benefits could be attributed to that action. Typically, however, preservation is achieved with multiple interactive management actions (e.g., federally listing as threatened or endangered, protection under State laws), each of which may be essential to recovery and no one of which can be singled out as the sole means by which a species is preserved or recovery attained. Given the data available, and without a clear delineation of the results of each management alternative, it is not possible to disaggregate the sum of benefits to identify that portion directly attributable to critical habitat designation.

Issue 55: One letter stated that the economic analysis does not address the impact of potential delays in both maintenance and new construction caused by designation of critical habitat.

Service Response: Actions that are authorized, funded, or carried out by Federal agencies are already subject to the jeopardy standard pursuant to section 7 of the Act, if such actions may affect desert tortoises. These actions require consultation between the action agency and the Service to determine whether or not they are likely to jeopardize the continued existence of the desert tortoise. With designation of critical habitat, the Service will also determine whether or not such actions are likely to destroy or adversely modify critical habitat. Both assessments will be made concurrently through consultation between the Federal action agency and the Service; therefore, designation of critical habitat will not result in any additional project delays. The Act requires the Service to issue a biological opinion within 135 days of the receipt of a request for formal section 7 consultation from an action agency. Therefore, the requirement for Federal agencies to insure that their actions do not jeopardize the continued existence of listed species or adversely modify critical habitat would not result in project delays.

Issue 56: One group stated that, given the long time frame necessary for recovery of the desert tortoise, the economic analysis should have considered the long-term effects of known or foreseeable projects.

Service Response: Without knowing the details of future projects, the Service cannot know how or to what extent such projects may affect critical habitat or vice versa. The Service evaluated economic information provided on existing projects to determine if the benefits of excluding areas outweighed the benefits of designating those areas as critical habitat. The Service was unable to assign a cost to those projects that may or may not be proposed within critical habitat in the future.

Issue 57: One group stated that the economic analysis of the effects of removing grazing from Federal lands was inadequate and understates the

importance of grazing to the region's economy. Ranchers act as land managers for the Federal government. By eliminating ranching, the Federal government would have to expend additional monies for management. In addition, range improvements, associated with grazing on Federal lands, improve overall habitat quality by providing water sources and facilitating effective forage use.

Service Response: According to a 1991 study by the GAO, the costs of administering the livestock grazing program by the BLM and Department of Agriculture (predator control and rangeland grasshopper control) far exceed the fees derived from the ranchers for their AUMs.

Issue 58: One letter stated that the critical habitat economic analysis should have included the costs associated with implementation of the recovery plan. A 2006 date for delisting was selected in an arbitrary and capricious manner and designed to limit the amount of funding the Recovery Team had to report in the Draft Recovery Plan.

Service Response: Implementation of the recovery plan for the desert tortoise is not a cost attributable to designation of critical habitat. The Draft Recovery Plan was prepared prior to proposing critical habitat and is mandated by the Endangered Species Act whether or not a species has designated critical habitat. Therefore, its implementation can be considered a cost of listing the desert tortoise as threatened versus a cost associated with designation of critical habitat.

Issue 59: The DOD installations stated that the economic analysis failed to evaluate the costs to the public of relocating base activities or potential base closures that might result from inclusion in critical habitat.

Service Response: After careful consideration of the activities that occur on the military installations, the Service concluded that designation of critical habitat should not result in the closure of military bases in the region. The Service maintains that most training conducted on the bases can be compatible with proper tortoise management and has concluded that concerns about military bases being rendered unusable due to designation of critical habitat are overstated. Areas that include existing facilities, or that have been highly degraded (e.g., high-impact bombing ranges), do not contain constituent elements of tortoise habitat. Therefore, they do not constitute critical habitat. Expansion or relocation of facilities or activities that may destroy or adversely modify critical habitat within a CHU on a military base (e.g., relocation of high impact bombing targets) would require section 7 consultation to determine if the relocation is likely to jeopardize the continued existence of the desert tortoise or destroy or adversely modify its critical habitat.

Issue 60: The Service should, on economic grounds, exclude the proposed site of the LLRWR facility in Ward Valley.

Service Response: The Service is aware that including the Ward Valley site in critical habitat may threaten a portion of the investment made in siting the LLRWR facility and may result in potentially significant costs for the State of California. However, after considering these potential economic impacts, the Service has determined that the area should not be excluded from critical habitat designation.

Issue 61: Several letters suggested that designation of critical habitat would result in taking of private property.

Service Response: The courts have held that the mere enactment of laws that may result in restrictions on property does not necessarily equate to a taking of property for which compensation is required (*Hodel* v. *Virginia Surface Mining and Reclamation Association*, 452 U.S. 264, 295 (1981), *Agins* v. *Tiburon*, 447 U.S. 255, 260–263 (1980)). Therefore, the Service concludes that publication of a final rule designating critical habitat for the desert tortoise does not equate to a taking of property requiring just compensation.

Recognizing that governmental regulation involves adjustment of rights for the public good, the U.S. Supreme Court has found that a regulation that curtails the most profitable use of one's property, resulting in a reduction in value or limitations on use likewise does not necessarily equate to a taking (*Andrus* v. *Allard*, 444 U.S. 51, 66 (1979), *Agins*, 447 U.S. at 262, *Hodel*, 452 U.S. at 296). Where a regulation denies a property owner the economically viable use of his or her property, then a taking will likely occur (*Agins*, 447 U.S. at 260). However, where regulations do not categorically prohibit use but merely regulate the conditions under which such use may occur, and do not regulate alternative uses, then no taking occurs (*Hodel*, 452 U.S. at 296). With the designation of critical habitat, a property owner is not denied the economical viable use of his or her land. Use of land is not categorically prohibited but rather certain restrictions may be imposed upon Federal agency actions that may result in the destruction or adverse modification of critical habitat. As such, the Service concludes that designation of critical habitat will not result in a taking of private property.

Furthermore, a property owner must establish that a "concrete controversy" exists before the court may even reach the merits of a takings claim (*Hodel*, 452 U.S. at 294, *Agins*, 447 U.S. at 260). The property owner must show a specific and real impact to specific properties before judicial resolution of a takings claim is made (*MacDonald, Sommer, and Frates* v. *Yolo County*, 477 U.S. 340, 348–349, *Agins*, 447 U.S. at 260). As applied to critical habitat designation, a claim of takings of property would not be ripe for judicial resolution until the consultation process is completed and exemption from the Endangered Species Committee is denied. Even then, it is highly unlikely that a takings claim would be successful because designation of critical habitat does not categorically prohibit use of the property owner's land. Therefore, the Service has concluded that designation of critical habitat for the desert tortoise does not pose significant takings implications.

Issue 62: One letter stated that designation of State lands as critical habitat violates the "trust" responsibility of the Federal government to the States. The main purpose of these State lands is to provide funding for the State's schools.

Service Response: Critical habitat designation will not affect State lands unless proposed actions on these lands are authorized, funded, or carried out by Federal agencies. Such actions would then be subject to consultation if they may affect the desert tortoise or its habitat pursuant to section 7 of the Act. As with private lands, State lands are already subject to prohibitions of section 9 of the Act, which prohibit unauthorized take of listed species.

Issue 63: Several groups stated that conferencing on projects in proposed critical habitat is illegal because the desert tortoise is already listed and because critical habitat has been proposed years beyond the statutory deadline for such designation.

Service Response: Section 7(a)(4) of the Act and 50 CFR 402.10 of the regulations require Federal agencies to confer with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat. With designation of critical habitat, Federal agencies will be required to enter into formal consultation with the Service for any actions that may affect desert tortoises or their critical habitat.

Issue 64: One letter stated that the public did not receive an adequate opportunity to review the maps upon which the proposed rule was based because the maps provided in the **Federal Register** notice were too small to be useful.

Service Response: The Service provided opportunities for the public to review maps at a scale of 1:100,000 at each of three public hearings and made the maps available at the field offices located in Arizona, California, Nevada, and Utah. Due to the court-mandated time frame for development of the proposed rule, the Service was unable to provide copies of these larger-scaled maps to other agencies.

Issue 65: There was an insufficient amount of time for comment and review between the critical habitat proposal and final designation.

Service Response: The Service provided 60 days for public comment on the critical habitat proposal, which included three public hearings. The schedule for designation of critical habitat follows a stipulation and order of dismissal filed on August 3, 1993, in two lawsuits filed against the Service (*Natural Resources Defense Council, et al.*, v. *Bruce Babbitt et al.* and *Desert Tortoise (Gopherus agassizii) a threatened species; et al.*, v. *Manual Lujan, Jr.*). This court-mandated schedule requires publication of the final critical habitat rule by December 15, 1993. This short time frame for finalizing the rule does not allow for an extension of the public comment period.

Issue 66: One letter stated that Tribal economic costs resulting from critical habitat designation were not considered in the proposal.

Service Response: For a 60-day period after the draft economic analysis was made available to the public, the Service collected and considered other responses from State and Federal agencies, private land holders, the Tribe, and other entities regarding economic effects they might experience from the proposed designation. All responses that identified specific economic impacts were considered in completing the final economic analysis. During the public comment period, the Tribe commented that the proposed designation "could eliminate or reduce economic development and other opportunities," but did not identify or describe specific effects that allowed estimation of economic impacts.

Issue 67: The Aerojet-General Corporation and Wyle Laboratories have requested that the 42,800 acres that they have purchased (28,800 acres) and leased (14,000 acres) from the BLM be excluded from critical habitat designation. The basis for the request was the Environmental Stipulations contained in the Land Exchange and Lease Agreements signed pursuant to the Nevada-Florida Land Exchange Authorization Act of 1988, which established a detailed plan for the conservation of the desert tortoise on these lands. In addition Aerojet-General Corporation felt that statements that critical habitat does not affect private lands are misleading, because designation of critical habitat will affect these lands and their future use either through the section 7 process or through the section 10 permit process.

Service Response: The Service recognizes the desert tortoise management plan for this area but does not believe that it adequately addresses the potential impacts of the transmission lines that are proposed through Coyote Spring Valley. Therefore, the Service has included this area in the designation of critical habitat. Whether or not critical habitat is designated, lands containing desert tortoises and their habitat are still subject to section 9 of the Act, which prohibits unauthorized take of listed species. The only avenues for authorizing take that is incidental to otherwise lawful activities are the section 7 process for activities that are authorized, funded, or carried out by Federal agencies, and the section 10(a)(1)(B) permitting process for non-Federal actions on private or State lands.

National Environmental Policy Act

The Service has determined that an Environmental Assessment and/or an Environmental Impact Statement, 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).

Regulatory Flexibility Act and Executive Order 12866

This final rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that the final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within CHUs, significant economic impacts will not result from the critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Takings Implications Assessment

The Service has analyzed the potential takings implications of designating critical habitat for the desert tortoise in a Takings Implications Assessment prepared pursuant to requirements of Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights." The Takings Implications Assessment concludes that the designation does not pose significant takings implications.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Nevada Field Office (see **ADDRESSES** section).

Authors

The primary authors of this rule and its associated CHU maps are Sheryl L. Barrett, Christine Mullen, Mark Maley, Michael Burroughs, and David L. Harlow, U.S. Fish and Wildlife Service, Nevada Field Office (see **ADDRESSES** section); Ray Bransfield, Kirk Waln, and Tim MacGillvray, U.S. Fish and Wildlife Service, Ventura Field Office; Marilet A. Zablan, U.S. Fish and Wildlife Service, Utah State Office; James Rorabaugh, U.S. Fish and Wildlife Service, Arizona Field Office; Arthur Davenport, U.S. Fish and Wildlife Service, Carlsbad Field Office; Mel Schamberger and Dirk Draper, U.S. Fish and Wildlife Service, National Ecology Research Center, Ft. Collins, Colorado.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is hereby amended 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 17.95(c) is amended by removing the critical habitat of the

Beaver Dam Slope population of the desert tortoise and adding the following new critical habitat of the desert tortoise (*Gopherus agassizii*) in its place to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) * * *

* * * * *

Desert Tortoise—Mojave Population (*Gopherus agassizii*)

Index map of approximate locations of critical habitat units follows:

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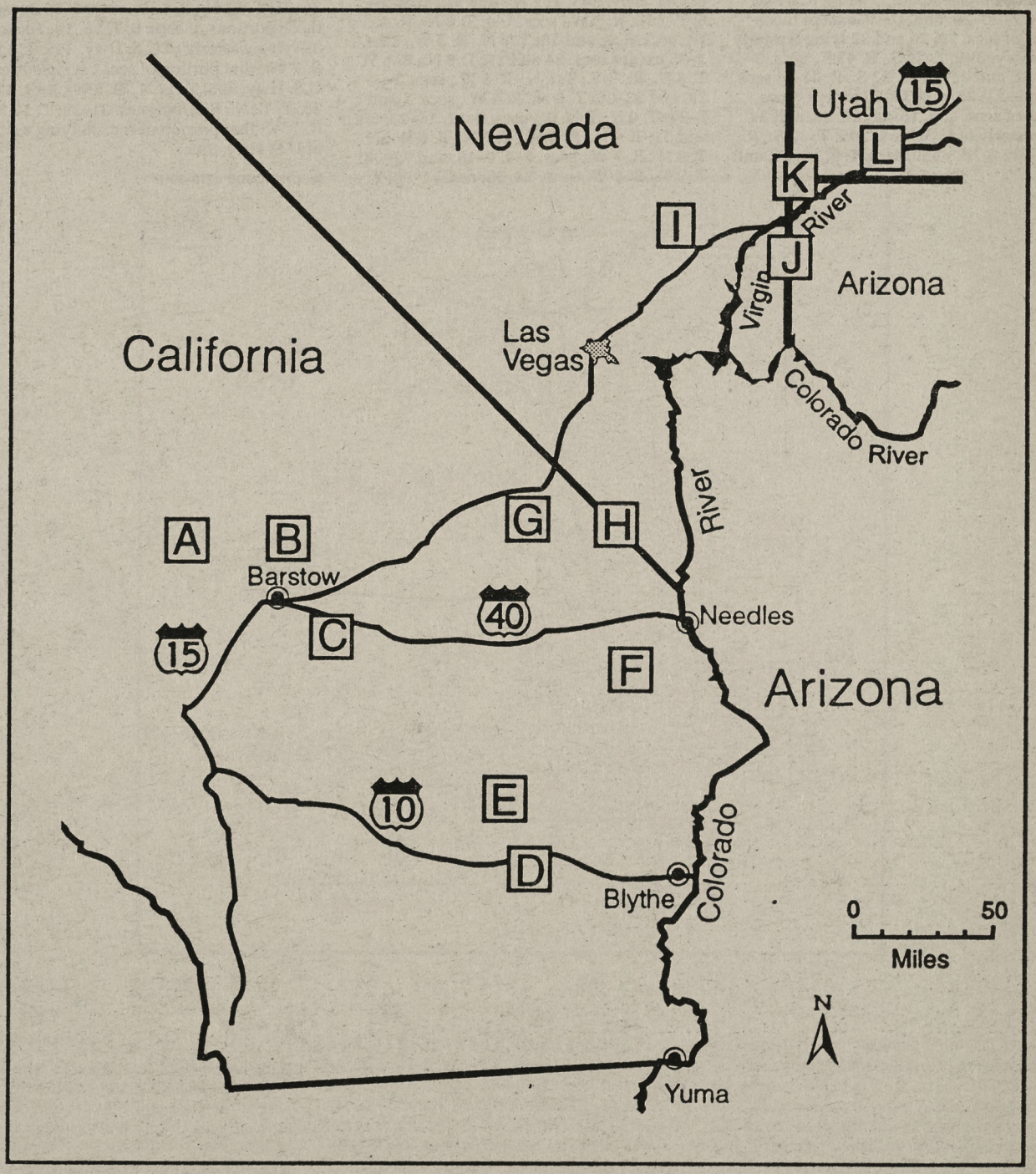
MAP 1



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California. Areas of land as follows:

1. *Fremont-Kramer Unit.* Kern, Los Angeles, and San Bernardino Counties. From BLM Maps: Victorville 1978 and Cuddeback Lake 1978. (Index map location A).

Mt. Diablo Meridian: T. 29 S., R. 39 E., secs. 13, 14, 22–26, 35, and 36; T. 29 S., R. 40 E., secs. 12–33; T. 29 S., R. 41 E., secs. 7, 8, 17–20, 27–30, and 32–36; T. 30 S., R. 38 E., secs. 24–26, 35, and 36; T. 30 S., R. 39 E., secs. 1–36 except secs. 3–5; T. 30 S., R. 40 E., secs. 4–9 and 13–36 except those portions of secs. 13, 14, and 23 lying northwesterly of the Randsburg-Mojave Road; T. 30 S., R. 41 E., secs. 1–36 except secs. 5–

8 and 20 and those portions of secs. 17 and 18 lying easterly of U.S. Hwy. 395; T. 30 S., R. 42 E., secs. 7–10, 15–22, and 27–34; T. 31 S., R. 40 E., secs. 1 and 6 except that portion of sec. 6 lying southeasterly of the Randsburg-Mojave Road; T. 31 S., R. 41 E., secs. 1–17, 20–29, and 32–36 except those portions of secs. 20, 29 and 32 lying westerly of U.S. Hwy. 395; T. 31 S., R. 42 E., secs. 3–10, 15–22, and 27–34; T. 32 S., R. 41 E., secs. 1–4, 9–16, 21–28, and 34–36 except those portions of secs. 4, 9, 16, 21, 27, 28, and 34 lying westerly of U.S. Hwy. 395; T. 32 S., R. 42 E.; T. 32 S., R. 43 E., secs. 4–9, 16–21, and 28–33.

San Bernardino Meridian: T. 7 N., R. 5 W., secs. 2–11 and 14–18 except that portion of sec. 18 lying west of U.S. Hwy. 395; T. 7 N., R. 6 W., secs. 1–6, 12, and 13 except those portions of secs. 1, 12, and 13 lying westerly of U.S. Hwy. 395; T. 7 N., R. 7 W., secs. 1–6; T. 7 N., R. 8 W., secs. 1–4; T. 8 N., R. 4 W., secs. 6, 7, and 18; T. 8 N., R. 5 W., secs. 1–35 except secs. 24 and 25; T. 8 N., R. 6 W.; T. 8 N., R. 7 W.; T. 8 N., R. 8 W., secs. 1–28, and 33–36; T. 8 N., R. 9 W., secs. 1 and 7–24; T. 9 N., R. 4 W., secs. 2–11, 14–23, 30, and 31; T. 9 N., R. 5 W.; T. 9 N., R. 6 W.; T. 9 N., R. 7 W., secs. 1–4, 9–16, and 19–36; T. 9 N., R. 8 W., secs. 24, 25, and 31–36; T. 9 N., R. 9 W., sec. 36; T. 10 N., R. 4 W., secs. 6, 7, 18–20, and 29–34; T. 10 N., R. 5 W.; T. 10 N., R. 6 W., secs. 1–36 except sec. 6; T. 10 N., R. 7 W., secs. 9–16, 21–28, and 33–36; T. 11 N., R. 5 W., secs. 2–11, 14–23, and 26–35; T. 11 N., R. 6 W., secs. 1–36 except those portions of secs. 6, 7, 18, 19, 30, and 31 lying westerly of U.S. Hwy. 395; T. 11 N., R. 7 W., that portion of sec. 1 lying easterly U.S. Hwy. 395; T. 12 N., R. 5 W., secs. 31–35; T. 12 N., R. 6 W., secs. 31–36; T. 12 N., R. 7 W., that portion of sec. 36 lying easterly of U.S. Hwy. 395.

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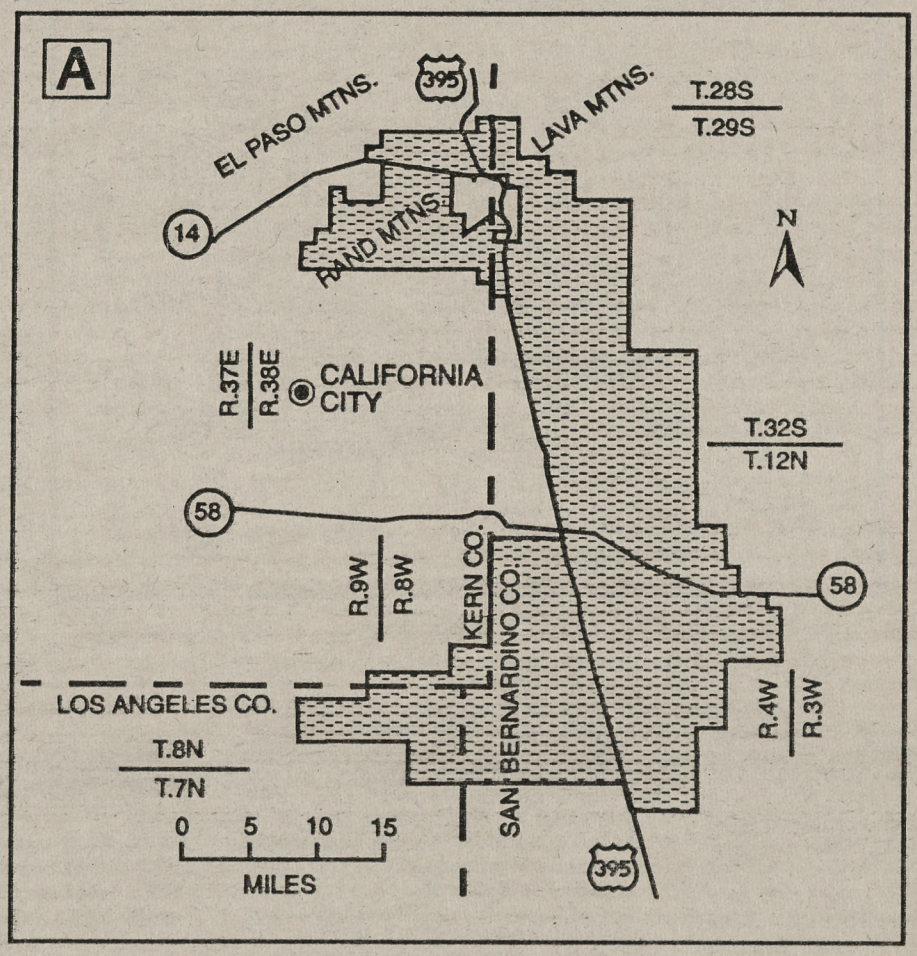
MAP 2



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2. *Superior-Cronese Unit.* San Bernardino County. From BLM Maps: Cuddeback Lake 1978, Soda Mts. 1978, Victorville 1978, and Newberry Springs 1978. (Index map location B).

Mt. Diablo Meridian: T. 29 S., R. 42 E., secs. 35 and 36; T. 29 S., R. 43 E., secs. 25, 26, and 31–36; T. 29 S., R. 44 E., secs. 20–36; T. 29 S., R. 45 E., secs. 14–16, 19–23, and 25–36; T. 29 S., R. 46 E., secs. 30–32; T. 30 S., R. 42 E., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 30 S., R. 43 E.; T. 30 S., R. 44 E.; T. 30 S., R. 45 E.; T. 30 S., R. 46 E., secs. 3–36; T. 30 S., R. 47 E., secs. 7–10, 15–22, and 27–34; T. 31 S., R. 42 E., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 31 S., R. 43 E.; T. 31 S., R. 44 E.; T. 31 S., R. 45 E.; T. 31 S., R. 46 E.; T. 31 S., R. 47 E., secs. 3–10, 15–22, and 27–34; T. 32 S., R. 43 E., secs. 1–3, 10–15, 22–27, and 34–36; T. 32 S., R. 44 E.; T. 32 S., R. 45 E.; T. 32 S., R. 46 E.; T. 32 S., R. 47 E., secs. 3–10, 15–22, and 27–34.

San Bernardino Meridian: T. 9 N., R. 1 W., those portions of secs. 1 and 2 lying northerly of Interstate Hwy. 15; T. 9 N., R. 1 E., that portion of sec. 6 lying northerly of Interstate Hwy. 15; T. 10 N., R. 2 W., secs. 1–29; T. 10 N., R. 1 W., secs. 1–28, 30, and 33–36 except those portions of secs. 33–35 lying southwesterly of Interstate Hwy. 15; T. 10 N., R. 1 E., secs. 18, 19, 30, and 31; T. 10 N., R. 2 E., secs. 1–5, 8–17, and 22–34 except those portions of secs. 25, 26, and 34 lying southeasterly of Interstate Hwy. 15; T. 10 N., R. 3 E., secs. 1–12, 14–21, and 30 except those portions of secs. 11, 12, 14–16, 19–21, and 30 lying southeasterly of Interstate Hwy. 15; T. 10 N., R. 4 E., those portions of secs. 5–7 lying northwesterly of Interstate Hwy. 15; T. 11 N., R. 5 W., secs. 1 and 12; T. 11 N., R. 4 W., secs. 1–7, 9, 11, and 12; T. 11 N., R. 3 W., secs. 1–18; T. 11 N., R. 2 W.; T. 11 N., R. 1 W.; T. 11 N., R. 1 E., secs. 1–31; T. 11 N., R. 2 E., secs. 1–36 except sec. 31; T. 11 N., R. 3 E.; T. 11 N., R. 4 E., secs. 1–34 except those portions of secs. 25, 26, 33, and 34 lying southeasterly of Interstate Hwy. 15; T. 11 N., R. 5 E., secs. 1–11 and 15–20 except those portions of secs. 1, 2, 10, 11, 15–17, 19, and 20 lying southeasterly of

Interstate Hwy. 15; T. 12 N., R. 5 W., sec. 36; T. 12 N., R. 4 W., secs. 31–36; T. 12 N., R. 3 W., secs. 31–36; T. 12 N., R. 2 W., secs. 31–36; T. 12 N., R. 1 W., secs. 31–36; T. 12 N., R. 1 E.; T. 12 N., R. 2 E., secs. 3–36; T. 12 N., R. 3 E., secs. 7–36; T. 12 N., R. 4 E., secs. 7–36; T. 12 N., R. 5 E., secs. 1–5 and 7–36; T. 12 N., R. 6 E., secs. 5–9, 15–22, and 27–34 except those portions of secs. 31–34 lying southerly of Interstate Hwy. 15; T. 13 N., R. 1 E.; T. 13 N., R. 2 E., secs. 19 and 29–34; T. 13 N., R. 5 E., secs. 26–28 and 32–36; T. 14 N., R. 1 E., secs. 5–10, 15–23, and 24–36.

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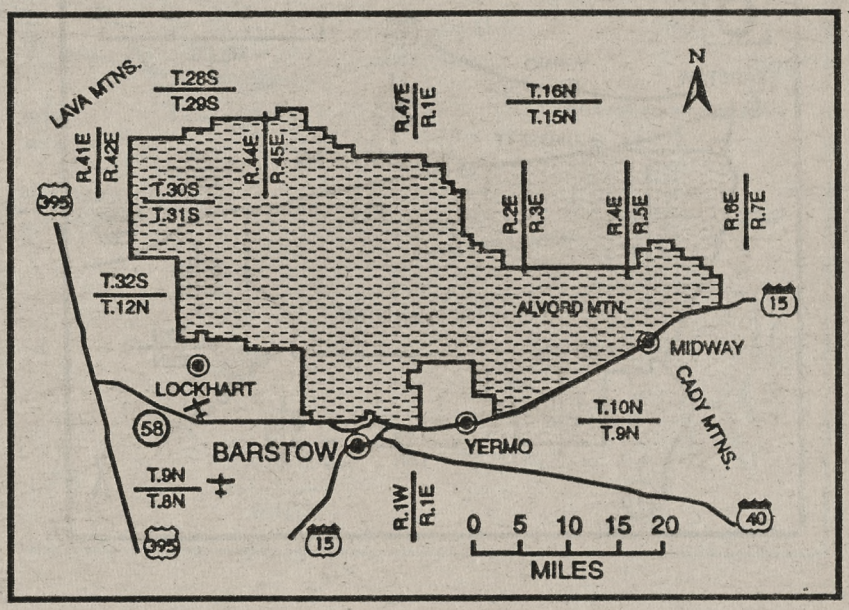
MAP 3



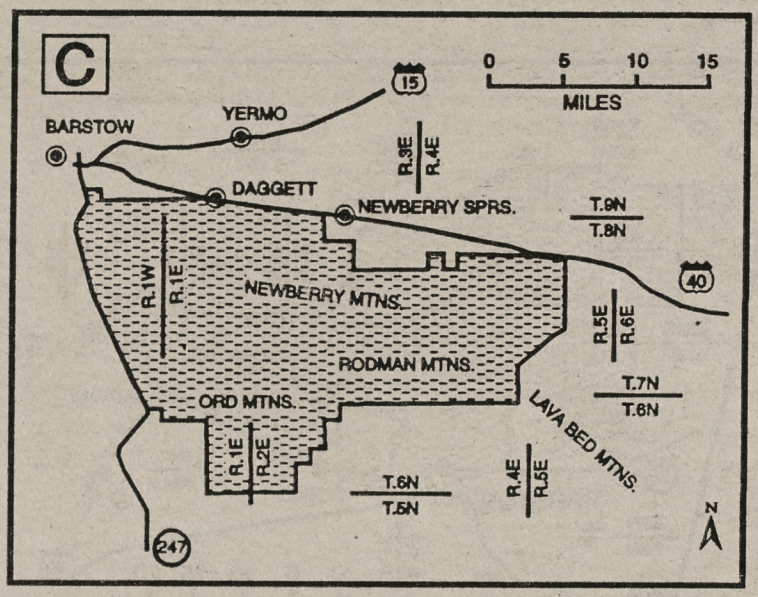
BILLING CODE 4310–55–C

3 *Ord-Rodman Unit.* San Bernardino County. From BLM Maps: Newberry Springs 1978 and Victorville 1978. (Index map location C)

San Bernardino Meridian: T. 6 N., R. 1 E., secs. 1–6, 10–15, 22–27, and 34–36; T. 6 N., R. 2 E., secs. 1–11, 14–22, and 28–33; T. 7 N., R. 1 W., secs. 1–4, 9–15, 22–26, 35, and 36 except those portions of secs. 4, 9, 10, 15, 22, 23, 26, and 35 lying southwesterly of State Hwy. 247; T. 7 N., R. 1 E.; T. 7 N., R. 2 E.; T. 7 N., R. 3 E.; T. 7 N., R. 4 E.; T. 7 N., R. 5 E., secs. 4–9 and 17–19 except those portions of secs. 4, 8, 9, and 17–19 lying southerly of the northern boundary of Twentynine Palms Marine Corps Base; T. 8 N., R. 1 W., secs. 1–18, 20–29, and 32–36 except those portions of secs. 6, 7, 17, 18, 20, 29, 32, and 33 lying southwesterly of State Hwy. 247; T. 8 N., R. 1 E.; T. 8 N., R. 2 E., secs. 2–36; T. 8 N., R. 3 E., secs. 7 and 18–36; T. 8 N., R. 4 E., secs. 13–16 and 18–36; T. 8 N., R. 5 E., secs. 16–18, 19–21, 28–30, and 31–33 except those portions of secs. 16 and 17 lying northerly of Interstate Hwy. 40; T. 8 N., R. 6 E., secs. 18–21 and 27–36 except those portions of secs. 18–21, 27, 28, 34, and 35 lying northerly of Interstate Hwy. 40; T. 9 N., R. 1 W., secs. 19, 20, and 25–36 except those portions of secs. 19, 20, and 29–31 lying westerly of State Hwy. 247; T. 9 N., R. 1 E., secs. 25–36 except those portions of secs. 25–27 lying northerly of Interstate Hwy. 40; T. 9 N., R. 2 E., secs. 27–35 except those portions of secs. 27–30 lying northerly of Interstate Hwy. 40.

BILLING CODE 4310–55–P

MAP 4



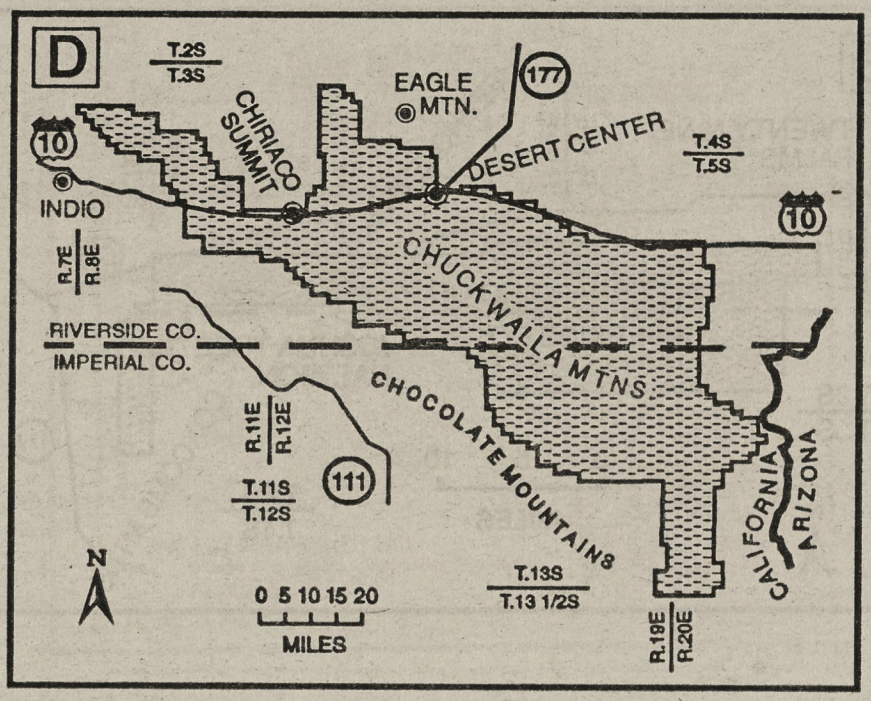
BILLING CODE 4310–55–C

4. *Chuckwalla Unit.* Imperial and Riverside Counties. From BLM Maps: Chuckwalla #18 1978, Parker-Blythe #16 1978, Salton Sea #20 1978, and Midway Well #21 1979. (Index map location D).

San Bernardino Meridian: T. 3 S., R. 13 E., secs. 19–21 and 27–35; T. 4 S., R. 8 E., secs. 1–6, 8–16, 22–26, and 36; T. 4 S., R. 9 E., secs. 6–10, and 15–36; T. 4 S., R. 10 E., secs. 19–21, and 27–34; T. 4 S., R. 13 E., secs. 2–36 except secs. 12 and 13; T. 4 S., R. 14 E., secs. 27–36; T. 4 S., R. 15 E., secs. 31 and 32; T. 5 S., R. 9 E., secs. 1–4, 12, 13, and 24; T. 5 S., R. 10 E., secs. 2–36 except sec. 31; T. 5 S., R. 11 E., secs. 19–21 and 28–33; T. 5 S., R. 12 E., sec. 36; T. 5 S., R. 13 E., secs. 1–36 except secs. 6 and 7; T. 5 S., R. 14 E.; T. 5 S., R. 15 E., secs. 4–9, 16–21, 25, S ½ sec. 26, S ½ sec. 27, and secs. 28–36; T. 5 S., R. 16 E., secs. 28–35; T. 6 S., R. 10 E., secs. 1–4, 9–16, 21–26, 35 and 36; T. 6 S., R. 11 E., secs. 4–36; T. 6 S., R. 12 E.; T. 6 S., R. 13 E.; T. 6 S., R. 14 E.; T. 6 S., R. 15 E.; T. 6 S., R. 16 E.; T. 6 S., R. 17 E., secs. 5–9, and 14–36; T. 6 S., R. 18 E., secs. 29–36; T. 6 S., R. 19 E., secs. 31–36; T. 6 S., R. 20 E., secs. 31–34; T. 7 S., R. 11 E., sec. 1; T. 7 S., R. 12 E., secs. 1–6, 9–15, and 23–25; T. 7 S., R. 13 E., secs. 1–30 and 31–36; T. 7 S., R. 14 E.; T. 7 S., R. 15 E.; T. 7 S., R. 16 E.; T. 7 S., R. 17 E.; T. 7 S., R. 18 E.; T. 7 S., R. 19 E.; T. 7 S., R. 20 E., secs. 3–10, 14–23, and 26–35; T. 8 S., R. 13 E., secs. 1, 2, and 11–14; T. 8 S., R. 14 E., secs. 1–18, and secs. 21–26; T. 8 S., R. 15 E., secs. 1–30 and 34–36; T. 8 S., R. 16 E.; T. 8 S., R. 17 E.; T. 8 S., R. 18 E.; T. 8 S., R. 19 E.; T. 8 S., R. 20 E., secs. 3–10, 15–22, and 28–33; T. 9 S., R. 15 E., sec. 1; T. 9 S., R. 16 E., secs. 1–17, 20–29, and 32–36; T. 9 S., R. 17 E.; T. 9 S., R. 18 E.; T. 9 S., R. 19 E.; T. 9 S., R. 20 E., secs. 5–8, 17–20, and 29–33; T. 10 S., R. 16 E., secs. 1–5, 9–16, and 22–26; T. 10 S., R. 17 E.; T. 10 S., R. 18 E.; T. 10 S., R. 19 E.; T. 10 S., R. 20 E., secs. 3–36; T. 10 S., R. 21 E., secs. 18–21 and 28–34; T. 10 ½ S., R. 21 E., secs. 31–33; T. 11 S., R. 17 E., secs. 1–5 and 8–15; T. 11 S., R. 18 E., secs. 1–24; T. 11 S., R. 19 E., secs. 1–26, 35, and 36; T. 11 S., R. 20 E., secs. 1–23 and 26–34; T. 11 S., R. 21 E., secs. 4–8; T. 12 S., R. 19 E., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 12 S., R. 20 E., secs. 3–10, 15–22, and 27–34; T. 13 S., R. 19 E., secs. 1, 2, 11, 12, 22–27, and 34–36; T. 13 S., R. 20 E., secs. 3–10, 14–23, and 26–34.

BILLING CODE 4310–55–P

MAP 5



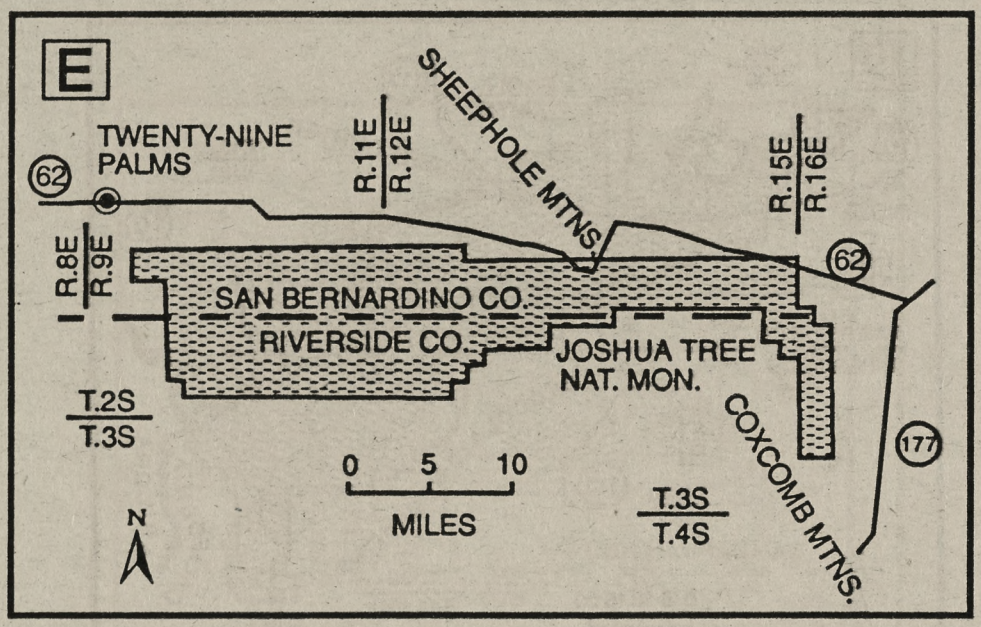
BILLING CODE 4310–55–C

5. *Pinto Mountain Unit.* Riverside and San Bernardino Counties. From BLM Maps: Yucca Valley 1982, Sheep Hole Mountains 1978, Chuckwalla 1978, and Palm Springs #17 1978. (Index map location E).

San Bernardino Meridian: T. 1 S., R. 9 E., secs. 10–15, 24, 25, and 36; T. 1 S., R. 10 E., secs. 7–36; T. 1 S., R. 11 E., secs. 7–36; T. 1 S., R. 12 E., secs. 7–36 except sec. 12; T. 1 S., R. 13 E., secs. 13–36; T. 1 S., R. 14 E., secs. 13–32; T. 1 S., R. 15 E., secs. 13–30 and 36; T. 1 S., R. 16 E., secs. 18, 19, and 30–32; T. 2 S., R. 9 E., secs. 1, 12, and 13; T. 2 S., R. 10 E., secs. 1–24; T. 2 S., R. 11 E., secs. 1–24; T. 2 S., R. 12 E., secs. 1–22 except sec. 13; T. 2 S., R. 13 E., secs. 3–6; T. 2 S., R. 15 E., sec. 1; T. 2 S., R. 16 E., secs. 4–9, 16, 17, 20, 21, 28, 29, 32, and 33; T. 3 S., R. 16 E., secs. 4, 5, 8, and 9.

BILLING CODE 4310–55–P

MAP 6



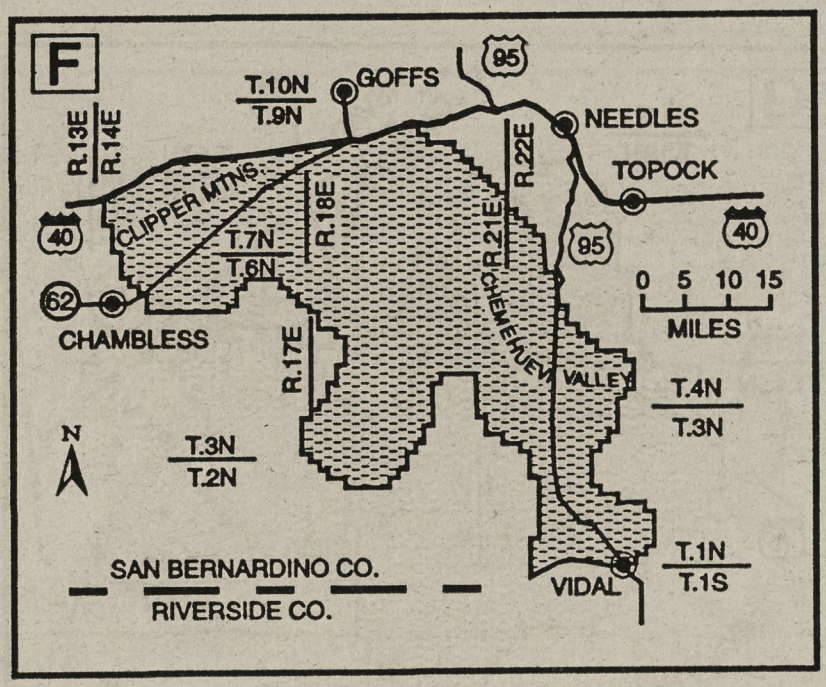
BILLING CODE 4310-55-C

6. *Chemehuevi Unit.* San Bernardino County. From BLM Maps: Sheep Hole Mts. 1978, Parker 1979, Needles 1978, and Amboy 1991. (Index map location F).

San Bernardino Meridian: T. 1 S., R. 22 E., those portions of secs. 3–5 lying northwesterly of the Atchison Topeka and Santa Fe Railroad; T. 1 S., R. 23 E., those portions of secs. 1–3 lying northerly of the Atchison Topeka and Santa Fe Railroad except that portion of sec. 1 lying easterly of U.S. Hwy. 95; T. 1 N., R. 22 E., secs. 1–4, 9–16, 20–29, and 32–36 except those portions of secs. 34–36 lying southerly of the Atchison Topeka and Santa Fe Railroad; T. 1 N., R. 23 E., secs. 1–36 except those portions of secs. 31–34 lying southerly of Atchison Topeka and Santa Fe Railroad; T. 1 N., R. 24 E., secs. 4–9, 16–21, and 29–31; T. 2 N., R. 18 E., secs. 1–5, and 9–14; T. 2 N., R. 19 E., secs. 2–10, and 16–18; T. 2 N., R. 22 E., secs. 1–5, 8–16, 21–28, and 33–36; T. 2 N., R. 23 E., secs. 5–8, 17–21, and 26–36; T. 2 N., R. 24 E., secs. 31 and 32; T. 3 N.. R. 17 E., secs. 12, 13, 24, and 25; T. 3 N., R. 18 E.; T. 3 N., R. 19 E., secs. 1–35; T. 3 N., R. 20 E., secs. 5–8, 18, and 19; T. 3 N., R. 21 E., secs. 1–5, 9–16, 23, and 24; T. 3 N., R. 22 E., secs. 1–36 except sec. 31; T. 3 N., R. 23 E., secs. 2–11, 14–22, and 28–32; T. 4 N., R. 18 E., secs. 1, 2, 10–15, 21–28, and 32–36; T. 4 N., R. 19 E.; T. 4 N., R. 20 E., secs. 1–12, 16–20, and 29–32; T. 4 N., R. 21 E., secs. 1–17, 20–29, and 32–36; T. 4 N., R. 22 E.; T. 4 N., R. 23 E., secs. 1–35; T. 4 N., R. 24 E., Secs 6, 7, 18, and 19; T. 5 N., R. 15 E., secs. 1–6; T. 5 N., R. 16 E., secs. 4–6; T. 5 N., R. 18 E., secs. 1–6, 8–17, 22–26, 35, and 36; T. 5 N., R. 19 E.; T. 5 N., R. 20 E.; T. 5 N., R. 21 E.; T. 5 N., R. 22 E., secs. 2–36; (Unsurveyed) T. 5 N., R. 23 E., protracted secs. 19, and 29–33; T. 6 N., R. 14 E., secs. 1–3, 10–15, and 23–25; T. 6 N., R. 15 E.; T. 6 N., R. 16 E., secs. 1–23, and 27–34; T. 6 N., R. 17 E., secs. 1–18, 22–26, and 36; T. 6 N., R. 18 E.; T. 6 N., R. 19 E.; T. 6 N., R. 20 E.; T. 6 N., R. 21 E.; T. 6 N., R. 22 E., secs. 3–10, 15–23, and 26–35; T. 7 N., R. 14 E., secs. 1–5, 8–17, 21–28, and 33–36; T. 7 N., R. 15 E.; T. 7 N., R. 16 E.; T. 7 N., R. 17 E.; T. 7 N., R. 18 E.; T. 7 N., R. 19 E.; T. 7 N., R. 20 E.; T. 7 N., R. 21 E.; T. 7 N., R. 22 E., secs. 18–20, and 28–34; T. 8 N., R. 14 E., secs. 13, 23–28, and 31–36 except those portions of secs. 13, 23, 24, 26, 27, 28, 31, 32, and 33 lying northwesterly of Interstate Hwy. 40; T. 8 N., R. 15 E., secs. 9–36 except those portions of secs. 9–12, 17, and 18 lying northwesterly of Interstate Hwy. 40; T. 8 N., R. 16 E., secs. 1, 2, and 7–36 except those portions of secs. 1, 2, and 7–10 and 11 lying northerly of Interstate Hwy. 40; T. 8 N., R. 17 E., secs. 1–36 except those portions of secs. 1–6 lying northerly of Interstate Hwy. 40; T. 8 N., R. 18 E., secs. 1–36 except that portion of sec. 6 lying northerly of Interstate Hwy. 40; T. 8 N., R. 19 E.; T. 8 N., R. 20 E.; T. 8 N., R. 21 E., secs. 7, 17–21, and 27–35; T. 9 N., R. 18 E., those portions of secs. 31–36 lying southerly of Interstate Hwy. 40; T. 9 N., R. 19 E., secs. 23–29 and 31–36 except those portions of secs. 23, 24, 26–29, 31, and 32 lying northerly of Interstate Hwy. 40; T. 9 N., R. 20 E., secs. 19, 20, and 29–33 except those portions of secs. 19 and 20 lying northerly of Interstate Hwy. 40 and S½ S½ sec. 27, SW¼ SW¼ sec. 26, and W½ W½ sec. 35.

BILLING CODE 4310-55-P

MAP 7



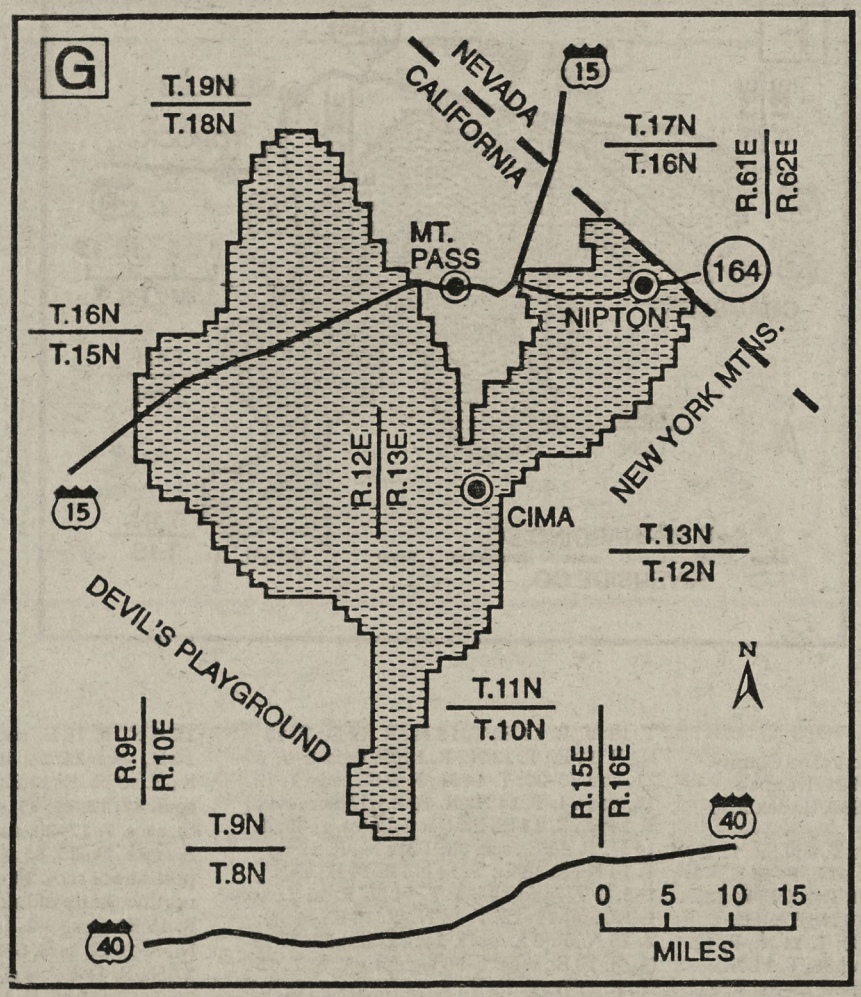
BILLING CODE 4310–55–C

7. *Ivanpah Unit.* San Bernardino County. From BLM Maps: Amboy 1991, Ivanpah 1979, and Mesquite Lake 1990. (Index map location G).

San Bernardino Meridian: T. 9 N., R. 12 E., secs. 1, 2, 11–14, and 24; T. 9 N., R. 13 E., secs. 4–9, 16–21, and 28–30; T. 10 N., R. 12 E., secs. 25, 35, and 36; T. 10 N., R. 13 E., secs. 3–10, 16–21, and 28–33; T. 11 N., R. 12 E., secs. 1, 12, 13, 24, 25, and 36; T. 11 N., R. 13 E., secs. 1–12, 15–21, and 28–33; T. 11 N., R. 14 E., sec. 6; T. 12 N., R. 11 E., secs. 1–5 and 9–15; T. 12 N., R. 12 E., secs. 1–18, 21–27, 35, and 36; T. 12 N., R. 13 E.; T. 12 N., R. 14 E., secs. 4–9, 16–21, and 29–32; T. 13 N., R. 10 E., secs. 1–5, 10–14, 24, and 25; T. 13 N., R. 11 E.; T. 13 N., R. 12 E.; T. 13 N., R. 13 E.; T. 13 N., R. 14 E., secs. 3–9, 16–21, and 28–33; T. 14 N., R. 9 E., secs. 1, 12, 13, and 24; T. 14 N., R. 10 E.; (Unsurveyed) T. 14 N., R. 11 E., Protracted secs. 1–35; T. 14 N., R. 11 E., sec. 36; T. 14 N., R. 12 E.; T. 14 N., R. 13 E.; T. 14 N., R. 14 E., secs. 1–5, 8–17, and 19–35; T. 14 N., R. 15 E., secs. 1–12, and 14–22; T. 14 N., R. 16 E., sec. 6; T. 15 N., R. 9 E., secs. 24, 25, and 36; T. 15 N., R. 10 E., secs. 1–36 except sec. 6; T. 15 N., R. 11 E.; T. 15 N., R. 12 E.; T. 15 N., R. 13 E., secs. 3–11 and 14–36; T. 15 N., R. 14 E., secs. 12, 13, 23–28, and 33–36; T. 15 N., R. 15 E.; T. 15 N., R. 16 E., secs. 1–11, 14–22, and 28–33; T. 15½ N., R. 14 E., secs. 24 and 25; T. 15½ N., R. 15 E., secs. 19–36; T. 15½ N., R. 16 E., secs. 19–35; T. 16 N., R. 10 E., secs. 25, 35, and 36; T. 16 N., R. 11 E.; T. 16 N., R. 12 E.; T. 16 N., R. 12½ E., secs. 12, 13, 24, 25, and 36; T. 16 N., R. 13 E., secs. 7, 17–20, and 29–33; T. 16 N., R. 14 E., secs. 24, 25, 35, and 36 except those portions of secs. 24 and 35 lying northwesterly of Interstate Hwy. 15; T. 16 N., R. 15 E., secs. 1–3, 10–14, and 23–36; T. 16 N., R. 16 E., secs. 6–8, 16–22, and 26–36; T. 17 N., R. 11 E., secs. 1–5, 8–17, 20–29, and 31–36; T. 17 N., R. 12 E., secs. 3–10, 14–23, and 26–36; T. 18 N., R. 11 E., secs. 13, 14, 22–28, and 33–36; T. 18 N., R. 12 E., secs. 18–20, and 28–33.

BILLING CODE 4310–55–P

MAP 8



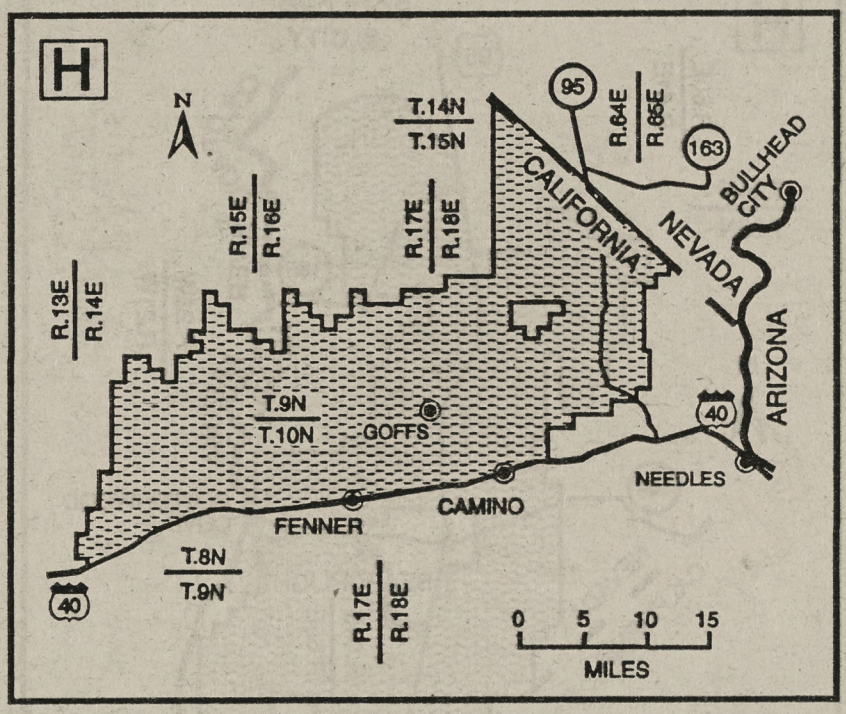
BILLING CODE 4310–55–C

8. *Piute-Eldorado Unit.* San Bernardino County. From BLM Maps: Amboy 1991, Needles 1978, and Ivanpah 1979. (Index map location H).

San Bernardino Meridian: T. 8 N., R. 14 E., secs. 1–4, 8–17, 19–24, 26–30, 32, and 33 except those portions of secs. 13, 23, 24, 26–28, 32, and 33 lying southeasterly of Interstate Hwy. 40; T. 8 N., R. 15 E., secs. 1–12, 17, and 18 except those portions of secs. 1, 8–12, 17, and 18 lying southeasterly of Interstate Hwy. 40; T. 8 N., R. 16 E., secs. 1–10 except those portions of sections 1–3 and 6–10 lying southerly of Interstate Hwy. 40; T. 8 N., R. 17 E., those portions of secs. 1–6 lying northerly of Interstate Hwy. 40; T. 9 N., R. 14 E., secs. 1–3, 10–15, 22–28, and 33–36; T. 9 N., R. 15 E.; T. 9 N., R. 16 E.; T. 9 N., R. 17 E., secs. 1–36 except that portion of sec. 36 lying southerly of Interstate Hwy. 40; T. 9 N., R. 18 E., secs. 1–36 except those portions of secs. 31–36 lying southerly of Interstate Hwy. 40; T. 9 N., R. 19 E., secs. 1–24 and 26–32 except those portions of secs. 26–29, 31, and 32 lying southerly of Interstate Hwy. 40; T. 9 N., R. 20 E., secs. 3–8 and 17–20 except those portions of secs. 19 and 20 lying southerly of Interstate Hwy. 40; T. 10 N., R. 14 E., secs. 11–14, 22–27, and 34–36; T. 10 N., R. 15 E., secs. 1–3, 9–16, and 18–36; T. 10 N., R. 16 E.; T. 10 N., R. 17 E.; T. 10 N., R. 18 E.; T. 10 N., R. 19 E.; T. 10 N., R. 20 E.; T. 10 N., R. 21 E., secs. 3–10, 15–22, and 28–31; T. 11 N., R. 15 E., secs. 9, 15, 16, 21, 22, 25–29, and 33–36; T. 11 N., R. 16 E., secs. 9, 15, 16, 21–23, 25–28, 31, and 33–36; T. 11 N., R. 17 E., secs. 8, 12–17, and 19–36; T. 11 N., R. 18 E., secs. 1–4 and 7–36; T. 11 N., R. 19 E., secs. 1–13, 18, 19, 23–27, and 29–36; T. 11 N., R. 20 E., secs. 1–11, 14–23, and 26–35; T. 12 N., R. 19 E.; T. 12 N., R. 20 E., secs. 3–11 and 13–36; T. 12 N., R. 21 E., secs. 19, 30, and 31; T. 13 N., R. 19 E., secs. 3–11 and 13–36; T. 13 N., R. 20 E., secs. 19 and 29–33; T. 14 N., R. 19 E., secs. 19 and 29–33.

BILLING CODE 4310–55–P

MAP 9



BILLING CODE 4310–55–C

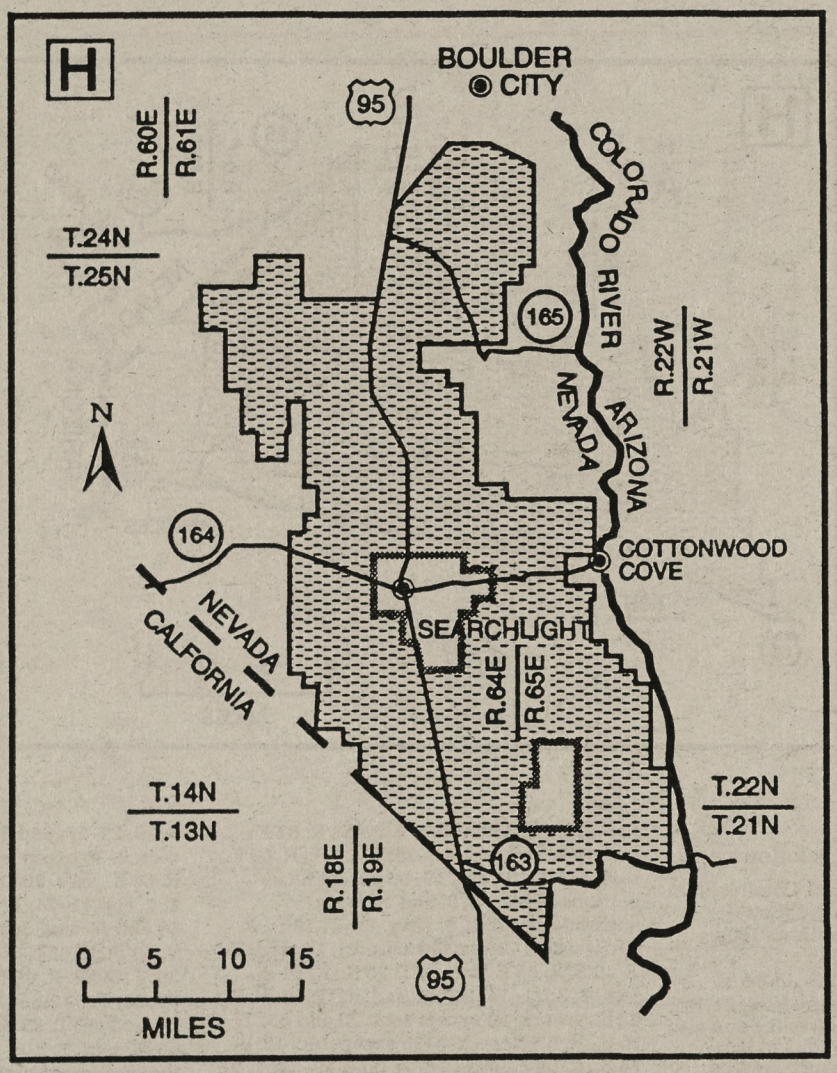
Nevada. Areas of land as follows:

9. *Piute-Eldorado Unit.* Clark County. From BLM Maps: Mesquite Lake 1990, Boulder City 1978, Ivanpah 1979, and Davis Dam 1979. (Index map location H).

Mt. Diablo Meridian: T. 23 S., R. 64 E., secs. 31–36 except that portion of sec. 31 lying northwesterly of the powerline and also except those portions of secs. 34–36 lying northeasterly of the powerline; T. 23 ½ S., R. 64 E., secs. 31–36 except that portion of sec. 31 lying northwesterly of the powerline; T. 23 ½ S., R. 65 E., that portion of sec. 31 lying southwesterly of the powerline; T. 24 S., R. 63 E., secs. 1, 2, 11–15, 22–28, and 33–36 except those portions of secs. 1, 2, 11, 14, and 15 lying northwesterly of the powerline and those portions of secs. 22, 27, 28, and 33 lying northwesterly of U.S. Hwy. 95; T. 24 S., R. 64 E.; T. 24 S., R. 65 E., secs. 6, 7, 18, 19, 30, and 31; T. 25 S., R. 61 E., secs. 13–15, E ½ sec. 16, E ½ sec. 21, secs. 22–27, E ½ sec. 28, secs. 35 and 36; T. 25 S., R. 62 E., secs. 4–9, and secs. 16–36; T. 25 S., R. 63 E., secs. 1–4, 9–16, and 19–36 except those portions of secs. 4, 9, and 16 lying northwesterly of U.S. Hwy. 95; T. 25 S., R. 64 E., secs. 1–35 except secs. 13, 24, and 25,; T. 25 S. R. 65 E., sec. 6; T. 26 S., R. 61 E., secs. 1, 2, 11–14, 24, 25, and 36; T. 26 S., R. 62 E., secs. 1–36 except secs. 28 and 33; T. 26 S., R. 63 E., secs. 2–36 except sec. 12; T. 26 S., R. 64 E., secs. 18–20, and 29–33; T. 27 S., R. 62 E., secs. 1–3, 5–8, 10–15, 22–26, 35, and 36; T. 27 S., R. 62 ½ E., secs. 1, 12, 13, 24, 25, and 36; T. 27 S., R. 63 E.; T. 27 S., R. 64 E., secs. 4–9, 16–21, and 26–36; T. 27 S., R. 65 E., secs. 31–35; T. 28 S., R. 62 E., secs. 1–3, 9–16, 21–28, and 33–36; T. 28 S., R. 63 E., secs. 1–20, and 29–32; T. 28 S., R. 64 E., secs. 1–18, 21–26, 35, and 36; T. 28 S., R. 65 E., secs. 2–11, 14–21, and 28–35; T. 29 S., R. 62 E., secs. 1–4, 9–16, 21–28, 34, 35 and 36; T. 29 S., R. 63 E., secs. 5–10, 15–23, and 26–36; T. 29 S., R. 64 E., secs. 1–3, 9–16, 21–28, and 31–36; T. 29 S., R. 65 E., secs. 2–36 except secs. 12 and 13; T. 29 S., R. 66 E., secs. 30–32; T. 30 S., R. 62 E., secs. 1, 2, and 11–14; T. 30 S., R. 63 E., secs. 1–36 except secs. 30 and 31; T. 30 S., R. 64 E.; T. 30 S., R. 65 E., secs. 1–26, 30, 31, 35, and 36; T. 30 S., R. 66 E., secs. 4–9, 16–21, and 28–33; T. 31 S., R. 63 E., secs. 1–5, 8–16, 22–26, and 36; T. 31 S., R. 64 E.; T. 31 S., R. 65 E., secs. 1, 2, 6, 11–14, and 23–36 except that portion of sec. 36 lying southwesterly of State Hwy. 163; T. 31 S., R. 66 E., secs. 3–10, 15–22, and 27–34 except that portion of sec. 31 lying southwesterly of State Hwy. 163; T. 32 S., R. 64 E., secs. 1–6, 8–16, 22–26, and 36; T. 32 S., R. 65 E., secs. 1–12, 17–20, and 29–32 except those portions of secs. 1 and 9–12 lying southeasterly or easterly of State Hwy. 163; T. 32 S., R. 66 E., those portions of secs. 3–6 lying northerly of State Hwy. 163; T. 33 S., R. 65 E., sec. 5.

BILLING CODE 4310–55–P

MAP 10



BILLING CODE 4310–55–C

10. *Mormon Mesa Unit.* Clark and Lincoln Counties. From BLM Maps: Pahranagat 1978, Clover Mts. 1978, Overton 1978, Indian Springs 1979, Lake Mead 1979, and Las Vegas 1986. (Index map location I).

Mt. Diablo Meridian: T. 9 S., R. 62 E., secs. 13–15, 22–27, and 34–36 except those portions of secs. 15, 22, 27, and 34 lying westerly of the easterly boundary line of the Desert National Wildlife Range; T. 9 S., R. 63 E., secs. 18, 19, 30, and 31; T. 10 S., R. 62 E., secs. 1, 2, 11–14, 23–25, and 36 except those portions of secs. 14, 23, 35, and 36 lying westerly of the easterly boundary line of the Desert National Wildlife Range; T. 10 S., R. 63 E., secs. 6, 7, 13–15, 18–20, and 22–36; T. 10 S., R. 64 E., secs. 13–24 and 26–34; T. 10 S., R. 65 E., secs. 18, and 19; T. 11 S., R. 62 E., that portion of sec. 1 lying easterly of the easterly boundary line of the Desert National Wildlife Range; T. 11 S., R. 63 E.; T. 11 S., R. 64 E., secs. 4–9, 17–20, 30, and 31; T. 11 S., R. 66 E., secs. 31–36; T. 12 S., R. 63 E.; T. 12 S., R. 64 E., secs. 6, 7, and 25–36; T. 12 S., R. 65 E., secs. 1, 12, 13, and 24–36 except those portions of secs. 1, 2, 13, and 24 lying westerly of Union Pacific Railroad; T. 12 S., R. 66 E.; T. 12 S., R. 67 E., secs. 6–8, 16–22, and 27–33; T. 12 S., R. 68 E., secs. 23–29 and 31–36; T. 12 S., R. 69 E., secs. 1–5, 8–17, and 19–36; T. 12½ S., R. 62 E., that portion of sec. 36 lying easterly of the easterly boundary line of the Desert National Wildlife Range; T. 13 S., R. 62 E., those portions of secs. 1, 12, 13, 24, and 25 lying easterly of the easterly line of the Desert National Wildlife Range; T. 13 S., R. 63 E.; T. 13 S., R. 64 E.; T. 13 S., R. 65 E., secs. 1–24, N ½ 26, N ½ 27, N ½ and SW ¼ sec. 28, 29–32, and W ½ 33; T. 13 S., R. 66 E., secs. 1–26, W ½ sec. 27, 35, and 36; T. 13 S., R. 67 E.; T. 13 S., R. 68 E., secs. 1–36 except those portions of secs. 25 and 33–36 lying southeasterly of Interstate Hwy. 15; T. 13 S., R. 69 E., secs. 1–30 except those portions of secs. 25–30 lying southerly of Interstate Hwy. 15; T. 13 S., R. 70 E., secs. 6, 7, 18, 19, 30, and 31 except those portions of secs. 30 and 31 lying southerly of Interstate Hwy. 15; T. 13½ S., R. 63 E., secs. 31–36; T. 13½ S., R. 64 E., secs. 31–36 except that portion of sec. 36 lying southwesterly of State Hwy. 168; T. 14 S., R. 63 E., secs. 1–23, and 26–35; T. 14 S., R. 64 E., secs. 2–6, 8–11, 15, and 16; T. 14 S., R. 66 E., secs. 1, E ½ sec. 2, 12, E ½ sec. 13, and E ½ sec. 24; T. 14 S., R. 67 E., secs. 1–12 and 14–22 except those portions of secs. 12, 14, 15, 21,

and 22 lying southerly of Interstate Hwy. 15; T. 14 S., R. 68 E., those portions of secs. 4–7 lying northwesterly of Interstate Hwy. 15; T. 15 S., R. 63 E., secs. 2–11, 14–22, and 27–34; T. 16 S., R. 63 E., secs. 3–10, 15–22, and 28–33; T. 17 S., R. 63 E., secs. 7–9, 16–21, and 28–32 except those portions of secs. 29 and 32 lying easterly of the westerly boundary line of the Apex Disposal Road; T. 18 S., R. 63 E., secs. 5–8, 17–19, and 29–31 except those portions of secs. 5, 8, 17–19, and 29–31 lying easterly of the westerly boundary line of the Apex Disposal Road and that portion of sec. 31 lying westerly of the easterly boundary line of Desert National Wildlife Range.

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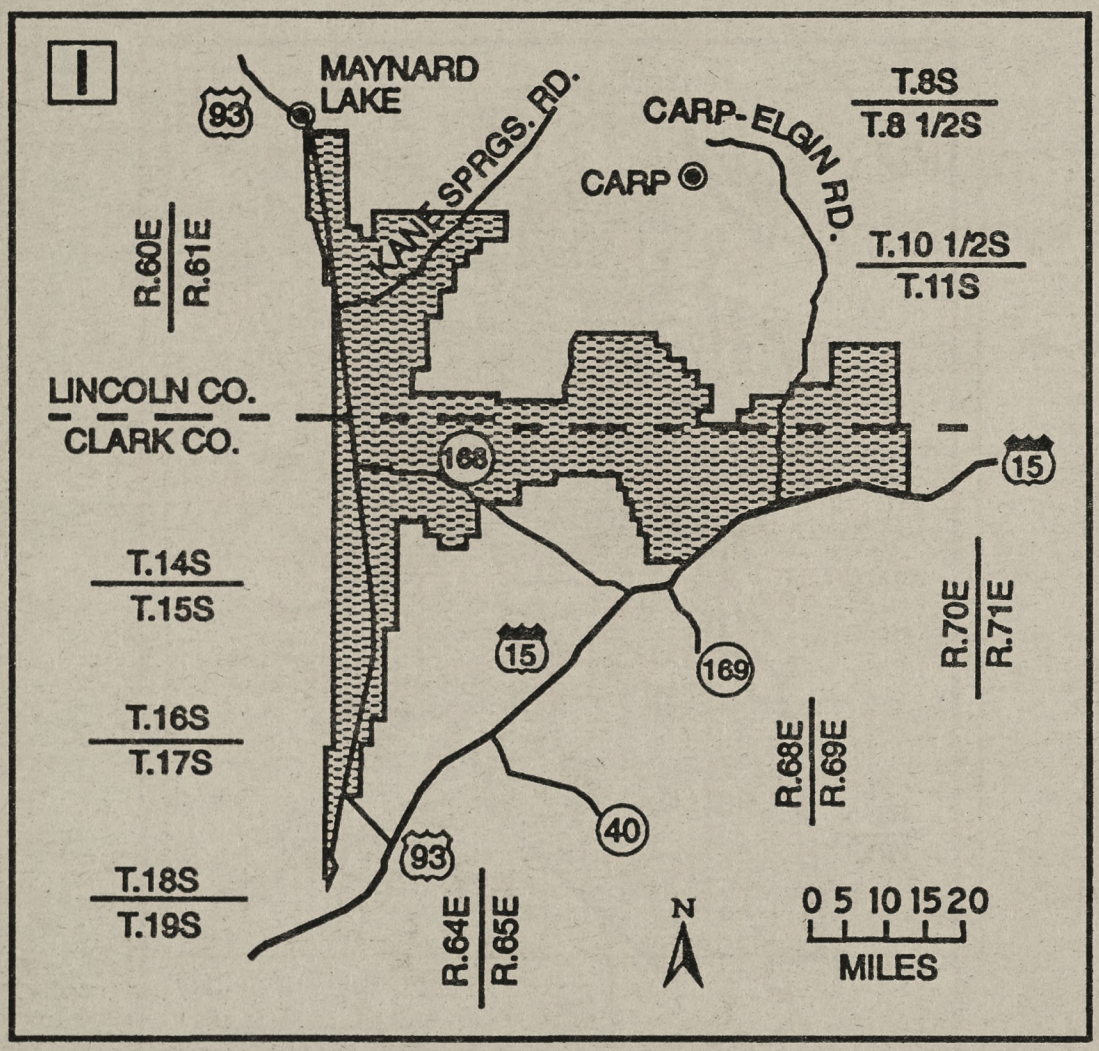
MAP 11



BILLING CODE 4310–55–C

11. *Gold Butte-Pakoon Unit.* Clark County. From BLM Maps: Overton 1978 and Lake Mead 1979. (Index map location J).

Mt. Diablo Meridian: T. 13 S., R. 71 E., secs. 32–34; T. 14 S., R. 69 E., secs. 24–26, and 34–36; T. 14 S., R. 70 E., secs. 1, and 10–36; T. 14 S., R. 71 E., secs. 3–10, 15–22, and 27–34; T. 15 S., R. 69 E., secs. 1–3, 9–16, 21–28, and 33–36; T. 15 S., R. 70 E., secs. 2–11, 15–22, and 28–33; T. 16 S., R. 69 E., secs. 1–36 except secs. 6, 7, and 29–32; T. 16 S., R. 70 E., secs. 4–36 except sec. 12; T. 16 S., R. 71 E., secs. 19, and 29–32; T. 17 S., R. 69 E., secs. 1–3, 11–14, 24, 25, and 36; T. 17 S., R. 70 E.; T. 17 S., R. 71 E., secs. 4–10, 15–22, and 27–34; T. 18 S., R. 69 E., sec. 1; T. 18 S., R. 70 E., secs. 1–6, 10–15, 22–27, and 34–36; T. 18 S., R. 71 E., secs. 3–10, 15–22, and 27–34; T. 19 S., R. 71 E., secs. 3, 4, 9, 10, 15, 16, 21, 22, 27, 28, 33 and 34; T. 20 S., R. 71 E., secs. 3 and 4.

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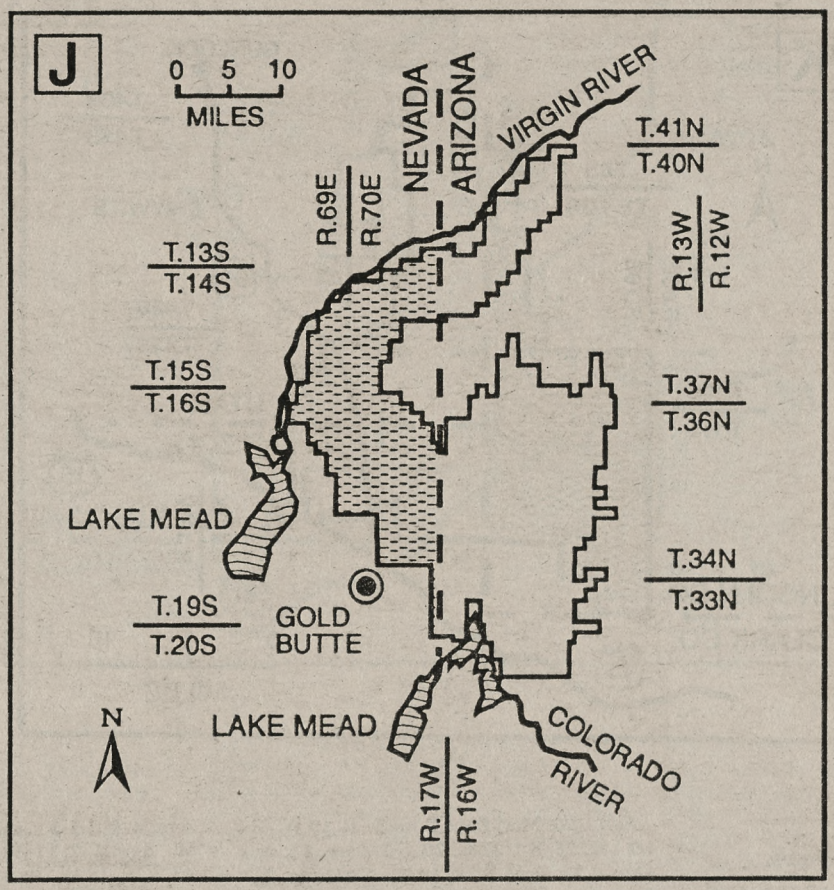
MAP 12



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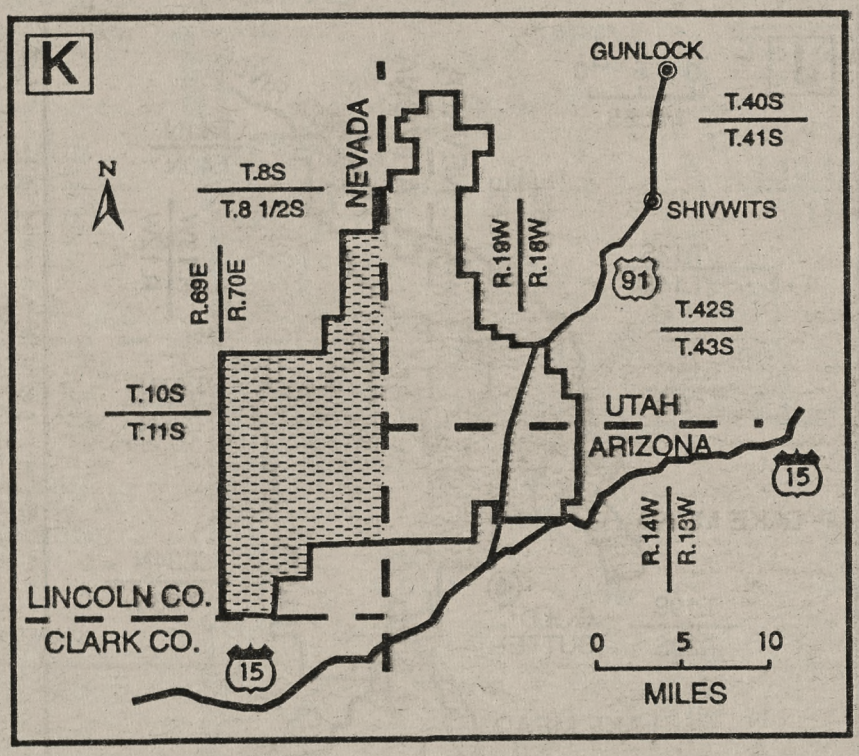
12. *Beaver Dam Slope Unit.* Lincoln County. From BLM Maps: Clover Mountains 1978 and Overton 1978. (Index map location K).

Mt. Diablo Meridian: T. 8 1/2 S., R. 71 E., that portion of sec. 34 lying south of a westerly extension of the north line of sec. 26, T. 41 S., R. 20 W. (Salt Lake Meridian), Washington County, Utah; T. 9 S., R. 71 E., secs. 3, 10, 15–17, 20–22, 27–29, and 32–34; T. 10 S., R. 70 E., secs. 19–36; T. 10 S., R. 71 E., secs. 3–5, 7–10, 15–22, and 27–34; T. 11 S., R. 70 E.; T. 11 S., R. 71 E., secs. 3–10, 15–22, and 27–34; T. 12 S., R. 70 E., secs. 1–12, 14–23, and 28–33; T. 12 S., R. 71 E., secs. 3–10.

BILLING CODE 4310–55–P

MAP 13



BILLING CODE 4310–55–C

Utah. Areas of land as follows:

13. *Beaver Dam Slope Unit.* Washington County. From BLM Maps: St. George 1980 and Clover Mts. 1978. (Index map location K).

Salt Lake Meridian: T. 40 S., R. 19 W., S 1/2 sec. 28, S 1/2 sec. 29, S 1/2 sec. 31, secs. 32 and 33; T. 41 S., R. 19 W., S 1/2 sec. 2, S 1/2 sec. 3, secs. 4, 5, 6, E 1/2 sec. 7, secs. 8–11, 15–17, E 1/2 sec. 18, and secs. 19–22, and 28–33; T. 41 S., R. 20 W., E 1/2 sec. 1, secs. 24–26, 35, and 36; T. 42 S., R. 19 W., secs. 4–9, 16–22, and 27–34; T. 42 S., R. 20 W., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 43 S., R. 18 W., secs. 7, 8, S 1/2 sec. 16, secs. 17–21, and 27–34; T. 43 S., R. 19 W., secs. 1–36 except N 1/2 sec. 1; T. 43 S., R. 20 W., secs. 1, 2, 11–14, 23–26, 35, and 36.

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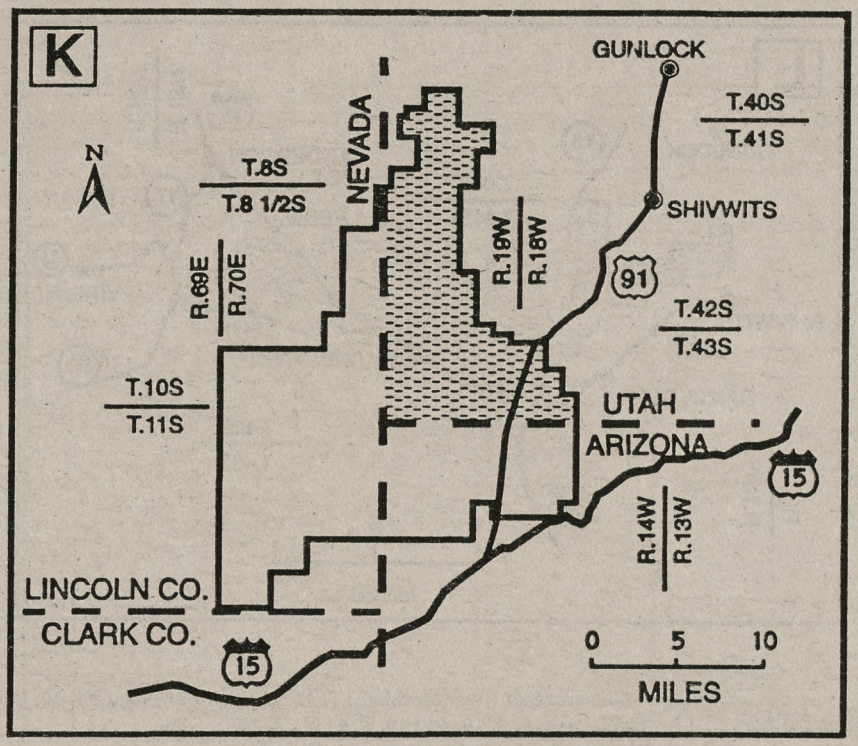
MAP 14



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14. *Upper Virgin River Unit.* Washington County. From BLM Map: St. George 1980. (Index map location L).

Salt Lake Meridian: T. 41 S., R. 13 W., secs. 17–21 except NW 1/4 NW 1/4 sec. 18, also W 1/2 and W 1/2 E 1/2 sec. 27, sec. 28 except that portion lying westerly of Gould Wash, N 1/2 sec. 29, N 1/2 sec. 30, N 1/2 N 1/2 sec. 33 except that portion lying westerly of Gould Wash, and N 1/2 NW 1/4 and NW 1/4 NE 1/4 sec. 34; T. 41 S., R. 14 W., S 1/2 S 1/2 and NE 1/4 SE 1/4 and SE 1/4 NE 1/4 sec. 13, that portion of sec. 14 lying westerly of Red Cliff Road, secs. 15–17 except N 1/2 NW 1/4 and SW 1/4 NW 1/4 sec. 17, secs. 19–22, that portion of sec. 23 lying westerly of Red Cliff Road and westerly of Interstate Hwy. 15, sec. 24, E 1/2 and N 1/2 SE 1/4 and SW 1/4 SE 1/4 sec. 25, and those portions of secs. 26, 27, and 32–34 lying northwesterly of Interstate Hwy. 15; T. 41 S., R. 15 W., secs. 14, 19, 20, and 22–36; T. 41 S., R. 16 W., secs. 4, 9, 10, S 1/2 sec. 14, 15–16, 19, 21, W 1/2 sec. 22, secs. 24–25 except W 1/2 SW 1/4 sec. 24 and W 1/2 NW 1/4 and NW 1/4 SW 1/4 sec. 25, and W 1/2 W 1/2 sec. 25, SW 1/4 NE 1/4 and NW 1/4 NW 1/4 and S 1/2 NW 1/4 and SW 1/4 and W 1/2 SE 1/4 sec. 27, E 1/2 and E 1/2 W 1/2 and NW 1/4 NW 1/4 and SW 1/4 SW 1/4 sec. 28, N 1/2 and SE 1/4 and E 1/2 SW 1/4 sec. 30, NE 1/4 sec. 31, N 1/2 sec. 32, N 1/2 and SE 1/4 and N 1/2 SW 1/4 sec. 33, sec. 34, SE 1/4 SE 1/4 and that portion of sec. 35 lying westerly of State Hwy. 18, and sec. 36; T. 41 S., R. 17 W., secs. 9, 14–16, NE 1/4 sec. 21, N 1/2 sec. 22, NW 1/4 and E 1/2 sec. 23, sec. 24, and NE 1/4 sec. 25; T. 42 S., R. 14 W., those portions of secs. 5 and 6 lying northwesterly of Interstate Hwy. 15; T. 42 S., R. 15 W., sec. 1, N 1/2 and N 1/2 S 1/2 sec. 2, NE 1/4 and W 1/2 sec. 3, secs. 4–9, W 1/2 W 1/2 sec. 10, N 1/2 N 1/2 sec. 12, secs. 16–18, N 1/2 and N 1/2 SE 1/4 and NE 1/4 SW 1/4 sec. 19, and W 1/2 NW 1/4 and NW 1/4 SW 1/4 sec. 20, except those portions of secs. 1 and 12 lying southeasterly of Interstate Hwy. 15; T. 42 S., R. 16 W., secs. 1–2, NW 1/4 and E 1/2 sec. 3, NE 1/4 NE 1/4 sec. 4, NE 1/4 sec. 10, NW 1/4 and E 1/2 sec. 11–12, E 1/2 and NW 1/4 and N 1/2 SW 1/4 sec. 13 except that portion lying westerly of State Hwy. 18, and N 1/2 NE 1/4 sec. 24.

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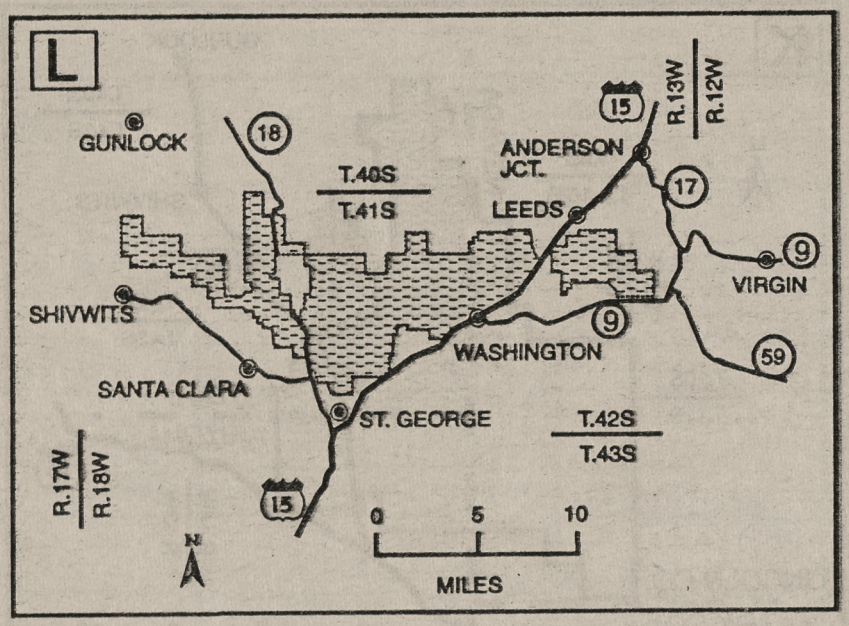
MAP 15



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Arizona. Areas of land as follows:

15. *Beaver Dam Slope Unit.* Mohave County. From BLM Maps: Overton 1978 and Littlefield 1987. (Index map location K).

Gila and Salt River Meridian: T. 41 N., R. 14 W., secs. 6, 7, 18, and 19; T. 41 N., R. 15 W., secs. 1–24, 26–28, 30, and 31; T. 41 N., R. 16 W., secs. 1–5, 8–17, 20–29, and 32–36; T. 42 N., R. 14 W., sec. 31; T. 42 N., R. 15 W., secs. 31–36; T. 42 N., R. 16 W., secs. 32–36.

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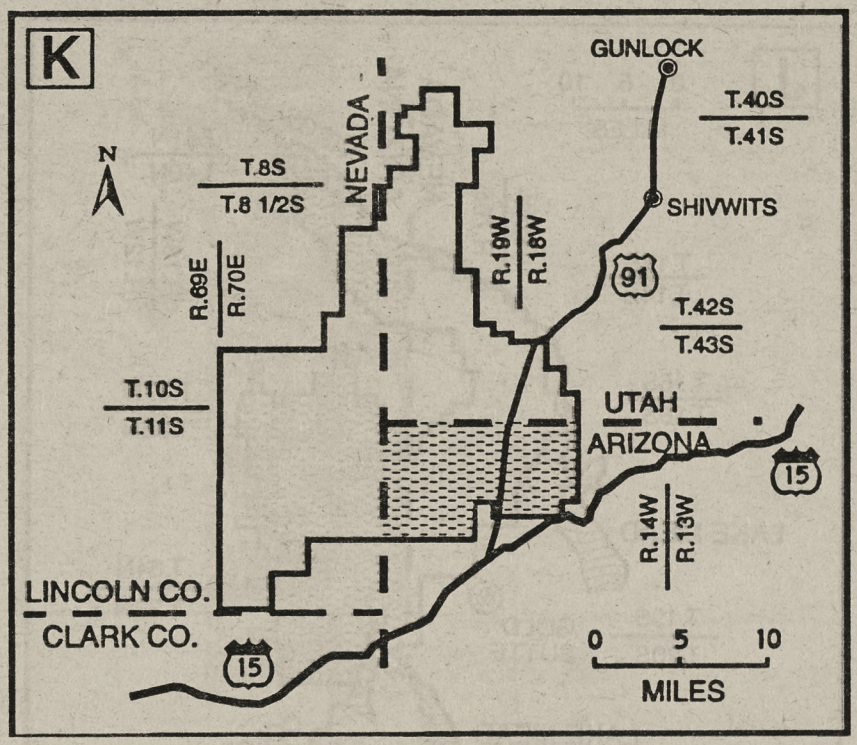
MAP 16



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16. *Gold Butte-Pakoon Unit.* Mohave County. From BLM Maps: Overton 1978, Littlefield 1987, Mount Trumbull 1986, and Lake Mead 1979. (Index map location J).

Gila and Salt River Meridian: T. 32 N., R. 15 W., secs. 1–18 except those portions of secs. 13–18 lying south of the Lake Mead National Recreation area boundary line; T. 32 N., R. 16 W., secs. 1, 2, 12, and 13; T. 32 1/2 N., R. 15 W., secs. 31–36; T. 32 1/2 N., R. 16 W., secs. 35 and 36; T. 33 N., R. 14 W., secs. 4–8, 18, 19, and 28–31; T. 33 N., R. 15 W.; T. 33 N., R. 16 W., secs. 1–14, 17–20, 23–26, 29–32, 35, and 36; T. 34 N., R. 14 W., secs. 4–9, 17–19, 30, 31, 33, and 34; T. 34 N., R. 15 W.; T. 34 N., R. 16 W.; T. 35 N., R. 14 W., secs. 3–9, 16–22, and 28–35 ; T. 35 N., R. 15 W.; T. 35 N., R. 16 W.; T. 36 N., R. 14 W., secs. 2–11, 14–22, and 27–34; T. 36 N., R. 15 W.; T. 36 N., R. 16 W., secs. 1–36 except secs. 4–9; T. 37 N., R. 14 W., secs. 15, 22, 27, 31, and 33–35; T. 37 N., R. 15 W., secs. 5, 8, 17–22, and 27–36; T. 37 N., R. 16 W., sec. 35; T. 38 N., R. 15 W., sec. 6; T. 38 N., R. 16 W., secs. 1–12 and 14–22; T. 39 N., R. 15 W., secs. 2–10, 16–21, and 29–32; T. 39 N., R. 16 W., secs. 1, 12, 13, 20, 23–29, and 32–36; T. 40 N., R. 14 W., sec. 6; T. 40 N., R. 15 W., secs. 1, 10–15, and 21–36.

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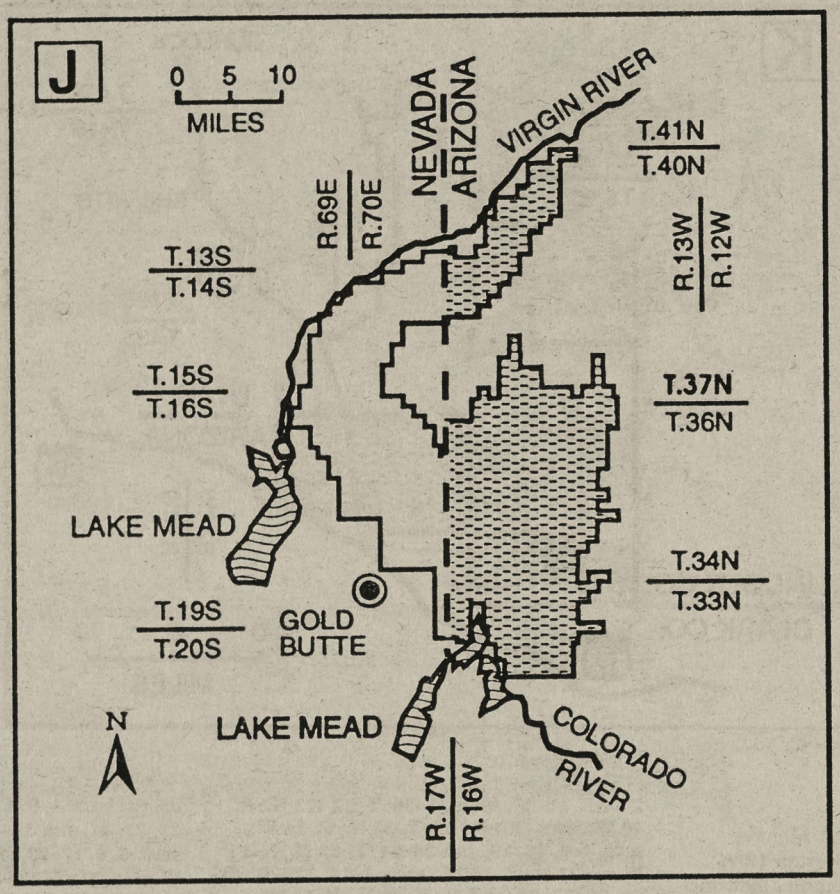
MAP 17



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Primary constituent elements: Desert lands that are used or potentially used by the desert tortoise for nesting, sheltering, foraging, dispersal, or gene flow.

Dated: December 20, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–2694 Filed 2–7–94; 8:45 am]

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federal register

Tuesday
February 8, 1994

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution (Stage I), Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-4834-5]

National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution (Stage I)

AGENCY: Environmental Protection Agency (Agency).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The Agency is today proposing standards which would limit emissions of hazardous air pollutants (HAP's) from existing and new bulk gasoline terminals and pipeline breakout stations. These proposed national emission standards for hazardous air pollutants (NESHAP) implement section 112(d) of the Clean Air Act as amended in 1990 (1990 amendments), which requires the Administrator to regulate emissions of the HAP's listed in section 112(b) of the Clean Air Act (Act). Several of these pollutants are emitted from all gasoline distribution facilities (pipeline pumping stations, pipeline breakout stations, bulk terminals, bulk plants, and service stations). The intent of the proposed standards is to protect the public health by requiring new and existing major sources to control HAP emissions to the level attainable by the maximum achievable control technology (MACT). Pipeline breakout stations and bulk gasoline terminals are the only two subcategories within the gasoline distribution network that have been found to include major source facilities. Therefore, the proposed standards would apply only to major source pipeline breakout stations and bulk gasoline terminals.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards for gasoline distribution facilities.

DATES: *Comments.* Comments must be received on or before April 11, 1994.

Public Hearing. If anyone contacts the Agency requesting to speak at a public hearing by March 1, 1994 , a public hearing will be held on March 10, 1994 beginning at 9 a.m. Persons wishing to present oral testimony must contact Ms. Lina Hanzely of EPA at (919) 541-5673 by March 1, 1994. Persons interested in attending the hearing should call Ms. Hanzely at the same number to verify that a hearing will be held.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (6102), ATTN: Docket No. A-92-38, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Background Information Document. The background information document (BID) may be obtained from the U.S. Environmental Protection Agency Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Gasoline Distribution (Stage I)—Background Information for Proposed Standards,".

Docket. Docket No. A-92-38, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the Agency's Air Docket Section, Waterside Mall, Room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general or technical information concerning the proposed standards, contact Mr. Stephen Shedd at (919) 541-5397, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For general information or information regarding the economic effects of the proposed standards, contact Mr. Scott Mathias at (919) 541-5310, Standards Development Branch, Emission Standards Division (MD-13), also at the above address.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Description of the Source Category and Subcategories
II. Background
III. Summary of the Proposed Standards
A. Sources Covered
1. Applicability Determination
2. Emission Points Covered
B. Standards for Sources
C. Effective Date for Compliance
D. Compliance Extensions
E. Compliance Testing and Monitoring
F. Recordkeeping and Reporting
IV. Summary of Estimated Environmental, Energy, and Economic Impacts of the Proposed Standards
A. Number and Type of Affected Sources or Facilities
B. Air Emission Reductions
C. Secondary Environmental Impacts
D. Energy Impacts
E. Cost Impacts
F. Economic Impacts
V. Decision Process for Setting the NESHAP
A. Authority for the Development of the NESHAP
B. Criteria for Development of the NESHAP
C. Regulatory Development Process for the NESHAP
D. Determining Maximum Achievable Control Technology (MACT) "Floors"
VI. Selection Rationale
A. Selection of Source Category(s) Controlled
B. Selection of Emission Points to be Covered
C. Selection of the Basis for the Proposed Standards for New and Existing Sources
1. Determination of Applicability
2. Determination of Floor Control Levels
3. Formulation of Regulatory Alternatives
4. Consideration of Environmental Impacts
5. Consideration of Cost
6. Consideration of Economic Impacts
7. Consideration of Secondary Impacts
8. Consideration of Energy Impacts
9. Selection of the Proposed Standards
D. Selection of the Format of the Proposed Standards
E. Equivalent Systems of Emission Reduction
F. Selection of Monitoring Requirements and Emission Test Methods
G. Selection of Recordkeeping and Reporting Requirements
H. Selection of Compliance Deadlines
I. Solicitation of Comments
VII. Administrative Requirements
A. Public Hearing
B. Docket
C. Executive Order 12866
D. Paperwork Reduction Act
E. Regulatory Flexibility Act
F. Clean Air Act Section 117
G. Regulatory Review

I. Description of the Source Category and Subcategories

The 1990 amendments require, under Section 112, that the Agency evaluate and control emissions of HAP's. The control of HAP's is to be achieved through promulgation of emission standards under Sections 112(d) and (f) for categories of sources that emit HAP's. Pursuant to Section 112(c) of the Act, the Agency published in the **Federal Register** the initial list of source categories that emit HAP's on July 16, 1992 (57 FR 31576). This list includes major and area sources of HAP's that the Agency intends to regulate before November of the year 2000. The list reflects the Section 112(a) definition of major source as a source that emits 10 tons per year (tpy) or more of any individual HAP or 25 tpy or more of any

combination of HAP's. Area sources are stationary sources that do not qualify as "major."

The initial list of major source categories includes the gasoline distribution source category. For purposes of the proposed standards, the gasoline distribution network refers to the storage and transfer of gasoline as it is moved from the production refinery process units to the service station storage tank. The gasoline distribution facility category is made up of several distinct facility types. During the analysis of this category, it was determined that this category should be subcategorized by facility type. Therefore, the following gasoline distribution subcategories were analyzed in the context of this proposed rulemaking:

—Pipeline pumping stations
—Pipeline breakout stations
—Bulk gasoline terminals
—Bulk plants
—Service stations

Gasoline is carried from production units at refineries to terminals by pipelines, which may span great distances, or be co-located or adjacent to refineries. The pipeline is made of sections of steel pipe, welded together, and usually buried underground. At the refinery, a pump sends the refined gasoline toward its destination. Since the primary pump is incapable of "pushing" the gasoline the entire distance, pumping stations are located along the pipeline to keep the gasoline flowing. Occasionally, flow may be interrupted as a quantity of gasoline is pumped out of the pipeline into storage tanks. These "breakout" stations usually are coincident with pumping stations.

Bulk gasoline terminals are facilities that receive gasoline from refineries via pipeline, ship, or barge and place it in storage tanks until it is distributed. Also, bulk terminals can be located onsite or adjacent to refineries. At these terminals, gasoline is loaded into railcars (which typically transport gasoline between terminals) or tank trucks. From the terminal, the tank trucks normally deliver gasoline to service stations or intermediate storage and handling facilities known as bulk plants.

Bulk plants, using smaller delivery tank trucks, primarily supply service stations and small accounts such as farms because they are long distances from terminals or are unable to accommodate the large terminal delivery tank trucks. At service stations, gasoline is transferred to storage tanks and ultimately to motor vehicles. Vehicle refueling (known as Stage II) and ship and barge handling of gasoline are being addressed by the Agency under separate programs.

II. Background

As noted above, section 112(b) of the 1990 amendments contains a list of HAP's to be regulated by Agency standards. Volatile organic compound (VOC) and HAP emission sources at gasoline distribution facilities have been studied and regulated by Federal, State, and local air pollution regulatory agencies for some time.

Beginning in the mid 1970's, the Agency issued control techniques guideline documents (CTGs) for the control of VOC from sources at several gasoline production and distribution facilities. These CTGs recommended control techniques for gasoline vapor emissions from service stations (November 1975), tank truck loading terminals (October 1977), bulk plants (December 1977), fixed-roof petroleum storage tanks (December 1977), external floating roof petroleum storage tanks (December 1978), and tank trucks (December 1978). The Agency also developed a general volatile organic liquid storage tank CTG (June 1984), and is in the process of revising this document (July 1992 draft). In addition, there is a CTG pertaining to the control of VOC from leaking equipment at petroleum refineries (issued in June 1978, and later superseded by a CTG issued in 1984). Most State and local agencies have implemented rules reflecting the CTG recommended control technologies in areas with ozone nonattainment problems.

The VOC emissions from sources at gasoline distribution facilities have also been addressed in Federal new source performance standards (NSPS). On March 8, 1974, the Agency promulgated an NSPS (subpart K of 40 CFR part 60) regulating VOC emissions from new petroleum liquid storage tanks. Subsequent updates (subparts Ka and Kb) require more stringent control levels for new storage tanks. Subpart Ka was promulgated on April 4, 1980, and subpart Kb on April 8, 1987 (52 FR 11428). Tank truck loading racks at new bulk gasoline terminals are covered by subpart XX of 40 CFR part 60, which was adopted on August 18, 1983 (48 FR 37578). On May 30, 1984, 40 CFR part 60, subpart GGG (referencing subpart VV provisions) NSPS were promulgated covering equipment leaks of VOC at petroleum refineries. Additionally, national emission standards for hazardous air pollutants, 40 CFR part 61, subpart J (referencing subpart V provisions) were promulgated in June 6, 1984 covering equipment leaks from equipment in benzene service.

The regulatory emission limits applied in some areas are more stringent than either the CTG or NSPS level. For example, rules for the Bay Area and Sacramento Air Quality Management Districts in California have bulk gasoline terminal emission limits that are more stringent than the levels required under the NSPS.

Methods for control of HAP emissions from gasoline distribution facilities have also been evaluated in past studies. In 1978, the Agency studied benzene emissions from gasoline distribution facilities (not including vehicle refueling) and presented its findings to the National Air Pollution Control Techniques Advisory Committee (NAPCTAC). After this presentation, the Agency decided not to proceed with a benzene standard but rather to proceed with the NSPS development for bulk gasoline terminals. On August 8, 1984, the Agency published in the **Federal Register** (49 FR 31706) a notice of the availability of a document on regulatory strategies being considered for controlling air pollutants from bulk gasoline terminals, bulk plants, and service stations. After the public comment period on the regulatory strategies, a Federal regulation for controlling vehicle refueling (Stage II) emissions with on the vehicle controls (onboard) was proposed on August 19, 1987, but no control requirements were included for bulk gasoline terminals, bulk plants, or other sources at service stations.

On February 7, 1987, in response to a petition filed in 1984 by the Natural Resources Defense Council, et. al., the United States District Court for the District of Columbia ordered the Agency to publish either a notice of intent not to regulate or a notice of proposed regulation. This order covered several sources of benzene emissions, including bulk gasoline terminals, bulk plants, and gasoline service stations (including the filling of service station storage tanks by gasoline tank trucks, but not the refueling of motor vehicles). On September 14, 1989 (54 FR 38083), the Agency proposed regulations for the gasoline distribution facilities noted above. However, on March 7, 1990 (55 FR 8292), the Agency withdrew these proposed standards. The rationale for this withdrawal was that the baseline benzene emissions were found to be within a safe range with regard to health risk, and that additional controls were unnecessary to provide an ample margin of safety. This earlier decision not to regulate these three types of gasoline distribution facilities was based on the

health effects from benzene alone and were under the provisions of the Act as amended in 1977.

The HAP list presented in the Act section 112(b), as amended in 1990, contains additional compounds normally contained in gasoline vapor, including, but not limited to benzene, toluene, hexane, ethylbenzene, naphthalene, cumene, xylenes, n-hexane, 2,2,4-trimethylpentane, and methyl tert-butyl ether (MTBE). Additionally, new provisions on how to develop NESHAP were provided in the 1990 amendments to the Act. Therefore, it became necessary to reevaluate emissions from gasoline distribution facilities to consider a combination of HAP's and the new provisions for setting NESHAPs.

There are other requirements and regulatory programs that will affect the HAP emissions from gasoline distribution facilities. These include the major and area source determination provisions for pipeline facilities covered in section 112(n)(4)(A) of the 1990 amendments, fuel volatility restrictions, and reformulated and oxygenated fuel requirements.

Section 112(n)(4)(A) stipulates that

"emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control to determine whether such units or stations are major sources".

Consequently, these facilities were evaluated separately for major source determination.

The Agency has promulgated a program that requires the use of lower volatility blends of gasoline during the summer months, which will reduce HAP and VOC emissions from the gasoline distribution network.

Reformulated and oxygenated fuel requirements in Title II of the Act will affect gasoline composition and the resulting HAP emissions. Reformulated fuel requirements specify a reduced benzene content, a minimum oxygen content, and a likely reduction in aromatic components of the blend. Reformulated gasoline is required throughout the year in the nine worst ozone nonattainment areas in the United States to reduce ozone forming VOC emissions during the summer months and air toxic emissions (benzene, 1,3-butadiene, formaldehyde, acetaldehyde, POM) year-round from gasoline vehicles by 15 percent beginning in 1995 and 25 percent in 2000. Other areas may choose to implement the prohibition provision [Section 211(k)(5) of the 1990 amendments] and thus enter the program as well. Oxygenated fuels program requires the use of oxygenates in gasoline during the winter months in all carbon monoxide (CO) nonattainment areas to reduce CO emissions. While significantly decreasing VOC, CO, and air toxics emissions, both the reformulated and oxygenated fuels programs could lead to an increase in HAP emissions due to the fact that MTBE is listed as a HAP in the Act section 112(b) of the Act and is expected to be used in a large portion of the market to meet the oxygenate requirements of these programs.

This increase will come about because to meet minimum oxygen requirements under the reformulated gasoline and oxygenated fuels programs, approximately 11 percent and 15 percent by volume of MTBE is needed in liquid gasoline, respectively. Since MTBE is much more volatile than the aromatic compounds that it will replace in the blend, a much higher concentration of HAP's in the vapor phase of this fuel will result. Therefore, it is expected that the inclusion of MTBE may increase the HAP/VOC ratio in gasoline vapor from approximately 5 weight percent for normal gasoline to nearly 15 percent for oxygenated gasoline. The actual increase in HAPs at facilities distributing reformulated gasolines and oxygenated fuels will depend on the fraction of their fuel containing MTBE as opposed to other oxygenates such as ethanol or ETBE. Furthermore, while the weight percent of HAP's may increase due to the presence of MTBE, this will be offset to some extent under the reformulated gasoline program by reducing the toxic air pollutants required by the ACT and the deep volatility controls expected to result from the reformulated gasoline program during the summer months.

The above mentioned programs, guidelines, and standards (fuels programs, CTGs, NSPS) were considered, and their impacts on the gasoline distribution network estimated, before the development of control alternatives for this proposed rulemaking began. As a consequence, all emission reductions, costs, and other impacts discussed in the forthcoming sections are incremental to existing control programs.

III. Summary of the Proposed Standards

A. Sources Covered

Sources in the gasoline distribution category are a combination of major sources and area sources. Some pipeline breakout stations and bulk gasoline terminals have been determined to be major sources, since larger breakout stations and terminals may emit either 10 tpy or greater of individual HAP's (i.e. hexane, MTBE) or 25 tpy or greater of a combination of HAP's. For purposes of this rulemaking, the Agency is proposing that major source pipeline breakout stations and bulk gasoline terminals in the gasoline distribution source category be regulated under maximum achievable control technology (MACT) standards. The following is a summary of the methods used to determine applicability of the proposed rule.

1. Applicability Determination

The proposed standard applies to all major source pipeline breakout stations and bulk gasoline terminals. Today's proposed standards provide two ways to determine if a facility is not a major source and not subject to the rule. They are: (1) The owner or operator provides documentation to the Administrator that the facility is not a major source as defined in section 112(a) by means of completion of an emissions audit at the facility, or (2) from the result of the following equations for estimating facility emissions.

The Agency has determined the following equations properly estimate if the facility is a major source. A bulk gasoline terminal is not considered a major source if the result of the calculation in equation (1), E_T, is less than 1.

(1) $E_T = 0.63(T_F) + 0.19(T_E) + 0.092(T_{ES}) + 0.03(T_I) + 0.0012(V) + 0.024(P) + KQ$

where:

E_T = major source applicability factor for bulk gasoline terminals, $E_T \geq 1$ means bulk gasoline terminal is a major source,

T_F = total number of fixed-roof gasoline storage tanks,

T_E = total number of external floating roof gasoline storage tanks with only primary seals,

T_{ES} = total number of external floating roof storage tanks with primary and secondary seals,

T_I = total number of fixed-roof gasoline storage tanks with an internal floating roof,

V = number of valves in gasoline service,

P = number of pumps in gasoline service,

Q = gasoline throughput rate (liters/day),

$K = 3.18 \times 10^{-6}$ for bulk gasoline terminals with uncontrolled loading racks (no vapor collection and

processing systems), *OR*

$K = (4.5 \times 10^{-9})(EF + 70)$ for bulk gasoline terminals with controlled loading racks (loading racks that have vapor collection and processing systems installed on the emission stream), and

EF = the federally enforceable emission standard for the vapor processor (mg of total organic compounds per liter of gasoline loaded).

A pipeline breakout station is not considered a major source if the result of the calculation in equation (2), E_p, is less than 1.

(2) $E_P = 2.4(T_F) + 0.09(T_E) + 0.043(T_{ES}) + 0.027(T_I) + 0.0009(V) + 0.009(P)$

where:

E_P = major source applicability factor for pipeline breakout stations, $E_P \geq 1$ means pipeline breakout station is a major source, and

T_F, T_E, T_{ES}, T_I, V, and P are the same as defined for bulk terminal equation (1).

The above equations are not allowed to be used if the bulk gasoline terminals or pipeline facilities are located within the contiguous area of and under common control with a major source petroleum refinery. For those facilities, they would demonstrate they are not a major source by providing an emission audit of all emission sources in the facility, including, but not limited to the refinery process units, wastewater systems, etc.

2. Emission Points Covered

Emission points affected at bulk gasoline terminals are storage tanks that contain or have the potential to contain gasoline, equipment leaks from the piping system that handles gasoline or gasoline vapors, loading racks that load gasoline into tank trucks or railcars, and gasoline vapor leakage from sealed tank trucks or railcars during loading. Emission points affected at pipeline breakout stations are individual storage tanks that contain or have the potential to contain gasoline, and equipment leaks from the entire breakout station piping system that handles gasoline.

There are two types of storage tanks found at bulk gasoline terminals and pipeline breakout stations, fixed-roof and floating roof tanks. The greatest portion of emissions occurring from fixed-roof tanks are those emitted through the breather (pressure-vacuum) valve as a result of tank breathing and filling. Floating roof tanks may have either external or internal floating roofs. The sources of greatest emissions associated with an external floating roof tank occur as a result of an improper fit between the seals and the tank shell, leaks associated with roof fittings, and withdrawal losses from evaporation when a wet portion of the tank wall is exposed. Losses from internal floating roof tanks occur mainly through vents in the metal shell of the tank.

Pumps and valves are used at pipeline breakout stations to move and route gasoline along the pipeline or to transfer gasoline to or from breakout station storage tanks. Pumps and valves at bulk gasoline terminals are used to transfer gasoline from storage tanks to tank trucks or railcars. In addition, other equipment at these facilities, such as compressors, pressure relief devices, sampling connection systems, flanges, or other connectors is in gasoline service.

Loading rack emissions from tank truck or railcar loading operations at bulk gasoline terminals occur when gasoline being loaded displaces vapors from the cargo tank of the truck or railcar to the atmosphere.

There is a potential for emissions due to vapor leakage even from controlled tank trucks or railcars during loading if their cargo tanks are not vapor-tight. Vapors may leak to the atmosphere from dome cover assemblies, pressure-vacuum (P–V) vents, and vapor collection piping and vents.

B. Standards for Sources

The Agency is proposing an equipment standard for storage tanks at new and existing major source bulk gasoline terminals and pipeline breakout stations. These proposed standards specify new and existing storage tanks comply with the equipment standards of the NSPS 40 CFR part 60, subpart Kb, they would require: (1) External floating roof tanks to have specified types of primary and secondary seals, and (2) fixed-roof tanks to have internal floating roofs with specific types of primary seals or secondary seals.

Additionally, the Agency is proposing an emission limit of 10 milligrams (mg) of total organic compounds (TOC) per liter of gasoline loaded (10 mg TOC/l) for the process stream outlet of control devices and continuous compliance monitoring of certain operating parameters of control devices installed at the loading racks of new and existing major source bulk gasoline terminals. Operating the control device in a manner that exceeds or fails to maintain, as appropriate, the monitored operating parameter value established during the emission performance test would be an exceedence of the emission limit. New major source bulk gasoline terminals would also be required to install vacuum assisted vapor collection equipment on their loading racks where gasoline tank trucks or railcars are loaded. This system would prevent vapor leakage from tank trucks that can occur due to the pressures normally developed in fuel compartments during loading.

The Agency is also proposing equipment and performance standards for all tank trucks and railcars loading at existing and new major source bulk gasoline terminals. Trucks and railcars loading at these facilities would be required to pass an annual vapor tightness test according to EPA Method 27. This requirement controls fugitive vapor losses at existing facilities and supplements the vacuum assist system at new facilities in providing the best control for vapor leakage during loading.

Pumps, valves and other equipment at new major source bulk gasoline terminals and pipeline breakout stations would all be subject to the same work practice and equipment standards specified by the leak detection and repair (LDAR) program in 40 CFR part 60, subpart VV. LDAR requirements at bulk gasoline terminals include components of the vapor collection and processing systems. Existing major source bulk gasoline terminals and pipeline breakout stations would be required to perform LDAR for pumps and valves four times per year (quarterly LDAR). New major source facilities would be required to implement a monthly LDAR program for pumps and valves, and follow the other equipment standards for other equipment under 40 CFR part 60, subpart VV. Provisions of these LDAR programs allow new and existing facilities with demonstrated low leak frequencies for valves to decrease the frequency of monitoring.

When promulgated, these standards will be codified under part 63 of title 40 of the Code of Federal Regulations (CFR). Proposed General Provisions of part 63 (58 *FR* 42760, August 11, 1993) to be located in subpart A, will, when promulgated, codify procedures and criteria to implement emission standards for stationary sources that emit one or more HAP's, and will provide general information and requirements that apply under the section 112 NESHAP promulgated under the CAA amendments of 1990.

C. Effective Date for Compliance

Section 112(i)(3)(A) of the Act requires compliance by existing sources within 3 years after rule promulgation, notwithstanding the provisions of sections 112(i)(1) and (2). Today's proposed regulation requires

compliance by all affected sources within 3 years after promulgation of the rule. Finally, major source facilities in the bulk gasoline terminal and pipeline breakout station subcategories must implement LDAR programs within 180 days after promulgation of this rule. New major source facilities must comply with all provisions of the standards upon startup.

D. Compliance Extensions

Section 112(i)(3)(B) allows the Administrator (or a State with a program approved under Title V) to grant existing sources an extension of compliance of up to 1 year, upon application by an owner or operator of an affected facility, if such time period is necessary for the installation of controls.

Additionally, under the early reduction provisions of section 112(i)(5), existing sources may be granted a 6-year extension of compliance with an otherwise applicable section 112(d) standard (MACT standard) upon demonstration by the owner or operator of the source that HAP emissions have been reduced by 90 percent or more prior to the date of this proposal, or the source makes an enforceable commitment to achieve such reduction prior to January 1, 1994. The general notice governing early reduction compliance extensions was published in the **Federal Register** on June 13, 1991 (56 FR 27338).

E. Compliance Testing and Monitoring

The tests required under the proposed standards include initial performance testing of the bulk terminal vapor processing system, vapor leak monitoring and repair of the vapor collection system before each performance test, and annual vapor tightness testing of gasoline tank trucks and railcars. Storage tanks at terminals and pipeline stations would require periodic visual and seal gap measurement tests. Continuous monitoring of an operating parameter would be required for vapor processing systems to ensure continuous compliance with today's proposed 10 mg TOC/l emission limit. At new bulk gasoline terminals, the vacuum achieved in the tank truck or railcar during loading would have to be monitored continuously to verify continuous compliance with maintaining the vacuum during truck and railcar loading operations.

The schedule for performance testing is provided in § 63.7 of the proposed General Provisions. The initial performance test is required 120 days after the effective date of the standards or after initial startup for a new facility, or 120 days after the compliance date specified for an existing facility.

Methods 2A, 2B, 25A, and 25B in Appendix A of 40 CFR Part 60 are specified for measurement of total organic compound emissions from the vapor collection and processing system. Due to the inherent inability to measure mass emissions from elevated flares (elevated flare's flame is open to atmosphere and therefore the emissions cannot be routed through stacks), these test methods are not applicable. Therefore, the Agency has established performance requirements for flares. These performance requirements, including a limitation on visible emissions, are provided in § 63.11 of the proposed General Provisions, which specifies Method 22 for determining visible emissions from this hard to test type of flare.

Before each performance test, the owner or operator would be required to use Method 21 to monitor potential leak sources in the terminal's vapor collection system during the loading of a gasoline tank truck or railcar. Leaks from the vapor collection and processing system would have to be repaired before conducting the rest of the performance test.

Each gasoline tank truck and railcar loading at an affected bulk terminal would have to pass an annual vapor tightness test using Method 27. This will ensure that fugitive vapor leakage from loading cargo tanks is minimized.

Today's proposed emission standard includes continuous monitoring of an operating parameter as a requirement for vapor processing systems to ensure continuous compliance with the proposed 10 mg TOC/l emission limit. The vapor processing system's operating parameter "value" would be established during the initial performance test of the vapor processor. Exceeding or failures to maintain, as appropriate, that operating parameter value would be a violation of the emission limit requiring maintenance and repair and documentation in a quarterly report to the Administrator. The parameters that may be monitored include organic compounds concentration for carbon adsorption and refrigeration condenser systems, and combustion or condenser temperature for thermal oxidation and refrigeration condenser systems. An owner or operator may substitute an alternative parameter or vapor processor type upon the approval of the Administrator.

At new bulk gasoline terminals installing a vacuum assisted vapor collection system, the proposed standards require continuous monitoring of the pressure in the collection system, to ensure that a vacuum exists at all times during loading. No specific vacuum limits are being proposed. As with parameter monitoring of the vapor processing system, this vacuum monitoring will ensure that fugitive vapor leakage is effectively reduced through the continuous compliance for the proposed vacuum requirements for the vacuum assist system.

The pumps, valves, and other specified equipment in the gasoline liquid and vapor transfer lines at bulk gasoline terminals and pipeline breakout stations may be sources of fugitive HAP emissions. The proposed standards include a requirement for an LDAR program in which pumps and valves are manually monitored using a portable VOC detector on a periodic basis, and then repaired if a leak is found. Under the proposed standards, monitoring would initially be carried out monthly at new facilities and quarterly at existing facilities. Provisions are included to reduce monitoring frequencies for valves on the basis of demonstrated low leak rates. When a leak is detected (meter reading of 10,000 ppm on a portable organic monitor), the owner or operator would have 5 calendar days in which to make an initial repair attempt, and 15 calendar days in which to complete the repair. Other equipment in gasoline liquid or vapor service at new facilities are required to have specified equipment.

F. Recordkeeping and Reporting

The proposed standards require four types of reports: initial notification, notification of compliance status, periodic reports, and other reports. The initial notification report apprises the regulatory authority of applicability for existing sources or of construction for new sources. This report also includes a statement as to whether the facility can achieve compliance by the required compliance date. The notification of compliance status demonstrates that compliance has been achieved. This report contains the results of the initial performance test, which includes calculation of the monitored operating parameter value for the vapor processor, and a list of equipment subject to the standard. Periodic reports submitted quarterly would specify exceedences of the emission standards, such as when the monitored operating parameter of a vapor processor is outside the value established during the performance test. Other periodic reports, which are submitted semiannually, include LDAR program and annual storage vessel

inspection results. Certain additional reporting is occasionally necessary because a short-term response may be needed from the reviewing authority. For example, the Administrator may request more frequent reports of monitored operating parameter or LDAR data if it is deemed necessary to ensure compliance with the standard.

Records required under the proposed standards must be kept at the facility for 5 years. These include records of tank truck and railcar vapor tightness test certifications, as well as monitoring data from the vapor processor and from the vacuum assist system at new bulk gasoline terminals. Records from the LDAR program and storage vessel inspections, and records of startups, shutdowns, and malfunctions of the vapor processor are required to ensure that the controls in place are continuing to be effective.

IV. Summary of Environmental, Energy, and Economic Impacts of the Proposed Standards

A. Number and Type of Affected Sources or Facilities

In 1998, the base year of the analysis, it is estimated that there will be approximately 403,600 facilities in the entire gasoline distribution network. However, only two subcategories within the network (pipeline breakout stations and bulk gasoline terminals), comprising a total of 1,300 facilities, are being addressed by this rulemaking. Of this total, it is estimated that about 20 pipeline breakout stations and about 280 bulk gasoline terminals qualify as major sources and therefore would be subject to today's proposed standards.

For the purpose of the analysis conducted in connection with these standards, all facilities built or reconstructed between today's proposal and the 1998 base year are considered "new" facilities in the base year analysis (see proposed General Provisions, subpart A of 40 CFR part 63). All other facilities prior to proposal were considered to be "existing" sources in this analysis. The estimated impacts of the levels of control specified by the proposed regulation within each subcategory are discussed below.

1. Existing Facilities

The base year population of existing pipeline breakout stations is estimated to be about 245 facilities (18 major source sites, 227 area source sites). Sources of emissions at these facilities arise from gasoline storage and various equipment components in the process line piping. Under the proposed regulation, each existing major source pipeline breakout station would be required to implement a quarterly LDAR program for leaks from pumps and valves.

Additionally, the 18 major source facilities would be required to retrofit external floating roof tanks with primary and secondary seals and install internal floating roofs with primary seals on fixed-roof tanks. It is estimated that 35 external floating roof storage tanks and 11 fixed-roof storage tanks at these major source sites would need to be upgraded to meet these equipment standards.

It is estimated that in 1998, there will be 737 bulk gasoline terminals that qualify as "existing" sources. It is further estimated that nearly 200, or 27 percent, will qualify as major sources. Under the proposed standards, existing major sources would be required to meet a 10 mg TOC/liter of gasoline loaded limit on their loading rack emissions. It is estimated that 33 percent of the loading racks at existing bulk gasoline terminals will already be meeting this level of control. Therefore, 134 of these facilities (the remaining 67 percent) would need to newly install, replace, or otherwise upgrade their control devices to meet this proposed standard.

It is estimated that there are approximately 1,600 storage tanks at existing major source bulk gasoline terminals. Furthermore, it is estimated that 400 external floating roof tanks and 500 fixed-roof tanks already have controls that satisfy the proposed standards (i.e., primary and secondary seals on external floating roof tanks and internal floating roofs with primary seals installed in all fixed-roof tanks). Consequently, it is estimated that approximately 470 external floating roof tanks and 210 fixed-roof tanks would need to improve their control level to meet the proposed standards.

There are an estimated 31,600 tank trucks and approximately 400 railcars that load at existing bulk gasoline terminals. It is estimated that 22,400 tank trucks are already subject to annual vapor tightness testing and nearly all of the remaining 9,200 are not tested. The proposed regulation would require all tank trucks and railcars loading at major source facilities to be vapor tightness tested annually using Method 27.

Essentially no terminals have been determined to routinely use an instrument to detect leaks from equipment (pumps and valves). Under the proposed standards, all existing major source bulk gasoline terminals would be required to implement the quarterly LDAR program for pumps and valves discussed previously for pipeline breakout stations.

Additionally, the proposed standards requires monitoring of equipment, maintaining records, and providing reports to verify compliance with the control requirements discussed above

2. New Facilities

It is estimated that there will be 10 storage tanks classified as new at the 2 new major source pipeline breakout stations through base year 1998. Although these tanks would be subject to these standards, they are also subject to the existing NSPS standard as defined in 40 CFR part 60, subpart Kb.

It is estimated that there will be nearly 80 major source bulk gasoline terminals subject to the new facility requirements of the proposed regulation (28 percent of the base year major source bulk gasoline terminals). The proposed standards would limit loading rack HAP emissions from these sources to 10 mg TOC/liter instead of 35 mg TOC/liter as under the NSPS standards.

As with pipeline breakout stations, the projected 600 storage tanks at new major source bulk gasoline terminals would be subject to this regulation (as well as the NSPS for storage tanks) with the same levels of control outlined previously.

All new major source bulk gasoline terminals and pipeline breakout stations would also be required to implement a monthly LDAR program to control equipment leaks from pumps and valves, as well as implement other 40 CFR part 60, subpart VV standards for other equipment. Lastly, new major source bulk gasoline terminals would be required to install, operate, and maintain a vacuum assist vapor collection system on their loading racks that fill gasoline tank trucks or railcars.

Additionally, the proposed standards require monitoring of equipment, maintaining records, and providing reports to verify compliance with the control requirements discussed above.

B. Air Emission Reductions

1. Existing Sources

For the existing gasoline distribution network (approximately 390,000 facilities in base year 1998), the nationwide baseline HAP emissions are estimated to be 46,000 Mg/yr. Of this total, 8 percent or 4,200 Mg/yr can be attributed to major source pipeline breakout stations and bulk gasoline terminals. Implementation of the proposed regulation would reduce these emissions to approximately 43,400 Mg/yr.

2. New Sources

For new sources through 1998, total nationwide HAP emissions from gasoline distribution facilities, approximately 13,000 total facilities, are estimated to be about 6,700 Mg/yr at baseline. The HAP emissions from pipeline breakout stations and bulk gasoline terminals account for 46 percent of this total (major sources contribute 12 percent of the total). The proposed regulation would reduce these emissions to a total of approximately 6,200 Mg/yr.

C. Secondary Environmental Impacts

Since implementation of the proposed regulation would encompass no additional water discharges, there would be no negative impact on water quality. There is a potential for a positive benefit to water quality, however, due to decreased amounts of gasoline entering drains, sewers, and waste sumps because of improved leakage control.

There is projected to be no significant solid waste or noise impact as a result of implementation of the proposed regulation. Neither flares, thermal oxidizers, nor refrigeration condenser systems generate any solid waste as a by-product of their operation. The only solid waste that may be generated is spent activated carbon if carbon adsorption is chosen by an owner or operator of a bulk gasoline terminal for loading rack emission control. It is estimated that, in this case, the total environmental impact would average about 680 kilograms of carbon per year for each bulk terminal choosing this option. Therefore, the solid waste impact can be considered to be small. This impact would be minimized if the carbon were reactivated and reused. The Agency has also tested the noise level from vapor processors, and found these levels to be moderate (less than 70 db at 7 meters).

D. Energy Impacts

The use of vapor recovery systems on loading racks at bulk gasoline terminals, and pollution prevention measures such as equipment standards for storage tanks and implementation of LDAR programs for equipment components will all keep gasoline in the system that would have escaped as emissions to the atmosphere. Nationwide annual gasoline savings are estimated to total 2.34 million gallons at pipeline breakout stations and 12 million gallons at bulk gasoline terminals.

E. Cost Impacts

Total capital and annualized control costs (third quarter 1990 dollars), including recovery credits, have been estimated for both existing and new sources. The control costs of the proposed regulation at existing facilities is estimated to require a total capital investment of $93 million, with an annualized cost of $8.4 million per year. The implementation costs of the proposed regulation will be lower for new facilities than for existing facilities primarily due to the smaller estimated number of new facilities (26 percent of the total number, encompassing both subcategories) and because new storage tanks are regulated by an existing NSPS standard and require no additional retrofit under the proposed standards. As a consequence, the control costs of the proposed regulation at new facilities is estimated to result in a total capital investment of $32 million, with annualized costs of approximately $7.4 million per year. Additional implementation costs for the reporting and recordkeeping requirements under the proposed rule are estimated to be 4 million.

F. Economic Impacts

The proposed standards were analyzed with regard to their impact on gasoline price and consumption, facility closures, and declines in employment. While the proposed standards require additional control only at bulk gasoline terminals and pipeline breakout stations, facilities downstream from terminals and breakout stations might be affected by the regulation due to higher gasoline wholesale prices and reduced consumption. The national average base year increase in the price of retail motor gasoline as a result of the proposed standards is estimated at $0.001 per gallon. The national base year decline in gasoline consumption is estimated at less than 100 million gallons (0.08 percent). The base year facility closure estimate is nearly 650, more than 90 percent of which is projected for the service station sector. While the number of service station closures is estimated to be in the hundreds, it should be noted that a total of over 380,000 stations is projected in the base year, so that the number of facilities that might close constitutes less than 0.2 percent. Furthermore, due to a consumption-spurred projection of modest industry growth from 1993 to 1998, some closures due to the regulation may be more accurately interpreted as reductions in new facility openings rather than closures of existing facilities. Employment reductions due to reduced consumption and facility closures are estimated at just over 1,100 jobs, 70 percent of which are projected for the service station sector. However, this constitutes only around 0.05 percent of the base year service station sector employment. For the same reason given for facility closures, some employment reductions may be more accurately interpreted as reductions in industry job opportunities rather than losses of existing jobs.

V. Decision Process for Setting the NESHAP

A. Authority for Development of the NESHAP

Title III of the 1990 amendments was enacted to help reduce the increasing amount of nationwide air toxics emissions. Under Title III, section 112 was amended to give the Agency the authority to establish national standards to reduce air toxic emissions from sources that emit one or more HAP's. Section 112(b) contains a list of HAP's, which are the specific air toxics to be regulated by the standards developed under section 112. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which the NESHAP will be developed. The Agency must list all known categories and subcategories of "major sources" defined earlier as those sources that emit 10 tons/yr or greater of individual HAP's or 25 tons/yr or greater of any combination of HAP's. Area source categories selected by the Agency for the NESHAP development will be based on the Administrator's judgment that the sources in a category, individually or in aggregate, pose a "threat of adverse effects to health and the environment." The initial list of source categories was published on July 16, 1992 (57 FR 31576).

B. Criteria for Development of the NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources pursuant to section 112(d) of the Act. The Act requires the standards to reflect the maximum degree of reduction in emissions of HAP's achievable for new or existing sources. Each NESHAP must reflect consideration of the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. The emission reduction may be accomplished through application of measures, processes, methods, systems, or techniques including, but not limited to, measures that:

1. Reduce the volume of, or eliminate emissions of, HAP's through process changes, substitution of materials, or other modifications;

2. Enclose systems or processes to eliminate emissions;

3. Collect, capture, or treat these pollutants when released from a process, stack, storage, or fugitive emissions point;

4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in Section 112(h); or

5. Are a combination of the above [Section 112(d)(2)].

C. Regulatory Development Process for the NESHAP

During development of a NESHAP, the Agency collects information about the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the cost, energy, and other environmental impacts of emission control techniques. The Agency uses this information in the development of possible regulatory approaches.

If the source category contains major sources, then a MACT standard is required. The level of control corresponding to the MACT "floor" needs to be determined as a boundary for developing the regulatory alternatives. (Procedures for determining MACT floors are discussed in part D of this section.)

Once the floor has been determined for new and existing sources for a category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor level. Such standards must then be met by all sources within the category or subcategory. However, in establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory [Clean Air Act Section 112(d)(1)]. Thus, for example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class.

In addition, the Act provides the Administrator further flexibility in regulating area sources. Section 112(d)(5) provides that, in lieu of establishing MACT standards under Section 112(d), the Administrator may promulgate standards that provide for the use of "generally available control technologies or management practices" (GACT standards). Area source standards promulgated under this authority are not subject to the MACT "floors" described in part D of this section.

The next step in establishing a MACT or GACT standard is the development and analysis of regulatory alternatives. First, information about the industry is analyzed to develop model plant parameters and populations for the purpose of projecting national impacts, including HAP emission reduction levels, costs, and energy and secondary environmental impacts. Several regulatory alternative levels (which may be different levels of emission control, different applicability cutoffs, or both) are then evaluated to determine the most appropriate regulatory alternative to reflect the MACT or GACT level.

In addition, although the NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary (e.g., source testing may be impossible or at least impractical due to technological and economic limitations). In these cases, work practice or equipment standards may be considered.

In the Agency's decision-making process, the regulatory alternatives considered for new versus existing sources may be different and each alternative must be technically achievable. In selecting a regulatory alternative to represent MACT or GACT, the Agency considers the achievable reduction in HAP emissions; the cost of control; and economic, energy, and other environmental impacts.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT or GACT decision typically includes Sections addressing applicability, standards, test methods and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation, published in the **Federal Register**, provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation during the public comment period. Following an evaluation of these comments, the Agency reaches a decision and promulgates the final standards.

D. Determining Maximum Achievable Control Technology (MACT) "Floors"

Once the Agency has identified the specific source categories or subcategories of major sources and area sources that it intends to regulate under section 112, MACT standards are set at a level at least as stringent as the "floor", unless the decision has been made to regulate area sources under section 112(d)(5). Congress has provided certain very specific directives to guide the Agency in the process of determining the regulatory floor.

Congress specified that the Agency must establish standards which require "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator * * * determines is achievable * * *" [Clean Air Act Section 112(d)(2)]. In addition, Congress limited the Agency's discretion by defining the minimum baseline (floor) at which standards may be set, as follows:

(1) For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator."

(2) For existing sources, the standards "may be less stringent than standards for new sources * * * but shall not be less stringent, and may be more stringent than: (A) The average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information) * * * or (B) the average emission limitation achieved by the best performing 5 sources * * * for categories or subcategories * * * with fewer than 30 sources" [Section 112(d)(3)].

VI. Selection Rationale

A. Selection of Source Category(s) Controlled

The gasoline distribution facility category is made up of several facility types, which taken together form the gasoline distribution network. The pollutants emitted at each of the facilities in the gasoline distribution network are essentially the same. These emissions consist of a mixture of organic compounds (essentially all of which qualify as VOC under the Agency's definition). Section 112(b) of the Act contains a list of HAP's for which the Agency has been directed to set national emission standards. A comparison of profiles of normal gasoline vapors to the HAP list reveals several compounds common to both. Benzene, toluene, hexane, ethylbenzene, naphthalene, cumene, all three chemical orientations of xylene (para, meta, and ortho), n-hexane, and 2,2,4-trimethylpentane (iso-octane) appear on both lists.

Section 211 of the Act contains provisions that will affect gasoline composition in the 1998 base year and, therefore, the HAP emissions from gasoline distribution sources. This section of the Act requires that fuels

purchased and sold in nonattainment areas contain higher levels of oxygenates (reformulated and oxygenated fuel programs). While the focus of these fuels programs is the reduction of both tailpipe (combustion) and evaporative emissions of CO and air toxics (benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and POM) emissions from gasoline vehicles, the intent of today's proposed rule is to reduce major stationary source evaporative HAP emissions from gasoline distribution facilities. Methyl tert-butyl ether (MTBE) is projected to be a major source of oxygen that will be added to gasoline to meet the oxygenate content requirements for the reformulated gasoline and oxygenated fuels programs. MTBE is also listed in Section 112(b) as a HAP.

On July 16, 1992 (57 FR 31576), the Agency published an initial list of source categories that emit HAP's, in response to Section 112(c) of the Act. In this listing, the gasoline distribution network was included as a major source but was not listed as a category whose area source facilities were to be considered for regulation.

The Agency's subsequent analysis (summarized in the background information document (BID)) of HAP emissions from all subcategories of the gasoline distribution network concluded that only two of these subcategories, pipeline breakout stations and bulk gasoline terminals, contained major sources and should therefore be considered for regulation under Section 112(d). All the other subcategories of the network (pipeline pumping stations, bulk plants, and service stations) encompass only area sources and as a consequence were not included in the proposed standards. These sources will be studied and may be considered for regulation at a future date pursuant to the urban area source provisions of Section 112(c)(3) of the Act. Public comments and data are specifically requested on today's proposal to exclude area sources in this rulemaking and on the analysis contained in the BID to estimate emissions for determining area and major source facilities. Also, the Agency is specifically requesting any data that would document that any service station, bulk plant, or pipeline pumping station could be considered a major source of HAP's.

B. Selection of Emission Points Covered

The proposed standards would regulate all HAP emission points at major source pipeline breakout stations and bulk gasoline terminals.

As noted in Section III.A.2, there are two HAP emission source types at pipeline breakout stations. These sources are: (1) Equipment leaks from pumps, valves, and other components, and (2) losses from storage tanks. Both of these sources can be significant sources of emissions. Of the total of nearly 7,200 Mg/yr baseline HAP emissions from gasoline at pipeline breakout stations, it is estimated that 12 percent can be attributed to equipment leaks and 88 percent is emitted from storage tanks. Emissions from pumps arise from liquid gasoline leaking from packed or mechanical seals in the pumps used to move the product through the pipeline. Leaks also occur from seals around stems of valves and other equipment components that control or isolate gasoline from the environment such as connections, drain lines, and pressure relief devices.

Storage tanks at breakout stations may be of either fixed-roof, external floating roof, or fixed-roof with an internal floating roof construction. Emissions from fixed-roof tanks consist of breathing and working losses. Breathing loss is a vapor loss due to expansion or contraction of the vapor space in the tank above the liquid because of daily changes in temperature or barometric pressure. These emissions may occur in the absence of any liquid level change in the tank. Working losses consist of emptying and filling losses. Emptying losses occur during the expansion of air that is drawn into the tank during liquid removal. This air becomes saturated with hydrocarbon vapor and, when it expands due to changes in temperature or barometric pressure, exceeds the fixed capacity of the vapor space. Overflow then occurs through the pressure-vacuum valve. Filling losses occur when incoming gasoline displaces air and vapors through vents to the atmosphere.

Standing-storage losses, which result from causes other than a change in the liquid level, constitute the major source of emissions from external floating roof tanks. The largest potential source of these losses is an improper fit between the floating roof seal and the tank shell (seal loss). Withdrawal loss is another source of emissions from floating roof tanks. When liquid is withdrawn from a tank, the floating roof is lowered and a wet portion of the tank wall is exposed. Withdrawal loss equals the amount of liquid vaporized from the wet tank wall.

Standing-storage losses from internal floating roof tanks arise through a somewhat different mechanism due to the enclosed design of the tanks. As ambient air flows over the exterior of the tank, it flows into the enclosed space between the fixed and floating roofs through some of the shell vents and flows out of the enclosed space through others. Any vapors that have evaporated from the exposed liquid surface and that have not been contained by the floating deck are swept out of the enclosed space. The withdrawal loss from an internal floating roof tank is similar to that discussed for tanks with external floating roofs.

There are four contributors to HAP emissions at bulk gasoline terminals, all of which contribute significantly to the overall totals: (1) From loading racks when gasoline is loaded into tank trucks or railcars (about 18 percent of the nationwide baseline total of 16,500 Mg/yr HAP emissions from bulk gasoline terminals), (2) fugitive leakage of vapors from tank trucks or railcars during loading of gasoline (23 percent of baseline total), (3) evaporation of gasoline from storage tanks (33 percent of the baseline total), and (4) equipment leaks from pumps, valves, and other components (26 percent of baseline values).

Emissions occur at loading racks when gasoline that is loaded into cargo tanks of trucks or railcars displaces vapors inside these containers. These emissions may occur either uncontrolled (when facilities are not using vapor collection and processing equipment) from tank truck or railcar cargo compartments, or from the outlet vents of control systems used to process these displaced vapors.

Even at controlled loading racks (ones equipped with vapor collection and processing systems), fugitive emissions from leaking truck transport tanks or railcars may occur through the dome covers, pressure-vacuum relief valves or vents, and several other potential sources. The dome or hatch cover designed to seal each cargo compartment during transport and during loading and unloading operations can develop leaks over time. Valves, which include the pressure-vacuum (P–V) vent under the dome plate assembly and the vent valve connected to the overturn rail on tank trucks, can leak if they become dirty or worn. Improperly installed or damaged hose couplings can also be sources of vapor emissions. The transport tank shell, if damaged, also can produce vapor emissions from cracks or failures in welds. This latter type of leak occurs less frequently than those at the dome cover and vents, but may be a large emission source for some transport tanks.

Storage tank and equipment component (pumps and valves) leak emissions at bulk gasoline terminals are

identical in the manner of their occurrence to those described earlier for pipeline breakout stations. However, HAP emission reductions are not the same due to differences in turnover rates and storage tank sizes as well as differences in the numbers of estimated equipment components in the process line piping between the two facility types.

C. Selection of the Basis for the Proposed Standards for New and Existing Sources

At the present time, a majority of sources within the gasoline distribution network are being controlled under State regulations and Federal new source performance standards (approximately one-third of the storage tanks at pipeline breakout stations; one-half of the storage tanks, nearly 70 percent of loading racks, and most of the tank trucks and railcars that load at bulk gasoline terminals). However, since the States are required to adopt regulations consistent with CTG recommendations only in areas not attaining the national ambient air quality standards (NAAQS) for ozone, many States have regulations that cover only those areas. Today's proposed standards will require more stringent emission control levels for major source facilities located in areas designated as ozone nonattainment, and will extend the same controls to major source facilities located in attainment areas.

1. Determination of Applicability

To determine which pipeline breakout stations or bulk gasoline terminals are to be regulated (i.e., which ones are classified as major sources), owners and operators of these facilities either may provide documentation to the Administrator that the facility is not a major source as defined in section 112(a) by means of completion of an emissions audit or may employ one of the equations discussed later in this section that have been developed for estimating facility emissions. However, regardless of the applicability criteria equation that is chosen, bulk gasoline terminals and pipeline breakout stations that are located within the contiguous area and under common control with a petroleum refinery are considered major sources if that petroleum refinery is a major source. This is because refinery process equipment in combination with bulk terminal and pipeline breakout station equipment is likely to emit more than the threshold levels for major source determination.

Initially, the Agency considered a throughput cutoff determination for distinguishing major source from area source facilities in each subcategory. However, for pipeline breakout stations, HAP emissions are a function of the number of individual emission sources (storage tanks, pumps, and valves), while emissions from bulk gasoline terminals occur from these sources as well as from sources which depend upon gasoline throughput (loading racks and tank truck or railcar leakage).

Since major source determinations are not based solely on throughput at each facility type, another approach was investigated for distinguishing between major and area sources. Equations were developed to estimate total HAP emissions from both bulk gasoline terminals and pipeline breakout stations. The equation approach allows a potential subject facility to input the type of equipment present at the facility and calculate emissions accordingly. These equations were developed to include all potential equipment; however, if a particular portion of the equation does not apply (e.g., no fixed-roof tanks), then that portion of the equation will equal zero and fall out of the calculation.

At first, several equations were developed to attempt to cover many different equipment combinations, different HAP contents in gasoline emissions, and the two major source criteria, 10 tons of a single HAP or 25 tons of combination of HAPs. One equation was developed for each subcategory that would handle normal gasoline (estimated HAP content of 4.8 percent), a second set of equations was developed for each facility handling reformulated or oxygenated fuels (estimated HAP emission content of 16 percent) and a third set of equations was developed for each facility handling the single-HAP (estimated to be gasoline vapor with MTBE with a HAP content of 12 percent).

The initial equations were simplified to match the desired approach to provide a simple and reasonable set of equations to distinguish between area and major sources. The initial equations were simplified and narrowed through testing the equations against different model facility parameters and assumptions. Consequently, the original equations were reduced to a limited number of equipment parameter variables and reduced to one equation for bulk terminals and another for pipeline breakout stations. The resulting equations presented below are determined by the Agency to capture all major sources under the realistic mix of facility equipment and operating parameters.

A bulk gasoline terminal is not considered a major source if the result of the calculation in equation (1), E_T, is less than 1.

(1) $$E_T=0.63(T_F)+0.19(T_E)+0.092(T_{ES})+0.03(T_I)+0.0012(V)+0.024(P)+KQ$$

where:

E_T=major source applicability factor for bulk gasoline terminals, $E_T \geq 1$ means bulk gasoline terminal is estimated to be a major source.,

T_F=total number of fixed-roof gasoline storage tanks,

T_E=total number of external floating roof gasoline storage tanks with only primary seals,

T_{ES}=total number of external floating roof storage tanks with primary and secondary seals,

T_I=total number of fixed-roof gasoline storage tanks with an internal floating roof,

V=number of valves in gasoline service,

P=number of pumps in gasoline service,

Q=gasoline throughput rate (liters/day),

$K=3.18\times10^{-6}$ for bulk gasoline terminals with uncontrolled loading racks (no vapor collection and processing systems), *OR*

$K=(4.5\times10^{-9})(EF+70)$ for bulk gasoline terminals with controlled loading racks (loading racks that have vapor collection and processing systems installed on the emission stream), and

EF=the federally enforceable emission standard for the vapor processor (mg of total organic compounds per liter of gasoline loaded).

A pipeline breakout station is not considered a major source if the result of the calculation in equation (2), E_P, is less than 1.

(2) $$E_P=2.4(T_F)+0.09(T_E)+0.043(T_{ES})+0.027(T_I)+0.0009(V)+0.009(P)$$

where:

E_P=major source applicability factor for pipeline breakout stations, $E_P \geq 1$ means pipeline breakout station is estimated to be a major source., and

T_F, T_E, T_{ES}, T_I, V, and P are the same as defined for bulk terminal equation (1).

The Agency provides the above equations to simplify and reduce the implementation burden to affected and non-affected facilities. The Agency requests public comments on the utility, accuracy, and need for these equations.

2. Determination of Floor Control Levels

A boundary in the formulation of the regulatory alternatives is a determination of the MACT floor for

new and existing sources. The statutory requirements for determining these floors was previously discussed in section V.D of this preamble. Selection of floor levels of control using the statutory criteria is described in the following subsections.

a. *Loading racks.* In many of the areas where bulk terminal loading rack controls are mandated authorities have imposed control requirements more stringent than the limit of 80 mg TOC per liter of gasoline loaded recommended in the CTG for bulk gasoline terminals. A summary of State regulations pertaining to gasoline tank truck loading indicated that some terminals currently are operating under a 10 mg TOC per liter limitation in parts of California. In addition, the NSPS for tank truck loading at bulk gasoline terminals (subpart XX of 40 CFR part 60) limits emissions to 35 mg/liter. There are currently three types of vapor processor systems, refrigeration condensers, carbon adsorbers, and thermal oxidation systems, used to meet these three control requirement emission limits. Each type of control can be specifically designed to meet each limit.

To establish the control requirements for new sources the Agency is required to select controls not less stringent (floor) than the control achieved in practice by the best similar source. The best performing control systems at similar sources, or systems achieving the maximum degree of reduction in emissions, are those systems designed and operated to meet the 10 mg TOC per liter standard. Therefore, control systems achieving the 10 mg TOC per liter limit are considered the floor control level for new sources.

To establish the limit for existing sources the Agency is required to select a limitation no less stringent (floor) than the average emission limitation achieved by the best performing 12 percent of sources. To support setting the floor for existing sources the Agency collected information on the number of facilities under each control requirement and the results of the measured emission rates achieved during performance tests of vapor processors at over 100 bulk gasoline terminals.

It is estimated that 70 percent of the approximately 1,000 terminals nationwide are required to meet one of the three levels of control requirements, 10, 35, and 80 mg TOC per liter of gasoline loaded. Performance test data were collected for terminals subject to each of those three levels. Performance test data collected from vapor processors at terminals regulated by the 10 mg standard all met the 10 mg limit, but less than 3 percent of terminals are subject to a 10 mg emission limitation. The majority (about 70 percent) of performance test data collected from terminals under the 35 mg NSPS standard achieved less than 10 mg TOC per liter. This indicates that the 10 mg standard is achievable by processors designed to achieve the 35 mg standard. About 40 percent of the terminals are subject to the 35 mg standard. Therefore, the average emission limitation achieved by the best performing 12 percent of the existing sources is a 10 mg standard, thus 10 mg limit is the floor control level for existing bulk gasoline terminals.

b. *Tank truck and railcar vapor leakage.* The CTG detailing control of fugitive emissions from tank trucks recommends that cargo tanks be tested for vapor leakage on an annual basis, and repaired as necessary. Also, the bulk terminal tank truck loading NSPS (subpart XX of 40 CFR part 60) requires that tank trucks that load gasoline at bulk gasoline terminals be "vapor-tight;" that is, they must pass an annual vapor tightness test in accordance with Method 27 of 40 CFR part 60, appendix A. A second form of leak testing is carried out by the Department of Transportation (DOT), whose required annual leak tightness testing specifies pressurization of the cargo tank to 80 percent of its maximum allowable working pressure. The DOT considers Method 27 to be an acceptable alternative to its own pressure test. However, since the relief vents on each fuel compartment (which have been found to be the major sources of vapor leakage) are capped off during the DOT test, this test is considered less stringent than Method 27 pressure test. Also, the DOT test does not include a vacuum test as specified in Method 27. The Agency estimates that over 70 percent of existing tank trucks are required to pass the annual vapor tightness testing using Method 27. It has also been determined that the same test can be applied to railcars.

Through contacts with one State control agency, the Agency discovered a system that provides additional control of vapor losses from cargo tanks. In this system, a negative pressure is created in the vapor collection system during loading, ensuring that vapors will not be forced out into the air through any leakage points. This "vacuum assist" system is in use at a few bulk gasoline terminals (in addition to Method 27 testing) in Texas, so it meets the Act requirement to consider the best controlled similar source in establishing the floor level of control for new terminals. Since less than 1 percent of terminals use this vacuum assist system it is not considered the floor for tank trucks at existing terminals. Annual vapor tightness testing using Method 27 is the next highest or best emission level and therefore represents the average emission limitation achieved by the best performing 12 percent of existing sources as specified in the Act. Therefore, annual vapor tightness testing using Method 27 is considered the floor for tank trucks loading at existing terminals.

Industry sources have expressed concerns regarding the operational reliability of a vacuum assist system, especially under extreme cold weather conditions. These commenters also believe that the system could present a safety hazard if excess negative pressures were developed within a tank truck fuel compartment. To the Agency's knowledge, the systems in operation have not experienced any significant problems, and one of the systems has been operating for over 2 years. These systems contain safety pressure relief devices in combination with the pressure-vacuum vents already installed on each tank truck compartment. However, safety concerns are important to the Agency. The Agency specifically requests comment, including technical documentation and data where available, on the reliability, effectiveness, safety aspects, and any other issue concerning vacuum producing equipment for bulk terminal vapor collection systems.

On the basis that this technology has been demonstrated, the Agency has selected the vacuum assist system for the loading of tank trucks and railcars at new bulk gasoline terminals (in combination with the 10 mg TOC/liter emission limit and continuous monitoring of the vapor processing system) as the floor level of control for fugitive cargo tank leakage at new facilities.

c. *Equipment leaks.* The control of emissions from equipment components leaking liquid or vapors at pipeline breakout stations and bulk gasoline terminals has never been specifically addressed by the Agency in a federal regulation or in a CTG. The Agency has determined, based on information obtained on site visits and from various industry contacts, that many facilities conduct periodic visual inspections to identify leaking components, and a few (less than one percent) perform leak detection and repair (LDAR) programs with a portable organic vapor analyzer. Therefore, the existing facility floor for the control of emissions from leaking equipment components at both pipeline

breakout stations and bulk gasoline terminals was determined to be periodic visual inspections, or no formal (federally enforceable) inspection procedure.

The control of emissions from leaking equipment components at other facilities with similarities to pipeline breakout stations and bulk gasoline terminals has been studied extensively. LDAR programs to conduct periodic monitoring of these components are in effect for many types of sources, including equipment in VOC service at petroleum refineries (40 CFR part 60, subparts GGG and VV) and equipment operated in volatile hazardous air pollutant (VHAP) service (40 CFR part 61, subparts J and V). These programs include monthly inspections of pumps and valves involving the use of a portable organic vapor analyzer to identify leaking components, a protocol for tagging leaking components, and a time limit for performing repairs.

In determining the frequency of monitoring that would reflect best control of these emission sources, the Agency found that some bulk gasoline terminals are already carrying out equipment leak monitoring with a portable organic analyzer. Some of these programs involve quarterly monitoring, while others involve monthly monitoring. Bulk gasoline terminals co-located with or within the contiguous area of refineries are performing LDAR under 40 CFR part 60, subparts GGG and VV and 40 CFR part 61, subparts J and V. Since these similar source control requirements are achieved in practice the Agency has selected an LDAR program based on 40 CFR part 60, subpart VV as the floor level of control for equipment leaks at new bulk gasoline terminals and breakout stations. The proposed standards require monthly leak monitoring of pumps, no detectible emissions from pressure relief valves (after overpressure release to insure proper reseating of valve), barrier fluid systems for compressors, closed-purge or closed-vent systems for sampling collection systems, and caps or plugs for open-ended valves or lines. Requirements for valves are that they be monitored monthly, with provisions allowing the monitoring frequency for valves that do not leak for 2 successive months to be relaxed from monthly to quarterly. Additionally, an alternative standard for valves allows for equal to or less than 2 percent of all valves to leak above the detection limit, and contains procedures that allow monitoring frequency to decrease from monthly to either quarterly or to annually.

d. *Storage tanks.* NSPS standards have been promulgated (40 CFR part 60, subparts K, Ka, and Kb) that cover new, modified, and reconstructed petroleum and volatile organic liquid (VOL) storage tanks, and CTG recommendations have been implemented for existing storage tanks in ozone nonattainment areas. The requirements specify that external floating roof tanks be equipped with certain primary and secondary seals and that fixed-roof tanks be equipped with internal floating roofs with certain types of seals.

Following an analysis of State regulations, the Agency estimated that approximately 76 percent of the storage tanks at pipeline breakout stations are of external floating roof design, while 24 percent are of fixed-roof construction. The corresponding numbers for storage tanks at bulk gasoline terminals are 53 and 47 percent, respectively. Further analysis showed that of the external floating roof tanks at pipeline breakout stations, 36 percent have the NSPS and CTG required primary and secondary seals, while 64 percent have only primary seals. At bulk gasoline terminals, the numbers are 43 and 57 percent for the respective seal types. Similarly, of the fixed-roof tanks at pipeline breakout stations, it was estimated that 38 percent have internal floating roofs (72 percent at bulk gasoline terminals) as required by NSPS and recommended by the CTG, while 62 percent are uncontrolled at pipeline breakout stations (28 percent at bulk gasoline terminals).

Based on the above analysis, the most recent NSPS standard (40 CFR part 60, subpart Kb) represents the average emission limitation achieved by the best performing 12 percent of existing sources. Thus the floor level of control for storage tanks at both existing pipeline breakout stations and existing bulk gasoline terminals has been determined to be the control level defined in subpart Kb. Since it has not been demonstrated that, in practice, there are any better controls than this level for storage tanks, the level of control defined by 40 CFR part 60, subpart Kb was also selected as the floor level of control for storage tanks at new pipeline breakout stations and bulk gasoline terminals.

Degassing and cleaning of tank bottom sediments are necessary to safely retrofit the different or additional seals on existing tanks to meet the floor level of control (subpart Kb requirements). Degassing and cleaning of the bottom of the tank are routine maintenance practices that have been reported to occur at least every ten years. Degassing and cleaning also results in air emissions. As discussed earlier in this preamble, section 112(i)(3) in the Act allows for up to three years to comply with this standard and an additional one-year permit extension. Also there is the additional time between proposal and promulgation. During this three to five year period, it is logical to assume that many of the tanks requiring the retrofit of controls will be experiencing their routine maintenance cleaning and degassing; these tanks could be retrofitted during this time. Thus, for these tanks the retrofitting required by this proposal would not result in earlier degassing and cleaning emissions than would otherwise occur. For those tanks that would not be degassed or cleaned during that period, degassing and cleaning emissions would be required by this proposed rule to occur earlier than normal. This early emissions increase is estimated to be more than off-set by the emission reductions achieved from the required improved seals. Comments and data are requested on any situations where estimated emissions increase will not be off-set by the emission reduction achieved by the controls; for these situation, the data should include the number and description of tanks in this atypical situation, their existing equipment and maintenance history, determinations of the emissions and costs for tank degassing and cleaning, and the basis for any calculations.

The floor level of control for existing storage tanks was discussed earlier and was determined to be the level of control achieved under the NSPS subpart Kb. Gasoline storage tanks meeting the control level in subpart Kb were determined to represent the average emission limitation achieved by the best performing 12 percent of the existing sources. Comments and data are specifically requested on the number of gasoline storage tanks at these facilities with seal types meeting subpart Kb.

3. Formulation of Regulatory Alternatives

After establishing the MACT floor control levels, the Agency developed regulatory alternatives for the affected subcategories. The first alternative developed was one that specified control levels at the floor for all new and existing major sources. This alternative was designated Alternative IV. Next, various combinations of control options were examined, ranging in stringency from the floor level controls specified in Alternative IV to the most stringent controls for each subcategory. A cost-effectiveness analysis was then performed to

eliminate the alternatives with higher costs for the same or lesser emission reductions. A final set of three regulatory alternatives (Alternatives IV, IV–Q, and IV–M) was then evaluated as the potential basis for the proposed standards. Alternatives IV–Q and IV–M are similar to Alternative IV except, they contain increasingly stringent levels of equipment leak control at existing facilities. The following paragraphs and Table 1 describe these alternatives.

TABLE 1.—MAJOR SOURCE REGULATORY ALTERNATIVES IV, IV–Q, IV–M

Emission source and controls for major sources	Bulk terminals		Pipeline breakout stations	
	New	Existing	New	Existing
REGULATORY ALTERNATIVE IV				
Storage Tanks:				
—External Floating Roof Tanks Install Primary and Secondary Seals.	X	X	X	X
—Fixed Roof Tanks Install Internal Floating Roofs with Primary Seals.	X	X	X	X
Tank Truck Loading:				
Collect and Process Vapors to 10 milligrams TOC per liter of Gasoline Loaded.	X	X		
Tank Truck Leaks:				
—Vacuum Assist Loading.	X			
— Annual Vapor Tightness Testing.	X	X		
Equipment Leaks:				
—Leak Detection and Repair Program:.	X		X	
REGULATORY ALTERNATIVE IV–Q (ALTERNATIVE IV PLUS THE FOLLOWING)				
Equipment Leaks:				
Quarterly LDAR for pumps and valves.		X		X
REGULATORY ALTERNATIVE IV–M (ALTERNATIVE IV PLUS THE FOLLOWING)				
Equipment Leaks:				
—Monthly LDAR for pumps and valves.		X		X

At pipeline breakout stations, Alternative IV requires that secondary seals be installed on both new and existing external floating roof storage tanks and that fixed-roof tanks be retrofitted with internal floating roofs with primary seals. The control level for storage tanks is the same as 40 CFR part 60, subpart Kb. It also requires that an LDAR program equivalent to 40 CFR part 60, subpart VV be implemented for equipment leaks at new facilities.

At new and existing bulk gasoline terminals, Alternative IV specifies a 10 mg TOC/liter emission limit for vapor processors at loading racks, and requires the same storage tank requirements discussed above for pipeline breakout stations. Also, new facilities must use vacuum assist vapor collection for loading of gasoline tank trucks and railcars, and an LDAR (40 CFR part 60, subpart VV) program. Also, at existing bulk gasoline terminals, Alternative IV requires tank trucks and railcars to undergo an annual vapor tightness test. Under this alternative, no LDAR program is required for equipment leaks at existing bulk gasoline terminals.

Alternatives IV–Q and IV–M specify controls identical to those of Alternative IV, with the addition of a pollution prevention LDAR program for both pumps and valves at existing bulk gasoline terminals and pipeline breakout stations. Alternative IV–Q adds a quarterly LDAR program for pumps and valves at existing facilities, and Alternative IV–M adds a monthly LDAR program for pumps and valves at these same sources. LDAR programs at existing sources achieve emission reduction at little additional annual cost to each facility, and are in use at facilities with similar equipment.

During the development of today's proposal, EPA considered including an emissions averaging approach but did not identify any viable alternatives. EPA would be interested in pursuing the development of an averaging alternative if such an alternative would be protective of the environment and, as expected, lower the cost of achieving any particular emission reduction. A possible benefit of an averaging approach is that it may provide sources greater flexibility in achieving emissions reductions that may also translate into cost savings for the source. EPA is interested and requests data and comments that could be used to develop an emissions averaging alternative in the final rule.

4. Consideration of Environmental Impacts

For the entire gasoline distribution network, total nationwide HAP emissions are estimated to be 52,440 Mg/yr at baseline. Of these emissions, approximately 23,750 Mg/yr (45 percent of the total) can be attributed to the two subcategories of the network subject to today's proposed regulation; nearly 7,250 Mg/yr of HAP's are emitted by pipeline breakout stations, while about 16,500 Mg/yr are associated with bulk gasoline terminals.

All individual sources of emissions at facilities in these two subcategories are significant contributors to total facility emissions, with equipment leaks at pipeline breakout stations being the smallest (12 percent of the baseline subcategory total, due to the relatively small number of equipment components in the process piping at these facilities). Storage tanks at pipeline breakout stations contribute the remaining 88 percent of the total for this subcategory. At bulk gasoline terminals, HAP emissions are more evenly distributed: loading racks account for 18 percent of the baseline subcategory total, storage tanks contribute 33 percent, fugitive leaks from cargo tanks of trucks or railcars account for 23 percent of the subcategory total, and it is estimated that leaking pumps and valves in the process line piping account for the remaining 26 percent.

It is estimated that implementation of Alternative IV would reduce these HAP emissions from pipeline breakout stations and bulk gasoline terminals by 11 percent, implementation of Alternative IV–Q would reduce them by a little less than 13 percent, and Alternative IV–M by slightly more than 14 percent. All of these are significant amounts in view of the fact that these reductions are incremental to existing programs, and that only an estimated 23 percent of the total subcategory facilities are major sources. (The analysis

estimates that 7.4 percent of pipeline breakout stations and 27 percent of bulk gasoline terminals qualify as major sources.) If only major source pipeline breakout stations and bulk gasoline terminals are considered at baseline, implementation of Alternative IV reduces these emissions by 48 percent, Alternative IV–Q by 55 percent, and Alternative IV–M by 59 percent.

Data directly from bulk gasoline terminals or pipeline facilities was not available to analyze the equipment leak potential emissions and reductions. The Agency used the emissions data that had been previously collected at petroleum refineries, including the Agency's published AP–42 emission factors. Subsequent to the Agency's analysis, new data specific to leaking components at bulk gasoline terminals was released in a published report. This data appeared to indicate lower emissions than those derived from the refinery data, and industry commenters urged the Agency to reconsider leak detection and repair standards for this subcategory. These commenters also stated that equipment components in use at gasoline production and distribution facilities are quite different, so the assumption that the leakage characteristics of components at these two types of facilities are similar may not be valid. To address this latter comment first, the Agency believes that the magnitude and frequency of leaks from components at these facilities are similar. This conclusion is based on several years of gathering and analyzing data on all configurations and uses of equipment at refineries and chemical production facilities. The Agency, in these data gathering efforts, found no correlation between temperature, pressure, or component size and the magnitude or frequency of leaks.

The Agency performed a thorough review of the new data collected at bulk gasoline terminals. It was determined that, while acceptable test protocols were used, the quantity of data (which were for only a few terminals) were insufficient to warrant a change in the emission calculations for these components. Therefore, the Agency's conclusion that a periodic equipment monitoring program would be a cost-effective means of ensuring maximum HAP emission reductions is unchanged. The data discussed above indicates potentially lower equipment leak emissions rates than those found in testing refineries. It should be noted that any facilities where this may be the case, could qualify for the less frequent monitoring requirements in today's proposed standards, as provided for in 40 CFR part 60, subpart VV.

The Agency is open to receiving additional data that could be used to quantify emissions and control levels of leaking equipment at bulk gasoline terminals and pipeline breakout stations. This includes leak frequency data, leak correlation data, and information on programs that may be in place to reduce equipment leaks. Such data should include specifics on test procedures, applicable rules, control methods, etc. The Agency will review all data received in developing and assessing the final control requirements. The full range of control options presented here will be included in the consideration.

5. Consideration of Cost

Implementation of Alternative IV, IV–Q, or IV–M is estimated to result in identical capital costs, approximately $125 million. This cost is primarily associated with retrofit or installation of vapor collection piping and vapor processors for loading racks at bulk gasoline terminals. However, there is a difference in annualized cost among these three alternatives due to annual costs and recovery credits associated with implementing LDAR programs at existing sources. Recovery credits are calculated based on the value and the amount of gasoline not allowed to evaporate or collected under each control alternative. Alternative IV–Q requires the smallest annualized cost, $15.8 million/yr, due to having the largest recovery credit per dollar spent on implementation of the program. Alternative IV–M is slightly more costly at $16.3 million/yr (recovery credits per dollar spent are not quite as large as IV–Q). Alternative IV has similar annualized cost as Alternative IV–M.

6. Consideration of Economic Impacts

The implementation of either Regulatory Alternative IV, IV–Q, or IV–M is projected to result in gasoline price and consumption impacts, facility closures, and declines in employment. The national average base year increase in the retail price of motor gasoline as a result of these alternatives is estimated at $0.001 per gallon. The national base year decline in gasoline consumption is estimated at less than 100 million gallons (0.08 percent). There are a limited number of facility closures estimated to result from the regulatory alternatives. The base year facility closure estimate is nearly 650, of which more than 90 percent are projected for the service station sector. While the estimated number of service station closures is estimated to be in the hundreds, it should be noted that a total of over 380,000 stations are projected being in operation during the base year, so that the number of facilities closing would constitute less than two-tenths of one percent. Furthermore, due to a consumption-spurred projection of modest industry growth from 1993 to 1998, some closures due to the regulation may be more accurately interpreted as reductions in new facility openings rather than closures of existing facilities. Employment reductions due to reduced consumption and facility closure are estimated at just over 1,100 jobs, of which 70 percent are projected for the service station sector. However, this job loss constitutes only about 0.05 percent of the total employment attributed to the service station sector in the base year. For the same reason given for facility closures, some employment reductions may be more accurately interpreted as reductions in industry job opportunities rather than losses of existing jobs.

7. Consideration of Secondary Impacts

As discussed earlier, there is projected to be no adverse secondary air pollution or water pollution impacts associated with standards based on implementation of any of the alternatives. In fact, there is likely to be some benefits. For example, implementation of any of the alternatives would be based in major part on an LDAR program. LDAR programs at most facilities should actually reduce the water pollution impact through detection and repair of faulty equipment in a shorter timeframe than in the past. Additional benefits may be realized through decreased intrusion of rainwater into storage tanks at both facility types.

The small amount of water condensed from the air-vapor stream by refrigeration condenser systems installed at loading racks should pose no threat to the environment because the gasoline is recovered (typically in an oil-water separator) and the gasoline-water portion is collected and stored for processing off-site.

The only potential secondary impact involves solid waste disposal, which may result in cases where carbon adsorbers are used to comply with the emission standards at bulk terminal loading racks. Spent activated carbon from these units is normally reclaimed for reuse during the carbon's useful life, and then discarded when it is no longer effective (usually 10 years) or reactivated in a furnace. If the average annual solid waste impact of this disposal (assuming no reactivation) is spread over the estimated life of the carbon, an overall environmental impact of about 230 megagrams per year (0.7

megagrams per terminal) results. Consequently, the magnitude of the adverse solid waste disposal impact occurring from the implementation of any of these alternatives is considered small.

8. Consideration of Energy Impacts

There is a beneficial nationwide energy impact associated with implementation of each of the alternatives. Implementation of LDAR programs and installation of secondary seals on storage tanks both result in energy savings, since additional gasoline is kept in the tanks and lines, and remains available for sale rather than being allowed to escape to the atmosphere. Only a small amount of electrical energy would be required for most flares that may be installed at bulk terminal loading racks for emission control; however, assist gas may be necessary for some systems. Where thermal oxidation, refrigeration condenser, or carbon adsorption systems are installed to achieve compliance for loading racks, however, a moderate amount of electrical energy will be required.

As mentioned earlier, vapor recovery (noncombustion) systems would recover gasoline from vapors collected at bulk terminal loading racks; LDAR programs, storage tank monitoring, and vacuum assist vapor collection all operate to reduce evaporation and improve leak prevention, so they result in gasoline savings. Assuming that 25 percent of the emission reduction at bulk terminal loading racks would be accomplished using recovery devices (the remainder would be the result of combustion devices) and subtracting the energy used by the recovery devices from the energy in the recovered product, the savings resulting from implementation of each of the alternatives are as follows: Alternative IV results in recovery of approximately 16 million gallons of gasoline per year, Alternative IV–Q saves almost 18 million gallons per year, and Alternative IV–M recovers slightly more than 19 million gallons per year.

9. Selection of the Proposed Standards

In accordance with Clean Air Act section 112(d), the Administrator is required to set emission standards for new and existing sources of HAP's from source categories listed pursuant to section 112(c) [see the source category list proposal of July 16, 1992 (57 FR 31576)]. In doing so, the Administrator must require the maximum degree of reduction in emissions of HAP's that is achievable, taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements. Having given full consideration to these directives, the Administrator has selected Alternative IV–Q as the basis for the proposed standards for gasoline distribution major sources.

All three alternatives discussed earlier (IV, IV–Q, and IV–M) satisfy the Act's criteria. Alternative IV achieves the least HAP emission reduction and is the least stringent possible alternative allowed by the Act statutory language. However, the Act provides for setting standards above the floor. As a result, Alternatives IV–M and IV–Q contain control levels more stringent than the floor for existing sources (monthly and quarterly leak detection and repair of pumps and valves, respectively). Results of emission reduction calculations show that Alternative IV–M achieves greater HAP emission reductions than IV–Q or the floor Alternative IV. Additionally, analysis shows that Alternative IV–Q and IV–M would have minor economic and nonair quality environmental impacts, and beneficial energy impacts.

Although Alternative IV–M would achieve the maximum reduction in HAP emissions, there is uncertainty in the calculation of emission reductions for leak detection and repair (as discussed in section 4). Due to this uncertainty in emissions and the increased cost of Alternative IV–M, Alternative IV–Q was chosen over the more stringent Alternative IV–M.

D. Selection of the Format of the Proposed Standards

Section 112(h) of the Act requires that standards be promulgated in terms of a numerical emission standard except when it is not feasible for the pollutants to be emitted through a conveyance or it is not practicable to apply measurement methodology due to technological or economic limitations. In these cases, the Administrator may promulgate a design, equipment, work practice, or operational standard that is consistent with the intent of section 112.

As discussed under Section B above, there are four distinct categories of emission sources at bulk gasoline terminals: (1) Displacement losses when gasoline tank trucks or railcars are loaded at loading racks, (2) fugitive vapor losses from leaking tank trucks or railcars during controlled loading operations, (3) losses from storage tanks, and (4) vapor leaks from equipment components. The latter two emission sources also occur at pipeline breakout stations.

To set a numerical emission limit for tank truck loading operations, the total HAP emissions would have to be measurable, so that a comparison with this emission limit could be made. Since the small portion of the displaced vapors which may leak from the tank trucks cannot be quantitatively measured, accurate measurements of total HAP emissions from tank truck loading are not possible. However, the major portion of the displaced vapors can be measured after the vapors are collected at the loading rack. Vapor collection systems typically include the equipment at the loading rack used to contain and route emissions, and generally consist of hoses or arms, manifolding, piping, and check valves. This type of system is consistent with the current state-of-the-art collection systems in use at many existing bulk gasoline terminals. Because of its demonstrated control effectiveness, and because it is not possible to set a standard of performance for the total emissions from the loading operation, an equipment standard requiring a vapor collection system at each loading rack was selected by the Administrator as the format for controlling HAP emissions at the loading racks.

Since emissions from the vapor collection system can be measured, standards of performance in the form of a numerical emission limit can be applied to emissions from the vapor collection system. Several formats for these standards of performance are possible. Three formats considered for limiting emissions from the vapor collection system include a concentration standard, a control efficiency standard, and a mass emissions standard. A vapor processing system would be necessary under any of these formats to achieve the required emission limit.

A format expressed in terms of concentration would limit the HAP concentration in the exhaust from the vapor processing system. However, test data from these systems indicate a variation in exhaust gas flow rates and concentrations among the various types of systems. Separate concentration limits might be required for each type of control system at each affected terminal if a concentration format were selected.

Information from the manufacturers and test results indicate that the control efficiencies of the processing systems are dependent on the inlet concentration to the processor. The data further indicate that concentrations at the inlet of the processor vary considerably from terminal to terminal. It would be difficult to adjust the calculations to account for these variations. Also, control efficiency testing would require two separate

measurements of pollutant concentration instead of just one measurement as required in the concentration or mass approaches.

A mass standard based upon the vapor processor outlet emissions would involve a simpler, less expensive, and more straightforward test procedure. This testing would require measurement of mass emissions at the processor outlet only. In addition, the affected industry has over 15 years experience in conducting this type of testing at bulk gasoline terminals and, in fact, this is the type of test data analyzed to determine the MACT control levels for the facilities to be regulated in this source category. Due to these considerations, a mass emission format, based on measurements at the outlet of the vapor processor only, was selected for the standard to be applied to bulk terminal tank truck and railcar loading emissions. This mass emission format is the same type analyzed to determine the MACT control levels for vapor processors.

The test methods that have proved to be acceptable for measuring pollutant emissions from bulk terminal control systems measure the total organic compounds content of the exhaust stream. To analyze the stream specifically for HAP content, more complex testing would have to be carried out. The emission reduction processes utilized in vapor processing systems have been found to reduce HAP's in proportion to the reduction of total organics. Therefore, the emission limit for loading rack vapor collection systems is expressed in terms of mass (milligrams) of total organic compounds emitted per volume (liter) of gasoline loaded into tank trucks and railcars.

Even at loading racks controlled through installation of vapor collection and processing systems, gasoline vapor emissions may occur from the loading operation due to vapor leakage from closed gasoline tank trucks or railcars during loading. These leakage emissions originate from pressure-vacuum vents and defective hatch covers and seals. Due to the fugitive nature of these emissions, it is not feasible to collect the escaping vapors and route them through a conveyance. Since cargo tank leakage measurements at the loading racks do not provide a quantitative measurement of total organic concentration, flow rate, or mass emissions, an enclosure around a loading tank truck or railcar would be necessary in to trap emissions for measurement. An enclosure or conveyance to accomplish this is not technologically or economically practicable. Due to these considerations, the Administrator determined that a standard of performance, in the form of a numerical emission limit, could not be set, and that a work practice standard would be appropriate for controlling cargo tank vapor leakage emissions.

One method for monitoring fugitive tank truck or railcar emissions would involve the use of a portable hydrocarbon analyzer to detect emissions during loadings. However, such a requirement is considered to represent an excessive burden, especially at unmanned terminals where entry is gained through a cardlock system. Another method for exercising control over leaking tank trucks would consist of a work practice standard. The work practice standard format would consist of a requirement that the owner or operator of the terminal restrict loadings of gasoline tank trucks to those for which documentation was on file that the tank had passed an appropriate vapor tightness test within the last year. This type of requirement is in effect in many areas of the country under current State rules and is the basis for setting the MACT control level. Since it is the most practical and effective means of controlling tank truck or railcar fugitive emissions at loading racks with vapor control systems, this work practice standard was selected by the Administrator as the requirement for fugitive tank truck leakage control.

Emissions from gasoline storage tanks at bulk gasoline terminals and pipeline breakout stations consist of a combination of standing and working losses. These emissions consist of vapors that escape through rim seals on the circumference of the tank (internal and external floating roof tanks), and for fixed-roof tanks, through several vents and other openings necessary to relieve built up internal tank pressures. The large number of emission points makes testing these sources excessively expensive and burdensome. Based on the best industry practice in use for controlling these emissions, an equipment and work practice standard is being proposed for the control of these storage tanks, which is identical to the national standards in practice for new storage tanks, 40 CFR part 60, subpart Kb. For fixed-roof tanks, an internal floating roof would be added, and for existing external floating roof tanks, a secondary seal would have to be added for those tanks with only a primary seal on the floating roof. Periodic visual inspections and seal gap measurements would be necessary to ensure that the seals are continuing to maintain the required control.

Both bulk gasoline terminals and pipeline breakout stations utilize pumps, valves, and other liquid and vapor transfer equipment components that may develop leaks over time. Due to the large number of sources, testing each to quantify emissions would be expensive. Thus, an equipment leak LDAR program and specific equipment standards similar to those currently being practiced at petroleum refineries, chemical manufacturing facilities, and a few terminals could be used to identify leaking components so that timely repair could be carried out. It is proposed that monthly monitoring of components and specific equipment standards at new facilities and quarterly monitoring of pumps seals and valves only at existing facilities, with the described provisions to modify these frequencies on the basis of monitoring results, be carried out.

E. Equivalent Systems of Emission Reduction

The Administrator does not preclude selection of alternative means of compliance to those described above in part D of this section, provided that the owner or operator provides proof of compliance as specified under section 112(h)(3) of the Act. If, after notice and opportunity for comment, the owner or operator of any source establishes to the satisfaction of the Administrator that an alternative means of emission limitation will reduce emissions of any air pollutant at least as much as would be achieved under the design, equipment, work practice, or operational standard, or combination thereof, the Administrator shall permit the use of the alternative means.

F. Selection of Emission Test Methods and Continuous Monitoring Requirements

The proposed standards require several types of performance tests, as well as both periodic and continuous monitoring to ensure that the intent of the standards to achieve maximum emission reductions is realized. The tests include performance testing of the bulk terminal control system, vapor leak monitoring and repair of the vapor collection system before each performance test, and annual vapor tightness testing of tank trucks and railcars that will load at the affected terminals. All of these procedures have been used with acceptable results and are consistent with § 63.7 of the proposed General Provisions for performance testing. Storage tanks at terminals and pipeline stations would require periodic visual and seal gap measurement tests (consistent with 40 CFR part 60, subpart Kb). Equipment components would have to be monitored and repaired as necessary in

accordance with the applicable LDAR program (requirements are detailed in 40 CFR part 60, subpart VV).

Continuous monitoring of an operating parameter would be required for vapor processing systems. At new bulk gasoline terminals, the vacuum achieved in the tank truck or railcar during vacuum assist loading would have to be monitored continuously. These monitoring requirements are required to verify that the control systems continue to provide the control level required by the proposed standards.

1. Emission Test Methods

Performance tests ensure that a vapor control system at a bulk gasoline terminal is in initial compliance with the required control level, and they also establish operating conditions under which the system should continue to meet the required standard. An initial performance test would be required, in accordance with the schedule in § 63.7 of the proposed General Provisions. This initial test is required 120 days after the effective date of the standards or after initial startup for a new facility, or 120 days after the compliance date specified for an existing facility. In accordance with § 63.7(a)(2) of the proposed General Provisions, the Administrator may require a performance test at any other time it is authorized by section 114 of the Act.

The proposed standards require the use of approved test methods to ensure consistent and verifiable results for the initial performance test and for demonstration of continuous compliance. Methods 2A, 2B, 25A, and 25B of 40 CFR part 60, appendix A are specified for measurement of total organic compound emissions from the vapor collection and processing system. These methods have been used routinely for many years at bulk gasoline terminals. Due to the difficulties involved in measuring mass emissions from flares without an outlet stack (which can be used to control loading rack emissions), the above test methods will not be applicable. In these cases, flares must comply with § 63.11 of the proposed General Provisions which includes a compliance determination according to Method 22 of 40 CFR Part 60, Appendix A, and design specifications for exit velocity and heat content.

Before each performance test, the owner or operator would be required to monitor potential leak sources in the terminal's vapor collection and processing system during the loading of a gasoline tank truck or railcar. Leaks (defined as a meter reading of 500 ppm or greater calibrated with methane) would have to be repaired before conducting the performance test. This leak definition is consistent with the definition in other equipment leak monitoring regulations; i.e., 40 CFR part 60, subparts VV and GGG.

The proposed standards would require each gasoline tank truck and railcar loaded at an affected bulk terminal to be certified as vapor-tight through an annual vapor tightness test according to Method 27 of 40 CFR part 60, appendix A. This test verifies that the tank compartments will not emit fugitive vapors or admit fresh air into the tank truck during loading. The pressure-vacuum test of Method 27 is presently required annually for gasoline tank trucks operating at terminals subject to the bulk gasoline terminals NSPS.

2. Continuous Monitoring Requirements

In addition to the initial performance test required for bulk terminal vapor processing systems, continuous monitoring of the operation of these systems is also part of the proposed standards. Selection of the format for this monitoring and the rationale for the selection are discussed in the following paragraphs.

Continuous monitoring systems that monitor vapor processor exhaust organic emissions in the units of the proposed standard (mg/liter) would require measuring not only total organics concentration in the system exhaust, but also exhaust gas flow rate, volume of product dispensed, temperature, and pressure. Such systems are not currently in use at bulk gasoline terminals. However, monitoring equipment is available and in use for monitoring the operational variables associated with the operation of the processing systems.

Today's proposed standards (40 CFR part 63, subpart R) require continuous monitoring of operating parameters of vapor processing systems, and reports of periods when the monitored value exceeds or there is a failure to maintain, as appropriate, the parameter value established by monitoring data recorded during the performance test. The Agency is requiring each source to establish a site-specific monitoring parameter value and if exceeded or not maintained, as appropriate, it would be an enforceable violation of the emission limit. System-specific values for monitored parameters would account for deviations in the design, installation, and operational characteristics of individual control systems.

Under the NSPS and the earlier NESHAP programs, parameter monitoring has traditionally been used as a tool in determining whether control devices are being maintained and operated properly. However, section 114(a)(3) of the Act and § 70.6(c) of the operating permit rule (57 FR 32251, July 21, 1992) require the submission of "compliance certifications" from sources subject to the operating permit program. Sources must certify whether compliance was continuous or intermittent, as well as their compliance status at the end of the reporting period. In light of these requirements, the Agency has considered how sources subject to this rule would demonstrate compliance. The Agency has found that operating parameter monitoring is already being used successfully at some bulk gasoline terminals and can be applied for this purpose. The Agency considers that each exceedence or failure to maintain, as appropriate, of a operating parameter value would constitute a violation of the emission limit.

Organic compounds concentration at the processor outlet is the best indication of system operation and corresponding emission reduction. A monitor to measure this parameter would be appropriate for carbon adsorption and possibly refrigeration condenser systems. To achieve representative organic concentration measurements at the processor outlet, the concentration monitoring device should be installed in the exhaust vent of the vapor processor: (1) At least two equivalent diameters downstream from the nearest control device, the point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate may occur and (2) at least a half equivalent diameter upstream from the effluent exhaust.

For some vapor processing systems, monitoring of the exhaust organics concentration may be impracticable and monitoring a process parameter may be an equally accurate measure of system performance. For example, temperature monitoring of the combustion section of a thermal oxidation system or the temperature of the air-vapor mixture on the outlet side of a refrigeration condenser system establish performance of the system. If a flare is used to control loading rack emissions, a heat-sensing device such as an ultraviolet beam sensor or a thermocouple to indicate the presence of a flame during the loading operation is required.

The Agency is requesting comment, including data and other supporting technical information, on whether the proposed approach on continuous monitoring and types of monitoring

parameters ensure continuous compliance of vapor control systems that would be installed at affected bulk gasoline terminals to meet today's proposed emission standard. Additionally, comments and data are requested on how representative the control equipment parameters are of actual performance of the control equipment and in determining compliance. Also, comments and data are requested on alternative methods to those proposed today that can be used to ensure continuous compliance with the emission standard. The proposed regulation also allows for substituting an alternative vapor processing system for those mentioned above or the monitoring of some other parameter if it can be demonstrated to the Administrator's satisfaction that the processing system achieves the emission limit, and the value of the alternative monitoring parameter ensures continuous compliance with the emission standard.

The operating parameter value would be established during the initial performance test. During the test, the operating parameter would be continuously recorded during all the times a gasoline tank truck or railcar was being loaded. Only monitoring data from performance tests in which the system shows compliance with the 10 mg TOC/liter emission limit are valid for the determination of the monitored operating parameter value. The operating parameter value would be the average of the values recorded during which loadings of gasoline tank trucks occur over the six-hour performance test. Today's proposal requires facilities to monitor this operating parameter value continuously, calculate and record a rolling six-hour average valve, and report exceedences or failures to maintain, as appropriate, the average value.

New bulk gasoline terminals must install a vacuum assist vapor collection system to ensure that loading tank trucks and railcars do not emit fugitive HAP vapors. The vapor collection system must be continuously monitored to verify that a vacuum always exists in the system while loading is taking place. The monitoring location must be within 0.3 meter (1 foot) of the tank truck/vapor return line interface. The Agency is not proposing any specific vacuum levels that must be maintained (although the vacuum must never exceed the level at which the system's or transport tank's safety vents automatically begin to open). Therefore, the monitoring device need not be highly precise. However, a continuous record indicating that a vacuum is being maintained for the duration of all loadings must be created and maintained at the facility.

Comments on the proposed approaches to monitoring the vacuum assist system, or vapor collection and processing systems, and any other suggested approaches are requested. In particular, the Agency requests that commenters submit data on parameters or values of parameters that might be used to better establish performance of these devices and continuous compliance with the emission standards.

G. Selection of Recordkeeping and Reporting Requirements

The proposed standards would require an owner or operator to submit the following four types of reports:

1. Initial Notification,
2. Notification of Compliance Status,
3. Periodic Reports, and
4. Other reports.

The purpose and contents of each of these reports are described in this section. The proposed rule requires all reports to be submitted to the "Administrator." The term Administrator refers either to the Administrator of the Agency, an Agency regional office, a State agency, or other entity that has been delegated the authority to implement this rule. In most cases, reports will be sent to State agencies. Addresses are provided in the proposed General Provisions (subpart A) of 40 CFR part 63.

Records of reported information and other information necessary to document compliance with the regulation are generally required to be kept for 5 years. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

1. Initial Notification

The proposed standards would require owners or operators who are subject to today's proposed standards under 40 CFR part 63, subpart R to submit an Initial Notification. This report notifies the agency of applicability for existing facilities or of construction for new facilities as outlined in § 63.5 of the proposed General Provisions, whichever is applicable. A respondent must also report any facility modifications as defined in § 63.5 of the proposed General Provisions. This report will establish an early dialogue between the source and the regulatory agency, allowing both to plan for compliance activities. The notice is due within 45 days after the date of promulgation for existing sources. For new sources, it is due 180 days before commencement of construction or reconstruction, or 45 days after promulgation of today's proposed rules, whichever is later.

The Initial Notification must include a statement as to whether the source can achieve compliance by the specified compliance date. If an existing source anticipates a delay that is beyond its control, it is important for the owner or operator to discuss the problem with the regulatory authority as early as possible. This report will also include a description of the parameter monitoring system intended to be used in conjunction with the vapor processing system. Pursuant to section 112(d) of the Act, the proposed standards contain provisions for a 1-year compliance extension to be granted by the Administrator on a case-by-case basis. Further discussion of compliance issues is included in section VI.H of this notice.

2. Notification of Compliance Status

The Notification of Compliance Status (NCS) would be submitted no later than 30 days after the facility's initial performance test. It contains the information necessary to demonstrate that compliance has been achieved, such as the results of the initial performance test on the vapor processing system and results of the LDAR monitoring program. The submission of the performance test report will allow the regulatory authority to verify that the source has followed the correct sampling and analytical procedures, and has performed all calculations correctly.

Included in the performance test report submitted with the NCS would be the calculation of the operating parameter value for the selected operating parameter to be monitored in the vapor processing system. The notification must include the data and rationale to support this parameter value as ensuring continuous compliance with the emission limit.

3. Periodic Reports

Periodic Reports are required to ensure that the standards continue to be met and that vapor control systems are operated and maintained properly. Generally, periodic reports would be submitted semiannually or quarterly. However, if monitoring results show that the parameter values for the vapor processing system exceed or fail to maintain, as appropriate, the operating parameter value for more than 1 percent of the operating time in a quarterly reporting period, or the monitor is out of service for more than 5 percent of the time, the Administrator may request that the owner or operator submit more

frequent reports. After 1 year, the facility may return to quarterly reporting if approved by the regulatory authority.

The Agency has established this reporting system to provide an incentive (less frequent reporting) for good performance. Due to uncertainty about the periods of time over which sources are likely to experience exceedences or failures to maintain, as appropriate, the operating parameter value or monitoring system failures, the Agency is seeking comment on the 1 percent and 5 percent criteria triggering the potential for more frequent reporting. In particular, data are requested on both the frequency of exceedences and monitoring system downtime. As discussed in section VI.F.2, records must be kept of the parameter value.

Owners and operators are also required to keep records of monthly or quarterly leak detection and repair, and to furnish reports on program results, as specified in § 63.428(f). These reports can be made a part of the Periodic Report, unless the frequency of the reports exceeds that of the Periodic Report. Facilities must also retain records and submit reports of annual inspections of storage vessels, in accordance with § 63.428(e). These reports may also be included in the appropriate Periodic Report.

4. Other Reports

There are also a limited number of other reports required under the proposed standards. Where possible, subpart R is structured to allow information to be reported in the semiannual (or quarterly) Periodic Report. However, in a few cases, it is necessary for the facility to provide information to the regulatory authority shortly before or after a specific event. For example, notification before a performance test or a storage vessel inspection is required to allow the regulatory authority the opportunity to have an observer present (as specified in the proposed General Provisions). This type of reporting must be done separately from the Periodic Reports because some situations require a shorter term response from the reviewing authority.

Reports of start of construction, anticipated and actual startup dates, and modifications, as required under § 63.5 and § 63.9 of the proposed General Provisions, are entered into the Agency's Aerometric Information Retrieval System (AIRS) and are used to determine whether emission limits are being met.

Records required under the proposed standards are generally required to be kept for 5 years. General recordkeeping requirements are contained in the proposed General Provisions under § 63.10(b). These requirements include records of malfunctions and maintenance performed on the vapor processing system and the parameter monitoring system. At bulk gasoline terminals, vapor tightness (annual test) documentation for each gasoline tank truck and railcar using the terminal is required. Continuous monitoring data from the parameter monitor on the vapor processor and the pressure monitor on the vacuum assist vapor collection system will provide a record of continuous compliance with the emission standards. Records of storage vessel inspections, operating plans, and other details of controlled storage vessels at terminals and pipeline stations are to be kept as specified under § 60.115b. Records documenting the LDAR program at subject facilities must be kept in accordance with § 60.486 (b) through (j).

H. Selection of Compliance Deadlines

The Agency proposes to allow affected sources the following time periods after promulgation for compliance, as provided for in Clean Air Act section 112(i). All sources, whether uncontrolled or having in place control systems or measures requiring upgrading to meet the new standards, would be required to reach full compliance within 3 years after promulgation of the standards. All sources must implement an LDAR program as soon as practical, but not later than 180 days after promulgation of this rule. These compliance deadlines allow a reasonable time for replacement of operating equipment at existing sources, for construction and installation of vapor control devices and piping, and for retrofit of storage tanks.

I. Solicitation of Comments

The Administrator welcomes comments from interested persons on any aspect of the proposed standards, and on any statement in the preamble or the referenced supporting documents.

The proposed standards were developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach. To receive proper consideration, documentation or data should be provided.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with Section 307(d)(5) of the Act. Persons wishing to make an oral presentation on the proposed standards for gasoline distribution should contact the Agency at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket section address given in the ADDRESSES section of this preamble, and should refer to Docket No. A–92–38.

A verbatim transcript of the hearing and any written statements will be available for public inspection and copying during normal working hours at the Agency's Air Docket Section in Washington, DC (see ADDRESSES section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) [Section 307(d)(7)(A) of the Act].

C. Executive Order 12866

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined to treat this action as a "significant regulatory action" within the meaning of the Executive Order. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the docket listed at the beginning of today's notice under ADDRESSES. The docket is available for public inspection at the Agency's Air Docket Section, which is listed in the ADDRESSES section of this preamble.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by the Agency (ICR No. 1659.01) and a copy may be obtained from Ms. Sandy Farmer, Information Policy Branch, Environmental Protection Agency, 401 M St., SW., (2136), Washington, DC 20460 or by calling (202) 260–2740.

The public reporting burden for this collection of information is estimated to average 400 hours per respondent for the first year after the date of promulgation of the rule, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The cost for this additional burden per respondent is estimated to be about 14,000 dollars during the first year.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, (2136), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 10460; and to the Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA." The final rule will respond to the OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis must be prepared. However, regulatory alternatives that would alleviate the potential impact of the proposed standards on directly affected companies were not selected because the CAA requires all facilities that are members of a category or subcategory of major sources to meet, at a minimum, the requirements of the MACT floor.

For the affected industry sectors, the Small Business Administration's definition of small business is independently owned companies with less than 100 employees. The proposed standards directly impact small companies owning gasoline bulk terminals and pipeline breakout stations. Due to downstream wholesale gasoline price increases, the proposed standards would indirectly impact small companies owning gasoline bulk plants and gasoline service stations.

A definitive estimate of the number of small businesses that would be directly and indirectly affected by the proposed standards could not be feasibly obtained because of the lack of data related to the extent of vertical integration in the gasoline distribution chain. However, the EPA believes that a maximum of 56 percent of all gasoline bulk terminals are owned by small companies. Potentially, up to 99 percent of the indirectly affected gasoline bulk plants and service stations are owned by small companies. The percentage of actual small companies in these sectors, especially the gasoline bulk terminal sector, is projected to be much smaller due to vertical integration with petroleum refiners. No estimate has been made of the percentage of pipeline breakout stations owned by small companies, but since they are typically affiliated with petroleum refiners, the percentage is projected to be small.

A preliminary assessment indicates that the proposed regulations would not result in financial impacts that would significantly or differentially stress affected small companies. The compliance costs for all but the smallest throughput facilities in directly affected industry segments are a minute fraction of production costs and revenues. Even so, the per unit compliance cost differential between large throughput and small throughput facilities are minor. Small facilities are likely to be serving small or specialized markets, which makes it unlikely that the differential in unit control costs between large throughput and small throughput facilities will seriously affect the competitive position of small companies, even assuming that small companies own small facilities.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant impact on small companies, even though a substantial number of small companies may be affected.

F. Clean Air Act Section 117

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comment on all aspects of the proposed regulation, including health, economic, technological, or other aspects.

G. Regulatory Review

In accordance with Clean Air Act sections 112(d)(6) and 112(f)(2), this regulation will be reviewed within 8 years from the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements, Petroleum bulk stations and terminals.

Dated: January 31, 1994.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

2. It is proposed that part 63 be amended by adding subpart R, consisting of §§ 63.420–63.429, to read as follows:

Subpart R—National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

Sec.
63.420 Applicability.
63.421 Definitions.
63.422 Standards: Loading racks.
63.423 Standards: Storage vessels.
63.424 Standards: Equipment leaks.
63.425 Test methods and procedures.
63.426 Alternative means of emission limitation.
63.427 Continuous monitoring.
63.428 Reporting and recordkeeping.
63.429 Delegation of authority.

Subpart R—National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

§ 63.420 Applicability.

(a) The provisions of this subpart apply to each bulk gasoline terminal, except those facilities:

(1) For which the result, E_T, of the following equation is less than 1:

$$E_T=0.63(T_F)+0.19(T_E)+0.092(T_{ES})+0.03(T_I)+0.0012(V)+0.024(P)+KQ$$

where:

E_T=major source applicability factor for bulk gasoline terminals, $E_T \geq 1$ means bulk gasoline terminal is a major source,

T_F=total number of fixed-roof gasoline storage tanks,

T_E=total number of external floating roof gasoline storage tanks with only primary seals,

T_{ES}=total number of external floating roof storage tanks with primary and secondary seals,

T_I=total number of fixed-roof gasoline storage tanks with an internal floating roof,

V=number of valves in gasoline service,

P=number of pumps in gasoline service,

Q=gasoline throughput rate (liters/day),

$K=3.18 \times 10^{-6}$ for bulk gasoline terminals with uncontrolled loading racks (no vapor collection and processing systems), *OR*

$K=(4.5 \times 10^{-9})$ (EF+70) for bulk gasoline terminals with controlled loading racks (loading racks that have vapor collection and processing systems installed on the emission stream), and

EF=the federally enforceable emission standard for the vapor processor (mg of total organic compounds per liter of gasoline loaded).

or

(2) For which the owner or operator has documented to the Administrator's satisfaction that the facility is not a major source as defined in section 112(a)(1) of the Clean Air Act.

(b) The provisions of this subpart apply to each pipeline breakout station, except those facilities:

(1) For which the result, E_P, of the following equation is less than 1:

$$E_P=2.4(T_F)+0.09(T_E)+0.043(T_{ES})+0.027(T_I)+0.0009(V)+0.009(P)$$

where:

E_P=major source applicability factor for pipeline breakout stations, $E_P \geq 1$ means pipeline breakout station is a major source, and

the definitions for T_F, T_E, T_{ES}, T_I, V, and P are the same as provided in paragraph (a) of this section; or

(2) For which the owner or operator has documented to the Administrator's satisfaction that the facility is not a major source as defined in section 112(a)(1) of the Act.

(c) The provisions of paragraphs (a)(1), (a)(2), (b)(1), and (b)(2) of this section, do not apply to bulk gasoline terminals or pipeline breakout stations located within a contiguous area and under common control of a petroleum refinery if the petroleum refinery is a major source under section 112(a)(1) of the Act.

(d) The owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart that is also subject to applicable provisions of 40 CFR part 60, subparts K, Ka, Kb, VV, XX, and GGG of this chapter, or 40 CFR part 61, subparts J and V of this chapter, shall comply only with the provisions in each subpart that contain the most stringent control requirements for that facility.

§ 63.421 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act; in subparts A, K, Ka, Kb, VV, XX, and GGG of part 60 of this chapter; in subparts A, J, and V of part 61 of this chapter; or in subpart A of this part. All terms defined in both subpart A of part 60 of this chapter and subpart A of this part shall have the meaning given in subpart A of this part. For purposes of this subpart, definitions in this section supersede definitions in other parts or subparts.

Controlled loading rack means a loading rack equipped with vapor collection and processing systems that reduce displaced vapor emissions to no more than 80 milligrams of total organic compounds per liter of gasoline loaded, as measured using the test methods and procedures in § 60.503 (a) through (c) of this chapter.

Equipment means each valve, pump, pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in the gasoline liquid transfer and vapor collection systems. This definition also includes the entire vapor processing system except the exhaust port(s) or stack(s).

Gasoline tank truck means a delivery tank truck or railcar used at bulk gasoline terminals which is loading gasoline or which has loaded gasoline on the immediately previous load.

In gasoline service means that a piece of equipment is used in a system that transfers gasoline or gasoline vapors.

In VHAP service or *In VOC service* means, for the purposes of this subpart, in gasoline service.

Operating parameter value means an established value for control equipment or operating condition, which, if achieved by itself or combination with one or more other operating parameter values, determines that and owner or operator has complied with an applicable emission limit or standard.

Pipeline breakout station means a facility along a pipeline containing storage vessels used to temporarily store gasoline from the pipeline.

Uncontrolled loading rack means a loading rack used to load gasoline tank trucks that is not a controlled loading rack.

Vapor-tight gasoline tank truck means a gasoline tank truck which has demonstrated within the 12 preceding months that its product delivery tank will sustain a pressure change of not more than 750 pascals (75 mm of water) within 5 minutes after it is pressurized to 4,500 pascals (450 mm of water) or evacuated to 1,500 pascals (150 mm of water). This capability is to be demonstrated using the pressure and vacuum test procedures specified in 40 CFR part 60 of this chapter, appendix A, Reference Method 27.

Volatile organic liquid (VOL) means, for the purposes of this subpart, gasoline.

§ 63.422 Standards: Loading racks.

(a) Each owner or operator of loading racks at a bulk gasoline terminal subject to the provisions of this subpart shall comply with the requirements in § 60.502 of 40 CFR part 60, subpart XX, of this chapter except for paragraphs (b) and (c) of that section. For purposes of this section, the term "affected facility" used in § 60.502 of this chapter means the loading racks that load gasoline tank trucks at the bulk gasoline terminals subject to the provisions of this subpart.

(b) Emissions to the atmosphere from the loading racks and the vapor collection and processing system due to the loading of gasoline tank trucks shall not exceed 10 milligrams of total organic compounds per liter of gasoline

loaded. Each owner or operator shall comply as expeditiously as practicable, but no later than February 8, 1997 at existing facilities and upon startup for new facilities.

(c) Owners or operators of new bulk gasoline terminals shall install a system at the loading racks used to load gasoline tank trucks that will maintain a vacuum in each gasoline tank truck during loading. The system shall satisfy the following requirements:

(1) During loading, a continuous vacuum shall be maintained in the vapor collection system as measured no more than 0.3 meter from the interface between the vapor collection system coupler and the gasoline tank truck vapor collection adapter; and

(2) An interlock system shall prevent loading from beginning until a vacuum has been achieved, and shall shut down the loading process if the vacuum is lost.

§ 63.423 Standards: Storage vessels.

The owner or operator of each storage vessel greater than or equal to 75 cubic meters used to store gasoline shall equip each storage vessel according to the requirements in § 60.112b(a)(1) through (4) of this chapter. At new bulk gasoline terminals and pipeline breakout stations, compliance shall be achieved upon startup. Existing bulk gasoline terminals and pipeline breakout stations shall be in compliance as expeditiously as practicable, but no later than February 8, 1997

§ 63.424 Standards: Equipment leaks.

(a) Each owner or operator of a new bulk gasoline terminal or new pipeline breakout station subject to the provisions of this subpart shall comply with the requirements of § 60.482–1 to 60.482–10 of this chapter, except as specified in paragraph (c) of this section. At new bulk gasoline terminals and pipeline breakout stations, initial compliance shall be achieved upon startup.

(b) Each owner or operator of an existing bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart shall:

(1) monitor pump seals in accordance with § 60.482–2 of this chapter, except the frequency of monitoring specified in § 60.482–2(a)(1) of this chapter shall be on a quarterly basis; and

(2) monitor valves in accordance with § 60.482–7 of this chapter, except the frequency of initial monitoring specified in § 60.482–7(a) of this chapter shall be on a quarterly basis. The provisions of § 60.482–7(c) of this chapter do not apply. At existing bulk gasoline terminals or pipeline breakout stations, initial compliance shall be achieved as expeditiously as practicable, but no later than August 8, 1994.

(c) An owner or operator may elect to comply with the alternative standards for valves in § 60.483–1 and § 60.483–2 of this chapter.

(d) Owners or operators of bulk gasoline terminals and pipeline breakout stations subject to the provisions of this subpart shall not cause or allow gasoline to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in vapor release to the atmosphere.

§ 63.425 Test methods and procedures.

(a) Each owner or operator subject to the emission standard for loading racks in § 63.422(b) shall conduct a performance test on the vapor processing system according to the test methods and procedures in § 60.503 of this chapter, except a reading of 500 ppm shall be used to determine the level of leaks under § 60.503(b) of this chapter to be repaired. If a flare is used to control loading rack emissions, and emissions from this device cannot be measured using these methods and procedures, the provisions of § 63.11(b) shall apply.

(b) For each performance test conducted under paragraph (a) of this section, a monitored operating parameter value for the vapor processing system shall be determined using the following procedure:

(1) During the performance test, continuously record the appropriate operating parameter as determined under § 63.427(a);

(2) The monitored operating parameter value is the average of values recorded during loadings of gasoline tank trucks that occur during performance test period in which the source has demonstrated compliance with the emission standard.

(c) For performance tests performed after the initial test, the owner or operator shall document the reasons for any change in the value for the operating parameter since the previous performance test.

(d) Each owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the equipment leak provisions of § 63.424 (a), (b), or (c) shall comply with the test methods and procedures in § 60.485 (b) through (g) of this chapter.

(e) The owner or operator of each storage vessel subject to the provisions of § 63.423 shall comply with the testing requirements in § 60.113b of this chapter, and with the requirements in paragraph (b) of this section when electing to comply with § 60.112b(a)(3) of this chapter.

§ 63.426 Alternative means of emission limitation.

(a) For determining the acceptability of alternative means of emission limitation for storage vessels under § 63.423, the provisions of § 60.114b of this chapter apply.

(b) For determining the acceptability of alternative means of emission limitation for equipment leaks under § 63.424, the provisions of § 60.484 of this chapter apply.

§ 63.427 Continuous monitoring.

(a) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall install, calibrate, certify, operate, and maintain, according to the manufacturer's specifications, the monitoring equipment specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section, as appropriate. All monitoring equipment shall be equipped with a continuous recorder for continuously recording and calculating 6 hour average values of the information required in this paragraph.

(1) Where a carbon adsorption system is used, an organic concentration monitoring device shall be installed in the exhaust air stream.

(2) Where a refrigeration condenser system is used, a temperature monitoring device shall be installed immediately downstream from the outlet to the condenser section. Alternatively, an organic concentration monitoring device may be installed in the exhaust air stream.

(3) Where a thermal oxidation system is used, a temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream from the firebox in a position before any substantial heat exchange occurs.

(4) Where a flare is used, a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, shall be installed in proximity to the pilot light to indicate the presence of a flame.

(5) Monitoring an alternative operating parameter other than those listed this paragraph shall be allowed upon demonstrating to the Administrator's satisfaction that the alternative parameter provides continuous compliance with § 63.422(b).

(b) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall operate the vapor processor in a manner not to exceed the operating parameter value at § 63.427(a) (1) and (2), or below the operating parameter value at

§ 63.427(a)(3), and established using the procedure in § 63.425(b). In cases where an alternative pursuant to § 63.427(a)(5) is approved, each owner or operator shall operate the vapor processor in a manner not to exceed or not to maintain, as appropriate, the alternative operating parameter value. Operation of the vapor processor in a manner exceeding or below the appropriate operating parameter value, as specified above, shall constitute violation of the emission limit in § 63.422(b).

(c) Owners and operators subject to the provisions of § 63.422(c) shall continuously monitor the pressure achieved in each gasoline tank truck during loading to ensure no exceedences in maintaining a negative pressure.

(d) Owners and operators of storage vessels subject to the provisions of § 63.423 shall comply with the monitoring requirements in § 60.116b of this chapter, and in paragraph (a) of this section when electing to comply with § 60.112b(a)(3) of this chapter.

§ 63.428 Reporting and recordkeeping.

(a) Each owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart shall comply with the general recordkeeping and reporting requirements of § 63.10.

(b) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall keep records and furnish reports as specified in § 60.505 (a) and (b) of this chapter.

(c) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall:

(1) Keep an up-to-date, readily accessible record of the continuous monitoring data values and the calculated 6 hour rolling average values required under § 63.427(a);

(2) Include the performance test data specified in § 63.425(b) in the Notification of Compliance Status report required under § 63.9(h) of the General Provisions; and

(3) Record and report the following information when using a flare to comply with § 63.422(b):

(i) Flare design (i.e., steam-assisted, air-assisted, or non-assisted); and

(ii) All visible emissions readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required under § 63.425(a).

(d) If an owner or operator requests approval to use a vapor processing system or monitor a parameter other than those specified in § 63.427(a), the owner or operator shall submit a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application.

(e) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall submit to the Administrator a quarterly report of exceedences or failures to maintain, as appropriate, the monitored operating parameter value required under § 63.427 (a) and (b). Owners and operators of new bulk gasoline terminals subject to provisions of this subpart shall submit to the Administrator a quarterly report of all instances in which a vacuum are not maintained in a gasoline tank truck during loading. These quarterly reports shall contain the monitored operating parameter value readings for the days on which exceedences or failures to maintain have occurred, and a description and timing of the steps taken to repair or perform maintenance on the vapor collection system or parameter monitoring system. A report is not required for those quarters where there were no exceedences or failures to maintain, as appropriate, the operating parameter and no instances in which a vacuum was not maintained.

(f) Owners and operators complying with § 63.427(a) shall maintain a record of the monitored operating parameter data at the facility for 5 years. This record shall indicate the time intervals during which loadings of gasoline tank trucks have occurred or, alternatively, shall record the operating parameter only during such loadings. The date and time of day shall also be indicated on this record.

(g) Owners and operators complying with § 63.427(c) shall maintain a record of the gasoline tank truck pressure data at the facility for 5 years.

(h) Each owner or operator of storage vessels subject to the provisions of this subpart shall keep records for 5 years and furnish reports as specified in § 60.115b of this chapter.

(i) Each owner or operator of equipment subject to the provisions of this subpart shall keep records as specified in § 60.486 (b) through (j) of this chapter, and shall furnish reports as specified in § 60.487 of this chapter.

(j) The reports required under all paragraphs of this section shall be consolidated into a Periodic Report and submitted to the Administrator on a semiannual basis. The additional Periodic Reports required under paragraph (e) of this section that fall between the semiannual reports shall be submitted separately. Each owner or operator shall certify in the Periodic Report that no excess emissions occurred during the quarters in which no excess report was filed under paragraph (e) of this section.

(k) The Administrator may request more frequent reporting of monitored operating parameter data if:

(1) Monitored parameter values demonstrating the source is out of compliance more than 1 percent of the operating days in the previous reporting period, or

(2) The monitoring system is out of service more than 5 percent of the operating time in the previous reporting period.

After 1 year of more frequent reporting, the owner or operator may request a return to quarterly reporting.

§ 63.429 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authority contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) The authority conferred in § 63.426, and § 63.427(a)(5) will not be delegated to any State.

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Tuesday
February 8, 1994

Part IV

Department of Commerce

International Trade Administration

United States-Canada Free Trade Agreement: Amendments to Rules of Procedure for Article 1904 Binational Panel Reviews; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free Trade Agreement: Amendments to Rules of Procedure for Article 1904 Binational Panel Reviews

AGENCY: United States-Canada Free Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Amendments to rules of procedure for Article 1904 Binational Panel Reviews.

SUMMARY: Canada and the United States have amended the rules of procedure for Article 1904 binational panel reviews. These amendments are intended to improve the panel review process under Chapter Nineteen of the United States-Canada Free Trade Agreement in order to increase its efficiency and effectiveness.

EFFECTIVE DATE: February 8, 1994. The Rules of Procedure, herewithin, apply to all panel proceedings under the United States-Canada Free Trade Agreement ("Agreement") commenced on or after, or pending on, the effective date, except that these Rules of Procedure shall not apply to the extent that in the opinion of the panel their application in a particular panel proceeding pending on the effective date would be impracticable or would be prejudicial to a participant, in which event the panel may apply the former procedure or such other procedure not inconsistent with the Agreement.

Specifically, these Rules of Procedure govern panel review of any final determination published or, in the case of a determination that is not published, for which notice is received prior to January 1, 1994, the date of entry into force of the North American Free Trade Agreement ("NAFTA"). In the event that either Canada or the United States withdraws from the NAFTA, the Agreement would revive between them and these Rules of Procedure again would apply.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Attorney, Stacy J. Ettinger, Attorney-Advisor, or Terrence J. McCartin, Attorney-Advisor, Office of the Chief Counsel for Import Administration, room B–099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0836, (202) 482–4618, and (202) 482–5031, respectively. For procedural matters involving cases under panel review, contact James R. Holbein, United States Secretary, Binational Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5438.

SUPPLEMENTARY INFORMATION:

Background

Chapter Nineteen of the United States-Canada Free Trade Agreement ("Agreement") establishes a mechanism for replacing judicial review of final antidumping and countervailing duty determinations involving imports from Canada or the United States with review by independent binational panels. If requested, these panels will expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the importing country. Title IV of the United States-Canada Free Trade Agreement Implementation Agreement Act of 1988, Public Law No. 100–449, 102 Stat. 1851 (1988) amends United States law to implement Chapter Nineteen of the Agreement.

The *Article 1904 Panel Rules* are intended to give effect to the panel review provisions of Chapter Nineteen of the Agreement by setting forth the procedures for commencing, conducting and completing panel reviews. Originally published on December 30, 1988 (53 FR 53212), the rules became effective on January 1, 1989, the date the Agreement entered into force. As a result of negotiations between the United States and Canada and, taking into account comments received from panelists and counsel for participants in panel reviews, the rules have been amended twice (54 FR 53165, Dec. 27, 1989; and 57 FR 26698, June 15, 1992). The further amendments to the *Article 1904 Panel Rules* contained in this notice are the result of negotiations between the United States and Canada prompted by the desire to modify certain procedures in the *Article 1904 Panel Rules*. Consequently, these amendments improve the panel review process.

A summary of the amendments to the *Article 1904 Panel Rules* is contained in the following section-by-section analysis. Amendments involving typographical errors, corrected cross-referencing, minor ministerial corrections, and any other changes not explained below, are considered drafting clarifications and have no substantive significance.

Preamble

The Preamble has been amended to incorporate the amendments contained herein into the legislative history of the *Article 1904 Panel Rules*.

Rule 1A

Rule 1A has been added in view of the entry into force of the North American Free Trade Agreement ("NAFTA") and in light of the possibility that a Party may withdraw from NAFTA. The *Article 1904 Panel Rules* govern panel review of any final determination published or, in the case of a determination that is not published, for which notice is received, prior to the entry into force of the NAFTA. If either Canada or the United States were to withdraw from the NAFTA, the Agreement would revive between them and these rules again would apply.

Rule 2

Rule 2 has been amended by deleting the provision that the *Article 1904 Panel Rules* shall not be construed to extend or limit the jurisdiction of the panels. This provision is inconsistent with rule 7. As amended, the final sentence of rule 2 clarifies that the Agreement prevails where there is an inconsistency or ambiguity between the *Article 1904 Panel Rules* and the Agreement.

Rule 2A

Rule 2A has been added to provide that these amendments to the rules shall not apply to any panel proceeding pending on January 1, 1994 where, in the opinion of the panel, their application would be impracticable or would be prejudicial to a participant.

Rule 3

The definition of "Disclosure Undertaking" has been added to eliminate the need to refer to the form of the undertaking in the body of the *Article 1904 Panel Rules* or in an attached schedule.

The definition of "investigating authority" has been amended to include a delegation of power by the competent investigating authority in matters regarding the issuance, amendment, modification and revocation of Disclosure Orders and Protective Orders.

The definition of "Protective Order Application" has been added to eliminate the need to refer to the form of the application in the body of the *Article 1904 Panel Rules* or in an attached schedule.

The definition of "service address" has been rephrased to clarify that an address, rather than a facsimile number, is the principal service address.

The definition of "service list" with respect to a panel review where the final determination was made in Canada has

been amended to clarify that the panel review process is restricted to goods of the United States.

Rule 15

Subrule 15(a) has been amended to ensure that a document containing proprietary or privileged information filed with the responsible Secretariat is treated in accordance with the terms of an applicable Disclosure Order or Protective Order.

Rule 22

In subrule 22(1), the cross-reference to rule 52 has been deleted because a person now must file with the responsible Secretariat one original and eight copies of a Disclosure Order or Protective Order, or any amendment or modification thereto, or notice of revocation thereof. The cross-reference to subrule 75(2)(a) was added because only one copy of a supplementary remand record must be filed.

Rule 23

Rule 23 has been amended to clarify the responsibilities of the responsible Secretary for the service of documents. Under subrule (a), the responsible Secretary is no longer required to serve Complaints other than on the Parties. Now, a complainant is required under subrule 24(5) to serve a Complaint on the investigating authority and on all persons on the service list.

Subrule 23(c) has been amended so that the responsible Secretary serves Notices of Appearance only on the participants.

Subrule 23(d) has been amended to require that the responsible Secretary serve participants only with those Disclosure Orders and Protective Orders, any amendments or modifications thereto, and notices of revocation thereof granted to panelists, court reporters or translators. Now, subrule 24(1) provides that participants must serve their own Disclosure Orders and Protective Orders, any amendments or modifications thereto, and notices of revocation thereof. Subrule 23(d) also has been amended to require that the responsible Secretary serve participants with Notices of Final Panel Action.

Rule 24

Subrule 24(1) has been amended to add supplementary remand records to the list of documents exempt from the service requirements of subrule (1). Subrule (5) has been added to provide that a complainant, and not the responsible Secretary, is required to serve a Complaint on the investigating authority and on all persons listed on the service list.

Rule 33

Subrule 33(1)(a) has been amended to conform with the statutory requirement that a party provide timely notice of its intent to commence judicial review in cases involving Canadian merchandise. 19 U.S.C. 1516a(g)(3)(B). An interested person who intends to commence judicial review of a final determination made in the United States must serve a Notice of Intent to Commence Judicial Review on both Secretaries, the investigating authority, and all persons listed on the service list within 20 days of the date the final determination was published in the **Federal Register**, or within 20 days of the date on which notice of the final determination was received by the other Party if the final determination was not published in the **Federal Register**.

Rule 35

Subrule 35(1)(c)(ii) has been amended to clarify that any person who does not file a Complaint but intends to participate in the panel review must file a Notice of Appearance.

Rule 36

Rule 36, which provided for joint panel review of final determinations of dumping or subsidization with final determinations of affirmative injury, has been removed because the procedure had never been applied successfully in any panel review.

Rule 37

Rule 37 requires joint panel review where a final affirmative antidumping or countervailing duty determination for a particular good and a final negative injury determination for that same good are both subject to a request for panel review.

Rule 38

Rule 38, which provides for the applicable periods in joint panel reviews, has been amended to account for the removal of rule 36, to clarify the event triggering the time period fixed for joint panel review pursuant to rule 37 and to provide, on motion, for the possibility of alternative time periods for final antidumping or countervailing duty determinations subject to joint panel review.

Subrule 38(1) provides that in a joint panel review pursuant to rule 37, the time period fixed for review of the final negative injury determination applies to both panel reviews. This subrule has been amended to specify that the time period fixed for a joint panel review commences with the date fixed for filing briefs under rule 60.

Subrule 38(2) now incorporates the substance of former subrule 38(3) and provides that in a joint panel review, the decision on the final negative injury determination will be issued first, unless the panel orders a different timetable. Subrule 38(2) also provides that where there is a Determination on Remand and where that Determination on Remand is affirmative, the panel will then issue its decision on the final antidumping or countervailing duty determination.

Subrule 38(3) has been added to allow participants to bring a motion requesting that alternate time periods be fixed for review of the final antidumping or countervailing duty determination. Subrule 38(4) has been added to specify the time period fixed for filing such a motion. Subrule 38(5) has been added to provide that where a panel has not issued a ruling on such a motion within 30 days or has not otherwise ordered, the motion is deemed denied and the timing set out in subrules 38(1) and (2) applies.

Rule 39

Subrule 39(1) has been amended to require that, in addition to filing the Complaint with the responsible Secretary, the complainant is now required serve the Complaint on the investigating authority and on all persons listed on the service list.

Subrule (4) has been amended to indicate that the time period for filing an amended Complaint is mandatory.

The substance of subrule (5) has been split into subrules (5) and (6) for greater clarity. Subrule (5) addresses the period within which an amended Complaint may be filed out of time. Subrule (6) sets out the procedure for seeking leave to file an amended Complaint.

Rule 40

Subrule 40(1)(c) has been amended to clarify the reasons for which a Notice of Appearance may be filed. Subrule (2) has been amended to reflect the amendments made consequentially to subrule (1)(c).

Rule 41

Rule 41 has been amended to streamline the procedures for filing and service of the record for review. Subrule (1) has been amended to remove the requirement that a Designation of Record be filed and to extend the time period for filing an Index to 15 days after the deadline for filing Notices of Appearance. Consequently, the investigating authority is now required to file the following documents with the responsible Secretariat within 15 days after the expiration of the time period

fixed for filing a Notice of Appearance: nine copies of the final determination, two copies of an Index, and two copies of the administrative record. As well, the investigating authority is now required to serve a copy of the Index on all participants.

New subrule (4) addresses the filing of privileged information and has been amended to provide that the investigating authority may waive its privilege and voluntarily file privileged information in a panel review.

Rule 43

Rule 43 has been amended consequentially to the amendments to rule 41. Rule 43, which addressed the filing of a portion of the administrative record, has been removed because rule 41 now requires that two complete copies of the record are to be filed with the responsible Secretary.

Rule 45

Rule 45 has been amended to clarify that assistants to panelists are covered by the Code of Conduct and to specify that a participant is required to notify the responsible Secretary, not the Parties, of an alleged violation of the Code of Conduct by a panelist or an assistant. The responsible Secretary is now required to notify the other Secretary and the Parties of the allegations. This reflects procedures developed by the governments for appropriate handling of such allegations.

Rule 48

Subrule 48(b) has been amended to limit filings of Disclosure Undertakings and Protective Order Applications with the Secretary to one original and any additional copies that the investigating authority requires. Because the definitions of Disclosure Undertaking and Protective Order Application have been revised to indicate that the forms are available from the investigating authority, there is no longer a need for Schedules A or B.

Rule 51

Subrule 51(2) has been amended to clarify that the panel may consider not only whether the terms of a Disclosure Order or Protective Order should be modified, but also whether they should be amended.

Subrule 51(3) has been amended to clarify the powers of a panel where a final determination is made in the United States and the competent investigating authority fails to comply with a panel notification to issue or modify a Disclosure Order or Protective Order. If the panel disagrees with the investigating authority's handling of a Disclosure Undertaking or Protective Order Application, the only sanction it can take is against the investigating authority. The sanction cannot be detrimental to the interests of the other participants in the panel review.

Rule 52

Subrule 52(2) has been amended to provide that where a Disclosure Order or Protective Order is amended, modified or revoked, the competent investigating authority shall provide the responsible Secretariat with a copy of the amendment, modification or Notice of Revocation.

Rule 53

Rule 53 has been removed because it was redundant and did not accurately reflect current practice.

Rule 55

Subrules 55(3) and 55(5) have been amended to ensure that, where the competent investigating authority files with the responsible Secretary a document under seal, the two panelists delegated to examine the document have an obligation to do so.

Rule 56

Subrule 56(a) has been amended to make clear that members of the Secretariat staff and others are eligible to receive access to documents disclosed pursuant to rule 55 and to provide that members of any future Extraordinary Challenge Committee and their assistants may have access to these documents, if necessary.

The substance of subrule (b) has been removed to subrule (c). New subrule (b) has been added to specify the procedure by which a panel identifies who is entitled to access to a document containing privileged information.

Rule 59

Subrules 59 (1)(b) and (2)(b) have been amended to allow the filing of pleadings containing non-proprietary and non-privileged information no later than one day after the filing of pleadings containing the proprietary or privileged information.

The cross-referencing in subrule 60(1) has been revised to account for the merging of time lines in joint panel reviews under subrule 38(1).

Rule 62

Subrule 62(1) has been restructured to distinguish between a table of contents and a table of authorities.

Rule 62A

Subrule 62A(1) has been amended to clarify the contents and organization of materials contained in an appendix. It now provides, among other things, that the appendix should include copies of all treaty and statutory references as well as copies of those cases primarily relied on in the briefs.

Rule 64

Rule 64 has been amended to add a cross-reference to subrule 77(5), which provides for no right of response to a motion for re-examination of a panel order or decision.

Rule 65

Rule 65 incorporates the substance of old rule 66.

Rule 66

New rule 66 incorporates the substance of old rule 65 and has been amended to provide that a panel may hear oral argument in person as well as by telephone conference call.

Rule 69

Subrule 69(4) has been added to clarify that oral argument shall be conducted by counsel of record or, where a participant is an individual who has not retained counsel, by the participant.

Rule 75

Subrule 75(4) has been amended by adding the phrase "after the later of" to clarify the time period for the issuance of an order by the panel. In addition, subrule 75(4) has been amended to delete the cross-reference to rule 74 because rule 74 requires that a panel decision include reasons, which an order affirming uncontested remand results does not require.

Rule 77

Subrules 77 (5), (6) and (7) have been added as a result of the addition of rule 79A, which provides for the issuance of a Notice of Final Panel Action. Under former subrule 77(5), issuance of a Notice of Completion could effectively deny a motion under subrule 77(1). Because rule 79A could have the effect of denying a motion under subrule 77(1), new subrule 77(5) has been added to clarify that there is no right of response to a motion for re-examination of a panel order or decision except at the discretion of the panel.

Subrule 77(6) has been added to specify the procedure a panel shall follow on a motion for re-examination of a decision, including a seven-day deadline to conform with the new scheme set forth in rule 79A.

To prevent a situation in which fewer than all five panelists are available, subrule 77(7) has been added to provide

that the concurrence of only three panelists is required to issue a decision or order on a motion for re-examination.

Rule 79A

Rule 79A provides for the issuance of a Notice of Final Panel Action. This rule has been added because the panel rules did not clearly set out when the time period begins to run for filing a Request for an Extraordinary Challenge Committee. Now, issuance of a rule 79A Notice will begin the time period for filing such a Request. Subrule 79A(1) provides that when a panel issues what it considers to be its last order or decision, the panel shall direct the responsible Secretary to issue a Notice of Final Panel Action on the eleventh day thereafter. Issuance of this Notice on the eleventh day is provided for because under subrule 77(1) participants may file a motion for re-examination of the panel's last decision within 10 days after a panel issues its decision. Subrule 79A(2) provides for the issuance of a Notice of Final Panel Action in cases where a motion for re-examination is filed pursuant to subrule 77(1).

Rule 80

Rule 80, which provides for the publication of a Notice of Completion of Panel Review, has been amended as a result of the addition of rule 79A. Subrule 80(a) provides that a Notice of Completion of Panel Review is effective on the day on which a panel review is terminated by consent of all participants. Subrule (a) takes into account the fact that where all participants consent to termination of panel review, there is no reason to request the establishment of an Extraordinary Challenge Committee. Subrule (b) provides that in any other case, a Notice of Completion of Panel Review is effective on the 31st day following the date on which the responsible Secretary issues a Notice of Final Panel Action.

Rules of Procedure for Article 1904 Binational Panel Reviews, United States-Canada Free Trade Agreement

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Preamble

The Parties,

Having regard to Chapter Nineteen of the Free Trade Agreement between Canada and the United States of America;

Acting pursuant to Article 1904.14 of the Agreement;

Adopted Rules of Procedure governing all panel reviews conducted pursuant to Article 1904 of the Agreement;

Adopt the following amended Rules of Procedure, effective on the date of publication in the **Federal Register**, which from that day shall govern all panel reviews conducted pursuant to Article 1904 of the Agreement.

Short Title

1. These rules may be cited as the *Article 1904 Panel Rules.*

Application

1A. These rules apply to a panel review of a final determination, unless any rules of procedure made pursuant to Article 1904 of the North American Free Trade Agreement are in force and apply to a panel review of a final determination.

Statement of General Intent

2. These rules are intended to give effect to the provisions of Chapter Nineteen of the Agreement with respect to panel reviews conducted pursuant to Article 1904 of the Agreement and are designed to result in decisions of panels within 315 days after the commencement of the panel review. The purpose of these rules is to secure the just, speedy and inexpensive review of final determinations in accordance with the objectives and provisions of Article 1904. Where a procedural question arises that is not covered by these rules, a panel may adopt the procedure to be followed in the particular case before it by analogy to these rules or may refer for guidance to rules of procedure of a court that would otherwise have had jurisdiction in the importing country. In the event of any ambiguity or inconsistency between the provisions of these rules and the Agreement, the Agreement shall prevail.

2A. Where, in respect of a panel proceeding for which a request for panel review was made before January 1, 1994, the application of these rules would, in the opinion of the panel, be impracticable or would be prejudicial to a participant, the panel may:

(a) Apply one or more of the rules of procedure for Article 1904 panel proceedings that were in effect at the time the request for panel review was made; or

(b) Make such order, not inconsistent with the Agreement, as in the panel's opinion is in the circumstances required.

Interpretation

3. In these rules,

"Agreement" means the Free Trade Agreement between Canada and the United States of America, signed on January 2, 1988;

"Code of Conduct" means the code of conduct established by the Parties pursuant to Article 1910 of the Agreement;

"Complainant" means a Party or interested person who files a Complaint pursuant to rule 39;

"Counsel" means:

(a) With respect to a panel review of a final determination made in the United States, a person entitled to

appear as counsel before a federal court in the United States, and

(b) With respect to a panel review of a final determination made in Canada, a person entitled to appear as counsel before the Federal Court of Canada;

"Counsel of record" means a counsel referred to in subrule 21(1);

"Deputy Minister" means the Deputy Minister of National Revenue for Customs and Excise, or the successor thereto, and includes any person authorized to perform a power, duty or function of the Deputy Minister under the *Special Import Measures Act*, as amended;

"Disclosure Undertaking" means an undertaking in the prescribed form, which form

(a) In respect of a review of a final determination by the Deputy Minister, is available from the Deputy Minister, and

(b) In respect of a review of a final determination by the Tribunal, is available from the Tribunal;

"Final determination" means, in the case of Canada, a definitive decision within the meaning of subsection 77.1(1) of the *Special Import Measures Act*, as amended;

"First Request for Panel Review" means

(a) Where only one Request for Panel Review is filed for review of a final determination, that Request, and

(b) Where more than one Request for Panel Review is filed for review of the same final determination, the Request that is filed first;

"Government information" means:

(a) With respect to a panel review of a final determination made in the United States, information classified in accordance with Executive Order No. 12065 or its successor, and

(b) With respect to a panel review of a final determination made in Canada, information

(i) The disclosure of which would be injurious to international relations or national defence or security,

(ii) That constitutes a confidence of the Queen's Privy Council for Canada, or

(iii) Contained in government-to-government correspondence that is transmitted in confidence;

"Interested person" means a person who, pursuant to the laws of the country in which a final determination was made, would be entitled to appear and be represented in a judicial review of the final determination;

"Investigating authority" means the competent investigating authority that issued the final determination subject to review and includes, in respect of the issuance, amendment, modification or revocation of a Disclosure Order or Protective Order, any person authorized by the investigating authority;

"Legal holiday" means

(a) With respect to the United States Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), Presidents' Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any day designated as a holiday by the President or the Congress of the United States and any day on which the offices of the Government of the United States located in the District of Columbia are officially closed in whole or in part, and

(b) With respect to the Canadian Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day, Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by the province in which the Section is located and any day on which the offices of the Canadian Section of the Secretariat are officially closed in whole or in part;

"Panel" means a binational panel established pursuant to Annex 1901.2 to Chapter Nineteen of the Agreement for the purpose of reviewing a final determination;

"Participant" means any of the following persons who files a Complaint pursuant to rule 39 or a Notice of Appearance pursuant to rule 40:

(a) A Party,

(b) An investigating authority, and

(c) An interested person;

"Party" means the Government of Canada or the Government of the United States;

"Person" means:

(a) An individual,

(b) A Party,

(c) An investigating authority,

(d) A government of a province, state or other political subdivision of the country of a Party,

(e) A department, agency or body of a Party or of a government referred to in paragraph (d), or

(f) A partnership, corporation or association;

"Pleading" means a Request for Panel Review, a Complaint, a Notice of Appearance, a Change of Service Address, a Designation of Record, a Notice of Motion, a Notice of Change of Counsel of Record, a brief or any other written submission filed by a participant;

"Privileged information" means:

(a) With respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States with respect to which the privilege has not been waived, and

(b) With respect to a panel review of a final determination made in Canada, information of the investigating authority that is subject to solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, and with respect to which the privilege has not been waived;

"Proof of service" means:

(a) With respect to a panel review of a final determination made in the United States, a certificate of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service, and

(b) With respect to a panel review of a final determination made in Canada,

(i) An affidavit of service stating by whom the document was served, the day of the week and date on which it was served, where it was served and the manner of service, or

(ii) An acknowledgement of service by counsel for a participant stating by whom the document was served, the day of the week and date on which it was served and the manner of service and, where the acknowledgement is signed by a person other than the counsel, the name of that person followed by a statement that the person is signing as agent for the counsel;

"Proprietary information" means:

(a) With respect to a panel review of a final determination made in the United States, business proprietary information under the laws of the United States, and

(b) With respect to a panel review of a final determination made in Canada, information that was accepted by the Deputy Minister or the Tribunal as confidential in the proceedings before the Deputy Minister or the Tribunal and with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information;

"Protective Order Application" means an application,

(a) In respect of a review of a final determination by the International Trade Administration of the United States Department of Commerce, in a form prescribed by, and available from, the International Trade Administration of the United States Department of Commerce; and

(b) In respect of a review of a final determination by the United States International Trade Commission, in a form prescribed by, and available from, the United States International Trade Commission;

"Responsible Secretariat" means the section of the Secretariat located in the country in which the final determination under review was made;

"Responsible Secretary" means the Secretary of the responsible Secretariat;

"Secretariat" means the Secretariat established pursuant to Article 1909 of the Agreement;

"Secretary" means the Secretary of the United States Section or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of the Secretary;

"Service address" means:

(a) With respect to a Party, the address filed with the Secretariat as the service address of the Party, including any facsimile number submitted with that address,

(b) With respect to a person other than a Party, the address of the counsel of record for the person, including any facsimile number submitted with that address or, where the person is not represented by counsel, the address set out by the person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served, including any facsimile number submitted with that address, or

(c) Where a Change of Service Address has been filed by a Party or the person, the new address set out as the service address in that form, including any facsimile number submitted with that address;

"Service list" means, with respect to a panel review,

(a) Where the final determination was made in the United States, the list maintained by the investigating authority of persons who have been served in the proceedings leading to the final determination, and

(b) Where the final determination was made in Canada, a list comprising the government of the United States and

(i) In the case of a final determination made by the Deputy Minister, persons named on the list maintained by the Deputy Minister who participated in the proceedings before the Deputy Minister and who were exporters of goods of the United States, importers of goods of the United States or complainants referred to in section 34 of the *Special Import Measures Act*, as amended; and

(ii) In the case of a final determination made by the Tribunal, persons named on the list maintained by the Tribunal of parties in the proceedings before the Tribunal who were exporters of goods of the United States, importers of goods of the United States, complainants referred to in section 31 of the *Special Import Measures Act*, as amended, or other domestic parties whose interest in the findings of the Tribunal is with respect to goods of the United States;

"Tribunal" means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf.

4. The definitions set forth in Article 1911 of the Agreement are hereby incorporated into these rules.

5. Where these rules require that notice be given, it shall be given in writing.

Part I—General

Duration and Scope of Panel Review

6. A panel review commences on the day on which a first Request for Panel Review is filed with the Secretariat and terminates on the day on which a Notice of Completion of Panel Review is effective.

7. A panel review shall be limited to

(a) The allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review; and

(b) Procedural and substantive defenses raised in the panel review.

Responsibilities of the Secretary

8. The normal business hours of the Secretariat, during which the offices of the Secretariat shall be open to the public, shall be from 9 a.m. to 5 p.m. on each weekday other than

(a) In the case of the United States Section of the Secretariat, legal holidays of that Section; and

(b) In the case of the Canadian Section of the Secretariat, legal holidays of that Section.

9. The responsible Secretary shall provide administrative support for each panel review and shall make the arrangements necessary for the oral proceedings and meetings of each panel.

10. (1) Each Secretary shall maintain a file for each panel review. Subject to subrules (3) and (4), the file shall be comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these rules, in the panel review.

(2) The file number assigned to a first Request for Panel Review shall be the Secretariat file number for all documents filed or issued in that panel review. All documents filed shall be stamped by the Secretariat to show the date and time of receipt.

(3) Where, after notification of the selection of a panel pursuant to rule 44, a document is filed that is not provided for in these rules or that is not in accordance with the rules, the responsible Secretary may refer the unauthorized filing to the chairperson of the Panel for instructions, provided such authority has been delegated by the Panel to its chairperson pursuant to rule 17.

(4) On a referral referred to in subrule (3), the chairperson may instruct the Secretary to

(a) Retain the document in the file, without prejudice to a motion to strike such document; or

(b) return the document to the person who filed the document, without prejudice to a motion for leave to file the document.

11. The responsible Secretary shall forward to the other Secretary a copy of all documents filed in the office of the responsible Secretary in a panel review and of all orders and decisions issued by the panel.

12. Where under these rules a responsible Secretary is required to cause a notice or other document to be published in the *Canada Gazette* and the **Federal Register**, the responsible Secretary and the other Secretary shall each cause the document to be published in the publication of the country in which that section of the Secretariat is located.

13. (1) Each Secretary and every member of the staff of the Secretariat shall, before taking up duties, file

(a) a Disclosure Undertaking with the Deputy Minister and the Tribunal; and

(b) a Protective Order Application with the International Trade Administration of the United States Department of Commerce and the United States International Trade Commission.

(2) Where a Secretary or a member of the staff of the Secretariat files a Disclosure Undertaking or Protective Order Application in accordance with subrule (1), the appropriate investigating authority shall issue to the Secretary or to the member a Disclosure Order or a Protective Order.

14. (1) The responsible Secretary shall file with the investigating authority one original and any additional copies that the investigating authority requires of

any Disclosure Undertaking or Protective Order Application, and any amendments or modifications thereto, filed by a panelist, assistant to a panelist, court reporter or translator pursuant to rule 49.

(2) The responsible Secretary shall ensure that every panelist, assistant to a panelist, court reporter and translator, before taking up duties in a panel review, files with the responsible Secretariat

(a) in the case of a panelist, a copy of a Disclosure Order or Protective Order, signed by the panelist; and

(b) in any other case, a copy of a Disclosure Order or Protective Order.

(3) The responsible Secretary shall ensure that every panelist, assistant to a panelist, court reporter and translator files with the responsible Secretariat any amendment or modification to, or revocation of, a Disclosure Order or Protective Order issued by the investigating authority.

15. Where a document containing proprietary information or privileged information is filed with the responsible Secretariat, each Secretary shall ensure that

(a) the document is stored, maintained, handled, and distributed in accordance with the terms of an applicable Disclosure Order or Protective Order;

(b) the wrapper of the document is clearly marked to indicate that it contains proprietary information or privileged information; and

(c) access to the document is limited to officials of, and counsel for, the investigating authority whose final determination is under review and

(i) in the case of proprietary information, the person who submitted the proprietary information to the investigating authority or counsel for that person and any persons who have been granted access to the information under a Disclosure Order or Protective Order with respect to the document, and

(ii) in the case of privileged information filed in a panel review of a final determination made in the United States, persons with respect to whom the panel has ordered disclosure of the privileged information under rule 55, if the persons have filed with the responsible Secretariat a Protective Order with respect to the document.

16. (1) Each Secretary shall permit access by any person to the information in the file in a panel review that is not proprietary information or privileged information and shall provide copies of that information on request and payment of an appropriate fee.

(2) Each Secretary shall, in accordance with subrule 15(c) and the terms of the applicable Disclosure Order, Protective Order or order of the panel,

(a) permit access to proprietary information or privileged information in the file of a panel review; and

(b) on payment of an appropriate fee, provide a copy of the information referred to in subrule (a).

(3) No document filed in a panel review shall be removed from the offices of the Secretariat except in the ordinary course of the business of the Secretariat or pursuant to the direction of a panel.

Internal Functioning of Panels

17. (1) A panel may adopt its own internal procedures, not inconsistent with these rules, for routine administrative matters.

(2) A panel may delegate to its chairperson

(a) the authority to accept or reject filings in accordance with subrule 10(4); and

(b) the authority to grant motions consented to by all participants, other than a motion filed pursuant to rule 20 or 55, a motion for remand of a final determination or a motion that is inconsistent with an order or decision previously made by the panel.

(3) A decision of the chairperson referred to in subrule (2) shall be issued as an order of the panel.

(4) Subject to subrule 26(b), meetings of a panel may be conducted by means of a telephone conference call.

18. Only panelists may take part in the deliberations of a panel, which shall take place in private and remain secret. Staff of the Secretariat and assistants to panelists may be present by permission of the panel.

Computation of Time

19. (1) In computing any time period fixed in these rules or by an order or decision of a panel, the day from which the time period begins to run shall be excluded and, subject to subrule (2), the last day of the time period shall be included.

(2) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

20. (1) A panel may extend any time period fixed in these rules if

(a) adherence to the time period would result in unfairness or prejudice to a participant or the breach of a general legal principle of the country in which the final determination was made;

(b) the time period is extended only to the extent necessary to avoid the unfairness, prejudice or breach;

(c) the decision to extend the time period is concurred in by four of the five panelists; and

(d) in fixing the extension, the panel takes into account the intent of the rules to secure just, speedy and inexpensive reviews of final determinations.

(2) A participant may request an extension of time by filing a Notice of Motion not later than the tenth day prior to the last day of the time period. Any response to the Notice of Motion shall be filed not later than seven days after the Notice of Motion is filed.

(3) A participant who fails to request an extension of time pursuant to subrule (2) may file a notice of motion for leave to file out of time, which shall include reasons why additional time is required and why the participant has failed to comply with the provisions of subrule (2).

(4) The panel will normally rule on such a motion before the last day of the time period which is the subject of the motion.

Counsel of Record

21. (1) A counsel who signs a document filed pursuant to these rules on behalf of a participant shall be the counsel of record for the participant from the date of filing until a change is effected in accordance with subrule (2).

(2) A participant may change its counsel of record by filing with the responsible Secretariat a Notice of Change of Counsel of Record signed by the new counsel, together with proof of service on the former counsel and other participants.

Filing, Service and Communications

22. (1) Subject to subrules 14(3) and 48(1), rule 49 and subrules 55 (3) and (4) and 75(2)(a), no document is filed with the Secretariat until one original and eight copies of the document are received by the responsible Secretariat during its normal business hours and within the time period fixed for filing.

(2) Receipt, date and time stamping or placement in the file of a document by the responsible Secretariat does not constitute a waiver of any time period fixed for filing or an acknowledgement that the document has been filed in accordance with these rules.

23. The responsible Secretary shall be responsible for the service of

(a) Notices of Intent to Commence Judicial Review and Complaints on each Party;

(b) Requests for Panel Review on the Parties, the investigating authority and the persons listed on the service list;

(c) Notices of Appearance on the participants; and

(d) Disclosure Orders and Protective Orders granted to panelists, assistants to panelists, court reporters or translators and any amendments or modifications thereto or notices of revocation thereof referred to in subrules 14 (2) and (3), decisions and orders of a panel, Notices of Final Panel Action and Notices of Completion of Panel Review on the participants.

24. (1) Subject to subrules (4) and (5), all documents filed by a participant, other than the administrative record, any supplementary remand record and any document required by rule 23 to be served by the responsible Secretary, shall be served by the participant on the counsel of record of each of the other participants, or where a participant is not represented by counsel, on the participant.

(2) A proof of service shall appear on, or be affixed to, all documents referred to in subrule (1).

(3) Where a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the courier service or is mailed.

(4) A document containing proprietary information or privileged information shall be filed and served under seal in accordance with rule 46, and shall be served only on

(a) the investigating authority; and

(b) participants who have been granted access to the proprietary information or privileged information under a Disclosure Order, Protective Order or order of the panel.

(5) A complainant shall serve a Complaint on the investigating authority and on all persons listed on the service list.

25. Subject to subrule 26(a), a document may be served by

(a) delivering a copy of the document to the service address of the participant;

(b) sending a copy of the document to the service address of the participant by facsimile transmission or by expedited delivery courier or expedited mail service, such as express mail in the United States or Priority Post in Canada; or

(c) personal service on the participant.

26. Where proprietary information or privileged information is disclosed in a panel review to a person pursuant to a Disclosure Order or Protective Order, the person shall not

(a) file, serve or otherwise communicate the proprietary information or privileged information by facsimile transmission; or

(b) communicate the proprietary information or privileged information by telephone.

27. Service on an investigating authority does not constitute service on a Party and service on a Party does not constitute service on an investigating authority.

Pleadings and Simultaneous Translation of Panel Reviews in Canada

28. Rules 29 to 31 apply with respect to a panel review of a final determination made in Canada.

29. Either English or French may be used by any person or panelist in any document or oral proceeding.

30. (1) Subject to subrule (2), any order or decision including the reasons therefor, issued by a panel shall be made available simultaneously in both English and French where

(a) in the opinion of the panel, the order or decision is in respect of a question of law of general public interest or importance; or

(b) the proceedings leading to the issuance of the order or decision were conducted in whole or in part in both English and French.

(2) Where

(a) an order or decision issued by a panel is not required by subrule (1) to be made available simultaneously in English and French, or

(b) an order or decision is required by subrule (1)(a) to be made available simultaneously in both English and French but the panel is of the opinion that to make the order or decision available simultaneously in both English and French would occasion a delay prejudicial to the public interest or result in injustice or hardship to any participant, the order or decision, including the reasons therefor, shall be issued in the first instance in either English or French and thereafter at the earliest possible time in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subrule (1) or (2) shall be construed as prohibiting the oral delivery in either English or French of any order or decision or any reasons therefor.

(4) No order or decision is invalid by reason only that it was not made or issued in both English and French.

31. (1) Any oral proceeding conducted in both English and French shall be translated simultaneously.

(2) Where a participant requests simultaneous translation of oral proceedings in a panel review, the request shall be made as early as possible in the panel review and preferably at the time of filing a Complaint or Notice of Appearance.

(3) Where the chairperson of a panel is of the opinion that there is a public interest in the panel review, the chairperson may direct the responsible Secretary to arrange for simultaneous translation of any of the oral proceedings in the panel review.

Costs

32. Each participant shall bear the costs of, and those incidental to, its own participation in a panel review.

Part II—Commencement of Panel Review

Notice of Intent To Commence Judicial Review

33. (1) Where an interested person intends to commence judicial review of a final determination, the interested person shall.

(a) where the final determination was made in the United States, within 20 days after the date referred to in the **Federal Register** citation referred to in subrule (3)(b) or the date referred to in subrule (3)(c), serve a Notice of Intent to Commence Judicial Review on

(i) both Secretaries,

(ii) the investigating authority, and

(iii) all persons listed on the service list; and

(b) where the final determination was made in Canada, serve a Notice of Intent to Commence Judicial Review on both Secretaries and on all persons listed on the service list.

(2) Where the final determination referred to in subrule (1) was made in Canada, the Secretary of the Canadian Section shall serve a copy of the Notice of Intent to Commence Judicial Review on the investigating authority.

(3) Every Notice of Intent to Commence Judicial Review referred to in subrule (1) shall include the following information (model form provided in the Schedule):

(a) the information set out in subrules 58(1) (c) to (f);

(b) the title of the final determination for which judicial review is sought, the investigating authority that issued the final determination, the file number assigned by the investigating authority and the appropriate citation if the final determination was published in the *Canada Gazette* or the **Federal Register**; and

(c) the date on which the notice of the final determination was received by the other Party if the final determination was not published in the *Canada Gazette* or the **Federal Register**.

Request for Panel Review

34. (1) A Request for Panel Review shall be made in accordance with the requirements of

(a) section 77.11 or 96.3 of the *Special Import Measures Act*, as amended, and regulations made thereunder;

(b) section 516A of the *Tariff Act of 1930*, as amended, and regulations made thereunder; or

(c) section 408 of the *United States-Canada Free Trade Agreement Implementation Act of 1988*, as amended, and regulations made thereunder.

(2) A Request for Panel Review shall contain the following information (model form provided in the Schedule):

(a) the information set out in subrule 58(1);

(b) the title of the final determination for which panel review is requested, the investigating authority that issued the final determination, the file number assigned by the investigating authority and the appropriate citation if the final determination was published in the *Canada Gazette* or the **Federal Register**,

(c) the date on which the notice of the final determination was received by the other Party if the final determination was not published in the *Canada Gazette* or the **Federal Register**,

(d) where a Notice of Intent to Commence Judicial Review has been served and the sole reason that the Request for Panel Review is made is to require review of the final determination by a panel, a statement to that effect; and

(e) the service list, as defined in rule 3.

35. (1) On receipt of a first Request for Panel Review filed within the time period fixed in the Act referred to in subrule 34(1)(a), (b) or (c), pursuant to which the Request for Panel Review is made, the responsible Secretary shall

(a) forthwith forward a copy of the Request to the other Secretary;

(b) forthwith inform the other Secretary of the Secretariat file number; and

(c) serve a copy of the first Request for Panel Review on the persons listed on the service list together with a statement setting out the date on which the Request was filed and stating that

(i) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with rule 39 within 30 days after the filing of the first Request for Panel Review,

(ii) a Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review, and

(iii) the panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

(2) On the filing of a first Request for Panel Review, each Secretary shall forthwith cause a notice of that Request to be published in the *Canada Gazette* and the **Federal Register**. The notice shall state that a Request for Panel Review has been received and shall specify the date on which the Request was filed, the final determination for which panel review is requested and the information set out in subrule (1)(c).

Joint Panel Reviews

36. Reserved.

37. (1) Where a panel is established to review a final determination made under subsection 41(1)(a) of the *Special Import Measures Act*, as amended, that applies with respect to particular goods of the United States and a Request for Panel Review of a negative final determination made under paragraph 43(1) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

(2) Where a panel is established to review a final determination made under section 705(a) or 735(a) of the *Tariff Act of 1930*, as amended, that applies with respect to particular goods of Canada and a Request for Panel Review of a negative final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

38. (1) Subject to subrules (2) and (3), where final determinations are reviewed jointly pursuant to rule 37, the time periods fixed under these rules for the review of the final determination made under subsection 43(1) of the *Special Import Measures Act*, as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930*, as amended, shall apply, commencing with the date fixed for filing briefs pursuant to rule 60.

(2) Unless otherwise ordered by a panel as a result of a motion under subrule (3), where final determinations are reviewed jointly pursuant to rule 37, the panel shall issue its decision with respect to the final determination made under subsection 43(1) of the *Special Import Measures Act*, as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930*, as amended, and where the panel remands the final determination to the investigating authority and the Determination on Remand is affirmative, the panel shall thereafter issue its decision with respect to the final determination made under subsection 41(1)(a) of the *Special Import Measures Act*, as amended, or section 705(a) or 735(a) of the *Tariff Act of 1930*, as amended.

(3) Where the final determinations are reviewed jointly pursuant to rule 37, any participant may, unilaterally or with the consent of the other participants, request by motion that time periods, other than the time periods referred to in subrule (1), be fixed for the filing of pleadings, oral proceedings, decisions and other matters.

(4) A Notice of Motion pursuant to subrule (3) shall be filed no later than 10 days after the date fixed for filing Notices of Appearance in the review of the final determination made under subsection 43(1) of the *Special Import Measures Act*, as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930*, as amended.

(5) Unless otherwise ordered by a panel, where the panel has not issued a ruling on a motion filed pursuant to subrule (3) within 30 days after the filing of the Notice of Motion, the motion shall be deemed denied.

Complaint

39. (1) Subject to subrule (3), any interested person who intends to make allegations of errors of fact or law, including challenges to the jurisdiction of the investigating authority, with respect to a final determination, shall file with the responsible Secretariat, within 30 days after the filing of a first Request for Panel Review of the final determination, a Complaint, together with proof of service on the investigating authority and on all persons listed on the service list.

(2) Every Complaint referred to in subrule (1) shall contain the following information (model form provided in the Schedule):

(a) the information set out in subrule 58(1);

(b) the precise nature of the Complaint, including the applicable standard of review and the allegations of errors of fact or law, including challenges to the jurisdiction of the investigating authority;

(c) a statement describing the interested person's entitlement to file a Complaint under this rule; and

(d) where the final determination was made in Canada, a statement as to whether the complainant

(i) intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) requests simultaneous translation of any oral proceedings.

(3) Only an interested person who would otherwise be entitled to commence proceedings for judicial review of the final determination may file a Complaint.

(4) Subject to subrule (5), an amended Complaint shall be filed no later than 5 days before the expiration of the time period for filing a Notice of Appearance pursuant to rule 40.

(5) An amended Complaint may, with leave of the panel, be filed after the time limit set out in subrule (4) but not later than 20 days before the expiration of the time period for filing briefs pursuant to subrule 60(1).

(6) Leave to file an amended Complaint may be requested of the panel by the filing of a Notice of Motion for leave to file an amended Complaint accompanied by the proposed amended Complaint.

(7) Where the panel does not grant a motion referred to in subrule (6) within the time period for filing briefs pursuant to subrule 60(1), the motion shall be deemed to be denied.

Notice of Appearance

40. (1) Subject to subrule (2), within 45 days after the filing of a first Request for Panel Review of a final determination, the investigating authority and any other person who is entitled to and proposes to participate in the panel review and who has not filed a Complaint in the panel review shall file with the responsible Secretariat a Notice of Appearance containing the following information (model form provided in the Schedule):

(a) the information set out in rule 58(1);

(b) in the case of a Notice of Appearance filed by the investigating authority, any admissions with respect to the allegations set out in the Complaints;

(c) a statement as to whether appearance is made

(i) in support of the allegations set out in a Complaint under subrule 39(2)(b),

(ii) in opposition to the allegations set out in a Complaint under subrule 39(2)(b), or

(iii) partly in support of the allegations set out in a Complaint under subrule 39(2)(b) and partly in opposition to the allegations set out in a Complaint under subrule 39(2)(b);

(d) a statement as to the basis for the person's claim of entitlement to file a Notice of Appearance under this rule; and

(e) where the final determination was made in Canada, a statement as to whether the person filing the Notice of Appearance

(i) intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) requests simultaneous translation of any oral proceedings.

(2) Any complainant who intends to appear partly in opposition to the allegations set out in a Complaint under subrule 39(2)(b) shall file a Notice of Appearance containing the statements referred to in subrules (1)(c)(iii) and (1)(d).

Record for Review

41. (1) The investigating authority whose final determination is under review shall, within 15 days after the expiration of the time period fixed for filing a Notice of Appearance, file with the responsible Secretariat

(a) nine copies of the final determination, including reasons for the final determination;

(b) two copies of an Index comprised of a descriptive list of all items contained in the administrative record, together with proof of service of the Index on all participants; and

(c) subject to subrules (3), (4), and (5), two copies of the administrative record.

(2) An Index referred to in subrule (1) shall, where applicable, identify those items that contain proprietary information, privileged information or government information by a statement to that effect.

(3) Where a document containing proprietary information is filed, it shall be filed under seal in accordance with rule 46.

(4) No privileged information shall be filed with the responsible Secretariat unless the investigating authority waives the privilege and voluntarily files the information or the information is filed pursuant to an order of a panel.

(5) No government information shall be filed with the Secretariat unless the investigating authority, after having reviewed the government information and, where applicable, after having pursued appropriate review procedures, determines that the information may be disclosed.

42. Reserved.

43. Reserved.

Part III—Panels

Announcement of Panel

44. On the completion of the selection of a panel, the responsible Secretary shall notify the participants and the other Secretary of the names of the panelists.

Violation of Code of Conduct

45. Where a participant in a panel review believes that a panelist or an assistant to a panelist is in violation of the Code of Conduct, the participant shall forthwith notify the responsible Secretary in writing of the alleged violation. The responsible Secretary shall promptly notify the other Secretary and the Parties of the allegations.

Part IV—Proprietary Information and Privileged Information

Filing or Service under Seal

46. (1) Where, under these rules, a document containing proprietary information or privileged information is required to be filed under seal with the Secretariat or is required to be served under seal, the document shall be filed or served in accordance with this rule and, where the document is a pleading, in accordance with rule 59.

(2) A document filed or served under seal shall be

(a) bound separately from all other documents;

(b) clearly marked

(i) in the case of a document containing proprietary information, "Proprietary" or "Confidential", and

(ii) in the case of a document containing privileged information, "Privileged"; and

(c) contained in an opaque inner wrapper and an opaque outer wrapper.

(3) An inner wrapper referred to in subrule (2)(c) shall indicate

(a) that proprietary information or privileged information is enclosed, as the case may be; and

(b) the Secretariat file number of the panel review.

47. Filing or service of proprietary information or privileged information with the Secretariat does not constitute a waiver of the designation of the information as proprietary information or privileged information.

Disclosure Orders and Protective Orders

48. (1) A counsel of record, or a professional retained by, or under the control or direction of, a counsel of record, who wishes disclosure of proprietary information in a panel review shall file a Disclosure Undertaking or a Protective Order Application with respect to the proprietary information as follows:

(a) with the responsible Secretariat, four copies; and

(b) with the investigating authority, one original and any additional copies that the investigating authority requires.

(2) A Disclosure Undertaking or Protective Order Application referred to in subrule (1) shall be served

(a) where the Disclosure Undertaking or Protective Order Application is filed before the expiration of the time period fixed for filing a Notice of Appearance in the panel review, on the persons listed in the service list; and

(b) in any other case, on all participants other than the investigating authority, in accordance with subrule 24(1).

49. (1) Every panelist, assistant to a panelist, court reporter and translator shall, before taking up duties in a panel review, submit to the responsible Secretary a Disclosure Undertaking or a Protective Order Application.

(2) A panelist, assistant to a panelist, court reporter or translator who amends or modifies a Disclosure Undertaking or Protective Order Application shall file with the responsible Secretariat a copy of the amendment or modification.

(3) Where the investigating authority receives, pursuant to subrule 14(1), a Disclosure Undertaking or Protective Order Application, or an amendment or modification thereto, the investigating authority shall issue a Disclosure Order, Protective Order, amendment or modification accordingly.

(4) Where the investigating authority amends, modifies or revokes a Disclosure Order or Protective Order, the panelist, assistant to a panelist, court reporter or translator shall provide the responsible Secretariat with a copy of the amendment, modification or notice of revocation.

50. The investigating authority shall, within 30 days after a Disclosure Undertaking or Protective Order Application is filed in accordance with subrule 48(1), serve on the person who filed the Disclosure Undertaking or Protective Order Application

(a) a Disclosure Order or Protective Order, as the case may be; or

(b) a notification in writing setting out the reasons why a Disclosure Order or Protective Order is not issued.

51. (1) Where

(a) an investigating authority refuses to issue a Disclosure Order or Protective Order to a counsel of record or to a professional retained by, or under the control or direction of, a counsel of record, or

(b) an investigating authority issues a Disclosure Order or Protective Order with terms unacceptable to the counsel of record, the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the panel review the decision of the investigating authority.

(2) Where, after consideration of any response made by the investigating authority referred to in subrule (1), the panel decides that a Disclosure Order or Protective Order should be issued or that the terms of a Disclosure Order or Protective Order should be modified or amended, the panel shall so notify counsel for the investigating authority.

(3) Where the final determination was made in the United States and the investigating authority fails to comply with the notification referred to in subrule (2), the panel may issue such orders as are just in the circumstances, including an order refusing to permit the investigating authority to make certain arguments in support of its case or striking certain arguments from its pleadings.

52. (1) Where a Disclosure Order or Protective Order is issued to a person in a panel review, the person shall file with the responsible Secretariat a copy of the Disclosure Order or Protective Order.

(2) Where a Disclosure Order or Protective Order is revoked, amended or modified by the investigating authority, the investigating authority shall provide to the responsible Secretariat and to all participants a copy of the Notice of Revocation, amendment or modification.

53. Reserved.

54. Where a Disclosure Order or Protective Order is issued to a person, the person is entitled

(a) to access to the document; and

(b) where the person is a counsel of record, to a copy of the document containing the proprietary information, on payment of an appropriate fee, and to service of pleadings containing the proprietary information.

Privileged Information

55. (1) A Notice of Motion for disclosure of a document in the administrative record identified as containing privileged information shall set out

(a) the reasons why disclosure of the document is necessary to the case of the participant filing the Notice of Motion; and

(b) a statement of any point of law or legal authority relied on, together with a concise argument in support of disclosure.

(2) Within 10 days after a Notice of Motion referred to in subrule (1) is filed, the investigating authority shall, if it intends to respond, file the following in response:

(a) an affidavit of an official of the investigating authority stating that, since the filing of the Notice of Motion, the official has examined the document and has determined that disclosure of the document would constitute disclosure of privileged information; and

(b) a statement of any point of law or legal authority relied on, together with a concise argument in support of non-disclosure.

(3) After having reviewed the Notice of Motion referred to in subrule (1) and any response filed under subrule (2), the panel may order

(a) that the document shall not be disclosed; or

(b) that the investigating authority file two copies of the document under seal with the responsible Secretariat.

(4) In a panel review of a final determination made in the United States, before examining a document in accordance with subrule (6) or (8), a panelist shall file with the responsible Secretariat four copies of a Protective Order with respect to the document, signed by the panelist.

(5) Where the panel has issued an order pursuant to subrule (3)(b), the panel shall select two panelists, one of whom shall be a lawyer who is a citizen of Canada and the other of whom shall be a lawyer who is a citizen of the United States.

(6) The two panelists selected under subrule (5) shall

(a) examine the document *in camera*; and

(b) communicate their decision, if any, to the panel.

(7) The decision referred to in subrule (6)(b) shall be issued as an order of the panel.

(8) Where the two panelists selected under subrule (5) fail to come to a decision, the panel shall

(a) examine the document *in camera*; and

(b) issue an order with respect to the disclosure of the document.

(9) Where an order referred to in subrule (7) or (8) is to the effect that the document shall not be disclosed, the responsible Secretary shall return all copies of the document to the investigating authority by service under seal.

56. In a panel review of a final determination made in the United States, where, pursuant to rule 55, disclosure of a document is granted,

(a) the panel shall limit disclosure to

(i) persons who must have access in order to permit effective representation in the panel review,

(ii) persons, such as the Secretariat staff, court reporters and translators, who must have access for administrative purposes in order to permit effective functioning of the panel, and

(iii) members of an Extraordinary Challenge Committee and their assistants who may need access pursuant to the *Extraordinary Challenge Committee Rules;*

(b) the panel shall issue an order identifying by name and by title or position the persons who are entitled to access and shall allow for future access by new counsel of record and by members of an Extraordinary Challenge Committee and, as necessary, their assistants; and

(c) the investigating authority shall issue a Protective Order with respect to that document in accordance with the order of the panel.

Violations of Disclosure Undertakings and Protective Orders

57. Where any person alleges that the terms of a Disclosure Undertaking or Protective Order have been violated, the panel shall refer the allegations to the investigating authority for investigation and, where applicable, the imposition of sanctions in accordance with section 77.26 of the *Special Import Measures Act*, as amended, or section 777(d) of the *Tariff Act of 1930*, as amended.

Part V—Written Proceedings

Form and Content of Pleadings

58. (1) Every pleading filed in a panel review shall contain the following information:

(a) the title of, and any Secretariat file number assigned for, the panel review;

(b) a brief descriptive title of the pleading;

(c) the name of the Party, investigating authority or interested person filing the document;

(d) the name of counsel of record for the Party, investigating authority or interested person;

(e) the service address, as defined in rule 3; and

(f) the telephone number of the counsel of record referred to in subrule (d) or, where an interested person is not represented by counsel, the telephone number of the interested person.

(2) Every pleading filed in a panel review shall be on paper 8½ x 11 inches (216 millimetres by 279 millimetres) in size. The text of the pleading shall be printed, typewritten or reproduced legibly on one side only with a margin of approximately 1½ inches (40 millimetres) on the left-hand side with double spacing between each line of text, except for quotations of more than 50 words, which shall be indented and single-spaced. Footnotes, titles, schedules, tables, graphs and columns of figures shall be presented in a readable form. Briefs shall be securely bound along the left-hand margin.

(3) Every pleading filed on behalf of a participant in a panel review shall be signed by counsel for the participant or, where the participant is not represented by counsel, by the participant.

59. (1) Where a participant files a pleading that contains proprietary information, the participant shall file two sets of the pleading in the following manner:

(a) one set shall be filed under seal, containing the proprietary information and labelled "Proprietary" or "Confidential", with the top of each page that contains proprietary information marked with the word "Proprietary" or "Confidential" and with the proprietary information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing proprietary information shall be filed and labelled "Non-Proprietary" or "Non-Confidential", with each page from which proprietary information has been deleted bearing a legend indicating the location from which the proprietary information was deleted.

(2) Where a participant files a pleading that contains privileged information, the participant shall file two sets of the pleading in the following manner:

(a) one set of shall be filed under seal, containing the privileged information and labelled "Privileged", with the top of each page that contains privileged information marked with the word "Privileged" and with the privileged information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing privileged information shall be filed and labelled "Non-Privileged", with each page from which privileged information has been deleted bearing a legend indicating the location from which the privileged information was deleted.

Filing of Briefs

60. (1) Subject to subrule 38(1), every participant who has filed a Complaint under rule 39 or a Notice of Appearance with a statement under subrule 40(1)(c)(i) or (iii) shall file a brief, setting forth grounds and arguments supporting the allegations of the Complaint no later than 60 days after the expiration of the time period fixed, under subrule 41(1), for filing the administrative record.

(2) Every participant who has filed a Notice of Appearance with a statement under subrule 40(1)(c)(ii) or (iii) shall file a brief supporting any reviewable portion of the final determination no later than 60 days after the expiration of the time period for filing of briefs referred to in subrule (1).

(3) Every participant who has filed a brief pursuant to subrule (1) may file a brief replying to the grounds and arguments set forth in the briefs filed pursuant to subrule (2) no later than 15 days after the expiration of the time period for filing of briefs referred to in subrule (2). Reply briefs shall be limited to rebuttal of matters raised in the briefs filed pursuant to subrule (2).

(4) An appendix containing authorities cited in all briefs filed under any of subrules (1) to (3) shall be filed with the responsible Secretariat within 10 days after the last day on which a brief under subrule (3) may be filed.

(5) Any number of participants may join in a single brief and any participant may adopt by reference any part of the brief of another participant.

(6) A participant may file a brief without appearing to present oral argument.

(7) Where a panel review of a final determination made by an investigating authority of United States with respect to certain goods involves issues that may relate to the final determination of the other investigating authority with respect to those goods, the latter investigating authority may file an *amicus curiae* brief in the panel review in accordance with subrule (2).

Failure to File Briefs

61. (1) Where a participant fails to file a brief within the time period fixed, the panel may order that the participant is not entitled

(a) to present oral argument;

(b) to service of any further pleadings, orders or decisions in the panel review; or

(c) to further notice of the proceedings in the panel review.

(2) Where

(a) no brief is filed by any complainant or by any participant in support of any of the complainants within the time periods established pursuant to these rules, and

(b) where no motion pursuant to rule 20 is pending, the panel may, on its own motion or pursuant to the motion of a participant, issue an order to show cause why the panel review should not be dismissed.

(3) If, on a motion under subrule (1), good cause is not shown, the panel shall issue an order dismissing the panel review.

(4) Where no brief is filed by an investigating authority, or by an interested person in support of the investigating authority, within the time period fixed in subrule 60(2), a panel may issue a decision referred to in rule 74.

Content of Briefs and Appendices

62. (1) Every brief filed pursuant to subrule 60(1) or (2) shall contain information, in the following order, divided into five parts:

Part I

(a) A table of contents; and

(b) A table of authorities:

The table of authorities shall include the authorities cited except references to documents from the administrative record. The table of authorities shall arrange the cases alphabetically, refer to the page(s) of the brief where each authority is cited and mark, with an asterisk in the margin, those authorities primarily relied on.

Part II: A statement of the Case

(a) in the brief of a complainant or of a participant filing a brief pursuant to subrule 60(1), this Part shall contain a concise statement of the relevant facts;

(b) in the brief of an investigating authority or of a participant filing a brief pursuant to subrule 60(2), this Part shall contain a concise statement of the position of the investigating authority or the participant with respect to the statement of facts set out in the briefs referred to in paragraph (a), including a concise statement of other facts relevant to its case; and

(c) in all briefs, references to evidence in the administrative record shall be made by page and, where practicable, by line.

Part III: A statement of the issues:

(a) in the brief of a complainant or of a participant filing a brief pursuant to subrule 60(1), this Part shall contain a concise statement of the issues; and

(b) in the brief of an investigating authority or of a participant filing a brief pursuant to subrule 60(2), this Part shall contain a concise statement of the position of the investigating authority or the participant with respect to each issue relevant to its case.

Part IV: Argument

This Part shall consist of the argument setting out concisely the points of law relating to the issues with applicable citations to authorities and the administrative record.

Part V: Relief

This part shall consist of a concise statement precisely identifying the relief requested.

(2) Paragraphs in Parts I to V of a brief may be numbered consecutively.

(3) A reply brief filed pursuant to rule 60(3) shall include a table of contents and a table of authorities, indicating those principally relied upon in the argument.

Appendix to the Briefs

62A. (1) Authorities referred to in the briefs shall be included in an appendix, which shall be organized as follows: a table of contents, copies of all treaty and statutory references, references to regulations, cases primarily relied on in the briefs, set out alphabetically, and all other references except documents from the administrative record.

(2) The appendix required under subrule 60(4) shall be compiled by a participant who filed a brief under subrule 60(1) and who was so designated by all the participants who filed a brief. Each participant who filed a brief under subrule 60(2) shall provide the designated participant with a copy of each authority on which it primarily relied in its brief that was not primarily relied on in any other brief filed under subrule 60(1). Each participant who filed a brief under subrule 60(3) shall provide the designated participant with a copy of each authority on which it primarily relied in its brief that was not primarily relied on in briefs filed pursuant to subrule 60 (1) or (2).

(3) The costs for compiling the appendix shall be borne equally by all participants who file briefs.

Motions

63. (1) A motion shall be made by Notice of Motion in writing (model form provided in the Schedule) unless the circumstances make it unnecessary or impracticable.

(2) Every Notice of Motion, and any affidavit in support thereof, shall be accompanied by a proposed order of the panel (model form provided in the Schedule) and shall be filed with the responsible Secretariat, together with proof of service on all participants.

(3) Every Notice of Motion shall contain the following information:

(a) the title of the panel review, the Secretariat file number for that panel review and a brief descriptive title indicating the purpose of the motion;

(b) a statement of the precise relief requested;

(c) a statement of the grounds to be argued, including a reference to any rule, point of law or legal authority to be relied on, together with a concise argument in support of the motion; and

(d) where necessary, references to evidence in the administrative record identified by page and, where practicable, by line.

(4) The pendency of any motion in a panel review shall not alter any time period fixed in these rules or by an order or decision of the panel.

(5) A Notice of Motion to which all participants consent shall be entitled a Consent Motion.

64. Subject to subrules 20(2) and 77(5), unless the panel otherwise orders, a participant may file a response to a Notice of Motion within 10 days after the Notice of Motion is filed.

65. (1) A panel may dispose of a motion based upon the pleadings filed pertaining to the motion.

(2) The panel may hear oral argument or, subject to subrule 26(b), direct that a motion be heard by means of a telephone conference call with the participants.

(3) A panel may deny a motion before responses to the Notice of Motion have been filed.

66. Where a panel chooses to hear oral argument or, pursuant to subrule 65(2), directs that a motion be heard by means of a telephone conference call with the participants, the responsible Secretary shall, at the direction of the chairperson, fix a date, time and place for the hearing of the motion and shall notify all participants of the same.

Part VI—Oral Proceedings

Location

67. Oral proceedings in a panel review shall take place at the office of the responsible Secretariat or at such other location as the responsible Secretary may arrange.

Pre-hearing Conference

68. (1) A panel may hold a pre-hearing conference, in which case the responsible Secretary shall give notice of the conference to all participants.

(2) A participant may request that the panel hold a pre-hearing conference by filing with the responsible Secretariat a written request setting out the matters that the participant proposes to raise at the conference.

(3) The purpose of a pre-hearing conference shall be to facilitate the expeditious advancement of the panel review by addressing such matters as

(a) the clarification and simplification of the issues;

(b) the procedure to be followed at the hearing of oral argument; and

(c) any outstanding motions.

(4) Subject to subrule 26(b), a pre-hearing conference may be conducted by means of a telephone conference call.

(5) Following a pre-hearing conference, the panel shall promptly issue an order setting out its rulings with respect to the matters considered at the conference.

Oral Argument

69. (1) A panel shall commence the hearing of oral argument no later than

30 days after the expiration of the time period fixed under subrule 60(3) for filing reply briefs. At the direction of the panel, the responsible Secretary shall notify all participants of the date, time and place for the oral argument.

(2) Oral argument shall be limited to the issues in dispute, shall be subject to the time constraints set by the panel and shall, unless the panel otherwise orders, be presented in the following order:

(a) the complainants and any participant who filed a brief in support of the allegations set out in a Complaint or partly in support of the allegations set out in a Complaint and partly in opposition to the allegations set out in a Complaint;

(b) the investigating authority and any participant who filed a brief in opposition to the allegations set out in a Complaint, other than a participant referred to in subrule (a); and

(c) argument in reply, at the discretion of the panel.

(3) If a participant fails to appear at oral argument, the panel may hear argument on behalf of the other participants who are present. If no participant appears, the panel may decide the case on the basis of briefs.

(4) Oral argument on behalf of a participant on a motion or at a hearing shall be conducted by the counsel of record for that participant or, where the participant is an individual appearing *pro se*, by the participant.

Subsequent Authorities

70. (1) A participant who has filed a brief may bring to the attention of the panel,

(a) at any time before the conclusion of oral argument, an authority that is relevant to the panel review;

(b) at any time after the conclusion of oral argument and before the panel has issued its decision,

(i) an authority that was reported subsequent to the conclusion of oral argument, or

(ii) with the leave of the panel, an authority that is relevant to the panel review and that came to the attention of counsel of record after the conclusion of oral argument, by filing with the responsible Secretariat a written request, setting out the citation of the decision or judgment, the page reference of the brief of the participant to which the decision or judgment relates and a concise statement, of no more than one page in length, of the relevance of the decision or judgment.

(2) A request referred to in subrule (1) shall be filed as soon as possible after the issuance of the decision or judgment by the court.

(3) Where a request referred to in subrule (1) is filed with the responsible Secretariat, any other participant may, within five days after the date on which the request was filed, file a concise statement, of no more than one page in length, in response.

Oral Proceedings in Camera

71. During that part of oral proceedings in which proprietary information or privileged information is presented, a panel shall not permit any person other than the following persons to be present:

(a) the person presenting the proprietary information or privileged information;

(b) a person who has been granted access to the proprietary information or privileged information under a Disclosure Order, Protective Order or an order of the panel;

(c) in the case of privileged information, a person as to whom the confidentiality of the privileged information has been waived; and

(d) officials of, and counsel for, the investigating authority.

PART VII—Decisions and Completions of Panel Reviews

Orders, Decisions and Terminations

72. The responsible Secretary shall cause notice of every decision of a panel issued pursuant to rule 74 to be published in the *Canada Gazette* and the Federal Register.

73. (1) Where a Notice of Motion requesting dismissal of a panel review is filed by a participant, the panel may issue an order dismissing the panel review.

(2) Where a Notice of Motion requesting termination of a panel review is filed by a participant and is consented to by all the participants, and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting termination, the panel review is terminated and, if a panel has been appointed, the panelists are discharged.

74. A panel shall issue a written decision with reasons, together with any dissenting or concurring opinions of the panelists, in accordance with Article 1904.8 of the Agreement. The decision will normally be released by noon on the date of issuance.

Panel Review of Action on Remand

75. (1) An investigating authority shall give notice of the action taken pursuant to a remand of the panel by filing with the responsible Secretariat a Determination on Remand within the time specified by the panel.

(2) If, on remand, the investigating authority has supplemented the administrative record,

(a) the investigating authority shall file with the responsible Secretariat an Index listing each item in the supplementary remand record, and a copy of each non-privileged item listed in that Index, within five days after the date on which the investigating authority filed the Determination on Remand with the panel;

(b) any participant who intends to challenge the Determination on Remand shall file a written submission with respect to the Determination on Remand within 20 days after the date on which the investigating authority filed the Index and supplementary remand record; and

(c) any response to the written submissions referred to in subrule (b) shall be filed by the investigating authority, and by any participant supporting the investigating authority, within 20 days after the last day on which written submissions in opposition to the Determination on Remand may be filed.

(3) If, on remand, the investigating authority has not supplemented the record,

(a) any participant who intends to challenge the Determination on Remand shall file a written submission within 20 days after the date on which the investigating authority filed the Determination on Remand with the panel; and

(b) any response to the written submissions referred to in subrule (a) shall be filed by the investigating authority, and by any participant filing in support of the investigating authority, within 20 days after the last day on which such written submissions may be filed.

(4) If no written submissions are filed under subrule (2)(b) or (3)(a) within the time periods established by these rules, and if no motion pursuant to rule 20 is pending, the panel shall, within 10 days after the later of the due date for such written submissions and the date of the denial of a motion pursuant to rule 20, issue an order affirming the investigating authority's Determination on Remand.

(5) Where a Determination on Remand is challenged, the panel shall issue a written decision pursuant to rule 74, either affirming the Determination on Remand or remanding it to the investigating authority, no later than 90 days after the Determination on Remand is filed.

75A. In setting the date by which a Determination on Remand shall be due from the investigating authority, the

panel shall take into account, among other factors,

(a) the date that any Determination on Remand with respect to the same goods is due from the other investigating authority, and

(b) the effect the Determination on Remand from the other investigating authority might have on the deliberations of the investigating authority with respect to the making of a final Determination on Remand.

Re-examination of Orders and Decisions

76. A clerical error in an order or decision of a panel, or an error in an order or decision of a panel arising from any accidental oversight, inaccuracy or omission, may be corrected by the panel at any time during the panel review.

77. (1) A participant may, within 10 days after a panel issues its decision, file a Notice of Motion requesting that the panel re-examine its decision for the purpose of correcting an accidental oversight, inaccuracy or omission, which shall set out

(a) the oversight, inaccuracy or omission with respect to which the request is made;

(b) the relief requested; and

(c) if ascertainable, a statement as to whether other participants consent to the motion.

(2) The grounds for a motion referred to in subrule (1) shall be limited to one or both of the following grounds:

(a) that the decision does not accord with the reasons therefor; or

(b) that some matter has been accidentally overlooked, stated inaccurately or omitted by the panel.

(3) No Notice of Motion referred to in subrule (1) shall set out any argument already made in the panel review.

(4) There shall be no oral argument in support of a motion referred to in subrule (1).

(5) Except as the panel may otherwise order under subrule (6)(b), no participant shall file a response to a Notice of Motion filed pursuant to subrule (1).

(6) Within seven days after the filing of a Notice of Motion under subrule (1), the panel shall

(a) issue a decision ruling on the motion; or

(b) issue an order identifying further action to be taken concerning the motion.

(7) A decision or order under subrule (6) may be made with the concurrence of any three panelists.

Delay in Delivery of Decisions

78. Where a panelist becomes unable to fulfil panel duties, is disqualified or dies, panel proceedings and the running of time periods shall be suspended, pending the appointment of a substitute panelist in accordance with the procedures set out in Annex 1901.2 to Chapter Nineteen of the Agreement.

79. Where a panelist becomes unable to fulfil panel duties, is disqualified or dies after the oral argument, the chairperson may order that the matter be reheard, on such terms as are appropriate, after selection of a substitute panelist.

Part VIII—Completion of Panel Review

79A. (1) Subject to subrule (2), when a panel issues:

(a) an order dismissing a panel review under subrule 61(2) or 73(1),

(b) a decision under rule 74 or subrule 75(5) that is the final action in the panel review, or

(c) an order under subrule 75(4), the panel shall direct the responsible Secretary to issue a Notice of Final Panel Action (model form provided in the Schedule) on the eleventh day thereafter.

(2) Where a motion is filed pursuant to subrule 77(1) regarding a decision referred to in subrule (1)(b), the responsible Secretary shall issue the Notice of Final Panel Action on the day on which the panel

(a) issues a ruling finally disposing of the motion; or

(b) directs the responsible Secretary to issue the Notice of Final Panel Action, the issuance of which shall constitute a denial of the motion.

80. If no Request for an Extraordinary Challenge Committee is filed, the responsible Secretary shall cause to be published in the *Canada Gazette* and the **Federal Register** a Notice of Completion of Panel Review, effective

(a) on the day on which a panel is terminated pursuant to subrule 73(2); or

(b) in any other case, on the 31st day following the date on which the responsible Secretary issues a Notice of Final Panel Action.

81. Except as provided in rule 80, where a Request for an Extraordinary Challenge Committee has been filed, the responsible Secretary shall cause to be published in the *Canada Gazette* and the **Federal Register** a Notice of Completion of Panel Review, effective on the day after the day referred to in rule 65 or subrule 66(a) of the *Extraordinary Challenge Committee Rules.*

82. Reserved

83. Reserved

84. Reserved

85. Panelists are discharged from their duties on the day on which a Notice of Completion of Panel Review is effective, or on the day on which an Extraordinary Challenge Committee vacates a panel review pursuant to subrule 66(b) of the *Extraordinary Challenge Committee Rules.*

Schedule

Procedural Forms

Forms (1) through (7) follow.

Form (1)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free Trade Agreement

In the matter of:

_____

_____

(Title of Final Determination)

Notice of Intent to Commence Judicial Review

Pursuant to Article 1904 of the Canada-United States Free-Trade Agreement, notice is hereby served that

_____

(interested person filing notice)

intends to commence judicial review in the

_____

(name of the court)

of the final determination referenced below. The following information is provided pursuant to Rule 33 of the *Article 1904 Panel Rules:*

1. _____

(The name of the interested person filing this notice)

2. _____

(The name of counsel for the interested person, if any)

3. _____

_____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules,* including facsimile number, if any)

4. _____

(The telephone number of counsel for the interested person or the telephone number of the interested person, if not represented by counsel)

5. _____

(The title of the final determination for which notice of intent to commence judicial review is served)

6. _____

(The investigating authority that issued the final determination)

7. _____

(The file number of the investigating authority)

8. (a) _____

(The citation and date of publication of the final determination in the **Federal Register** or *Canada Gazette*); or

(b) _____

(If the final determination was not published, the date notice of the final determination was received by the other Party)

Date _____

_____

Signature of Counsel (or interested person, if not represented by counsel)

Form (2)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)

Secretariat File No.

_____

Request for Panel Review

Pursuant to Article 1904 of the Canada-United States Free-Trade Agreement, panel review is hereby requested of the final determination referenced below. The following information is provided pursuant to Rule 34 of the *Article 1904 Panel Rules:*

1. _____

(The name of the Party or the interested person filing this request for panel review)

2. _____

(The name of counsel for the Party or the interested person, if any)

3. _____

_____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules,* including facsimile number, if any)

4. _____

(The telephone number of counsel for the Party or the interested person or the telephone number of the interested person, if not represented by counsel)

5. _____

(The title of the final determination for which panel review is requested)

6. _____

(The investigating authority that issued the final determination)

7. _____

(The file number of the investigating authority)

8. (a) _____

(The citation and date of publication of the final determination in the **Federal Register** or *Canada Gazette*); or

(b) _____

(If the final determination was not published, the date notice of the final determination was received by the other Party)

9. Yes _____ No _____ Non-Applicable _____

(Where a Notice of Intent to Commence Judicial Review has been served, is the sole reason for requesting review of the final determination to require review by a panel?)

10. The Service List, as defined by Rule 3, is attached.

Date _____

_____

Signature of Counsel (or interested person, if not represented by counsel)

Form (3)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)

Secretariat File No.

_____

Complaint

1. _____

(The name of the interested person filing the complaint)

2. _____

(The name of counsel for the interested person, if any)

3. _____

_____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules,* including facsimile number, if any)

4. _____

(The telephone number of counsel for the interested person or telephone number of the interested person, if not represented by counsel)

5. Statement of the Precise Nature of the Complaint (See Rule 39)

A. The Applicable Standard of Review

B. Allegations of Errors of Fact or Law

C. Challenges to the Jurisdiction of the Investigating Authority

6. Statement of the Interested Person's Entitlement to File a Complaint Under Rule 39

7. For Panel Reviews of Determinations Made in Canada:

(a) Complainant intends to use the specified language in pleadings and oral proceedings (Specify one)

_____ English _____ French

(b) Complainant requests simultaneous translation of oral proceedings (Specify one)

_____ Yes _____ No

Date _____

_____

Signature of Counsel (or interested person, if not represented by counsel)

Form (4)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)

Secretariat File No.

_____

Notice of Appearance

1. _____

(The name of the investigating authority or the interested person filing this notice of appearance)

2. _____

(The name of counsel for the investigating authority or the interested person, if any)

3. _____

_____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules,* including facsimile number, if any)

4. _____

(The telephone number of counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)

5. This Notice of Appearance is made:

_____ in support of the allegations set out in a Complaint;

_____ in opposition to the allegations set out in a Complaint; or

_____ partly in support of the allegations set out in a Complaint and partly in opposition to the allegations set out in a Complaint;

6. Statement as to the basis for the interested person's entitlement to file a Notice of Appearance under rule 40

7. For Notices of Appearance Filed by the Investigating Authority

Statement by the Investigating Authority regarding any admissions with respect to the allegations set out in the Complaints

8. For Panel Reviews of Determinations Made in Canada:

(a) I intend to use the specified language in pleadings and oral proceedings (Specify one)

_____ English _____ French

(b) I request simultaneous translation of oral proceedings (Specify one)

_____ Yes _____ No

Date _____

_____

Signature of Counsel (or interested person, if not represented by counsel)

Form (5)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)

Secretariat File No.

_____

Notice of Motion

_____

(descriptive title indicating the purpose of the motion)

1. _____

(The name of the investigating authority or the interested person filing this notice of motion)

2. _____

(The name of counsel for the investigating authority or the interested person, if any)

3. _____

_____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules,* including facsimile number, if any)

4. _____

(The telephone number of the counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)

5. Statement of the precise relief requested

6. Statement of the grounds to be argued, including references to any rule, point of law, or legal authority to be relied on

7. Arguments in support of the motion, including references to evidence in the administrative record by page and, where practicable, by line

8. Draft order attached (see Rule 63 and Form (6))

Date

Signature of Counsel (or interested person, if not represented by counsel)

Form (6)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free Trade Agreement

In the matter of:

(Title of Panel Review)

Secretariat File No.

Order

Upon consideration of the motion for_____, (relief requested), filed on behalf of _____, (participant filing motion), and upon all other papers and proceedings herein, it is hereby ORDERED that the motion is _____

Issue Date

panelist name

panelist name

panelist name

panelist name

panelist name

Form (7)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free Trade Agreement

In the matter of:

(Title of Panel Review)

Secretariat File No.

Notice of Final Panel Action

Under the direction of the panel, pursuant to rule 79A of the *Article 1904 Panel Rules,* NOTICE is hereby given that the panel has taken its final action in the above-referenced matter.

This Notice is effective on _____.

Issue Date

Signature of the Responsible Secretary

Dated: January 25, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94–2782 Filed 2–3–94; 1:06 pm]

BILLING CODE 3510–GT–P

federal register

Tuesday
February 8, 1994

Part V

Department of Commerce

International Trade Administration

United States-Canada Free Trade Agreement: Amendments to Rules of Procedure for Article 1904 Extraordinary Challenge Committees; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free Trade Agreement: Amendments to Rules of Procedure for Article 1904 Extraordinary Challenge Committees

AGENCY: United States-Canada Free Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Amendments to rules of procedure for Article 1904 Extraordinary Challenge Committees.

SUMMARY: Canada and the United States have amended the rules of procedure for Annex 1904.13 extraordinary challenge proceedings. These amendments are intended to improve the extraordinary challenge proceeding process under Chapter Nineteen of the United States-Canada Free Trade Agreement in order to increase its efficiency and effectiveness.

EFFECTIVE DATE: February 8, 1994. The Rules of Procedure, herewithin, apply to all extraordinary challenge committee proceedings under the United States-Canada Free Trade Agreement ("Agreement") commenced on or after the effective date. Specifically, these Rules of Procedure govern any extraordinary challenge arising out of a panel review of any final determination published or, in the case of a determination that is not published, for which notice is received prior to January 1, 1994, the date of entry into force of the North American Free Trade Agreement ("NAFTA"). In the event that either Canada or the United States withdraws from the NAFTA, the Agreement would revive between them and these Rules of Procedure again would apply.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Attorney, Stacy J. Ettinger, Attorney-Advisor, or Terrence J. McCartin, Attorney-Advisor, Office of the Chief Counsel for Import Administration, room B–099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0836, (202) 482–4618, and (202) 482–5031, respectively. For procedural matters involving cases under extraordinary challenge committee review, contact James R. Holbein, United States Secretary, Binational Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5438.

SUPPLEMENTARY INFORMATION:

Background

Chapter Nineteen of the United States-Canada Free Trade Agreement ("Agreement") establishes a mechanism for replacing judicial review of final antidumping and countervailing duty determinations involving imports from Canada or the United States with review by independent binational panels. If requested, these panels will expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the importing country.

In instances in which one of the Parties to the Agreement alleges, pursuant to Article 1904.13 of the Agreement, that (a)(i) a member of a panel materially violated the rules of conduct, (ii) the panel seriously departed from a fundamental rule of procedure, or (iii) the panel manifestly exceeded its powers, authority or jurisdiction, and that (b) any of the actions set out in (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process, that Party may request formation of an extraordinary challenge committee ("ECC"). Extraordinary challenge committee review is therefore not a routine appeal. Rather, as the name suggests, the United States or Canada may have recourse to an ECC only in extraordinary cases. Title IV of the United States-Canada Free Trade Agreement Implementation Agreement Act of 1988, Public Law No. 100–449, 102 Stat. 1851 (1988) amends United States law to implement Chapter Nineteen of the Agreement.

The *Extraordinary Challenge Committee Rules* are intended to give effect to the extraordinary challenge committee provisions of Chapter Nineteen of the Agreement by setting forth the procedures for commencing, conducting and completing extraordinary challenge proceedings. Originally published on December 30, 1988 (53 Fed. Reg. 53212, 53222), the *Extraordinary Challenge Committee Rules* became effective on January 1, 1989, the date the Agreement entered into force. These amendments to the *Extraordinary Challenge Committee Rules* are the result of negotiations between the United States and Canada. The amendments improve the extraordinary challenge committee review process by providing for the smooth functioning of that process and by making the rules more easily understood by counsel.

A summary of the amendments to the *Extraordinary Challenge Committee Rules* is contained in the following section-by-section analysis. Amendments involving typographical errors, corrected cross-referencing, minor ministerial corrections, and any other changes not explained below, are considered drafting clarifications and have no substantive significance.

Preamble

The Preamble has been amended to clarify that paragraph 2 of Annex 1904.13 provides the mandate for the *Extraordinary Challenge Committee Rules.*

Rule 2

Rule 2 has been added in view of the entry into force of the North American Free Trade Agreement ("NAFTA") and in light of the possibility that a Party may withdraw from NAFTA. The *Extraordinary Challenge Committee Rules* govern any proceeding in which a Request for an Extraordinary Challenge Committee is filed in respect of a panel review of any final determination published or, in the case of a determination that is not published, for which notice is received, prior to the entry into force of NAFTA. If either Canada or the United States were to withdraw from NAFTA, the Agreement would revive between them and these rules would again apply.

Rule 3

Rule 3 amends former rule 2 to clarify that where procedural questions arise which are not covered by the *Extraordinary Challenge Committee Rules,* any procedure adopted by a committee should not be inconsistent with the Agreement.

Rule 3 also has been amended to add a provision corresponding to the final sentence of Rule 2 of the *Article 1904 Panel Rules,* which provides that the Agreement prevails where there is an inconsistency or ambiguity between the *Extraordinary Challenge Committee Rules* and the Agreement.

Rule 4

The definition of "Disclosure Undertaking" corresponds to an amendment to the *Article 1904 Panel Rules* and has been added to eliminate the need to refer to the form of the undertaking in the body of the *Extraordinary Challenge Committee Rules* or in an attached schedule.

The definition of "investigating authority" corresponds to an amendment to the *Article 1904 Panel Rules* and has been added to include a delegation of power by the competent investigating authority in matters regarding the issuance, amendment,

modification and revocation of Disclosure Orders and Protective Orders.

The definition of "personal information" has been added to account for a class of information not found in the administrative record under review by a panel and consists of information produced in respect of a request for an extraordinary challenge committee arising from an allegation under Article 1904.13(a)(i) of the Agreement.

The definition of "pleading" has been amended to remove the Notice of Request for an Extraordinary Challenge Committee and to add the Notice of Motion.

The definition of "proof of service", as it applies to an extraordinary challenge proceeding requested in respect of a panel review of a final determination made in the United States, has been amended to remove acknowledgement of service as an alternative form of proof of service because it is not standard practice in the United States.

The definition of "Protective Order Application" corresponds to an amendment to the *Article 1904 Panel Rules* and has been added to eliminate the need to refer to the form of the application in the body of the *Extraordinary Challenge Committee Rules* or in an attached schedule.

The definition of "service address" has been amended to correspond to an amendment to the *Article 1904 Panel Rules* and has been rephrased to clarify that an address, rather than a facsimile number, is the principal service address.

Rule 5

Rule 5, formerly rule 4, provides for the incorporation of the definitions in Article 1911 of the Agreement into the *Extraordinary Challenge Committee Rules.*

Rules 6 to 8

Rules 6 to 8 consolidate the general rules applicable to all extraordinary challenge proceedings.

Rule 6 provides for the duration of an extraordinary challenge proceeding.

Rule 7, formerly rule 25, indicates which legal principles govern an extraordinary challenge proceeding.

Rule 8, formerly rule 26, gives a committee the discretion to review any portion of the panel record.

Rules 9 and 10

Rules 9 and 10 consolidate the rules for the routine functioning of committees.

Rule 9, formerly rule 14, provides that a committee may adopt rules for its own routine administrative matters.

Rule 10, formerly rule 15, sets out who may participate in the deliberations of a committee.

Rules 11 and 12

Rules 11 and 12 provide for the computation of time.

Rule 11, formerly rule 16, sets out the provisions for computation of time and has been amended to add subrule 11(3), which provides for the computation of time periods of five days or less. This provision was added due to the relatively short period of time within which an extraordinary challenge proceeding typically takes place—30 days from the date of establishment of the committee.

Rule 12, formerly rule 17, gives a committee the discretion to extend time periods, if certain conditions are met.

Rule 13

Rule 13, formerly rule 18, sets out the conditions for a counsel to become counsel of record for a participant in an extraordinary challenge proceeding.

Rule 14

Rule 14, formerly rule 31, provides for the allocation of costs.

Rules 15 to 22

Rules 15 to 22 provide for the protection of non-public information: proprietary information, privileged information and personal information. These rules set out the procedures whereby committee members, their assistants, court reporters and translators, as well as participants in an extraordinary challenge proceeding, may gain access to this non-public information and the conditions which participants must fulfill in order to gain access to this information.

Subrule 15(1), formerly subrule 11(1), provides for the filing with the responsible Secretary of Disclosure Undertakings or Protective Order Applications by committee members, their assistants, court reporters and translators who may require access to documents containing non-public information.

Subrule 15(2) has been added to provide that the responsible Secretary shall file the Disclosure Undertaking or the Protective Order Application with the appropriate investigating authority.

Subrules 15(3) and (4) address the requirements for issuance of a Disclosure Order or Protective Order. Former subrule 11(3) had provided that the person to whom the Disclosure Order or Protective Order was issued would file with the responsible Secretariat the order and the required number of copies. Under new subrule 15(3), the investigating authority issues the appropriate Order and transmit it to the responsible Secretary.

Under subrule 15(4) the responsible Secretary, on receipt of the appropriate Order, transmits that Order to the person named in the Order. The rationale for this amendment was to ensure that the Secretary could act as the conduit for assembling, filing and receipt of Orders for all persons who are not counsel in an extraordinary challenge proceeding.

Rule 16 has been added to correspond to the procedure under subrules 49(2), 49(3) and 49(4) of the *Article 1904 Panel Rules* and provides for the amendment and modification of Disclosure Undertakings and Protective Order Applications and for the amendment, modification or revocation of Disclosure Orders and Protective Orders.

Under subrule 16(1), a committee member, assistant to a committee member, court reporter, or translator provides to the responsible Secretariat a copy of any amendment or modification made to a Disclosure Undertaking or Protective Order Application.

Under subrule 16(2), the responsible Secretary then files the amendment or modification to the Disclosure Undertaking or Protective Order Application with the competent investigating authority.

Under subrule 16(3), the competent investigating authority, as appropriate, amends, modifies or revokes the Disclosure Order or Protective Order and then transmits to the responsible Secretariat the amended or modified Order or the notice of revocation of the Order.

Under subrule 16(4), the responsible Secretary transmits the amended or modified Order or the notice of revocation of the Order to the person named therein.

Rule 17 has been added to correspond to the procedure under subrule 23(d) of the *Article 1904 Panel Rules* for service by the responsible Secretary of Disclosure Orders and Protective Orders, amendments and modifications thereto and notices of revocation thereof.

Rule 18 has been added to correspond to the procedure under rule 48(1) of the *Article 1904 Panel Rules* and provides for the issuance of Disclosure Orders or Protective Orders to new counsel of record or any professional retained by, or under the control of, new counsel of record. A professional retained by counsel refers, for example, to a professional who is retained on a contractual basis. A professional under the control of counsel refers, for example, to an employee of counsel

who is not hired on a contractual basis, but takes direction from counsel.

Subrule 18(1) provides that a new counsel of record or such professional shall file a Disclosure Undertaking or Protective Order Application with the responsible Secretariat and with the competent investigating authority.

Subrule 18(2) provides that the Disclosure Undertaking or Protective Order Application shall be served on all participants. Subrule 18(3) limits the competent investigating authority to 10 days after the filing of the Disclosure Undertaking or Protective Order Application to issue or to transmit reasons for not issuing a Disclosure Order or Protective Order.

Rule 19 has been added to correspond to rule 50 of the *Article 1904 Panel Rules*. Subrule 19(1) provides that counsel may file a notice of motion requesting that a committee review the decision of a competent investigating authority refusing to issue a Disclosure Order or Protective Order to persons named in subrule 18(1) or issuing a Disclosure Order or Protective Order with terms unacceptable to a person named in subrule 18(1).

Subrule 19(2) provides for notice by a committee to counsel and the competent investigating authority where the committee decides that an order should be issued or that the terms of a Disclosure Order or Protective Order should be amended or modified.

Subrule 19(3) provides that if a United States investigating authority fails to comply with a notice of the committee set out in subrule 19(2), the committee may issue such orders as are just in the circumstances.

Rule 20 has been added to correspond to rule 52 of the *Article 1904 Panel Rules* and provides for the amendment, modification or revocation of Disclosure Orders or Protective Orders issued to persons in committee proceedings.

Rule 21, formerly rule 39, sets out conditions under which personal information, filed pursuant to a request for an extraordinary challenge under Article 1904.13(a)(i) of the Agreement, shall be kept confidential.

Rule 22, formerly rule 33, sets out procedures where there have been allegations of violations of the terms of a Disclosure Order or Protective Order.

Rule 23

Rule 23 sets out procedures for giving notice of allegations of violations of the Code of Conduct and has been added to correspond to the amendments to rule 45 of the *Article 1904 Panel Rules*. Rule 23 applies to both committee members and their assistants. Notice of such an allegation must be given forthwith to the responsible Secretary who, in turn, is required to notify promptly the other Secretary and both Parties.

Rules 24 to 27

Rules 24 to 27, formerly rules 27 to 30, provide for the language of pleadings and simultaneous translation of extraordinary challenge proceedings in Canada.

Rule 28

Rule 28, formerly rule 5, provides that all notices required under these rules be given in writing.

Rules 29 to 36

Rules 29 to 36 consolidate the procedures for the filing and service of documents and other communications.

Rule 29 amends former rule 19 to provide that the original plus five copies of a document are to be filed with the responsible Secretariat.

Rule 30, which consolidates former subrules 21(2) and (3) and rule 22, sets out the requirements for service of public documents. Subrule 30(1) sets out which of the documents filed by a participant are required to be served by that participant on the other participants.

Subrule 30(2) sets out three alternative methods of service of the documents set out in subrule 30(1).

Subrule 30(3) provides that proof of service be set out on all documents served under subrule 30(1).

Subrule 30(4) sets out the requirements for establishing the date of service where a document is served by special delivery courier or expedited mail service.

Rules 31 to 35 consolidate former subrule 21(4) and former rules 23, 47, 48 and 50. The new rules provide for the filing and service of documents under seal, *i.e.*, those documents containing personal information, privileged information or proprietary information.

Subrule 31(1), formerly subrule 47(10), provides that the filing and service of documents under seal are required to accord with the procedures set out in this subrule and rule 33.

Subrule 31(2), formerly rule 47(2), provides for the binding, marking and wrapping of documents filed under seal.

Subrule 31(3) provides that the opaque inner wrapper containing documents filed under seal shall be labelled to indicated its contents, *i.e.*, proprietary information, privileged information, or personal information, and the Secretariat file number.

Rule 32, formerly rule 48, provides that the filing and service of documents under seal does not waive the privilege attached to the personal, privileged and proprietary information contained in those documents.

Subrule 33 (1), formerly subrule 50(1), provides for the filing of pleadings containing proprietary information and sets out the method for filing each of the two sets of pleadings required. Subrule 33(2), formerly subrule 50(2), makes similar provisions for privileged information.

Subrules 33(1)(b) and (2)(b) have been amended to allow the filing of pleadings containing non-proprietary and non-privileged information no later than one day after the filing of pleadings containing the proprietary or privileged information.

Subrule 33(3), formerly subrule 50(3), makes similar provisions for personal information and sets out the method for filing the one set of pleadings required.

Rule 34 has been added to provide for restrictions on service of documents under seal. Subrule 34(1) has been added to correspond to subrule 24(4) of the *Article 1904 Panel Rules* and limits service of documents filed under seal to the investigating authority and those participants with Disclosure Orders or Protective Orders.

Subrule 34(2) has been added to provide for service of documents on a participant without a Disclosure Order or Protective Order where that participant submitted the proprietary information contained in those documents.

Subrule 34(3) has been added to limit access to information in documents containing personal information to those persons granted access by order of a committee.

Rule 35, formerly rule 23, provides that persons receiving documents under seal shall not file, serve or otherwise communicate any personal, privileged or proprietary information contained in those documents by facsmile transmission or by telephone.

Rule 36, formerly rule 24, provides that service on an investigating authority is not service on a Party and service on a Party is not service on an investigating authority.

Rule 37

Rule 37 amends former rule 49 and provides for the form and content of pleadings. Subrule 37(1) has been amended to correspond to subrule 58(1) of the *Article 1904 Panel Rules* and sets out the information required in every pleading. Subrule 37(2) has been amended to move the requirement for the binding of briefs to subrule 44(1).

Rules 38 to 40

Rules 38 to 40 provide for requests for extraordinary challenge committees.

Rule 38, which consolidates portions of former rules 34 and 40 and which provides for request for an extraordinary challenge committee, has been amended to reflect the addition of rule 79A to the *Article 1904 Panel Rules*. Rule 79A provides for the issuance of a Notice of Final Panel Action which triggers the running of the time period for filing a Request for an Extraordinary Challenge Committee.

Subrule 38(1), therefore, requires that a Party file a Request for an Extraordinary Challenge Committee referred to in Article 1904.13(a)(ii) or (iii) within 30 days after the issuance, pursuant to rule 79A of the *Article 1904 Panel Rules*, of the Notice of Final Panel Action in the panel review that is the subject of the Request.

Subrule 38(2)(a) requires that a Request for an Extraordinary Challenge Committee referred to in Article 1904.13(a)(i) also be filed within 30 days after the issuance of the Notice of Final Panel Action. Where, however, a Party gains knowledge of the action of the panelist giving rise to the allegation under Article 1904.13(a)(i) more than 30 days after the issuance of a Notice of Final Panel Action, subject to subrule 38(3), subrule 38(2)(b) requires a Party to file the Request no more than 30 days after gaining knowledge of the action of the panelist. There is a limitation, found in subrule 38(3), which states that no Request pertaining to a panelist's action may be filed if two years or more have elapsed since the issuance of the Notice of Completion of Final Panel Review pursuant to rule 80 or 81 of the *Article 1904 Panel Rules*.

Rule 39 consolidates former subrule 35(a) and portions of subrule 40(1) and sets out the information to be contained in a Request for Extraordinary Challenge Committee. Subrule 39(2) has been added to provide that where a Request contains an allegation referred to in Article 1904.13(a)(i) of the Agreement, the identity of the panelist against whom such an allegation is made shall be revealed only in a confidential annex filed together with the Request and shall be disclosed only in accordance with rule 61.

Rule 40, which consolidates former subrule 35(b) and portions of former subrule 40(1), provides for the materials to accompany a Request for Extraordinary Challenge Committee.

Rules 41 and 42

Rules 41 and 42 provide for Notices of Appearance.

Rule 41 consolidates former rules 37 and 42, and sets out the procedure for filing Notices of Appearance in response to a Request for an Extraordinary Challenge Committee.

Subrule 41(1) provides for filing of the Notice and for the information to be contained in the Notice.

Subrules 41 (2) and (3) provide for the submission of documents on the administrative record of the panel review not specified in the Index.

Rule 42, formerly rule 43, provides that where a panelist has made a motion for an *in camera* hearing and has filed documents under seal in support of that motion, and where the committee denies the motion, the panelist is permitted to withdraw those documents.

Rules 43 and 44

Rules 43 and 44 provide for the filing and content of briefs and appendices.

Rule 43, formerly rule 38, provides for the filing of briefs and has been amended to provide for the filing of appendices along with the briefs.

Rule 44, formerly rule 51, sets out the structure and content of briefs.

Subrule 44(1) has been amended to add the requirement for binding of briefs.

Subrule 44(1) has been further amended and subrule 44(3) has been added to clarify the structure and content of a table of authorities.

Rule 45

Rule 45, which amends former rule 52, provides for motions. The new rule clarifies that a committee may dispose of a motion based on the pleadings and that, if there is oral argument, it may be heard by telephone conference call, so long as there is no disclosure of personal, privileged or proprietary information.

Rules 46 to 49

Rules 46 to 49 provide for the conduct of oral proceedings.

Rule 46, which amends former rule 45, provides for orders of a committee on a motion for *in camera* hearings.

Subrule 46(2) has been added to clarify that the responsible Secretary is not to serve documents containing personal information filed by a panelist on a motion for an *in camera* hearing prior to the time for withdrawal by the panelist of documents filed under seal on the motion.

Rule 47, formerly rule 46, provides that a committee may decide the procedure to be followed in an extraordinary challenge proceeding.

Rule 48, formerly rule 53, provides that oral argument in a committee proceeding is at the discretion of the committee.

Rule 49, formerly rule 54, provides for oral proceedings *in camera*.

Rules 50 to 61

Rules 50 to 61 consolidate and, by amendment, clarify the responsibilities of the Secretary.

Rule 50 has been added to correspond to rule 8 of the *Article 1904 Panel Rules*, which sets out the business hours of the Secretariat.

Rule 51, formerly rule 32, provides guidance to the Secretary as to who is to receive notice on completion of the selection of the members of a committee.

Rule 52, formerly rule 7, sets out the administrative support to be provided by the Secretary. The new rule removes the requirement that the Secretary should make arrangements for simultaneous translation because such a service is included in the term "administrative support".

Rule 53, formerly rule 8, specifies that each Secretary shall maintain a file of all documents filed in each extraordinary challenge, whether or not a document was filed in accordance with these rules, reflecting that the Secretaries do not have any discretion to reject a document that is submitted for filing. The issue of whether a document is properly filed is for the committee to determine.

Rule 54, formerly rule 9, provides for the forwarding of documents from the responsible Secretary to the other Secretary.

Rule 55, which amends former rule 10, provides for the publication of documents. Under the new rule, both Secretaries cause a document to be published. The provision in the former rule for forwarding a document from one Secretary to the other has been removed because it is part of the Secretary's administrative practice.

Rule 56, formerly rule 12, provides for the storage, wrapping, handling and access to documents filed with the Secretary, which contain personal, privileged or proprietary information. The term "storage" has been expanded to include storage, maintenance, handling and distribution of documents.

Rule 57, formerly subrule 13(3), provides for removal from the Secretary's office of documents filed in an extraordinary challenge proceeding.

Subrule 58(1), formerly part of subrule 13(1), provides for access to information in the file of an extraordinary challenge proceeding that is not personal, privileged or proprietary.

Subrule 58(3), formerly part of subrule 13(1), sets out the procedure for providing copies of information to persons who have been given access to the information.

Rule 59 amends former rules 20, 26 and 41 and sets out the responsibilities of the Secretary for the forwarding and service of documents, orders and decisions. Subrules 59(1) and (2) provide for the forwarding and service of documents upon the filing of a Request for Extraordinary Challenge Committee.

Subrules 59(3) and (4) provide for the service of orders and decisions of a committee and of Notices of Completion of Extraordinary Challenges.

Rule 60, formerly rule 56, provides for publication of the final decisions and orders of a committee.

Rule 61

Rule 61, formerly rule 44, provides for the service of documents in cases where the time period fixed for filing a motion by a panelist for an *in camera* hearing has expired.

Rules 62 to 64

Rules 62 to 64 set out procedures on orders and decisions of a committee.

Rule 62, formerly rule 55, provides that all committee orders and decisions require a majority vote.

Rule 63, which amends former rule 57, provides for Notices of Motion requesting dismissal.

Subrule 63(1) provides that a committee may terminate an extraordinary challenge proceeding where a motion requesting dismissal of the proceeding has been filed.

Subrule 63(2) has been amended to remove the requirement for an order of the committee where termination is by consent of all participants. The subrule now provides that an extraordinary challenge proceeding is terminated when all participants consent to dismissal and an affidavit to that effect is filed.

Rule 64, formerly rule 58, sets out three alternative actions which a committee may take on a final decision. The rule has been amended to include the possibility of a remand in a proceeding based on a Request for Extraordinary Challenge Committee filed under Article 1904.13(a)(i) of the Agreement.

Rules 65 to 67

Rules 65 to 67 provide for the completion of extraordinary challenge proceedings.

Rule 65 amends former rule 59 to provide that publication of a Notice of Termination on termination of an extraordinary challenge proceeding by consent occurs on the day after the day on which all requirements under subrule 63(2) are met, given that termination on consent no longer requires issuance of an order by the committee.

Rule 66, formerly rule 60, provides for publication of a Notice of Completion of Extraordinary Challenge on issuance of a final decision by a committee.

Subrule 60(c) has been amended to provide that on remand to a panel, it is the Secretary, not the panel as in the former rule, who gives notice to the committee that the panel has taken action not inconsistent with the decision of the committee.

Rule 67, formerly rule 61, provides for discharge of committee members.

United States-Canada Free Trade Agreement Rules of Procedure for Article 1904 Extraordinary Challenge Committees

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Preamble

The Parties,

Having regard to Chapter Nineteen of the Free Trade Agreement between Canada and the United States of America;

Acting pursuant to paragraph 2 of Annex 1904.13 to Chapter Nineteen of the Agreement;

Adopted Rules of Procedure governing all extraordinary challenge committee proceedings conducted pursuant to Article 1904 of the Agreement;

Adopt the following amended Rules of Procedure, effective on the date of publication in the **Federal Register**, which from that day shall govern all extraordinary challenge committee proceedings conducted pursuant to Article 1904 of the Agreement.

Short Title

1. These rules may be cited as the *Extraordinary Challenge Committee Rules.*

Application

2. These rules apply to any proceeding in which a Request for an Extraordinary Challenge Committee is filed in respect of a panel review made pursuant to Article 1904 of the Agreement.

Statement of General Intent

3. These rules are intended to give effect to the provisions of Chapter Nineteen of the Agreement with respect to extraordinary challenges conducted pursuant to Article 1904 of the Agreement and are designed to result in decisions typically within 30 days after the establishment of the committee. Where a procedural question arises that is not covered by these rules, a committee may adopt an appropriate procedure that is not inconsistent with the Agreement. In the event of any ambiguity or inconsistency between the provisions of these Rules and the Agreement, the Agreement shall prevail.

Interpretation

4. In these rules,

"Agreement" means the Free Trade Agreement between Canada and the United States of America, signed on January 2, 1988;

"Code of Conduct" means the code of conduct established by the Parties pursuant to Article 1910 of the Agreement;

"committee" means an extraordinary challenge committee established pursuant to Annex 1904.13 to Chapter Nineteen of the Agreement;

"counsel" means

(a) with respect to an extraordinary challenge of a final determination made in the United States, a person entitled to appear as counsel before a federal court in the United States; and

(b) with respect to an extraordinary challenge of a final determination made in Canada, a person entitled to appear as counsel before the Federal Court of Canada;

"Counsel of record" means a counsel referred to in subrule 13(1);

"Deputy Minister" means the Deputy Minister of National Revenue for

Customs and Excise, or the successor thereto, and includes any person authorized to perform a power, duty or function of the Deputy Minister under the *Special Import Measures Act*, as amended;

"Disclosure Undertaking" means an undertaking, in the prescribed form, which form—

(a) in respect of a review of a final determination by the Deputy Minister, is available from the Deputy Minister, and

(b) in respect of a review of a final determination by the Tribunal, is available from the Tribunal;

"final determination" means, in the case of Canada, a definitive decision within the meaning of subsection 77.1(1) of the *Special Import Measures Act*, as amended;

"investigating authority" means the competent investigating authority that issued the final determination that was the subject of the panel review to which an extraordinary challenge relates and includes, in respect of the issuance, amendment, modification or revocation of a Disclosure Order or Protective Order, any person authorized by the investigating authority;

"legal holiday" means—

(a) with respect to the United States Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), Presidents' Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any other day designated as a holiday by the President or the Congress of the United States and any day on which the offices of the Government of the United States located in the District of Columbia are officially closed in whole or in part, and

(b) with respect to the Canadian Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day, Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by the province in which the Section is located and any day on which the offices of the Canadian Section of the Secretariat are officially closed in whole or in part;

"panel" means a binational panel established pursuant to Annex 1901.2 to Chapter Nineteen of the Agreement, the decision of which is the subject of an extraordinary challenge;

"participant" means a Party who files a Request for an Extraordinary Challenge Committee or any of the following persons who files a Notice of Appearance pursuant to these rules:

(a) the other Party,

(b) a person who participated in the panel review that is the subject of the extraordinary challenge, and

(c) a panelist against whom an allegation referred to in Article 1904.13(a)(i) of the Agreement is made;

"Party" means the Government of Canada or the Government of the United States;

"person" means:

(a) an individual,

(b) a Party,

(c) an investigating authority,

(d) a government of a province, state or other political subdivision of the country of a Party,

(e) a department, agency or body of a Party or of a government referred to in paragraph (d), or

(f) a partnership, corporation or association;

"personal information" means, with respect to an extraordinary challenge proceeding in which an allegation is made that a member of the panel was guilty of gross misconduct, bias or a serious conflict of interest or otherwise materially violated the rules of conduct, the information referred to in subrule 40(2) and rule 42;

"pleading" means a Request for an Extraordinary Challenge Committee, a Notice of Appearance, a Change of Service Address, a Notice of Change of Counsel of Record, a Notice of Motion, a brief or any other written submission filed by a participant;

"privileged information" means:

(a) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States and with respect to which the privilege has not been waived, and

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, information of the investigating authority that is subject to solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, with respect to which the privilege has not been waived;

"proof of service" means:

(a) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, a certificate of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service, and

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Canada,

(i) an affidavit of service stating the name of the person who served the document, the date on which it was served, where it was served and the manner of service, or

(ii) a written acknowledgement of service by counsel for a participant stating the name of the person who served the document, the date on which it was served and the manner of service and, where the acknowledgement is signed by a person other than the counsel, the name of that person followed by a statement that the person is signing as agent for the counsel;

"proprietary information" means:

(a) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, business proprietary information under the laws of the United States, and

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, information that was accepted by the Deputy Minister or the Tribunal as confidential in the proceedings before the Deputy Minister or the Tribunal and with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information;

"Protective Order Application" means an application,

(a) in respect of a review of a final determination by the International Trade Administration of the United States Department of Commerce, in a form prescribed by, and available from, the International Trade Administration of the United States Department of Commerce; and

(b) in respect of a review of a final determination by the United States International Trade Commission, in a form prescribed by, and available from, the United States International Trade Commission;

"responsible Secretariat" means, with respect to an extraordinary challenge of a panel review, the section of the Secretariat located in the country in which the final determination reviewed by the panel was made;

"responsible Secretary" means the Secretary of the responsible Secretariat;

"Secretariat" means the Secretariat established pursuant to Article 1909 of the Agreement;

"Secretary" means the Secretary of the United States Section or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of a Secretary;

"service address" means

(a) with respect to a Party or panelist, the address filed with the Secretariat as the service address of the Party or panelist, including any facsimile number submitted with that address,

(b) with respect to a participant other than a Party or panelist, the service address of the participant in the panel review, or

(c) where a Change of Service Address has been filed by a participant, the new address set out as the service address of the participant in that form, including any facsimile number submitted with that address;

"Tribunal" means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf.

5. The definitions set forth in Article 1911 of the Agreement are hereby incorporated into these rules.

Part I—General

6. An extraordinary challenge proceeding commences on the day on which a Request for an Extraordinary Challenge Committee is filed with the Secretariat and terminates on the day on which a Notice of Completion of Extraordinary Challenge is effective.

7. The general legal principles of the country in which a final determination was made apply in an extraordinary challenge of the decision of a panel with respect to the final determination.

8. A committee may review any part of the record of the panel review relevant to the extraordinary challenge.

Internal Functioning of Committees

9. (1) For routine administrative matters governing its own internal functioning, a committee may adopt procedures not inconsistent with these rules or the Agreement.

(2) Subject to subrule 35(b), meetings of a committee may be conducted by means of a telephone conference call.

10. Only committee members may take part in the deliberations of a committee, which shall take place in private and remain secret. Staff of the Secretariat and assistants to committee members may be present by permission of the committee.

Computation of Time

11. (1) In computing any time period fixed in these rules or by an order or decision of a committee, the day from which the time period begins to run shall be excluded and, subject to subrules (2) and (3), the last day of the time period shall be included.

(2) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

(3) In computing any time period of five days or less fixed in these rules or by an order or decision of a committee, any legal holiday that falls within the time period shall be excluded from the computation.

12. A committee may extend any time period fixed in these rules if

(a) the extension is made in the interests of fairness and justice; and

(b) in fixing the extension, the committee takes into account the intent of the rules to secure just, speedy and inexpensive final resolutions of challenges of decisions of panels.

Counsel of Record

13. (1) Subject to subrule (2), the counsel of record for a participant in an extraordinary challenge proceeding shall be

(a) the counsel for the participant in the panel review; or

(b) in the case of a Party who was not a participant in the panel review or of a panelist, the counsel who signs any document filed on behalf of the Party or panelist in the extraordinary challenge proceeding.

(2) A participant may change its counsel of record by filing with the responsible Secretariat a Notice of Change of Counsel of Record signed by the new counsel, together with proof of service on the former counsel and other participants.

Costs

14. Each participant shall bear the costs of, and incidental to, its own participation in an extraordinary challenge proceeding.

Protection of Non-Public Information

15. (1) Where proprietary information has been filed in a panel review that is the subject of an extraordinary challenge proceeding, every member of a committee, assistant to a committee member, court reporter and translator shall provide the responsible Secretariat with a Disclosure Undertaking or a Protective Order Application.

(2) Upon receipt of a Disclosure Undertaking or Protective Order Application, the responsible Secretary shall file with the appropriate investigating authority the Disclosure Undertaking or Protective Order Application and any additional copies of those documents required by the investigating authority.

(3) The investigating authority shall, if appropriate, issue the Disclosure Order or Protective Order and provide the responsible Secretariat with the original and any additional copies of those documents required by the responsible Secretariat.

(4) Upon receipt of a Disclosure Order or Protective Order, the responsible Secretary shall transmit the original Disclosure Order or Protective Order to the appropriate member of a committee, assistant to a committee member, court reporter or translator.

16. (1) A member of a committee, assistant to a committee member, court reporter or translator who amends or modifies a Disclosure Undertaking or Protective Order Application shall provide a copy of the amendment or modification to the responsible Secretariat.

(2) Upon receipt of an amended or modified Disclosure Undertaking or Protective Order Application, the responsible Secretary shall file with the appropriate investigating authority that document and any additional copies of that document required by the investigating authority.

(3) Upon receipt of an amended or modified Disclosure Undertaking or Protective Order Application, the investigating authority shall, as appropriate, amend, modify or revoke the Disclosure Order or Protective Order and provide the responsible Secretariat with the original of the amendment, modification or notice of revocation and any additional copies of the document required by the responsible Secretariat.

(4) Upon receipt of an amended or modified Disclosure Order or Protective Order or a notice of revocation, the responsible Secretary shall transmit the amended or modified Disclosure Order or Protective Order or the notice of revocation to the appropriate member of a committee, assistant to a committee member, court reporter or translator.

17. The responsible Secretary shall serve Disclosure Orders and Protective Orders granted to members of a committee, assistants to committee members, court reporters or translators, and any amendments or modifications thereto or notices of revocation thereof, on all participants other than the investigating authority.

18. (1) A counsel of record, or a professional retained by, or under the control or direction of, a counsel of record, who has not been issued a

Disclosure Order or Protective Order in the panel review or in these proceedings and who wishes disclosure of proprietary information in the file of an extraordinary challenge proceeding, shall file a Disclosure Undertaking or a Protective Order Application, as follows:

(a) with the responsible Secretariat, four copies; and

(b) with the investigating authority, one original and any additional copies that the investigating authority requires.

(2) A Disclosure Undertaking or Protective Order Application referred to in subrule (1) shall be served on all participants.

(3) The investigating authority shall, within 10 days after a Disclosure Undertaking or Protective Order Application is filed with it in accordance with subrule (1), serve on the person who filed the Disclosure Undertaking or Protective Order Application

(a) a Disclosure Order or Protective Order; or

(b) a notification in writing setting out the reasons why a Disclosure Order or Protective Order is not issued.

19. (1) Where

(a) the investigating authority refuses to issue a Disclosure Order or Protective Order to a counsel of record or to a professional retained by, or under the control or direction of, a counsel of record, or

(b) the investigating authority issues a Disclosure Order or Protective Order with terms unacceptable to a counsel of record, the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the committee review the decision of the investigating authority.

(2) Where, after consideration of any response made by the investigating authority referred to in subrule (1), the committee decides that a Disclosure Order or Protective Order should be issued or that the terms of a Disclosure Order or Protective Order should be amended or modified, the committee shall so notify counsel for the investigating authority.

(3) Where the final determination was made in the United States and the investigating authority fails to comply with the notification referred to in subrule (2), the committee may issue such orders as are just in the circumstances, including an order refusing to permit the investigating authority to make certain arguments in support of its case or striking certain arguments from its pleadings.

20. (1) Where a Disclosure Order or Protective Order is issued to a person in an extraordinary challenge proceeding, the person shall file with the responsible Secretariat a copy of the Disclosure Order or Protective Order.

(2) Where a Disclosure Order or Protective Order is revoked, amended or modified by an investigating authority, the investigating authority shall provide to the responsible Secretariat and to all participants a copy of the Notice of Revocation, amendment or modification.

21. In an extraordinary challenge proceeding that commences with a Request for an Extraordinary Challenge Committee pursuant to Article 1904.13(a)(i) of the Agreement, personal information shall be kept confidential

(a) where a Notice of Motion is filed pursuant to subrule 42(1)(c),

(i) until the committee makes an order referred to in subrule 46(1)(a), or

(ii) where the committee makes an order referred to in subrule 46(1)(b), indefinitely, unless otherwise ordered by the committee; and

(b) in any other case, until the day after the expiration of the time period fixed, pursuant to rule 42, for filing a Notice of Motion referred to in subrule 42(1)(c).

22. Where a person alleges that the terms of a Disclosure Undertaking or Protective Order have been violated, the committee shall refer the allegations to the investigating authority for investigation and, where applicable, the imposition of sanctions in accordance with section 77.26 of the *Special Import Measures Act*, as amended, or section 777(f) of the *Tariff Act of 1930*, as amended.

Violation of Code of Conduct

23. Where a participant believes that a committee member or an assistant to a committee member is in violation of the Code of Conduct, the participant shall forthwith notify the responsible Secretary in writing of the alleged violation. The responsible Secretary shall promptly notify the other Secretary and the Parties of the allegations.

Pleadings and Simultaneous Translation of Extraordinary Challenge Proceedings in Canada

24. Rules 25 to 27 apply with respect to an extraordinary challenge of a panel review of a final determination made in Canada.

25. Either English or French may be used by any person, panelist or member of a committee in any document or oral proceeding.

26. (1) Subject to subrule (2), any order or decision including the reasons therefor, issued by a committee shall be made available simultaneously in both English and French where

(a) in the opinion of the committee, the order or decision is in respect of a question of law of general public interest or importance; or

(b) the proceedings leading to the issuance of the order or decision were conducted in whole or in part in both English and French.

(2) Where

(a) an order or decision issued by a committee is not required by subrule (1) to be made available simultaneously in English and French, or

(b) an order or decision is required by subrule (1)(a) to be made available simultaneously in both English and French but the committee is of the opinion that to make the order or decision available simultaneously in both English and French would occasion a delay prejudicial to the public interest or result in injustice or hardship to any participant, the order or decision, including the reasons therefor, shall be issued in the first instance in either English or French and thereafter at the earliest possible time in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subrule (1) or (2) shall be construed as prohibiting the oral delivery in either English or French of any order or decision or any reasons therefor.

(4) No order or decision is invalid by reason only that it was not made or issued in both English and French.

27. (1) Any oral proceeding conducted in both English and French shall be translated simultaneously.

(2) Where a participant requests simultaneous translation of an extraordinary challenge proceeding, the request shall be made as early as possible in the proceedings.

(3) Where a committee is of the opinion that there is a public interest in the extraordinary challenge proceedings the committee may direct the responsible Secretary to arrange for simultaneous translation of the oral proceedings, if any.

Part II—Written Proceedings

28. Where these rules require that notice be given, it shall be given in writing.

Filing, Service and Communications

29. No document is filed with the Secretariat until one original and five copies of the document are received by the responsible Secretariat during its normal business hours and within the time period fixed for filing.

30. (1) All documents filed by a participant, other than documents

required by rule 59 to be served by the responsible Secretary and documents referred to in subrule 39(2), rule 40, subrule 41(2)(a) and rule 42 shall be served by the participant on the counsel of record of each of the other participants or, where another participant is not represented by counsel, on the other participant.

(2) Subject to subrules 35(a) and 59(4), a document may be served by

(a) delivering a copy of the document to the service address of the participant;

(b) sending a copy of the document to the service address of the participant by facsimile transmission or by an expedited delivery courier or expedited mail service, such as express mail in the United States or Priority Post in Canada; or

(c) personal service on the participant.

(3) A proof of service shall appear on, or be affixed to, all documents referred to in subrule (1).

(4) Where a document is served by an expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the courier service or expedited mail service.

31. (1) Where, under these rules, a document containing proprietary information, privileged information or personal information is required to be filed under seal with the Secretariat or is required to be served under seal, the document shall be filed or served in accordance with this rule and, where applicable, in accordance with rule 33.

(2) A document filed or served under seal shall be

(a) bound separately from all other documents;

(b) clearly marked

(i) in the case of a document containing proprietary information, "Proprietary" or "Confidential",

(ii) in the case of a document containing privileged information, "Privileged", and

(iii) in the case of a document containing personal information, "Personal Information"; and

(c) contained in an opaque inner wrapper and an opaque outer wrapper.

(3) An inner wrapper referred to in subrule (2)(c) shall indicate

(a) that proprietary information, privileged information or personal information is enclosed, as the case may be; and

(b) the Secretariat file number of the extraordinary challenge proceeding.

32. Filing or service of proprietary information, privileged information or personal information with the Secretariat does not constitute a waiver of the designation of the information as proprietary information, privileged information or personal information.

33. (1) Where a participant files a pleading that contains proprietary information, the participant shall file two sets of the pleading in the following manner:

(a) one set shall be filed under seal, containing the proprietary information and labelled "Proprietary" or "Confidential", with the top of each page that contains proprietary information marked with the word "Proprietary" or "Confidential" and with the proprietary information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing proprietary information shall be filed and labelled "Non-Proprietary" or "Non-Confidential", with each page from which proprietary information has been deleted marked to indicate the location from which the proprietary information was deleted.

(2) Where a participant files a pleading that contains privileged information, the participant shall file two sets of the pleading in the following manner:

(a) one set shall be filed under seal, containing the privileged information and labelled "Privileged", with the top of each page that contains privileged information marked with the word "Privileged" and with the privileged information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing privileged information shall be filed and labelled "Non-Privileged", with each page from which privileged information has been deleted marked to indicate the location from which the privileged information was deleted.

(3) Where a participant files a pleading that contains personal information, the pleading shall be filed under seal and labelled "Personal Information".

34. (1) Subject to subrule (2), a document containing proprietary or privileged information shall be filed under seal in accordance with rule 31 and shall be served only on the investigating authority and on those participants who have been granted access to the information under a Disclosure Order or Protective Order.

(2) Where all proprietary information contained in a document was submitted to the investigating authority by one participant, the document shall be served on that participant even if that participant has not been granted access to proprietary information under a Disclosure Order or Protective Order.

(3) A document containing personal information shall be filed under seal in accordance with rule 31 and shall be served only on persons or participants who have been granted access to the information under an order of the committee.

35. Where proprietary information, privileged information or personal information is disclosed to a person in an extraordinary challenge proceeding, the person shall not

(a) file, serve or otherwise communicate the information by facsimile transmission; or

(b) communicate the information by telephone.

36. Service on an investigating authority does not constitute service on a Party and service on a Party does not constitute service on an investigating authority.

Form and Content of Pleadings

37. (1) Every pleading filed in an extraordinary challenge proceeding shall contain the following information:

(a) the title of, and any Secretariat file number assigned for, the extraordinary challenge proceeding;

(b) a brief descriptive title of the pleading;

(c) the name of the participant filing the pleading;

(d) the name of counsel of record for the participant;

(e) the service address, as defined in rule 4; and

(f) the telephone number of the counsel of record of the participant or, where the participant is not represented by counsel, the telephone number of the participant.

(2) Every pleading filed in an extraordinary challenge proceeding shall be on paper 8½ x 11 inches (216 millimetres by 279 millimetres) in size. The text of the pleading shall be printed, typewritten or reproduced legibly on one side only with a margin of approximately 1½ inches (40 millimetres) on the left-hand side with double spacing between each line of text, except for quotations of more than 50 words, which shall be indented and single-spaced. Footnotes, titles, schedules, tables, graphs and columns of figures shall be presented in a readable form.

(3) Every pleading filed on behalf of a participant in an extraordinary challenge proceeding shall be signed by counsel for the participant or, where the participant is not represented by counsel, by the participant.

Request for an Extraordinary Challenge Committee

38. (1) Where a Party, in its discretion, files with the responsible Secretary a Request for an Extraordinary Challenge Committee referred to in Article 1904.13(a)(ii) or (iii) of the Agreement, the Party shall file the Request within 30 days after the issuance, pursuant to rule 79A of the *Article 1904 Panel Rules,* of the Notice of Final Panel Action in the panel review that is the subject of the Request.

(2) Where a Party, in its discretion, files with the responsible Secretary a Request for an Extraordinary Challenge Committee referred to in Article 1904.13(a)(i) of the Agreement, the Party shall file the Request

(a) within 30 days after the issuance, pursuant to rule 79A of the *Article 1904 Panel Rules,* of the Notice of Final Panel Action in the panel review that is the subject of the Request; or

(b) subject to subrule (3), where the Party gained knowledge of the action of the panelist giving rise to the allegation more than 30 days after the issuance of a Notice of Final Panel Action, no more than 30 days after gaining knowledge of the action of the panelist.

(3) No Request for an Extraordinary Challenge Committee referred to in subrule (2)(b) may be filed if two years or more have elapsed since the effective date of the Notice of Completion of Panel Review pursuant to rule 80 or 81 of the *Article 1904 Panel Rules.*

39. (1) Subject to subrule (2), every Request for an Extraordinary Challenge Committee (model form provided in the Schedule) shall be in writing and shall

(a) include a concise statement of the allegations relied on, together with a concise statement of how the actions alleged have materially affected the panel's decision and the way in which the integrity of the panel review process is threatened;

(b) contain the name of the Party in the panel review, name of counsel, service address and telephone number; and

(c) where the panel decision was made in Canada, state whether the Party filing the Request for an Extraordinary Challenge Committee

(i) intends to use English or French in pleadings and oral proceedings before the committee, and

(ii) requests simultaneous translation of any oral proceedings.

(2) Where a Request contains an allegation referred to in Article 1904.13(a)(i) of the Agreement, the identity of the panelist against whom such an allegation is made shall be revealed only in a confidential annex filed together with the Request and shall be disclosed only in accordance with rule 61.

40. (1) Every Request for an Extraordinary Challenge Committee shall be accompanied by

(a) those items of the record of the panel review relevant to the allegations contained in the Request; and

(b) an Index of the items referred to in subrule (a).

(2) Where a Request contains an allegation referred to in Article 1904.13(a)(i) of the Agreement, the Request shall be accompanied by, in addition to the requirements of subrule (1),

(a) any other material relevant to the allegations contained in the Request; and

(b) if the Request is filed more than 30 days after the panel issued a Notice of Final Panel Action pursuant to rule 79A of the *Article 1904 Panel Rules,* an affidavit certifying that the Party gained knowledge of the action of the panelist giving rise to the allegation no more than 30 days preceding the filing of the Request.

Notice of Appearance

41. (1) Within 10 days after the Request for an Extraordinary Challenge Committee is filed, a Party or participant in the panel review who proposes to participate in the extraordinary challenge proceeding shall file with the responsible Secretariat a Notice of Appearance (model form provided in the Schedule) containing the following information:

(a) the name of the Party or participant, name of counsel, service address and telephone number;

(b) a statement as to whether appearance is made

(i) in support of the Request, or

(ii) in opposition to the Request; and

(c) where the extraordinary challenge is in respect of a panel review of a final determination made in Canada, a statement as to whether the person filing the Notice of Appearance

(i) intends to use English or French in pleadings and oral proceedings before the committee, and

(ii) requests simultaneous translation of any oral proceedings.

(2) Where a Party or participant referred to in subrule (1) proposes to rely on a document in the record of the panel review that is not specified in the Index filed with the Request for an Extraordinary Challenge Committee, the Party or participant shall file, with the Notice of Appearance,

(a) the document; and

(b) a statement identifying the document and requesting its inclusion in the extraordinary challenge record.

(3) On receipt of a document referred to in subrule (2), the responsible Secretary shall include the document in the extraordinary challenge record.

42. (1) Within 10 days after a Request for an Extraordinary Challenge Committee referred to in Article 1904.13(a)(i) of the Agreement is filed, a panelist against whom an allegation contained in the Request is made and who proposes to participate in the extraordinary challenge proceeding:

(a) shall file a Notice of Appearance;

(b) may file, under seal, documents to be included in the extraordinary challenge record relevant to the panelist's defense against the allegation; and

(c) may file an *ex parte* motion requesting that the extraordinary challenge proceeding be conducted in camera.

(2) Where a committee issues an order pursuant to subrule 46(1)(a), a panelist who filed documents described in subrule (1)(b) may, within 5 days after issuance of the order, withdraw any of those documents.

(3) Where a panelist withdraws documents pursuant to subrule (2), the committee shall not consider those documents.

Filing and Content of Briefs and Appendices

43. (1) All briefs shall be filed within 21 days after the Request for an Extraordinary Challenge Committee is filed and shall be in the form required by rule 44.

(2) Appendices shall be filed with the briefs.

44. (1) Briefs and appendices shall be securely bound along the left-hand margin. Briefs shall contain information, in the following order, divided into five parts:

Part I:

(a) A table of contents; and

(b) A table of authorities:

The table of authorities shall arrange the cases alphabetically, refer to the page(s) of the brief where each authority is cited and mark, with an asterisk in the margin, those authorities primarily relied upon.

Part II: A statement of the case:

This part shall contain a concise statement of the relevant facts with references to the panel record by page and, where applicable, by line.

Part III: A statement of the issues:

(a) In the brief of a Party that files a Request, this part shall contain a concise statement of the issues; and

(b) In the brief of any other participant, this part shall contain a concise statement of the position of the participant with respect to the issues.

Part IV: Argument:

This part shall consist of the argument, setting out concisely the points of law relating to the issues, with applicable citations to authorities and the panel record.

Part V: Relief:

This part shall consist of a concise statement precisely identifying the relief requested.

(2) Paragraphs in Parts I to V of a brief may be numbered consecutively.

(3) Authorities referred to in the briefs shall be included in an appendix, which shall be organized as follows: a table of contents, copies of all treaty and statutory references, references to regulations, cases primarily relied on in the briefs, set out alphabetically, all documents relied on from the panel record and all other materials relied on.

Motions

45. (1) Motions, other than motions referred to in subrule 42(1)(c), may be considered at the discretion of the committee (model form provided in the Schedule).

(2) A committee may dispose of a motion based upon the pleadings filed on the motion.

(3) A committee may hear oral argument in person or, subject to subrule 35(b), direct that a motion be heard by means of a telephone conference call with the participants.

Part III—Conduct of Oral Procedings

46. (1) The order of a committee on a motion referred to in subrule 42(1)(c) shall set out

(a) that the proceedings shall not be held *in camera*; or

(b) that the proceedings shall be held *in camera* and

(i) that all the participants shall keep confidential all information received with respect to the extraordinary challenge proceeding and shall use the information solely for the purposes of the proceeding, and

(ii) which documents containing personal information the responsible Secretary shall serve under seal and on whom the documents shall be served.

(2) The responsible Secretary shall not serve any documents containing personal information until the time period for withdrawal of any documents pursuant to subrule 42(2) has expired.

47. A committee may decide the procedures to be followed in the extraordinary challenge proceeding and may, for that purpose, hold a pre-hearing conference to determine such matters as the presentation of evidence and of oral argument.

48. The decision as to whether oral argument will be heard shall be in the discretion of the committee.

Oral Proceedings in Camera

49. During that part of oral proceedings in which proprietary information or privileged information is presented, a committee shall not permit any person other than the following persons to be present:

(a) the person presenting the proprietary information or privileged information;

(b) a person who has been granted access to the proprietary information or privileged information;

(c) in the case of privileged information, a person as to whom the confidentiality of the privileged information has been waived; and

(d) officials of, and counsel for, the investigating authority.

Part IV—Responsibilities of the Secretary

50. The normal business hours of the Secretariat, during which the offices of the Secretariat shall be open to the public, shall be from 9 a.m. to 5 p.m. on each weekday other than

(a) in the case of the United States Section of the Secretariat, legal holidays of that Section; and

(b) in the case of the Canadian Section of the Secretariat, legal holidays of that Section.

51. On the completion of the selection of the members of a committee, the responsible Secretary shall notify the participants and the other Secretary of the names of the members of the committee.

52. The responsible Secretary shall provide administrative support for each extraordinary challenge proceeding and shall make the arrangements necessary for meetings and any oral proceedings.

53. Each Secretary shall maintain a file for each extraordinary challenge, comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these rules. All documents filed shall be stamped by the Secretariat to show the date and time of receipt.

54. The responsible Secretary shall forward to the other Secretary a copy of all documents filed with the responsible Secretary and of all orders and decisions issued by a committee.

55. Where under these rules a notice or other document is required to be published in the *Canada Gazette* and the **Federal Register**, the responsible Secretary and the other Secretary shall each cause the document to be published in the publication of the country in which that section of the Secretariat is located.

56. (1) Where a document containing proprietary information or privileged information is filed with the responsible Secretariat, each Secretary shall ensure that

(a) the document is stored, maintained, handled, and distributed in accordance with the terms of an applicable Disclosure Order or Protective Order; and

(b) access to the document is limited to

(i) in the case of proprietary information, officials of, and counsel for, the investigating authority, the person who submitted the proprietary information to the investigating authority and counsel of record for that person, and any persons who have been granted access to the information under a Disclosure Order or Protective Order, and

(ii) in the case of privileged information relied upon in an extraordinary challenge of a decision of a panel with respect to a final determination made in the United States, committee members and their assistants and persons with respect to whom the panel ordered disclosure of the privileged information under rule 55 of the *Article 1904 Panel Rules*, if those persons have filed with the responsible Secretariat a Protective Order with respect to the document.

(2) Where a document containing personal information is filed with the Secretariat; each Secretary shall ensure that

(a) the document is stored, maintained, handled, and distributed in accordance with the terms of any applicable Disclosure Order or of Protective Order; and

(b) access to the document is limited to persons granted access to the information pursuant to subrule 46(1)(b).

57. No document filed in an extraordinary challenge proceeding shall be removed from the offices of the Secretariat except in the ordinary course of the business of the Secretariat or pursuant to the direction of a committee.

58. (1) Each Secretary shall permit access by any person to information in the file of an extraordinary challenge proceeding that is not proprietary information, privileged information or personal information.

(2) Each Secretary shall, in accordance with the terms of any applicable Disclosure Order, Protective Order or order of a panel or committee, permit access to proprietary information, privileged information or personal information in the file of an extraordinary challenge proceeding.

(3) Each Secretary shall, on request and on payment of the prescribed fee,

provide copies of information in the file of an extraordinary challenge proceeding to any person who has been given access to that information.

59. (1) Where a Request for an Extraordinary Challenge Committee pursuant to Article 1904.13(a)(ii) or (iii) of the Agreement is filed with the responsible Secretariat, the responsible Secretary shall, upon receipt thereof,

(a) forward a copy of the Request and Index to the other Secretary; and

(b) serve a copy of the Request and Index on the other Party and on the participants in the panel review, together with a statement setting out the date on which the Request was filed and stating that all briefs shall be filed within 21 days of the date of filing of the Request.

(2) Where a Request for an Extraordinary Challenge Committee pursuant to Article 1904.13(a)(i) of the Agreement is filed, the responsible Secretary shall, upon receipt thereof,

(a) forward a copy of the Request, Index and annex to the other Secretary; and

(b) serve a copy of the Request, Index and annex on the other Party, on the panelist against whom the allegation contained in the Request is made and on the participants in the panel review.

(3) The responsible Secretary shall serve orders and decisions of a committee and Notices of Completion of Extraordinary Challenge on the participants.

(4) Where the decision of a committee referred to in subrule (3) relates to a panel review of a final determination made in Canada, the decision shall be served by registered mail.

60. The responsible Secretary shall cause notice of a final decision of a committee issued pursuant to rule 64, and any order that the committee directs the Secretary to publish, to be published in the *Canada Gazette* and the **Federal Register**.

61. Where the time period fixed, pursuant to rule 42, for filing an *ex parte* motion referred to in subrule 42(1)(c) has expired, the responsible Secretary shall serve on all participants.

(a) where no motion is filed pursuant to that subrule, the documents referred to in rules 40 and 42;

(b) where the committee issues an order referred to in subrule 46(1)(a), the documents referred to in rules 40 and 42 in accordance with any order of the committee; and

(c) where the committee issues an order referred to in subrule 46(1)(b), the documents referred to in rules 40 and 42, in accordance with subrule 46(1)(b)(ii) and any order made by the committee.

Part V—Orders and Decisions

62. All orders and decisions of a committee shall be made by a majority of the votes of all members of the committee.

63. (1) Where a Notice of Motion requesting dismissal of an extraordinary challenge proceeding is filed by a participant, the committee may issue an order terminating the proceeding.

(2) Where the motion referred to in subrule (1) is consented to by all the participants and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting dismissal, the extraordinary challenge proceeding is terminated.

64. (1) A final decision of a committee shall

(a) affirm the decision of the panel;

(b) vacate the decision of the panel; or

(c) remand the decision of the panel to the panel for action not inconsistent with the final decision of the committee.

(2) Every final decision of a committee shall be issued in writing with reasons, together with any dissenting or concurring opinions of the members of the committee.

(3) Subrule (2) shall not be construed as prohibiting the oral delivery of the decision of a committee.

Part VI—Completion of Extraordinary Challenges

65. Where all participants consent to the termination of the proceeding pursuant to rule 63, the responsible Secretary shall cause to be published in the *Canada Gazette* and the **Federal Register** a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which the requirements of rule 63 have been met.

66. Where a committee issues its final decision, the responsible Secretary shall cause to be published in the *Canada Gazette* and the **Federal Register** a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which—

(a) the committee affirms the decision of the panel;

(b) the committee vacates the decision of the panel; or

(c) where the committee remands the decision of the panel, the day the responsible Secretary gives notice to the committee that the panel has given notice that it has taken action not inconsistent with the committee's decision.

67. The members of the committee are discharged from their duties on the day on which a Notice of Completion of Extraordinary Challenge is effective.

Schedule—Procedural Forms

Forms (1) through (4) follow.

Form (1)

Article 1904—Extraordinary Challenge Proceeding Pursuant to the United States-Canada Free Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)

_____

Secretariat File No. _____

Request For An Extraordinary Challenge Committee

Pursuant to Article 1904 of the Canada-United States Free Trade Agreement, (*the Party*) hereby requests an Extraordinary Challenge Committee review of the panel decision referenced below. The following information is provided pursuant to rules 39 and 40 of the *Extraordinary Challenge Committee Rules*:

1. _____

(The name of the Party filing this Request)

2. _____

(The name of counsel for the Party)

3. _____

_____

(The service address, as defined by Rule 4 of the *Extraordinary Challenge Committee Rules*, including facsimile number, if any)

4. _____

(The telephone number of counsel for the Party)

5. _____

(The title of the panel review for which an Extraordinary Challenge Committee is requested)

6. Concise statement of the allegations relied on, together with a concise statement of how the actions alleged have materially affected the panel's decision and the way in which the integrity of the panel review process is threatened.

7. Items of the record of the panel review relevant to the allegations contained in the Request, and an Index of the items are attached (see rule 40(1)).

8. Where a Request contains an allegation referred to in Article 1904.13(a)(i) of the Agreement

(a) confidential annex is attached containing the identity of the panelist against whom such an allegation is made (*see* subrule 39(2)),

(b) items of the record of the panel review relevant to the allegations contained in the Request, and an Index of the items are attached (*see* subrule 40(1)),

(c) any other material relevant to the allegations contained in the Request is attached (*see* subrule 40(2)(a)), and

(d) if the Request is filed more than 30 days after the panel issued a Notice of Final Panel Action pursuant to rule 79A of the *Article 1905 Panel Rules*, an affidavit certifying that the Party gained knowledge of the action of the panelist giving rise to the allegation no more than 30 days preceding the filing of the Request (*see* subrule 40(2)(b)).

9. Where the Panel Decision Was Made in Canada:

(a) I intend to use the specified language in pleadings and oral proceedings (Specify one)

_____ English

_____ French

(b) I request simultaneous translation of oral proceedings (Specify one)

_____ Yes

_____ No

_____

Date

_____

Signature of Counsel

Form (2)

Article 1904 Extraordinary Challenge Proceeding Pursuant to the United States-Canada Free Trade Agreement

In the Matter of:

_____

_____

(Title of Panel Review)

_____

Secretariat File No. _____

Notice of Appearance

1. _____

(The name of the Party or participant filing this notice of appearance)

2. _____

(The name of counsel for Party or participant)

3. _____

_____

_____

(The service address, as defined by Rule 4 of the *Extraordinary Challenge Committee Rules*, including facsimile number, if any)

4. _____

(The telephone number of counsel for the Party or participant or the telephone number of the participant, if not represented by counsel)

5. This Notice of Appearance is made:

_____ in support of the Request; or

_____ in opposition to the Request.

6. Where a Party or participant proposes to rely on a document in the record of the panel review that is not specified in the Index filed with the Request for an Extraordinary Challenge Committee

(a) statement identifying the document and requesting its inclusion in the extraordinary challenge record, and

(b) attach the document (see subrule 41(2)).

7. Where the Panel Decision Was Made in Canada:

(a) I intend to use the specified language in pleadings and oral proceedings (Specify one)

_____ English

_____ French

(b) I request simultaneous translation of oral proceedings (Specify one)

_____ Yes

_____ No

_____

Date

_____

Date Signature of Counsel (or participant, if not represented by counsel)

Form (3)

Article 1904 Extraordinary Challenge Proceeding Pursuant to the United States-Canada Free Trade Agreement

_____

In the matter of:

_____

_____

(Title of Panel Review)

_____

Secretariat File No. _____

Notice of Motion

_____

(descriptive title indicating the purpose of the motion)

1. _____

(The name of the Party or participant filing this notice of motion)

2. _____

(The name of counsel for the Party or participant)

3. _____

_____

_____

(The service address, as defined by Rule 4 of the *Extraordinary Challenge Committee Rules*, including facsimile number, if any)

4. _____

(The telephone number of counsel for the Party or participant or the telephone number of the participant, if not represented by counsel)

5. Statement of the precise relief requested.

6. Statement of the grounds to be argued, including references to any rule, point of law, or legal authority to be relied on, and arguments in support of the motion.

7. Draft order attached (*see* Form (4)).

_____

Date

_____

Signature of Counsel (or participant, if not represented by counsel)

Form (4)

Article 1904 Extraordinary Challenge Proceeding Pursuant to the United States-Canada Free Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)

_____

Secretariat File No. _____

Order

Upon consideration of the motion for

_____,

(relief requested)

filed on behalf of

_____,

(participant filing motion)

and upon all other papers and proceedings herein, it is hereby Ordered that the motion is _____.

_____

Issue Date

_____

Member name

_____

Member name

_____

Member name

Dated: January 25, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94–2783 Filed 2–3–94; 1:06 pm]

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federal register

Tuesday
February 8, 1994

Part VI

Department of Justice

Bureau of Prisons

28 CFR Parts 511 and 551

Control, Custody, Care, Treatment and Instruction of Inmates; Final Rule and Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 511

RIN 1120–AA01

Control, Custody, Care, Treatment and Instruction of Inmates; Searching/Detaining of Non-Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its rule on searching/detaining of non-inmates to incorporate statutory changes concerning arrest authority for employees of the Bureau of Prisons, to clarify terminology concerning contraband and prohibited objects, and to make minor editorial changes.

EFFECTIVE DATE: February 8, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on searching/detaining of non-inmates. A final rule on this subject was published in the **Federal Register** November 1, 1984 (49 FR 44057) and amended July 18, 1986 (51 FR 26126) and February 1, 1991 (56 FR 4159). A summary of the changes promulgated in this document follows.

Arrest authority for employees of the Bureau of Prisons, which is contained in section 3050 of title 18 of the United States Code, was broadened by Public Law 99–646. This document revises paragraph (b) of 28 CFR 511.10 to reflect that broadened authority. Paragraph (a) of § 511.10 is revised to clarify the equivalence of contraband and prohibited objects. Section 511.11 is amended by clarifying the provisions in paragraph (a) concerning reasonable suspicion which is based upon confidential information, by removing extraneous language from paragraph (b) and correcting punctuation in paragraph (b) for the sake of editorial consistency, and by adding a definition of prohibited objects in new paragraph (c). In § 511.12, paragraph (d) is amended by adding a phrase inadvertently omitted in a previous amendment to the section.

Because these changes either merely conform the regulations to current provisions of the United States Code, clarify existing provisions, or are editorial in nature, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 511

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 511 in subchapter A of 28 CFR, chapter V is amended as set forth below.

Kathleen M. Hawk,

Director, Bureau of Prisons.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 511—GENERAL MANAGEMENT POLICY

1. The authority citation for 28 CFR part 511 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99, 6.1.

2. In 28 CFR part 511, the heading for subpart B is revised to read as follows:

Subpart B—Searching/Detaining of Non-Inmates

3. Section 511.10 is revised to read as follows:

§ 511.10 Purpose and scope.

(a) In an effort to prevent the introduction of contraband (such prohibited objects as defined in § 511.11(c)) into an institution, Bureau of Prisons staff may subject all persons entering an institution, or during their presence in an institution, to a search of their persons and effects.

(b) Title 18, United States Code, section 3050 authorizes Bureau of Prisons employees (does not include United States Public Health Service employees)—

(1) to make an arrest on or off Bureau of Prisons premises without warrant for violation of the following provisions regardless of where the violation may occur: § 111 (assaulting officers), § 751 (escape), § 752 (assisting escape) of title 18, United States Code, and § 1826(c) (escape) of title 28, United States Code;

(2) to make an arrest on Bureau of Prisons premises or reservation land of a penal, detention, or correctional facility without warrant for violation occurring thereon of the following provisions: § 661 (theft), § 1361 (depredation of property), § 1363 (destruction of property), § 1791 (contraband), § 1792 (mutiny and riot), and § 1793 (trespass) of title 18, United States Code, and

(3) to arrest without warrant for any other offense described in title 18 or 21 of the United States Code, if committed on the premises or reservation of a penal or correctional facility of the Bureau of Prisons if necessary to safeguard security, good order, or government property. Bureau policy provides that such an arrest may be made when staff has probable cause to believe that a person has committed one of these offenses and when there is likelihood of the person escaping before a warrant can be obtained.

4. Section 511.11 is revised to read as follows:

§ 511.11 Definitions

(a) *Reasonable suspicion.* As used in this rule, "reasonable suspicion" exists if the facts and circumstances that are known to the Warden warrant rational inferences by a person with correctional experience that a person is engaged, or attempting or about to engage, in criminal or other prohibited behavior. A reasonable suspicion may be based on reliable information, even if that information is confidential; on a positive reading of a metal detector; or when contraband or an indicia of contraband is found during search of a visitor's personal effects.

(b) *Probable cause.* As used in this rule, "probable cause" exists if the facts and circumstances that are known to the Warden would warrant a person of reasonable caution to believe that an offense has been committed.

(c) *Prohibited object.* A firearm or destructive device; ammunition; a weapon or an object that is designed or intended to be used as a weapon or to facilitate escape from a prison; a narcotic drug, lysergic acid diethylamide, or phencyclidine; a controlled substance or alcoholic

beverage; any United States or foreign currency; and any other object that threatens the order, discipline, or security of a prison, or the life, health, or safety of an individual.

§ 511.12 [Amended]

5. In § 511.12, paragraph (d) is amended by revising the phrase "or is attempting to introduce" to read "or is introducing or attempting to introduce".

[FR Doc. 94–2850 Filed 2–7–94; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

RIN 1120–AA12

Control, Custody, Care, Treatment and Instruction of Inmates; Smoking/No Smoking Areas

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to revise and reorganize its regulations on Smoking/No Smoking Areas. As revised, designated smoking areas at the Bureau's medical referral centers and minimum security institutions ordinarily would be outside of buildings and away from entrances. Wardens at all low, medium, high, and administrative institutions other than medical referral centers may continue, but are not required, to designate indoor smoking areas in addition to outdoor smoking areas. This amendment is intended to provide for a clean air environment and to protect the health and safety of staff and inmates.

DATES: Comments due by April 11, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on Smoking/No Smoking Areas. A final rule on this subject was published in the **Federal Register** on November 16, 1989 (54 FR 47753).

The Bureau of Prisons is committed to the creation of a clean air environment and to protect the health and safety of its staff and inmates by restricting areas in which a person is allowed to smoke. To achieve this purpose, the Bureau is proposing that "smoking areas" to be designated by Wardens at medical referral centers and at minimum security institutions shall ordinarily be outside of all buildings and away from all entrances so as not to expose others to second-hand smoke. Because inmates at minimum security institutions have ample access to designated outdoor smoking areas, the Bureau believes that the proposed change is a reasonable step towards a smoke free environment. Establishment of a smoke free environment at the Bureau's medical referral centers is proposed in accordance with guidelines from the Joint Commission on Accreditation of Healthcare Organizations. As for the remaining Bureau institutions, the proposed rule specifies that the Warden may, but is not required to, designate indoor smoking areas in addition to outdoor smoking areas. The Bureau believes that by allowing Wardens at these institutions this discretion, the Bureau will be able to more effectively assess the practicability of making further changes at higher security level institutions.

In addition to the revisions described above, the Bureau has reorganized and revised its regulations on Smoking/No Smoking Areas for the sake of clarity and to avoid redundancy. For example, the current regulations contain cross references qualifying those locations where smoking ordinarily is not permitted. Because the Warden is responsible for designating smoking areas, ordinarily only where the needs of effective operations so require, the Bureau deems it unnecessary to list in its revised regulations specific locations which would still be subject to the Warden's discretion. The listing of these locations has therefore been removed from the regulation, but remains as guidance in implementing instructions to staff. The revised regulations also contain a nomenclature change in which the title "Warden" has been substituted for "Chief Executive Officer".

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 551

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), it is proposed to amend part 551 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR part 551 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Public Law 99–500 (sec. 209); 28 CFR 0.95–0.99.

2. Subpart N, consisting of §§ 551.160 through 551.163, is revised to consist of §§ 551.160 through 551.164 as follows:

Subpart N—Smoking/No Smoking Areas

Sec.
551.160 Purpose and scope.
551.161 Definitions.
551.162 Designated no smoking areas.
551.163 Designated smoking areas.
551.164 Notice of smoking areas.

Subpart N—Smoking/No Smoking Areas

§ 551.160 Purpose and scope.

To advance towards becoming a clean air environment and to protect the health and safety of staff and inmates, the Bureau of Prisons will restrict areas and circumstances where smoking is permitted within its institutions and offices.

§ 551.161 Definitions.

For purpose of this subpart, smoking is defined as carrying or inhaling a lighted cigar, cigarette, pipe or other lighted tobacco products.

§ 551.162 Designated no smoking areas.

All areas of Bureau of Prisons facilities and vehicles are no smoking areas unless specifically designated as a smoking area by the Warden as set forth in § 551.163.

§ 551.163 Designated smoking areas.

(a) At all Medical Referral Centers, including housing units, and at minimum security institutions, including satellite camps and intensive

confinement centers, the Warden shall identify "smoking areas", ordinarily outside of all buildings and away from all entrances so as not to expose others to second-hand smoke.

(b) At all low, medium, high, and administrative institutions other than medical referral centers, the Warden shall identify outdoor smoking areas and may, but is not required to, designate a limited number of indoor smoking areas where the needs of effective operations so require, especially for those who may be employed in, or restricted to, a nonsmoking area for an extended period of time.

(c) To the maximum extent practicable nonsmoking inmates shall be housed in nonsmoking living quarters.

§ 551.164 Notice of smoking areas.

The Warden shall ensure that smoking areas are clearly identified by the appropriate placement of signs. The absence of a sign shall be interpreted as indicating a no smoking area. Appropriate disciplinary action shall be taken for failure to observe smoking restrictions.

[FR Doc. 94–2851 Filed 2–7–94; 8:45 am]

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Vol. 59, No. 26

Tuesday, February 8, 1994

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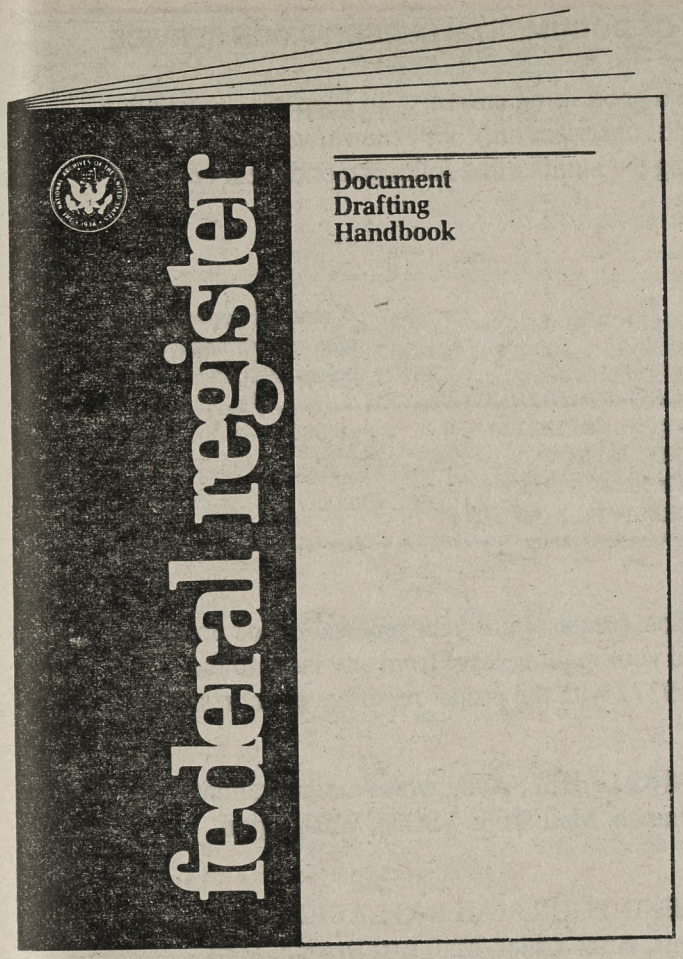

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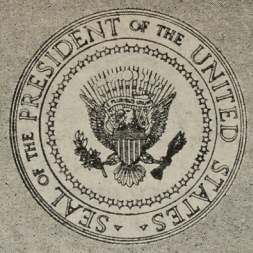

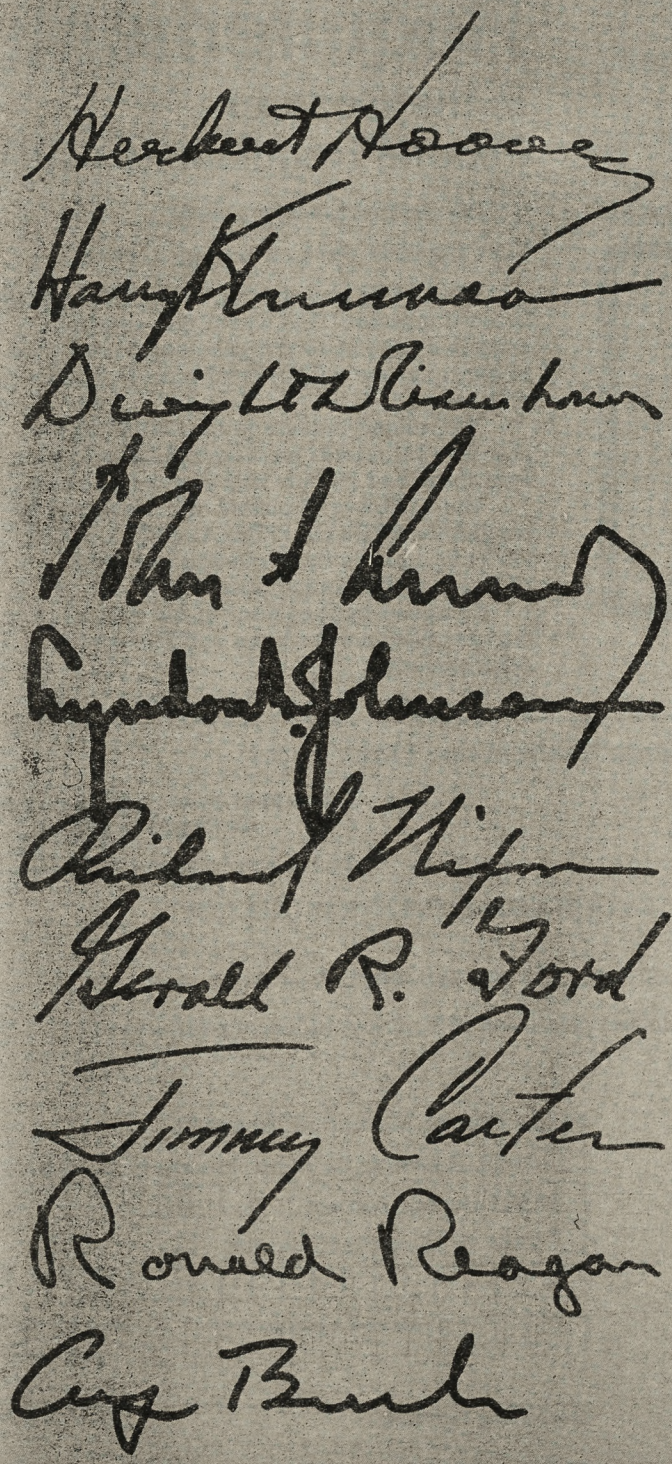

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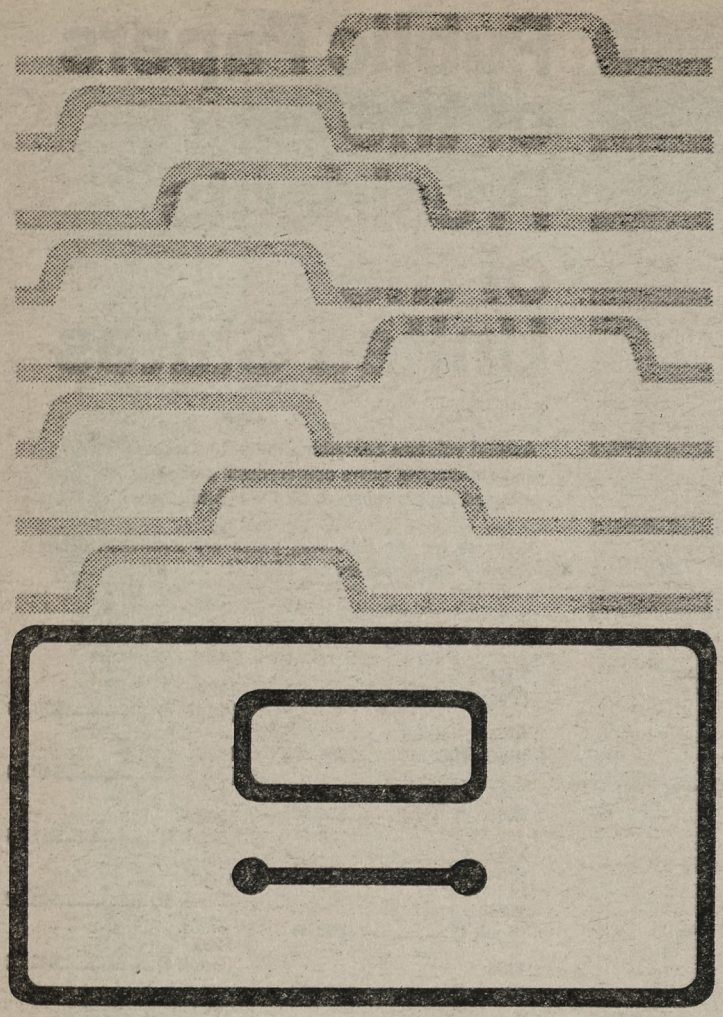

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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