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Title 3—

The President

Presidential Determination No. 95–15 of February 28, 1995

Certifications for Major Narcotics Producing and Transit Countries

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended, (''the Act''), I hereby determine and certify that the following major drug producing and/or major drug transit countries/dependent territories have cooperated fully with the United States, or taken adequate steps on their own, to achieve full compliance with the goals and objectives of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances:

The Bahamas, Brazil, China, Dominican Republic, Ecuador, Guatemala, Haiti, Hong Kong, India, Jamaica, Laos, Malaysia, Mexico, Panama, Taiwan, Thailand, Venezuela, and Vietnam.

By virtue of the authority vested in my by section 490(b)(1)(B) of the Act, I hereby determine that it is in the vital national interests of the United States to certify the following countries:

Bolivia, Colombia, Lebanon, Pakistan, Paraguay, and Peru.

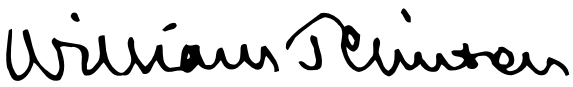
Information on these countries, as required under section 490(b)(3) of the Act, is attached.

I have determined that the following major producing and/or major transit countries do not meet the standards set forth in section 490(b):

Afghanistan, Burma, Iran, Nigeria, and Syria.

I have made these determinations, taking into account the factors set forth in section 490 of the Act, and based on the information contained in the International Narcotics Control Strategy Report of 1995. Because the performance of these countries varies, I have attached an explanatory statement in each case.

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 28, 1995.

STATEMENT OF EXPLANATION

The Bahamas

U.S.-Bahamian drug enforcement cooperation under Operation Bahamas and Turks & Caicos (OPBAT) has been excellent and resulted in a dramatic reduction in the flow of drugs through The Bahamas into the United States, as indicated by vastly reduced drug-seizure levels over the last several years. Nevertheless, The Bahamas remains a major transit country for U.S.-

bound Colombian cocaine and Jamaican marijuana. As a major financial center, The Bahamas is vulnerable to money laundering. The Bahamas is a party to the 1988 UN Convention. The Ingraham government has taken a firm stand against drug trafficking, drug abuse and money laundering and worked diligently during 1994 to fulfill the goals and objectives of the UN Convention and U.S.-Bahamian bilateral counternarcotics accords.

During 1994, Bahamian maritime cooperation with the United States was excellent under the terms of several bilateral agreements and arrangements. The Government of the Commonwealth of the Bahamas (GCOB) moved to improve cooperation with the Cuban government when traffickers intensified their exploitation of Cuban territory to avoid OPBAT enforcement efforts. The GCOB generally responds positively to specific U.S. requests under our Mutual Legal Assistance Treaty. In 1994, the GCOB took judicial action against three public officials for drug-related corruption: a prison official, an immigration officer and a customs officer.

The GCOB took several strong steps to improve its drug-trafficking-control tools. The new U.S.-Bahamas extradition treaty entered into force in 1994. The GCOB also adopted legislation, based on U.S. law, making it a crime to engage in a continuing criminal enterprise related to narcotics trafficking. Working closely with the USG, the GCOB placed special emphasis on strengthening its judicial system by increasing its courts budget, implementing a court automation system, and enacting stronger bail and sentencing legislation.

In 1994, the GCOB drafted stronger money laundering legislation, which it expects Parliament to approve in 1995. When enacted, this legislation will criminalize money laundering. The GCOB agreed to an evaluation of its money laundering controls by the Caribbean Financial Action Task Force, also expected to take place during 1995. We urge continued vigilance by The Bahamas on possible money laundering through shell corporations and international business companies, which are proliferating in The Bahamas and elsewhere in the Caribbean. Although Bahamian law renders the assets of a convicted drug offender subject to forfeiture, in practice asset forfeiture has been difficult to implement. No procedures exist for civil asset forfeiture in narcotics cases.

Brazil

Brazil is a major transit country for cocaine from Colombia destined for the United States and Europe. Increased cocaine and precursor chemical trafficking and money laundering contribute to Brazil's escalating narcotics problem; corruption allegations against counternarcotics officials in Brazil persist.

Despite these problems, Brazil endeavors to meet the goals and objectives of the 1988 UN Convention, and has succeeded in some significant interdiction efforts. The government has made progress towards complying with the UN Convention in law enforcement, asset forfeiture, extradition, and anti-corruption. The Brazilian government generally meets the goals of bilateral counternarcotics agreements with the USG on enforcement and demand reduction.

Brazil's increased seizure rate in 1994 of 11 metric tons of cocaine marks both heightened trafficker use of Brazil and improved abilities of the Brazilian Federal Police Counternarcotics Unit (DPF/DRE). Brazilian non-governmental organizations (NGOs) hosted seminars by U.S. police in schools to voice the message against drug abuse. The DPF/DRE has targetted and disrupted major Cali-connected drug trafficking organizations.

However, the Brazilian government has not hired new police or provided increased funding for the DPF/DRE. The Brazilians have not yet enacted legislation first proposed in 1991 to implement effectively the goals and objectives of the 1988 UN Convention, nor has it drafted a national drug control strategy. Brazil has not yet proposed specialized anti-money launder-

ing legislation, but requires reporting of cash transactions involving amounts over $10,000.

The international consultative forum, the Dublin Group, has focused worldwide donor attention on the need for Brazil to pay greater attention to counternarcotics issues and urged the GOB to take more vigorous action against its growing drug problem. Newly-elected President Cardoso is expected to take such action to confront narcotics traffickers.

Brazil's former President Franco signed a decree increasing the DPF's licensing and oversight responsibility for chemicals. The DPF/DRE initiated a sea/airport security program, and continued to seize drugs by riverine and ground law enforcement methods. Brazil continues to plan for a radar system (SIVAM), financed by the Export-Import Bank, to detect narcotics trafficking aircraft in the Amazon.

China

The Government of the People's Republic of China (PRC) is committed to combatting narcotics trafficking and use. China is a major transit route for heroin from neighboring Burma, Laos and Vietnam to the United States and other overseas markets. Drug addiction, which was effectively stamped out following the founding of the PRC in 1949, is once again on the rise. Thanks to China's expanding economy and increasing openness to the outside world, narcotics consumption within the PRC is growing. In addition, opportunities for investment in China provide greater potential for money laundering.

Chinese enforcement efforts continue to be vigorous and were stepped up in 1994. Strong laws based on a national directive issued in 1990 call for the death penalty for many drug-related crimes. Hundreds of drug criminals are executed in accordance with these laws annually. Narcotics trafficking in Yunnan province, which borders Burma, decreased in the latter part of 1994. The Chinese arrested major figures in two drug trafficking groups based in Burma, the Kokang and the Wa. Better surveillance of the Burmese border, improved intelligence work, and better control of precursor chemicals have also contributed to at least a temporary decrease in trafficking in Yunnan. PRC counternarcotics officials project no increase in national trafficking figures over 1993 levels. The PRC has taken a strong stand against official corruption, and has laws dealing specifically with government officials who are found guilty of the use, manufacture or delivery of narcotics.

The United States and China do not have a bilateral counternarcotics agreement in place. China has met, or is actively seeking to meet, the goals and objectives of the 1988 UN Convention, to which it is a party, by continuing its efforts to enhance law enforcement measures, public education, and international cooperation.

Illicit opium cultivation exists in remote, often roadless areas of Yunnan province and is suspected to exist in scattered pockets in other parts of China. The authorities are committed to eradicating opium cultivation when it is detected. Yunnan province cultivation is estimated at 1,965 hectares, capable of yielding approximately 25 metric tons of opium gum.

Impediments to bilateral cooperation remain. The Chinese frequently cite the 1993 U.S. court decision blocking the forced return to China of a Chinese drug trafficker (''goldfish case'') as an obstacle to U.S.-China counternarcotics cooperation, but these same officials state that they would like to expand bilateral cooperation in the future.

Dominican Republic

The United States Government and the Government of the Dominican Republic (GODR) maintained close, effective counternarcotics cooperation in 1994, despite tensions over the disputed Dominican presidential election and over Haiti. The Dominican Republic intensified its counternarcotics effort and improved interagency/inter-service cooperation under the leadership of the new director of the National Directorate of Drug Control (DNCD).

GODR personnel, working with U.S. law enforcement, made several multi-hundred kilo cocaine seizures in 1994. The GODR was especially helpful in arranging the return of several major drug figures who were fugitives from U.S. justice.

Threat assessments indicate an increased flow of narcotics into the Dominican Republic from Haiti, especially since the September 1991 coup in Haiti. Maritime shipments from Panama are also increasing. The DNCD and Dominican Navy, working in concert with DEA, interdicted one such maritime shipment on November 22, seizing nearly a metric ton of cocaine and uncovering a major smuggling operation.

During 1994, a wide range of USG-financed professional training (law enforcement, drug abuse prevention, financial investigations, and canine handling assessment) was provided to DNCD personnel and other military and civilian officials. The GODR complied fully with its commitments under the bilateral counternarcotics assistance agreement.

The Dominican Republic became a party to the UN Convention in late 1993 and has taken action consistent with the goals and objectives of the UN Convention. Additional legislation, however, is needed in areas such as money laundering and asset seizure to enable the GODR to comply more fully with the Convention. The GODR has been active in the Inter-American Drug Abuse Control Commission and the United Nations Drug Control Program. It hosted the 1994 United Nations Heads of Narcotics Law Enforcement Agencies Conference for Latin America and will host the Latin American International Drug Enforcement Conference in April 1995. It has established cooperative relationships with a number of other governments in the hemisphere, most recently signing a bilateral drug cooperation agreement with Venezuela.

The GODR still faces many challenges in establishing an effective national anti-drug effort. While it has taken steps to address narcotics-related and other official corruption, corruption continues to undermine GODR law enforcement efforts. Anti-drug legislation, while strengthened, has serious flaws; in the area of money laundering control, for example, the Dominican legislature removed prison sentences, leaving only moderate fines for bankers convicted of involvement in laundering activities. The GODR will resubmit the package in 1995 to correct this.

Ecuador

Ecuador is a bridge between the world's largest supplier of coca leaf, Peru, and the world's major processor of cocaine hydrochloride, Colombia. Traffickers use Ecuador as a transit point to ship 30–50 metric tons (mt) of cocaine per year to the United States and Europe, as well as to smuggle chemicals into Colombia for cocaine processing. Money launderers take advantage of Ecuador's loose banking laws and extensive offshore banking system to conceal the illicit nature of their proceeds.

Ecuadorian judges are subject to trafficker intimidation and subornation, which has obstructed efforts to bring Cali-connected kingpin Jorge Reyes Torres to justice. Corrupt judicial practices have precluded indictments in Reyes Torres-related cases, specifically the Banco De Los Andes case. Stronger resolve by the Government of Ecuador (GOE) to confront judicial corruption will be necessary to successfully conclude the Jorge Reyes Torres case and other counternarcotics initiatives.

Ecuador made significant strides this year toward complying with the 1988 UN Convention, to which it is a party. The government has taken steps to generally meet the goals of bilateral counternarcotics agreements with the USG on enforcement, demand reduction, and prosecutions of major narcotics traffickers. The GOE enacted a law based on OAS model legislation on asset sharing and completed a study to determine the amount of licit chemical use in Ecuador.

However, the Ecuadorians should strive to control trafficking in precursor and essential chemicals by creating an effective monitoring and control system based on the results of the completed study. Ecuador is making efforts to control money laundering by involving the police, Superintendency of Banks, and the National Drug Council (CONSEP) in collaborative investigations.

The USG has provided Thrush aircraft to identify illicit crop cultivation in Ecuador. None was discovered in 1994, but search flights will continue in 1995. Ecuador is progressing in implementing its National Drug Strategy. Ecuador signed an asset-sharing agreement with the USG in 1994. A limited amount of asset-sharing has already taken place based on this agreement. The Ecuadorians used the funds for law enforcement purposes. Ecuador continues to work toward sharing the remainder of $3 million in assets forfeited in the Reyes Torres investigation.

The USG counternarcotics assistance program helps Ecuador to reduce money laundering, control essential chemicals, and buttress the judiciary's ability to preserve democracy by enforcing the rule of law.

Guatemala

The Government of Guatemala (GOG) has successful programs to reduce demand, cultivation, and transit of illicit narcotics.

With USG technical support, specially trained units of the Guatemalan Treasury Police conduct ongoing eradication that has reduced opium poppy cultivation to minimal levels. Persistent attempts to revive poppy cultivation are the focus of a continuing suppression program which includes detection and eradication.

Guatemala's hundreds of small, unmonitored airfields connected by good roads appear to have almost been forsaken by traffickers moving cocaine in small planes to the United States from South America. In response to DEA's Operation Cadence and GOG vigilance in-country, traffickers are increasingly transporting drugs overland and by sea. During 1994, over 1.5 metric tons of cocaine were seized outside Guatemala as a result of Guatemalan-based intelligence. Almost two metric tons were seized in-country.

The GOG's aggressive investigation, interdiction and eradication operations are consistent with the goals of the 1988 UN Convention, to which Guatemala is a party. However, Guatemala lacks legislation needed to implement the Convention in areas such as money laundering and essential chemical control. Money laundering has not been criminalized in Guatemala and is not considered a significant problem.

Corruption, especially in the judicial branch, is a major problem in Guatemala. The GOG has begun to focus attention on corruption, particularly in the courts where several judges were relieved of their positions for releasing prisoners under allegedly questionable circumstances. The GOG does not, as a matter of policy or practice encourage or facilitate illicit narcotics production or distribution, or laundering of drug proceeds.

Guatemala continues to accomplish the goals of its bilateral narcotics agreements with the USG for drug eradication, interdiction, and demand reduction. The USG is working with the GOG to implement cost reductions while retaining the high level of effectiveness demonstrated by Guatemala's counternarcotics programs.

Haiti

Because of its ideal geographic location for smuggling, the island of Hispaniola has long been a significant transit point for cocaine destined for U.S. and European markets. The unstable political situation and weak government institutions in Haiti facilitated narcotics trafficking for many years. The opportunities for traffickers to take advantage of these conditions were even greater after the September 1991 coup which ousted President Jean Bertrand Aristide. Multi-hundred kilo and multi-ton shipments of cocaine

transited the country frequently. The USG has received credible, but unsubstantiated, reports for many years that the Haitian military was involved in assisting traffickers. However, the USG was unable to determine the veracity of reports that the *de facto* regime or the military hierarchy secretly condoned such activity.

Until the legitimate government of Haiti was restored in September 1994, the USG maintained only limited counternarcotics cooperation with the *de facto* regime in Haiti, largely through the Haitian Center for Information Coordination (CICC), which the United States helped establish in 1987. The *de facto* government undertook some drug enforcement efforts and made a number of cocaine seizures in the 2–60 kg range in 1993–1994, some in cooperation with USG law enforcement personnel from the U.S. Embassy. However, suspected multi-ton shipments transited Haiti unimpeded until the country was subjected to an international maritime blockade in April 1994.

Drug trafficking was among the six issues President Clinton listed in early 1994 as key areas of U.S. concern relating to Haiti. Growing drug trafficker influence in Haiti may well have impeded the return of democracy, sound administration of justice and economic recovery. The Aristide administration, working with the international community, has initiated an extensive administration of justice and police reform program. Former military and police personnel suspected of involvement in drug trafficking are being excluded from the new civilian police corps and the reorganized military.

This massive and critical reform is the most important step that the Government of Haiti can take at this stage to attack the narcotics problem at its core. Since the restoration of the Aristide government, the USG-led Multinational Force and the International Police Monitors have played a large role in law enforcement in Haiti. These efforts have included control of the major ports and airfields, and supervising and monitoring the interim Haitian police. This, and all other relevant activity, is undertaken with the full concurrence of the Haitian government. The Aristide government cooperated completely with the United States in all aspects of this effort.

In the future, the restored Aristide government will need to take a number of other measures to address drug trafficking more effectively: it should become a party to the 1988 UN Convention, establish a national council to coordinate Haitian counternarcotics activities, implement money laundering controls, and forcefully address the problem of narco-corruption within the police and military forces.-

Hong Kong

Hong Kong is not a party to the 1988 UN Convention, but the territory's counternarcotics efforts effectively comply with most of the goals and objectives of the agreement. Hong Kong takes serious and effective measures to combat narcotics trafficking. Nevertheless, Hong Kong remains an important transshipment center for heroin from Southeast Asia. Due to enforcement efforts and changes in trafficking patterns, the volume of drugs passing through Hong Kong seems to be dropping. The amount of heroin detected transiting Hong Kong for Taiwan, Japan, and the United States fell during 1994 and heroin arriving in Hong Kong is increasingly intended for domestic consumption.

The USG is not aware of any narcotics-related corruption among senior government or law enforcement officials in Hong Kong. Hong Kong has a comprehensive anti-corruption ordinance that is effectively enforced by an independent commission that reports directly to the Governor.

Hong Kong continues to serve as a major center of money laundering of drug proceeds by local and regional groups trafficking in heroin. Passage of the new Organized and Serious Crimes Ordinance improves the Hong Kong Government's (HKG) ability to prosecute money launderers. The HKG is in the final stages of drafting amendments to the Financial Recovery

of Proceeds Act to conform more fully with the Financial Action Task Force recommendations and the UN Convention.

There is a bilateral narcotics agreement, which facilitates asset freezing and asset forfeiture. The Hong Kong Government and the USG have worked closely together on U.S. extradition requests, although there is some concern that overly strict application of Hong Kong evidentiary requirements has made extradition difficult in some cases. Overall bilateral cooperation on drug enforcement efforts is very good.

India

India is the world's largest producer of licit opium and the largest supplier to the U.S. pharmaceutical industry. Opium is diverted from legal production, and there is substantial illicit opium cultivation in certain districts. India is also a transit route for heroin from nearby producing countries, and an exporter of methaqualone and heroin precursor chemicals en route to the Middle East, Africa, Europe and North America.

As a licit producer of opium, India must meet an additional certification requirement. In accordance with Section 490(c) of the Foreign Assistance Act, it must maintain licit production and stockpiles at levels no higher than those consistent with licit market demand and take adequate steps to prevent significant diversion of its licit cultivation and production into illicit markets and to prevent illicit cultivation and production.

The United States and India conducted an intensive dialogue on narcotics issues, with meetings of a Joint Working Group and a 1994 visit by Dr. Lee Brown. With U.S. encouragement, India maintained during 1994 a promising narcotics dialogue with Pakistan on cross-border smuggling of heroin and precursor chemicals, despite poor bilateral relations in other areas.

Over the past several years, the Government of India (GOI) has taken steps to reduce licit opium stockpiles and the potential for diversion of licit opium to the illicit market. The total area licensed for cultivation was kept at about 14,000 hectares (ha) in the 1993/4 crop season and physical controls on harvested opium were enhanced. In 1994, in the course of taking the first physical inventory in many years, it became clear that real stocks on hand were far lower (by 800 metric tons) than official inventories and that supplies were insufficient to fulfill 1994 contractual requirements. An International Narcotics Control Board audit described the failure to have maintained adequate inventory records as a violation of the 1961 Single Convention on Narcotics Drugs. No adequate accounting of several hundred tons of the discrepancy between book stocks and real stocks has been made. New storage and accounting controls put into place in 1994 should reduce potential for diversion from licit stocks.

To combat large-scale diversion by growers, the GOI has slowly increased minimum qualifying yields (MQY) on licensed growers. MQY was raised from 40 kg per ha to 43 kg/ha for the 1994/5 growing season. An unreleased GOI crop survey reportedly suggests that MQY could be raised by a substantially greater amount. The United States raised with India the need for a scientific crop yield survey in the near future so that MQY can be raised to a level high enough to prevent substantial diversion to the illicit market.

To cope with the 1994 opium shortfall and rebuild an appropriate reserve stockpile, the GOI decided in 1994/5 to expand the cultivated area to about 24,000 hectares, but to improve security by concentrating production in a more limited region, granting additional hectarage to farmers with a history of high yields, and delicensing some 40,000 farmers whose opium deliveries to the GOI fell below the MQY. This expansion in cultivated area raises concern about the potential for increased diversion.

The Government of India cooperates well with the United States on individual cases of trafficking. There has been little success, however, in cracking major smuggling rings, pointing up a continuing lack of resources and personnel, including lack of intelligence-gathering capability and high-level political

support, allocated to narcotics enforcement. There were no seizures of heroin laboratories in 1994. The United States has no specific knowledge of any senior GOI officials encouraging or facilitating trafficking or money laundering. Allegations of corruption among lower-level judicial and law enforcement personnel are widespread, but successful prosecutions rare.

Illicit cultivation of opium is concentrated in the state of Jammu and Kashmir, in remote areas of Uttar Pradesh, and in other areas where political disturbances and inadequate enforcement resources kept GOI eradication efforts to a minimum. The GOI cited bureaucratic difficulties in turning down a U.S. offer of partial U.S. funding for an aerial crop survey in 1994. Illicit opium production is estimated to be in the range of 80 metric tons on 5,500 hectares, with reported eradication of about 100 hectares.

India is a party to the 1988 UN Convention and has made some progress toward precursor chemical control and law enforcement cooperation. However, India has not yet passed asset seizure legislation or implemented recommendations of the Financial Action Task Force. Although India did not sign a bilateral agreement with the United States in 1994, the goals of a 1993 agreement aimed at improving security at the opium factories are being achieved.

India fulfilled the requirement of FAA Section 490(c) to maintain licit production and stockpiles at levels no higher than consistent with market demand. The GOI addressed a number of the specific U.S. concerns expressed in 1994 bilateral narcotics consultations, which focussed on better controls on licit opium production. For 1994, India's efforts to impose necessary controls on licit opium and cooperation with DEA and other endorsement agencies justify continued certification. In 1995, significant additional steps will need to be taken if full certification is to continue. Areas of outstanding concern include: quantifying real licit opium yields; revising MQY to appropriate levels; eradicating illicit cultivation; taking effective action against major narcotics trafficking syndicates and kingpins; and implementing effective measures on money laundering and asset seizure.

Jamaica

Jamaica is both a major producer of marijuana and a flourishing transshipment site for South American cocaine en route to the United States, The Bahamas, Canada and Europe. There is scant evidence of money laundering at this point. Jamaica is not yet a party to the 1988 UN Convention. However, the Government of Jamaica (GOJ) took adequate steps during 1994 to fulfill the goals and objectives of both the Convention and U.S.-Jamaican counternarcotics agreements.

The GOJ made progress during 1994 in strengthening its narcotics control effort. Jamaica's Forfeiture of Assets Act, which allows for criminal but not civil forfeiture, went into effect in August. The GOJ also amended its Dangerous Drugs Act to provide for tougher fines and longer imprisonment for drug offenders. The GOJ continued work on money laundering control legislation and expects to present it to Parliament before April 1995. With the adoption of money laundering legislation, Jamaica will have the full range of implementing legislation for the 1988 UN Convention, which it then intends to ratify. In 1994, the GOJ submitted to Parliament enabling legislation to permit Jamaican ratification of the U.S.-Jamaica Mutual Legal Assistance Treaty, and the GOJ expects passage soon.

Throughout 1994, the GOJ continued its excellent cooperation on extradition. GOJ drug enforcement agencies also continued to cooperate well with the U.S. Drug Enforcement Administration (DEA). These agencies have recognized the need to bring major traffickers to justice and break up trafficker networks and are taking appropriate steps. Recognizing the necessity of prompt prosecution and conviction, the GOJ has begun to work with the USG on judicial reform, the objectives being to improve the flow of cases through Jamaica's court system and obtain more convictions. Although we know of no GOJ prosecutions of officials for corruption in 1994, the GOJ,

and especially the Police Commissioner, has attempted to de-politicize the police force and control corruption, largely by transferring suspect personnel. The Commissioner fully supported the USG's revocation of the visas of several police officers suspected of drug trafficking, as permitted under U.S. law. The GOJ's major demand reduction program, a UNDCP-funded project, is not making appreciable progress at this time due to internal problems within the National Council on Drug Abuse.

During 1994, the GOJ revitalized its marijuana eradication program. In November, the Jamaica Defense Force (JDF), Jamaica Constabulary Force (JCF) and DEA cooperated to estimate the total amount of illegally-grown marijuana. The JDF and JCF quickly organized a task force to eradicate the marijuana detected during the estimation exercise. During 1994, the GOJ eradicated 692 hectares of marijuana, a 52 percent increase over 1993 eradication.

Laos

Laos is not a party to the 1988 UN Convention, but has drafted a comprehensive drug control program that commits it to the goals of the Convention. As part of this program, the government has pledged to become a party to the Convention no later than the year 2000. A letter of agreement on counternarcotics signed in 1989 is the basis for ongoing drug control projects funded by the USG. These projects consist of an alternative crop development project and a law enforcement support project. In 1994, police units supported by the law enforcement project became operational and began to make arrests. Road building, dam site preparation and other basic development work was undertaken in the crop development project.

Based on USG estimates, Laos remains one of the world's major producers of opium, although production has been on a declining trend since 1990. Due primarily to weather, opium cultivation and yield fell sharply during the 1993/4 growing season. USG estimates for the 1994 crop show a decrease in cultivation of approximately 29 percent, from 26,040 hectares in 1993 to 18,520 in 1994. Production of opium gum dropped even more significantly, from about 180 metric tons in 1993 to only 85 metric tons in 1994, a decline of 53 percent. Opium cultivation is not illegal under existing statutes.

In the past year, the Lao government has moved forward in its antinarcotics efforts through continuation of both bilateral and multilateral programs. Bilateral agreements signed with the USG continued the crop control project in Houaphan Province and the law enforcement project. An additional crop control project has been approved, which will be implemented by Norwegian Church Aid/UNDCP. An active UNDCP program also operates an alternative development program aimed at opium crop control. The Lao special counternarcotics unit, which was formed as a result of the 1992 bilateral USG-Lao law enforcement project agreement, is now functioning and had some successes in 1994 in heroin interdiction efforts. Lao customs has worked closely and effectively with the special unit in several significant seizures of illicit drugs and in follow-on investigations.

There have been allegations of military and official collusion in narcotics production and trafficking, but there is no solid evidence of official corruption. Lao government employees receive low pay, making them susceptible to corruption and low-level corruption is assumed to exist. There is no clear evidence that the Lao government as a matter of policy encourages or facilitates the illicit production or distribution of drugs or the laundering of drug money.

Malaysia

Malaysia ratified the 1988 UN Convention in 1993 and has worked cooperatively with the USG, as well as taking adequate steps on its own, to fulfill the Convention's goals and objectives. The USG and the Government of Malaysia (GOM) continue strong antinarcotics cooperation. Several important steps forward in bilateral cooperation were made this year. The two govern-

ments renewed efforts to collect and analyze intelligence on international drug trafficking, and the Drug Enforcement Administration and the Royal Malaysian Police restored their cooperative relations. A bilateral agreement to assist in demand reduction programs is being implemented effectively. Negotiations for a new U.S.-Malaysia extradition treaty are proceeding.

The Government of Malaysia considers the narcotics problem a priority issue. Malaysia pursues an aggressive enforcement policy under one of the most severe drug laws in the world. A well-funded counternarcotics program emphasizes both enforcement and demand reduction.

Illicit heroin processing, heroin trafficking, and growing addiction continue to be serious problems in Malaysia. Traffickers smuggle heroin base into Malaysia from Thailand and Burma and refined heroin continues to transit Malaysia en route to the United States and other Western markets.

During 1994, there were no notable cases of corruption involving narcotics. However, Penang, where Chinese triad gangs control most narcotics trafficking, is still considered to be vulnerable to corruption and gang members are believed to be involved in attempts to engage law enforcement officials in various forms of corruption. Corruption continued to be addressed by law enforcement agencies. The Royal Malaysian Police continued to take precautions against potential corruption by a careful selection of officers for its anti-narcotics unit and frequent transfers within the unit. Although some law enforcement officials have been charged with corruption in the past, there has been no evidence of corruption among senior officials.

Despite severe legal penalties for both drug use and trafficking, drug trafficking remains a major problem. Illicit narcotics generally continue to be available at stable prices for the local addict population.

There is no evidence that Malaysia is a significant center for money laundering now, but the Malaysian government is concerned that a new offshore financial center may be vulnerable to money laundering activities and is looking for ways to head off this threat.

Mexico

The United States Government and the Government of Mexico (GOM) maintained close counternarcotics cooperation in 1994, the final year of the Salinas administration, in keeping with the commitments of the bilateral agreement on cooperation in combatting narcotics trafficking and drug dependency (Chiles Amendment Agreement). Mexico continued its multi-faceted national campaign against production, trafficking and abuse of illegal drugs, meeting many of the goals and objectives of the 1988 UN Convention. However, the results of this campaign were mixed, with cocaine seizures falling to the lowest level of Salinas' tenure (about 21 mt) and few major traffickers arrested and prosecuted. Narco-corruption remains a serious impediment to effective drug law enforcement. Eradication of opium poppy and cannabis also declined substantially. One factor causing the decline may have been the diversion of military personnel and resources to handle the political uprising in the state of Chiapas. On the positive side, heroin seizures increased to about 300 kilograms, more than the previous five years combined. Seizures of precursor and essential chemicals and destruction of clandestine laboratories likewise increased. Money laundering, particularly the large-scale conversion of cash from the United States, remains a major problem in Mexico, which the GOM has not yet effectively curbed.

The decline in cocaine seizures was due to a number of factors. Much of the Mexican Attorney General's Office was devoted to investigating the assassinations of the leading Presidential candidate and the Secretary General of the ruling PRI party. Also, to avoid detection by U.S. and Mexican air interdiction systems, traffickers increased the use of fast moving cargo jets, each transporting huge quantities of cocaine into Mexico. Only one of these aircraft was seized; the U.S. and Mexican governments are sharing intelligence and upgrading equipment to address this situation.

Despite commendable efforts by the Salinas administration to tackle endemic corruption with the Mexican police and judicial systems, including hundreds of dismissals and numerous prosecutions, the measures taken did not turn the tide. Anti-corruption actions, as well as efforts to build strong anti-drug institutions, were undermined by narco-influence (and money) and frequent personnel turnovers, especially in 1994.

The actions taken by newly-inaugurated President Ernesto Zedillo are encouraging. Zedillo stated publicly that narcotrafficking presented the single greatest threat to the national security of Mexico. Within a few weeks of taking office, he promulgated a sweeping judicial reform package, which was overwhelmingly approved by the Mexican Congress. The Zedillo administration has also pledged to pursue institutional reform of Mexican law enforcement agencies to counter official corruption and to strengthen legal controls over money laundering and precursor chemicals.

Panama

Panama is a major money laundering center, a producer of coca leaf, and a transit point for cocaine destined for the United States.

For most of 1994, Panama was preoccupied by election year politics and the transition of administration from President Endara to President Perez Balladares. Nonetheless, there were significant policy and legislative initiatives on the counternarcotics front.

Two important counternarcotics achievements were enacted by the Endara administration before it left office: the establishment of cross-border currency controls and the passage of Law 13 which expanded the Government of Panama's (GOP) ability to investigate and prosecute narcotics-related crime.

Since taking office in September 1994, the administration of Perez Balladares acknowledged that narcotrafficking and narcotics-related money laundering threaten Panama's political and economic stability. In an effort to prevent abuse of incorporation laws, the new President issued a decree mandating attorneys to follow ''know-your-customer'' practices. He then established a special commission to develop money laundering controls. The resulting policy statement prescribed a number of far-reaching changes. For example, it criminalized drug-related money laundering, mandated suspicious transaction reporting, and extended cash transaction reporting obligations to non-financial institutions. Moreover, Panama's new controls include strengthening the regulatory authority of the National Banking Commission and developing a financial analysis center, an investigations unit, and a prosecutor's office to develop cases of financial crime.

Panama was generally successful in meeting the goals and objectives of the 1988 UN Convention and bilateral counternarcotics agreements with the United States. The GOP's aggressive eradication efforts continued, and interdiction operations showed a marked improvement. To combat money laundering and corruption, the administration of Perez Ballardares moved rapidly on the policy front but was unable to begin implementation of controls before the end of the year. Several middle- and low-level officials were investigated for corruption and, in a few cases, dismissed. The GOP does not, as a matter of policy or practice, encourage or facilitate illicit narcotics distribution, corruption, or laundering of drug proceeds.

In 1994, Panama developed a framework on which it can wage a campaign against traffickers and money launderers. In 1995, the measure of the GOP's counternarcotics programs will be the degree to which it builds upon that framework by implementing controls, seizing assets, and prosecuting offenders.

Taiwan

Changing drug trafficking patterns in East Asia have created a growing heroin trafficking problem in Taiwan. Domestic demand for heroin has risen sharply, and Taiwan has also emerged as an important center for the transshipment of heroin. Over the past three or four years, Taiwan authorities

have made drug enforcement a priority and heroin seizures have risen sharply, climbing to over one metric ton in 1993.

Taiwan is not a party to the 1988 UN Convention, but the vigorous drug enforcement campaign mounted by the Taiwan authorities demonstrates substantial progress toward meeting some of the goals of the Convention, and shows Taiwan is taking adequate steps on its own to address the problem of heroin trafficking. However, legislation and agreements do not yet exist to implement the provisions of the Convention regarding asset forfeiture, controlled delivery, extradition, mutual legal assistance and illicit traffic by sea. Taiwan authorities have expressed an interest in developing agreements in some of these areas. There were no reported incidents of police corruption involving drugs. There is no evidence of senior Taiwan officials being involved with the illegal drug trade.

Working cooperation between the Drug Enforcement Administration and both the Taiwan National Police and the Ministry of Justice Investigation Bureau has been good. Efforts are being made to enhance enforcement cooperation and Taiwan authorities have expressed interest in entering into a bilateral counternarcotics agreement under the auspices of the Taipei Economic and Cultural Representative Office in the United States and the American Institute in Taiwan.

Thailand

Thailand is the main transit route for the illicit drug production from the Golden Triangle. Successful eradication and development efforts have reduced opium cultivation far below the amounts grown in the neighboring countries of Burma and Laos. Due to the efforts of the Thai Government authorities, 1994 cultivation of illicit opium was only 2,110 hectares, yielding 17 metric tons of opium.

Drug enforcement cooperation is very good and improved even further in 1994. In a precedent-setting cooperative law enforcement operation, the Royal Thai government in November 1994 arrested ten major traffickers under indictment in the United States who form part of drug lord Khun Sa's Shan United Army (SUA) infrastructure and proceedings to extradite the fugitives to the United States are now pending in Thai courts. During 1994, Thailand also took action to close off its northern border, reducing the flow of supplies and other logistical support to the SUA in Burma. Efforts continue to enhance judicial cooperation and the Thai Cabinet has just moved to permit the courts to consider the extradition of a former Thai Member of Parliament under indictment in the United States on large-scale marijuana smuggling charges.

Thailand is a leader in regional drug control programs and shares its expertise through agreements with neighboring countries and the United Nations and through training and cooperative enforcement activities.

Thailand remains vulnerable to money laundering due to the relatively low level of sophistication of the Thai banking system and the presence of an active quasi-legal non-bank financial system. Thailand is now in the process of drafting money laundering legislation. Drug-related corruption of some politicians and police officials remains a problem.

A bilateral agreement with the United States supports law enforcement cooperation and crop control, including eradication of opium poppies and Thailand has performed well under that agreement. Thailand is not a party to the 1988 UN Convention, but is a party to the 1961 Single Convention on Narcotic Drugs, its 1972 Protocol, and the 1971 Convention on Psychotropic Substances.

Venezuela

Venezuela is a major drug transit country. Traffickers ship an estimated 100–200 metric tons (mt) of cocaine annually through Venezuela. Precursor and essential chemical trafficking and money laundering are also serious problems in Venezuela. The Venezuelan judiciary's marginal ability to resist

the corruptive influence of traffickers has hampered counternarcotics efforts in that country.

Venezuela has taken adequate steps to meet the goals and objectives of the 1988 UN Convention, to which it is a party, especially in its vigorous response to illicit crop cultivation. Venezuela quickly eradicated in 1994, with USG assistance, over 1,000 hectares of coca and opium poppy cultivation in Zulia state near its western border with Colombia. The government generally meets the goals of bilateral counternarcotics agreements with the USG. In addition, the Venezuela-Colombia border agreement to keep Venezuela free of narcotics traffickers and the successful eradication effort indicates serious Government of Venezuela (GOV) interest in preventing traffickers from making incursions into Venezuela.

Seizures of cocaine increased in 1994 to 5.0 mt, indicating both more trafficker use of Venezuela and better interdiction of cocaine by Venezuelan counternarcotics forces. Venezuela's bilateral agreement with the United States to conduct counternarcotics air interdiction operations reflects invigorated cooperation on strategic initiatives.

In 1994, the Guardia Nacional (GN) seized 5.0 mt of cocaine and 15 kilograms (kg) of heroin. However, the recent arrests of two GN members for trafficking 250 kg of cocaine through Maiquetia Airport evinces corruption problems at lower levels in the organization. The GN quickly removed the two soldiers and began an investigation of the unit.

Although President Caldera has spoken out strongly against narco-corruption, most recently at the December Summit of the Americas, corruption in Venezuela remains a serious problem. A convicted trafficker, Larry Tovar Acuna, fled to Colombia after fraudulently obtaining a pardon, and the Venezuelan government made an extradition request to Colombia for Tovar. In addition, a corrupt judge released members of the Sinforoso Caballero money laundering organization. The Venezuelan Supreme Court reopened the case and investigated the judge.

Venezuela has not yet approved its draft national counternarcotics strategy and has not begun to control precursor and essential chemicals. With more attention from President Caldera, Venezuela's compliance with bilateral agreements on chemical control and money laundering measures should improve.

Vietnam

The Socialist Republic of Vietnam has a significant opiate abuse problem and is emerging as a location for drug trafficking. Illicit opium production exceeded 1,000 hectares, but the precise extent of cultivation remains unclear. Estimates have ranged as high as 14,000 hectares during the 1992/3 growing season. The government is undertaking a serious eradication effort and has pledged to eliminate opium cultivation, which exists primarily in relatively inaccessible regions of the north.

Opiate addiction in urban areas is a serious problem. The government, with the aid of the United Nations International Drug Control Program (UNDCP), is formulating a drug control plan to combat both production and consumption in Vietnam. Economic reforms and the growing overall volume of the Southeast Asian heroin trade have made Vietnam an emerging transit point for heroin destined for Taiwan, the United States and other locations.

Corruption is a complicating factor in domestic enforcement efforts, but there is no evidence that the government tolerates, condones or profits from drug trafficking activity.

The government is not a party to the 1988 UN Convention, but is developing a program to work toward fulfillment of the goals and objectives of the Convention. This program is embodied in the drug control plan being drafted with the assistance of UNDCP. In coordination with UNDCP, the government is drafting legislation that meets the goals of the Convention.

There is no bilateral counternarcotics agreement between the United States and Vietnam. However, informal discussions have begun between representatives of the Socialist Republic of Vietnam and the USG about counternarcotics cooperation and the Vietnamese response has been positive.

VITAL NATIONAL INTERESTS JUSTIFICATION

Bolivia

Bolivia is the world's second largest producer of coca leaf after Peru and the second largest producer of cocaine after Colombia. Most of the cocaine refined from Bolivian coca leaf is consumed in the United States.

Bolivia was highly successful in counternarcotics law enforcement operations during 1994. The Government of Bolivia (GOB) conducted four major operations designed to block trafficker movements, seized two large cocaine HCl laboratories, and arrested major traffickers with links to the Medellin drug mafia. GOB forces foiled Colombian traffickers and their Bolivian accomplices attempting a prison break at a maximum security facility and arrested the prison warden for complicity in the plot. Throughout 1994, the GOB continued its probe of alleged trafficker ties to former President Jaime Paz Zamora and members of his Movement of the Left (MIR) political party. In June, the Bolivian Congress removed two Supreme Court justices for corruption.

President Sanchez de Lozada is seeking to develop a strategy to eliminate illegal coca from the country without the use of measures he considers to be divisive, such as forced eradication. In 1994, however, the GOB made no measurable progress toward creating a plan to carry out this strategy.

In February 1994, the GOB briefly undertook a campaign of forced eradication which resulted in a violent reaction by coca growers. Voluntary, compensated eradication dropped off sharply and new plantings increased, resulting in a net increase in the area of coca under cultivation.

The Sanchez de Lozada administration has supported USG efforts to extradite drug traffickers, but such efforts stalled in the Bolivian Supreme Court in 1994. In early 1995, however, prominent trafficker Jose Faustino Rico Toro was declared extraditable. Thirty-five other extradition requests by the United States are pending with Bolivia. The GOB has declined to sign an extradition treaty negotiated in 1990, but in early 1995, the Sanchez de Lozada administration proposed a new draft treaty, which USG officials are reviewing.

It is in the vital national interests of the United States to maintain and increase the level of cooperation with Bolivia, the world's second largest coca and cocaine producer. Denial of certification would likely terminate much of Bolivia's multilateral development bank assistance, which would have an extremely harmful effect on the Bolivian economy. It would reduce significantly the resources available to the GOB to combat narcotics trafficking and would foster conditions in which more Bolivians would be driven to engage in illicit coca cultivation and trafficking.

Because the World Bank and Inter-American Development Bank are Bolivian's largest aid donors, USG opposition to loans to Bolivia by those institutions would result in strident calls within Bolivia for the GOB to cease its counternarcotics cooperation with the USG. Economic instability could lead to a loss of confidence throughout the country and thereby serve to undermine Bolivia's still-fledging democratic institutions. Should Bolivia's current democratically-elected government be followed by an authoritarian regime, narcotraffickers might gain a strong foothold, as they did in the corrupt dictatorships of the early 1980's. Preserving and promoting democracy in Bolivia is in the U.S. national interest of enhancing democracy throughout the Western Hemisphere.

In 1994, although the GOB's efforts and cooperation with the USG on interdiction and on broader political issues were substantial, its overall

counternarcotics efforts were not adequate to meet the goals and objectives of the 1988 UN Convention. Nevertheless, the risks posed to vital U.S. national interests from the possible consequences of terminating U.S. assistance, as noted above, greatly outweigh the risks posed by the lack of complete GOB cooperation on counternarcotics. With recent positive signs of action from the GOB, the USG will enter into further discussions to secure commitments for action in key areas.

Colombia

In 1994, Colombia remained the world's largest supplier of cocaine and the source of virtually all the cocaine imported into the United States. There are currently more than 111,000 acres (45,000 hectares) of coca being cultivated, a 13.3 percent increase over 1993 and, if such cultivation is not contained and crops are not eradicated, Colombia could soon surpass Bolivia as the second largest source of coca after Peru. Colombia is also a significant supplier of heroin and one of the largest cultivators of opium poppy in the world, along with Burma, Afghanistan and Laos. Recent data indicate that after having been suppressed over the last few years, Colombia's marijuana cultivation and export to the United States is again increasing. The expected diminution in the movement and flow of narcotics originating in Colombia as a result of the destruction of the Medellin syndicate in 1993 did not materialize. It is apparent that the removal of Pablo Escobar and his drug empire from the Colombia narcotics scene only benefited the now-dominant syndicate headquartered in the city of Cali.

During 1994, the USG and the Government of Colombia (GOC) collaborated on a number of fronts against the scourge of narcotics trafficking in both countries. The GOC had some successes. GOC performance on a number of critical issues, however, was inadequate. Among the successes attained by the GOC were ratification of the 1988 UN Convention which entered into force for Colombia in September 1994, the legalization of the herbicide glyphosate for use against coca cultivation, the defeat of a bill in Congress supported by narco-traffickers that would have diluted the existing illicit enrichment law, the indictment of Miguel Rodriguez Orejuela, and an aerial eradication campaign against illicit cultivation, which the GOC has pressed in the face of large-scale protests by the cultivators. Colombia remains the only producer of coca currently permitting aerial eradication of illegal crops.

Individual police and other officials operating at the ground level show considerable determination to bring narcotics traffickers to justice. Sporadic and ambivalent support by some quarters of the Colombian political establishment prevents significant damage to the Colombian drug syndicates. In 1994, the GOC took no legislative steps to reverse the 1993 revision of the criminal procedures code which made it more difficult to bring mid-level and senior syndicate heads to justice. As a result, following the trend set in 1993, there were no arrests, incarcerations, or fines imposed on such traffickers. In addition, a number of previously convicted traffickers were able to benefit from significant reductions in their sentences pursuant to Colombia's woefully lenient sentencing laws. The GOC's inability to protect and use information provided to them by the U.S. Justice Department has made impossible a full resumption of our previous law enforcement evidence-sharing relationship. The GOC has been informed that evidence obtained in the United States will not be provided for any new criminal cases pending a successful resolution of old cases for which we have provided evidence.

In 1994, total drug seizures through interdiction efforts were above those of 1993 but did not reach the levels accomplished in 1991 (86.35 mt) as the USG had recommended to the GOC. Performance on eradication has improved, but results to date have not met expectations. Even with increased USG-provided air and herbicide assets, the amount of opium poppy eradicated was almost 50 percent less than in 1993. As for coca the numbers are impressive (4,500+ hectares vs. 793 ha in 1993). They might have been

greater had not local grower protests temporarily brought the program to a near halt in December.

In excess of 15,000 active criminal corruption investigations have been filed by the Attorney General against government officials, including 21 Colombian members of Congress. In 1994, there were no senior government officials indicted for corruption. Although Colombia and the United States in 1980 signed a Mutual Legal Assistance Treaty, Colombia has failed to ratify the treaty, and it has not entered into force. The Colombian Congress did not pass bills introduced by the Samper administration to counter money laundering activities and asset retention by illegal enterprises and those who participate in them. There was insufficient progress to detect and remove those corrupt officials primarily involved in counternarcotics efforts. There continues to be a problem with drug syndicate control of sovereign territory, such as San Andres Island.

The performance of two successive governments of Colombia during 1994 on the counternarcotics front did not meet the expectations agreed upon between our governments in numerous official and non-official meetings on the subject. Certain performance criteria were set out with the GOC in order to advance our joint commitments to this problem. Despite a national election and promises by the new government, Colombia did not meet these performance criteria nor did it take adequate steps on its own to achieve full compliance with the goals and objectives established by the 1988 UN Convention. As a result, the activities of the Colombian drug syndicates continue to ensure that the flow of cocaine, heroin and marijuana from Colombia to the United States remains undiminished.

There was a demonstrable absence of support by some quarters of the political establishment to buttress the gains achieved by GOC institutions operating at the ground level. There were no efforts made in the areas of judicial reform, capture and incarceration of syndicate heads, or the strengthening of executive institutions to counter the successful efforts of the trafficking syndicates. Lack of action by the Congress on GOC-introduced legislation also remains a problem.

Vital U.S. national interests would be at risk if we were to deny Columbia certification. As Colombia is the primary source of cocaine to the United States, continued cooperation with the GOC is very important to this country. A vital national interest certification will ensure that USG policy and assistance remain focused on developing more effective Colombian anti-drug efforts, while acknowledging that GOC actions to date have not had the desired impact on the flow of illegal narcotics to the United States. Further, such a certification allows the United States to continue working closely with Colombia on the other important issues on our bilateral agenda: promoting human rights, advancing free trade, and cooperating in international fora.

If Colombia were not certified, the USG would be required to vote against multilateral development lending. Termination of such assistance would have an adverse effect on the Colombian economy, reducing the resources available to the GOC to combat narcotics trafficking and fostering conditions in which more Colombians would be encouraged to engage in illicit coca cultivation and trafficking. Moreover, Colombia would find it more difficult to get international donors to help fund its projected alternative development scheme. Columbia's planned purchase of a U.S. radar system using Export-Import Bank financing would be cancelled, further reducing Colombia's interdiction capabilities.

While the GOC needs to do more in its efforts against drugs, the decrease in narcotics cooperation that would likely attend denial of certification would result in even more narcotics entering this country. Decertification would result in strident nationalistic calls on the GOC to cease its CN cooperation with the USG. In short, the risks associated with denying certification to Colombia are greater than the risks associated with Colombia's failure in the last year to cooperate fully with the United States, or to

take adequate steps on its own, to combat narcotics. Continued cooperation with the GOC will serve our drug control interests. Contrary to our national interests, the net result of decertification would be an increase in the flow of narcotics from Colombia to the United States and in the number of deaths among American drug victims.

Lebanon

Lebanon remained a major nexus for narcotics production and trafficking in 1994. Lebanese success in dramatically reducing the cultivation of both opium and cannabis in 1994 was offset by the continued processing of imported narcotics. Lebanese production facilities maintained pre-eradication levels of output. The Syrians have been cooperative in facilitating some advances in the Lebanese counternarcotics effort. However, no processing laboratories in Lebanon were dismantled in 1994 and the number of heroin and cocaine laboratories increased significantly. The volume of raw opium and cocaine flowing into Lebanon for processing and reexport offset the decreased volume of opium and cannabis cultivated in the Biqa' Valley.

In addition to significant successful eradication efforts, positive developments in Lebanon during 1994 include the lifting of immunity to permit prosecution of a legislator alleged to be corrupt, and the initiation of investigations of other public figures. There was also a marked increase in the number of small seizures and arrests reported in Lebanon, a major seizure of cocaine base in the port of Beirut was recorded, and a major importer of pharmaceuticals was also arrested on suspicion of diverting chemicals to illicit laboratories.

Although Lebanon has signalled its intent to accede, it is not yet a party to the 1988 UN Convention and has not met some of the goals and objectives of the Convention. Lebanon does not have a bilateral narcotics agreement with the United States.

The threat posed to the United States by drug trafficking and processing in Lebanon remains real. However, Lebanon's inability to confront in a wholly successful manner the narcotics threat, or to cooperate fully with the United States reflects, in part, the weakness of its institutions and regional political dynamics. Moreover, the stability, peace, and economic development of Lebanon are important to the stability of the Middle East region. The United States' vital national interests in continuing assistance to Lebanon and in furthering regional stability outweigh the threat posed by drug trafficking through Lebanon to the United States.

Pakistan

Pakistan is both a producer and an important transit country for opiates destined for international drug markets. Laboratories in Pakistan's Northwest Frontier Province process opium grown there and in neighboring Afghanistan. The USG estimates that about one-tenth of heroin consumed in the United States originates in Southwest Asia, much of it produced in the illegal labs in Pakistan. During the 1993–94 crop year, Pakistan produced about 160 metric tons of opium from about 7,300 hectares of poppy.

Despite limited progress in some areas, in 1994 the Government of Pakistan laid the foundation for significant progress in early 1995.

The GOP extended, by decree, the 1930 Narcotics Law to the tribal areas, increased significantly seizures of opium and heroin, increased financial resources devoted to combatting illicit narcotics processing and trade, and in several meetings with Government of India officials agreed to expand counternarcotics cooperation. It also initiated twelve new asset seizure cases in 1994 and used the media to alert the public to the GOP counternarcotics efforts and the dangers of narcotics.

There was limited progress in other areas. Despite the GOP extension of the 1930 Narcotics Law to the frontier areas, few major drug traffickers were arrested or prosecuted during calendar year 1994. None of the new asset seizure cases has been prosecuted. Pakistan marginally extended the

opium cultivation ban while eradication equaled only 1993's total eradication. Poppy cultivation was up 16 percent in 1994, although the overall level of cultivation has remained more or less constant over the last five years.

By year end, Pakistan had drafted and vetted legislation to bring Pakistani law into conformance with the 1988 UN Convention, to which Pakistan is a party, and to prevent drug money laundering. President Leghari promulgated the legislative package as a temporary decree January 9, effective for 120 days after disagreements in the cabinet precluded submission to the National Assembly. Legislative action will be required to make it permanent. Politically difficult efforts to curb corruption in GOP law enforcement agencies and the courts have been modest.

Building on the foundation laid in 1994, Pakistan intensified its anti-narcotics efforts in 1995. The government began an eradication campaign in Bajaur Agency in January 1995 and created a demand reduction office. It also announced on January 25 that it had frozen $68 million in assets of narcotics traffickers. In a late January raid on a drug warehouse in the Northwest Frontier Province, 132 metric tons of drugs, primarily hashish, were seized. Recently, the GOP indicated a willingness to proceed expeditiously on outstanding extradition requests. Pakistan recently expanded the poppy ban in the NWFP.

Vital U.S. national interests could be damaged if Pakistan were to be denied certification. Pakistan is a strategically-located, moderate Islamic state with a nuclear weapons capability. Pakistan has provided troops for UN peacekeeping operations, most recently in Bosnia and Somalia, and has cooperated in the international fight against terrorists. The Government of Pakistan has also used its moderating influence with other Islamic countries. Decertification would be viewed in Pakistan as abandonment of a loyal ally and would endanger U.S./Pakistani dialogue and cooperation on these vital issues. It could also undermine Pakistan's ongoing efforts to address the drug problem, including cooperation by Pakistani anti-narcotics forces with DEA and the embassy narcotics affairs section.

The risk to these vital U.S. interests, and particularly our narcotics cooperation efforts, outweighs the potential gain from decertifying Pakistan for its inadequate efforts to combat narcotics. Pakistan is the conduit for opium and morphine base from Afghanistan, the second largest opium producer in the world. If the surge of Afghan drugs is to be stemmed, we need more Pakistani cooperation. Morale in Pakistan's anti-narcotics organizations could be adversely affected by decertification.

Although Pakistan is currently prohibited from receiving many forms of aid by the Pressler Amendment, denial of certification would add a requirement to vote against Pakistan in multilateral development banks. Access to such loans is vital to Pakistan. During the period of national interest certification, the USG will redouble its efforts to assist the GOP in improving its anti-narcotics performance to meet the criteria for full certification.

Paraguay

Paraguay is used as a transit route for cocaine shipped primarily from Bolivia, and perhaps increasingly from Colombia, to Argentina and Brazil for onward shipment to the United States and Europe. High-quality marijuana is exported to Argentina and Brazil and consumed within Paraguay. Paraguay is potentially a major money laundering center, based on its extensive re-export trade and its expanding and poorly regulated financial sector.

President Juan Carlos Wasmosy, Paraguay's first democratically-elected civilian President in over five decades, has stressed his personal commitment to combatting narcotics trafficking. He has continued authorization to stage USG counternarcotics surveillance aircraft in Paraquay and submitted to Congress legislation to control money laundering. Nevertheless, he failed in 1994 to act decisively when brought information relating to corruption within the GOP's counternarcotics leadership. As a result, Paraquay's co-

operation in drug law enforcement was weak in the first half of the year, and one criminal investigation was very probably compromised due to corruption. A lack of political will to uncover what is widely believed to be extensive official corruption led to an overall weak drug control program. Given this situation, Paraguay cannot be considered to be in compliance with the goals of the 1987 bilateral counternarcotics agreement with the USG, which seeks to eliminate the illicit production, processing, trafficking, and consumption of narcotics in Paraguay and the transit of narcotics through contiguous territorial waters.

Cooperation briefly improved in mid-year, resulting in a successful joint investigation with the Drug Enforcement Administration that netted 756 kilos of cocaine, the largest seizure ever in Paraguay. In October, the head of the anti-narcotics secretariat (SENAD) was assassinated, apparently in a personal dispute, disrupting further drug enforcement investigations for the remainder of the year. The new head of SENAD has expressed commitment to a cooperative drug control effort and has promised to carry out widespread changes in the composition of SENAD and the national anti-narcotics police. The USG remains concerned, however, that the Paraguayan military's control over SENAD will cloud any efforts to change the organization fundamentally.

The Government of Paraguay (GOP) made some progress toward meeting the goals and objectives of the 1988 UN Convention when the Paraguayan Congress ratified a financial information exchange agreement with the USG. However, until the GOP takes credible action to investigate allegations of corruption and to promote an aggressive investigative stance against those aiding drug trafficking, it cannot be considered to be fully cooperating with the United States, or to be taking adequate steps on its own, to comply with the goals and objectives of the 1988 UN Convention.

Despite its concerns about the GOP's lack of political will to seriously address drug trafficking, the USG is cognizant that Paraguay remains a young, fragile democracy. The consequences of decertification would likely have a significant adverse impact on Paraguay's ability to consolidate and sustain its fledgling democracy. The USG believes that its long-term counternarcotics goal for Paraguay, the promotion of strong, independent, credible institutions of government able to defeat drug trafficking, is best served by fully supporting the continued growth of democracy. Such support is in the vital national interest of the United States. Therefore, the vital U.S. national interest of promoting democracy outweighs the risks posed by the lack of full GOP cooperation on counternarcotics.

Peru

Vital U.S. national interests would be harmed if we deny certification to Peru. Peru remains the largest source of coca leaf in the world, making continued cooperation with the Government of Peru very important to the United States. In 1994, there was no measurable reduction in the flow of coca base from Peru to Colombia and no systematic mature coca eradication. While the amount of coca under cultivation remained the same, coca leaf production increased by six percent due to new, more productive coca plantings in expanded new areas that are superseding older areas, such as the Huallaga Valley. A vital national interests certification will ensure that U.S. Government policy and assistance remain focused on reducing the cultivation of coca and implementing the Peruvian drug strategy promulgated in 1994. Further, such a certification will allow the United States to continue working closely with Peru on other important issues such as democracy, economic reform and human rights.

In September, the Government of Peru (GOP) approved a national drug plan that defines measures to eliminate illegal drug production, trafficking and abuse, including eliminating all coca cultivation destined for illicit uses. It also established timetables and assigned responsibilities for implementing sectoral plans and programs, including a national alternative development program. In June, the GOP passed a stringent law with strict penalties

for any aspect of opium poppy cultivation trafficking or use, which requires destruction of any poppy found in Peru. The GOP cooperated on most counternarcotics matters contained in its bilateral narcotics agreement with the United States, and took some steps to comply with the goals and objectives of the 1988 UN Convention. However, it made no progress toward the critical goal of reducing mature coca cultivations.

In 1994, there was concrete evidence of refined cocaine HCl processing and shipment from Peru to Mexico by Peruvian trafficking organizations, raising the specter of Peru as a potentially large-scale cocaine refining and shipping center, similar to Colombia. Police and armed forces seized over 9 mt of cocaine base through November 1994, exceeding the 1993 total. Nearly 6 mt were seized by the armed forces, using police intelligence. In January 1994, at GOP request, Colombia arrested major Peruvian trafficker Demetrio Limonier Chavez-Penaherrera (''Vaticano''). He was tried in Peru and is serving a 30-year sentence. There were similar successes against other major Peruvian trafficking organizations. The Peruvian Air Force (FAP) continued to implement an air intercept program with A–37s and Tucano aircraft, despite the USG shutdown of intelligence sharing in May (which has now resumed pursuant to a U.S. Presidential Determination).

The GOP has cooperated with UN Drug Control Program alternative development projects in parts of the Huallaga, Aguaytia, Pachitea and Urubamba valleys. Resumption of international financial institution lending was followed by World Bank and Inter-American Development Bank projects to rehabilitate over 1500 kilometers of roads, and improved electrical power facilities in areas affected by the coca economy. Such improvements in infrastructure facilitate the production and transport of alternative licit crops. Coca seedbed eradication was resumed in July, and has had a measurable impact on efforts to reduce the cultivation of coca in specific areas.

Alternative development programs in or near coca-producing regions will set the stage for future coca crop reduction. The GOP must integrate alternative development efforts with actual net reduction of coca cultivation and prevent the expansion of new coca cultivation areas in order to comply with 1988 UN Convention goals and U.S. and Peruvian drug plans.

A decrease in narcotics cooperation with the GOP would result in more cocaine entering the United States. The risks associated with denying certification to Peru are greater than the risks associated with Peru's failure in the past year to cooperate fully with the United States, or take adequate steps on its own to reduce coca cultivations.

STATEMENT OF EXPLANATION

Afghanistan

In 1994, opium poppy cultivation in Afghanistan increased dramatically amid ongoing civil war, widespread lawlessness, and poor economic opportunities. According to USG estimates, opium production in Afghanistan rose 38 percent to approximately 950 metric tons of opium in 1994. Cultivated hectarage rose 39 percent to 29,180 hectares. USG analysis indicates Afghanistan remains the second largest opium producer in the world.

The nominal Government of Afghanistan was unable to eradicate systematically poppy plants, investigate or prosecute traffickers, or impede the transportation of opium, morphine base, or other narcotics. Few provincial leaders apart from Haji Qadir, Governor of poppy-rich Nangarhar, attempted to disrupt the cultivation or trafficking through the areas under their control. Haji Qadir in late 1994 began a campaign of plowing under Nangarhar's newly-planted poppy fields. Despite a demonstration of poppy-plowing for the benefit of U.S. and other international officials, we are unable to judge the extent or efficacy of Qadir's campaign.

Afghan traffickers continued development of new trafficking routes through the Newly Independent States, supplementing existing routes through Pakistan and Iran.

Reports continue to allege the direct involvement of some factional leaders, particularly small-scale independent ''commanders,'' in narcotics production and trafficking and the indirect involvement of others who provide security to the narcotics trade in return for payment.

There is no functioning bilateral agreement between Afghanistan and the United States. While Afghanistan ratified the 1988 UN Convention in 1992, it has made virtually no progress in achieving its goals.

The tremendous increase in poppy cultivation during 1994, combined with the inadequate efforts to eliminate cultivation and trafficking, precludes a determination that Afghanistan has cooperated fully with the United States or taken adequate steps on its own to meet the goals and objectives established by the 1988 Convention. The core problem in Afghanistan is the absence of a functional central government. Although the USG has vital national interests in fostering the re-establishment of a functioning central government that could cooperate with us on regional security issues and drug eradication, USG assistance for such purposes falls largely outside the definition of U.S. assistance that would be cut off by denial of certification, at least this fiscal year. Accordingly, denial of certification is appropriate.

Burma

Burma remains the world's largest producer of illicit opium and heroin and the Government of Burma (GOB) continues to treat counternarcotics efforts as a matter of secondary importance. Estimated opium production in 1993/94 was 2,030 metric tons and illicit poppy cultivation covered 146,600 hectares. Opium production fell by 21 percent, due principally to poor weather. There were some modest signs of greater government efforts in counternarcotics. One of the results of a Burmese Army campaign against the Shan United Army (SUA) of Khun Sa was to restrict the opium supply and drug trafficking routes of the SUA. The GOB has also begun to show signs of willingness to cooperate in counternarcotics efforts and has agreed to facilitate an opium yield survey in 1995 and to allow the UN Drug Control Program (UNDCP) to perform an aerial survey of project areas. Domestic enforcement efforts have also shown some marginal improvement with regional task forces under the Burmese police becoming more active in drug enforcement. These efforts, however, fall short of what is required to address seriously the drug problem in Burma.

The government's ability to suppress Burma's opium and heroin trade is severely limited by lack of access to and control over the areas in which most opium is grown and heroin processed. Well-equipped ethnic armies sheltered in these remote mountainous regions have been permitted wide-ranging, local autonomy in exchange for halting their active insurgencies against Rangoon. At the same time, opium poppy cultivation has soared in the base areas of the insurgent groups, especially in the Wa hills, despite nominal commitments by insurgents and the government alike that efforts would be made to reduce opium growing. Direct government complicity in the drug trade does not appear to be a problem among senior officials, but narcotics corruption is a problem among lower level officials.

Multilateral drug control projects in enforcement and alternative development under the UNDCP involving cooperative efforts between Burma, China and Thailand are underway. These projects continue to receive support from the international community. Project scale is small, however, and the overall impact of these efforts on the huge opium cultivation problem in Burma has been extremely limited so far.

Burma is a party to the 1988 UN Convention and has enacted some legislation in conformity with the Convention, but has not made a strong effort to enforce these laws. There has been no bilateral counternarcotics

agreement with the USG since the State Law and Order Restoration Council assumed power in 1988.

Iran

Iran is a major drug transit country. Reportedly, almost half the morphine base that arrives in Turkey monthly for processing as heroin passes through Iran. It also continues to grow opium poppy in remote provinces. Although the USG did not estimate production in 1994, the USG does not believe cultivation diminished significantly as we know of no eradication campaigns. The 1993 estimate was about 3,500 hectares of cultivation with a yield of between 35 and 70 metric tons of opium.

Iran is a party to the 1988 UN Convention and has undertaken at least some activities to fulfill the goals and objectives the Convention established. Since Iran and the United States do not have diplomatic relations and have not cooperated in counternarcotic efforts, the U.S. has been unable to ascertain the extent or adequacy of Iran's undertakings. There is no bilateral counternarcotics agreement in place between Iran's government and the USG.

According to both Iranian radio reports and Iranian government reports to the UN Drug Control Program (UNDCP), the Government of Iran (GOI) is waging a vigorous campaign to eradicate trafficking through Iran. Almost daily radio reports announce substantial morphine base and heroin seizures. Reportedly many individuals are arrested and later executed for drug trafficking. The USG cannot verify many of these reports as it has no representatives in Iran. UNDCP observers have viewed some seizures, including 30 tons of opium in one exhibit bond room. Interpol statistics for 1994, probably based on Iranian government reports, state Iran seized 112 tons of opium, 800 kilograms of heroin and 15 tons of morphine base. However, despite claims about the high level of Iran's counternarcotics effort, the level of drugs arriving in Syria and Turkey has not noticeably decreased.

UNDCP representatives have verified that Iran has fortified frontier guard posts with Pakistan and dug a trench to prevent crossing between posts in an effort to decrease trafficking. Intelligence reports suggest that border guards continue to be bribed to permit drug caravans through, however. The USG believes drug-related corruption continues to be a serious problem among Iran's law enforcement and security services. The USG does not know the extent to which Iran enforces its prominently advertised campaign to prevent and punish public corruption.

Human rights organizations and some Iranian exiles accuse Iran of executing dissidents on false charges of drug trafficking.

Nigeria

A major transit country for Asian heroin and Latin American cocaine destined for the United States and numerous other points around the world, Nigeria remains the focal point for most West African trafficking organizations. Corruption in the Nigerian Drug Law Enforcement Agency (NDLEA) and other law enforcement agencies has not been addressed adequately, thereby hindering counternarcotics efforts. The export of Nigerian drug trafficking to Liberia and other West African counties is of particular concern. The NDLEA's focus in 1994 remained almost exclusively on drug couriers rather than on leaders of drug trafficking groups.

The Government of Nigeria (GON) did begin to show concern about international and domestic drug abuse during 1994. The GON prepared a draft national drug policy plan aimed at rooting out trafficking and substance abuse. The GON formed a ministerial level task force on drug abuse which will develop a drug control strategy by mid-1995. In late December, the GON appointed a special advisor on drugs, money laundering, and advance fee fraud whose task is to coordinate the anti-drug efforts of the NDLEA, the police, and the customs agency. In 1994, the GON returned to the United States three drug barons responsible for heroin rings.

These steps may have potential for significant improvement in Nigeria's anti-drug efforts. We will evaluate at an early stage if they and other steps are being implemented effectively and if these steps are followed by additional anti-drug measures.

While the United States welcomes the positive steps taken during the past year, Nigeria did not meet the goals and objectives of the 1988 UN Convention. Nigeria did not effectively implement its bilateral agreement with the United States.

Based on a complete and thorough review of the GON's counternarcotics actions throughout 1994, Nigeria's prominent role in international narcotics trafficking, and its failure in 1994 to make significant progress in meeting the goals and objectives of the 1988 UN Convention, the threat posed to the United States by drug trafficking by Nigerians through Nigeria and elsewhere justifies continued denial of certification.

Syria

Syria is a transit point for narcotics flowing through the Middle East to Europe and, to a lesser extent, the United States. In addition, Syria continues to have a responsibility for assisting Lebanese authorities in ending drug production and trafficking through Lebanon because of the presence of some 30,000 Syrian troops in the Bekaa Valley. In 1994, Syria continued and expanded its cooperation with Lebanese authorities to eradicate opium poppy and cannabis cultivation in the Bekaa Valley, significantly reducing opium and cannabis cultivation. Syrian forces increased seizures of cocaine, heroin, and hashish and raised the number of arrests of drug traffickers in Syria and Lebanon. Syrian military authorities in Lebanon assisted in a significant seizure of cocaine base delivered to Beirut's port during 1994. Despite these efforts, however, the flow of narcotics did not diminish in 1994.

The Syrian government has reiterated its willingness to pursue all information regarding the possible production of narcotics in Lebanon and Syria. However, neither the Syrian nor the Lebanese authorities moved successfully against cocaine or heroin laboratories operating in either country. There were a significant number of arrests in Syria for drug-related offenses, but despite reports of individual Syrian military officials profiting from the drug trade in Lebanon, no corruption investigations or charges were brought against any Syrian government or military officials in 1994.

The USG does not provide Syria with bilateral assistance and does not support loans for Syria in multilateral institutions.

Syria is a party to the 1988 UN Convention. While Syria greatly improved its performance in reducing illicit cultivation and increased seizures in Lebanon, it did not meet some of the other goals and objectives of the 1988 UN Convention. Syria does not have a bilateral narcotics agreement with the United States.

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Rules and Regulations

Federal Register
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Thursday, March 9, 1995

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

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 94–012F]

Incorporation by Reference; Updating of Text; Net Weight Labeling of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to update references to the National Institute of Standards and Technology (NIST) Handbook 133, ''Checking the Net Contents of Packaged Goods'' and NIST Handbook 44, ''Specifications, Tolerances and Other Technical Requirements for Measuring Devices.'' A 1994 edition of NIST Handbook 44 was published in October 1993 and four supplements to NIST Handbook 133 were published in September 1990, October 1991, October 1992, and October 1994, subsequent to their incorporation by reference in certain sections of the Federal meat and poultry products inspection regulations. FSIS is amending the provisions in its regulations that reference the publications to reflect the most recent edition of NIST Handbook 44 and the supplements to NIST Handbook 133.

DATES: This rule will be effective on May 8, 1995 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before April 10, 1995.

ADDRESSES: Adverse comments or notice of intent to submit adverse comments should be sent in triplicate to Regulations Development, Policy, Evaluation and Planning Staff, Attention: Diane Moore, FSIS Docket Clerk, Food Safety and Inspection Service, Room 3171, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. Comments should reference Docket No. 94–012F. All comments will be available for public inspection from 8:30 a.m. to 1 p.m. and 2 p.m. to 4:30 p.m., Monday through Friday, in Room 3171, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Paula M. Cohen, Director, Regulations Development, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7164.

SUPPLEMENTARY INFORMATION:

Background

Title 1 of the Code of Federal Regulations (1 CFR Part 51) requires that an Agency seeking approval of a change to a publication that is approved for incorporation by reference in the Code of Federal Regulations publish a notice of the change in the **Federal Register** and amend the Code of Federal Regulations. The Agency must also ensure that a copy of the amendment or revision is on file at the Office of the Federal Register and notify the Director of the Federal Register in writing that the change is being made.

Accordingly, FSIS has reviewed the most recent publications, NIST Handbook 44 and supplements to NIST Handbook 133, pertaining to meat and meat food products and poultry and poultry products and FSIS' regulations that reference the Handbooks.

The following is a summary of the changes to NIST Handbooks 44 and 133 applicable to meat and poultry products.

NIST Handbook 44

The changes to the General Scales Codes of NIST Handbook 44 from 1990 through 1993 primarily recognize new features and capabilities of scales. These changes have the effect of giving scale manufacturers more flexibility in scale design and the ability to incorporate features that better meet the needs of the users. Although NIST Handbook 44 addresses a wide range of scales, the following summary describes the most significant changes to the Handbook as it applies to scales used to weigh meat and poultry products produced in meat and poultry establishments.

The most significant change is recognition of the use of electronic forms of audit trails to provide security to scale adjustments rather than requiring the use of a physical security seal to indicate when access to metrological parameters has occurred. Another change allows scales to incorporate an ''initial zero-setting mechanism.'' The mechanism allows different types of scale platforms to be used while continuing to allow the scale to weigh to capacity. Marking requirements have been combined into a table format to make them more understandable and easily referenced. Additionally, automatic and semi-automatic calibration of scales using an internal calibration weight are permitted provided the calibration mechanism or the calibration process do not facilitate inaccurate adjustments to the scale. Finally, tolerances for scales manufactured before 1986 have been consolidated, in table format, for easy reference.

NIST Handbook 133

The changes to NIST Handbook 133 pertaining to meat and poultry products are primarily for clarification and consistency with the meat and poultry products inspection regulations. The following is a summary of the more significant changes to NIST Handbook 133 pertaining to meat and poultry products. The remaining changes were strictly editorial.

1. The definition of ''used tare'' and ''dried used tare'' were made consistent with procedures for meat and poultry products that permit drying in a microwave oven.

2. A reference to product for which no gray area has yet been determined was added.

3. The reference to bacon with free-flowing liquid as ''subquality'' was deleted.

4. Group 5 Lower Limits for Individual Weights was changed to 1 percent of labeled weight. The lower limit of 1.5 ounces for the largest weight of 160 ounces in Group 4 is equivalent to 0.94 percent of the labeled weight. A fixed lower limit of 2 ounces (or 4 ounces, depending upon the scale being used) in Group 5 (with labeled weight of 160 ounces and up) is too small as a percentage of the labeled weights. For example, a lower limit of 2 ounces for

a labeled weight of 50 pounds is equivalent to 0.25 percent of the labeled weights.

5. Revisions were made to indicate that packaging materials must be cleaned before weighing tare and to specify a zero gray area for bacon packages with no free-flowing liquid inside as well as packages with no absorbent material.

6. Revisions were made to establish a definition of ''fresh poultry'' for net weight determinations and to clarify that the gray area should only be applied to raw, fresh poultry in retail packages when wet tare tests are conducted.

7. Revisions were made to specify procedures for cleaning tare materials and to add a paragraph on the repackaging of packages opened for tare determination.

8. A paragraph was added on procedures to follow when there is no free-flowing liquid or absorbent material in contact with the product.

9. A paragraph was expanded to include testing of bacon, sausage, or luncheon meats with no free-flowing liquid or absorbent tare material.

10. Revisions were made to reflect changes to the Category A sampling plans and to correct addresses and telephone numbers of FSIS regional offices.

Copies of the 1994 Edition of the NIST Handbook 44, NIST Handbook 133, and supplements to NIST Handbook 133 issued in September 1990, October 1991, October 1992, and October 1994, are on file at the Office of the Federal Register. Copies of the publications and supplements may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Effective Date

We are publishing this rule without prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**. Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

Executive Order 12866

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Effect on Small Entities

The Administrator, FSIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

List of Subjects

9 CFR 317

Incorporation by reference, Meat inspection, Net weight.

9 CFR 381

Incorporation by reference, Poultry products inspection, Net weight.

For the reasons set out in the preamble, 9 CFR parts 317 and 381 are amended as set forth below.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for Part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.19 is amended by revising the first sentence of paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 317.19 Definitions and procedures for determining net weight compliance.

(a) For the purpose of §§ 317.18 through 317.22 of this part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Institute of Standards and Technology (NIST) Handbook 133, ''Checking the Net Contents of Packaged Goods,'' Third Edition, September 1988, and Supplements 1, 2, 3, and 4 dated September 1990, October 1991, October 1992, and October 1994, respectively, which are incorporated by reference, with the exception of the NIST Handbook 133 and Supplements 1, 3, and 4 requirements listed in paragraphs (b) and (c) of this section. * * *

(b) * * *

(c) The following requirements of Supplement 1, dated September 1990, Supplement 3, dated October 1992, and Supplement 4, dated 1994, of NIST Handbook 133 are not incorporated by reference.

Supplement 1

Chapter 2 General Considerations

2.13.1. Polyethylene Sheeting and Film
2.13.2. Textiles
2.13.3. Mulch

Chapter 3 Methods of Test for Packages Labeled by Weight

3.11.4. Exhausting the Aerosol Container

Chapter 4 Methods of Test for Packages Labeled by Volume

4.6.4. Method D: Determining the Net Contents of Compressed Gas in Cylinders
4.7. Milk
4.16. Fresh Oysters Labeled by Volume

Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities

5.4. Polyethylene Sheeting

Supplement 3

Chapter 3 Methods of Test for Packages Labeled by Weight

3.17. Flour and Dry Pet Food

Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combination of Quantities

5.4. Polyethylene Sheeting
5.5. Paper Plates
5.8. Baler Twine

Appendix A. Forms and Worksheets

Supplement 4

3.11 Aerosol Packages
3.11.1 Equipment
3.11.2 Preparation for Test
3.11.3 The Determination of Net Contents: Part 1
3.11.4 Exhausting the Aerosol Container
3.11.5 The Determination of Net Contents: Part 2

Appendix A. Report Forms

3. Section 317.20(a) is amended by revising the second sentence to read as follows:

§ 317.20 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.

(a) * * * Such scales shall meet the applicable requirements contained in National Institute of Standards and Technology Handbook 44, ''Specifications, Tolerances and Other Technical Requirements for Weighing

and Measuring Devices,'' 1994 Edition, October 1993, which is incorporated by reference. * * *

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

4. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

5. Section 381.121b is amended by revising the first sentence of paragraph (a) and adding a new paragraph (c) to read as follows:

§ 381.121b Definitions and procedures for determining net weight compliance.

(a) For the purpose of § 381.121b of this part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Institute of Standards and Technology (NIST) Handbook 133, ''Checking the Net Contents of Packaged Goods,'' Third Edition, September 1988, and Supplements 1, 2, 3, and 4 dated September 1990, October 1991, October 1992, and October 1994, respectively, which are incorporated by reference, with the exception of the NIST Handbook 133 and Supplements 1 and 3 requirements listed in paragraphs (b) and (c) of this section. * * *

(b) * * *

(c) The following requirements of Supplement 1 dated September 1990, Supplement 3 dated October 1992, and Supplement 4 dated October 1994, of NIST Handbook 133 are not incorporated by reference.

Supplement 1

Chapter 2 General Considerations

2.13.1. Polyethylene Sheeting and Film
2.13.2. Textiles
2.13.3. Mulch

Chapter 3 Methods of Test for Packages Labeled by Weight

3.11.4. Exhausting the Aerosol Container

Chapter 4 Methods of Test for Packages Labeled by Volume

4.6.4. Method D: Determining the Net Contents of Compressed Gas in Cylinders
4.7. Milk
4.16. Fresh Oysters Labeled by Volume

Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities

5.4. Polyethylene Sheeting

Supplement 3

Chapter 3 Methods of Test for Packages Labeled by Weight

3.17. Flour and Dry Pet Food

Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities

5.4. Polyethylene Sheeting
5.5. Paper Plates
5.8. Baler Twine

Appendix A. Forms and Worksheets

Supplement 4

3.11 Aerosol Packages
3.11.1 Equipment
3.11.2 Preparation for Test
3.11.3 The Determination of Net Contents: Part 1
3.11.4 Exhausting the Aerosol Container
3.11.5 The Determination of Net Contents: Part 2

Appendix A. Report Forms

6. Section 381.121c(a) is amended by revising the second sentence to read as follows:

§ 381.121c Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.

(a) * * * Such scales shall meet the applicable requirements contained in National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices,'' 1994 Edition, October 1993, which is incorporated by reference. * * *

* * * * *

Done at Washington, DC, on: February 14, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–4500 Filed 3–8–95; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations; Unblocking of Vietnamese Assets

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to the claims settlement agreement entered into on January 28, 1995, between the Government of the United States and the Government of the Socialist Republic of Vietnam, the Office of Foreign Assets Control is unblocking assets in which Vietnam or a national thereof has an interest, blocked pursuant to the Foreign Assets Control Regulations.

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

On February 3, 1994, President Clinton lifted the trade embargo against Vietnam and authorized new financial and other transactions with Vietnam and its nationals. Property blocked as of February 3, 1994, because of an interest therein of Vietnam or its nationals, however, remained blocked pending a claims settlement agreement between the two countries. On January 28, 1995, an agreement was reached between the United States Government and the Government of the Socialist Republic of Vietnam, in which Vietnam agreed to pay $208.5 million in settlement of outstanding U.S. private and government claims, and providing that the remaining Vietnamese property be unblocked. Accordingly, this rule amends the Foreign Assets Control Regulations, 31 CFR part 500 (''FACR''), to unblock assets held in the name of the Vietnamese Government or a national thereof on February 3, 1994.

Because the FACR involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, Banking, Blocking of assets, Cambodia, Exports, Fines and penalties, Finance, Foreign investment in the United States, Foreign trade,

Imports, Information and informational materials, International organizations, North Korea, Reporting and recordkeeping requirements, Securities, Services, Travel restrictions, Trusts and estates, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1.The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 500.578 is revised to read as follows:

§ 500.578 Vietnamese property unblocked.

All transactions otherwise prohibited by this part which involve property in which a designated national of Vietnam has an interest are authorized.

Dated: February 22, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 23, 1995.

John Berry,

Deputy Assistant Secretary (Enforcement).

[FR Doc. 95–5858 Filed 3–6–95; 4:52 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH09

Special Monthly Compensation Ratings

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations concerning the rate of special monthly compensation payable to a veteran with a totally disabling service-connected disability who either has additional service-connected disability ratable at 60 percent or is permanently housebound by reason of service-connected disability. This change is necessary because of a General Counsel precedent opinion which held that the regulation restricts eligibility in a manner not authorized by the statute. The intended effect of this amendment is to bring the regulation into conformity with the statute.

EFFECTIVE DATE: This final rule is effective March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Special monthly compensation is a benefit established by Congress to be paid for specified disabilities independent of any other compensation authorized by Title 38 U.S.C. 1114(a)–(j). 38 U.S.C. 1114(s) provides for payment of special monthly compensation for a veteran who has a service-connected disability rated as total and (1) has additional service-connected disability or disabilities independently ratable at 60 percent or more, or (2) is permanently housebound by reason of a service-connected disability or disabilities. 38 CFR 3.350(i), the implementing regulation, provides that the special monthly compensation rate under 38 U.S.C. 1114(s) is payable where the veteran has a single service-connected disability rated as 100 percent ''without resort to individual unemployability'' and meets the other criteria.

In a precedent opinion dated February 2, 1994 (OGC Prec 2–94), VA's General Counsel held that the plain and unambiguous language of 38 U.S.C. 1114(s) does not restrict the nature of total ratings that may serve as a basis for entitlement to the rate of special monthly compensation which section 1114(s) authorizes. Based on that holding, the General Counsel found that the portion of 38 CFR 3.350(i) which precludes eligibility if the service-connected disability rated as total is so rated due to individual unemployability is an unauthorized restriction.

The General Counsel has recommended that the regulation be revised. We are, therefore, revising the text of 38 CFR 3.350(i) to remove the unauthorized restriction.

VA is issuing a final rule to amend the provisions of 38 CFR 3.350(i). Publication of this amendment as a proposed rule is unnecessary because this notice merely amends 38 CFR 3.350(i) to conform to the terms of the governing statute.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Persons with disabilities, Pensions, Veterans.

Approved: November 23, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. The introductory text of paragraph 3.350(i) is amended by removing the phrase ''without resort to individual unemployability''.

[FR Doc. 95–5761 Filed 3–8–95; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7121

[OR–943–1430–01; GP5–039; OR–19083]

Partial Revocation of Executive Order Dated November 24, 1916; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects 2.50 acres of land withdrawn for the Bureau of Land Management's Powersite Reserve No. 566. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through sale. This action will open the land to surface entry subject to temporary segregations of record. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/

Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6171.

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

1. The Executive Order dated November 24, 1916, which established Powersite Reserve No. 566, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 1 N., R. 19 E.,
Sec. 14, S½S½SW¼SW¼SE¼.

The area described contains 2.50 acres in Gilliam County.

2. At 8:30 a.m. on April 10, 1995, the land described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on April 10, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 24, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–5697 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–33–P

43 CFR Public Land Order 7122

[CA–010–1430–01; CACA 7645]

Partial Revocation of Secretarial Order Dated July 9, 1927; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order dated July 9, 1927, insofar as it affects 160.02 acres of public land withdrawn for the Bureau of Land Management's Powersite Classification No. 183. The land is no longer needed for this purpose, and the revocation is necessary to facilitate the completion of a land exchange under Section 206 of the Federal Land Policy and Management Act of 1976. This action will open the land to surface entry unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to mineral leasing. The Federal Energy Regulatory Commission has concurred with this action.

EFFECTIVE DATE: June 8, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–979–2858.

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

1. The Secretarial Order dated July 9, 1927, which withdrew lands for Powersite Classification No. 183, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 17 N., R. 7 E.,
Sec. 2, lot 1, SE¼NE¼, and E½SE¼ (described as sec. 2, E½E½ in the original order).

The area described contains 160.02 acres in Yuba County.

2. The State of California, with respect to the land described in paragraph 1, has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1988).

3. At 10 a.m. on June 8, 1995, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 8, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The land has been open to mining under the provisions of the Mining Claim Rights Restoration Act of 1955, 30 U.S.C. 621 (1988), and these provisions are no longer required.

Dated: February 24, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–5698 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–40–P

43 CFR Public Land Order 7123

[AK–932–1430–01; AA–62904]

Revocation of Geological Survey Order dated April 23, 1948, as Modified; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a Geological Survey order as it affects approximately 5,000 acres of land withdrawn for power purposes at Taiya River. The land, which includes public land and land which has been conveyed out of Federal ownership, is no longer needed for the purpose for which it was withdrawn. The public land lies within the Klondike Gold Rush National Historical Park; the remainder has been conveyed to the State of Alaska.

EFFECTIVE DATE: March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

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

1. The Geological Survey Order dated April 23, 1948, as modified, which established Powersite Classification No. 396, is hereby revoked as it affects the following described land:

Copper River Meridian

Land located within T. 25 S., R. 60 E., T. 26 S., R. 59 E., and T. 26 S., R. 60 E., and more particularly described as:

Land located in approximate latitude 59°40′ N., and longitude 135°16′ W., being every smallest legal subdivision, any portion of which, when surveyed will be within ½ mile of Taiya River from the mouth of Nourse River to the International Boundary. The area described contains approximately 5,000 acres.

2. The public land described above will remain part of the Klondike Gold Rush National Historical Park as established by Public Law 94–323, 16 U.S.C. 410(bb)(1988). The remaining land described above has been conveyed out of Federal ownership subject to Section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. 818 (1988).

Dated: February 24, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–5763 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–JA–P

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Removal of Three Kangaroos From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has determined that three common species of kangaroos, the red kangaroo, the western gray kangaroo, and populations of the eastern gray kangaroo in mainland Australia, should be removed from the list of threatened species under the Endangered Species Act (Act or ESA). The Service also announces that it is denying a December 20, 1989, petition to reimpose a ban on the commercial importation of products from these three species of kangaroos from mainland Australia on procedural grounds. The Service, with this rule, also rescinds the existing special rule applicable to threatened kangaroo populations.

EFFECTIVE DATE: April 10, 1995.

ADDRESSES: The complete file for the rule is available for public inspection by appointment, from 8 a.m. to 4 p.m., in Room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, at the above address, or by phone (703–358–1708) or by fax (703–358–2276).

SUPPLEMENTARY INFORMATION:

Background

The term ''kangaroo'' in this rule refers to all populations of the red kangaroo (*Macropus rufus*), the western gray kangaroo (*M. fuliginosus*), and the eastern gray kangaroo (*M. giganteus*) in mainland Australia, which are being removed from the list of endangered and threatened wildlife (50 CFR 17.11) under Act (16 U.S.C. 1531–1544). The subspecies of the eastern gray kangaroo (*M. g. tasmaniensis*), which occurs solely in Tasmania retains its endangered classification under the Act. The red kangaroo, western gray kangaroo, and the eastern gray kangaroo in mainland Australia were listed on December 30, 1974 (39 FR 44990), as threatened species pursuant to the Act and the commercial importation of kangaroos, their parts, and products was banned. A special rule to allow such importations into the United States after development of adequate State management plans accompanied the listing. The Service accepted the management programs for four Australian States and lifted the importation ban on April 29, 1981 (46 FR 23929), after kangaroo management plans and population survey techniques had been strengthened. The Service, in two **Federal Register** notices of April 8, 1983, proposed to delist the three species of kangaroos (48 FR 15428) and to continue the commercial importation of kangaroos (48 FR 15434). The final rule allowing the continuation of the importation of kangaroos was published on August 1, 1983 (48 FR 34757). The Service withdrew the proposed rule to delist the three kangaroo species on April 24, 1984 (49 FR 17555), after receiving new data from the Australian Government that the severe drought in the summer of 1982–3 had caused significant reductions in kangaroo populations. It was noted that the drought was broken in winter 1983, that kangaroos were again beginning to breed, but the ability of kangaroo populations to recover from the major 1982–3 population fluctuation was unknown. It was further noted that the delisting action could be reconsidered after the Service had a better understanding of how kangaroo populations recover from drought events.

The Service was petitioned on December 20, 1989, by Greenpeace USA, with subsequent support from other groups, ''to reinstate the ban on commercial importation of kangaroos and of kangaroo products.'' The petitioners contended that Australia's management of kangaroos was inherently flawed and that Australian States did not have adequate and effective conservation programs that ensured the protection of the threatened species. The Service, in order to respond to the December 20, 1989, petition in a meaningful manner, sent three representatives to Australia in March 1990 to investigate the population status of the three kangaroo species (survey methods, numbers, and trends) and the implementation of management programs. In addition, the team received comments about the conservation benefit of management plans that allowed the harvest of kangaroos. The Service team spent 12 days meeting with selected members of Parliament, representatives of various nongovernmental organizations, scientists, State and federal natural resource managers, enforcement personnel, grain growers, and ranchers. The team also visited parks, open range, chillers, faunal dealers, ports and exporters. The team presented their findings in a June 5, 1990, report (Nichols et al. 1990). The Service, in a **Federal Register** notice of August 8, 1990 (55 FR 32276), announced the receipt of the Greenpeace petition and the availability of the June 5, 1990, Service report and requested comments on the status of the three species of kangaroos in Australia. The comment period on the status review for the December 20, 1989, petition was extended to November 6, 1990.

The Wildlife Legislative Fund of America submitted a petition dated November 6, 1990, which was received by the Service on the following day. That petition requested that all populations of the red kangaroo (*Macropus rufus*), the western gray kangaroo (*M. fuliginosus*), and the eastern gray kangaroo (*M. giganteus*), except the subspecies *M. g. tasmaniensis*, be removed from the list of threatened species under the Endangered Species Act (Act).

The Wildlife Legislative Fund petition presented the June 5, 1990, report prepared by Service personnel as the principal basis for the petition. Among other things, the petitioners cited the conservative estimates of the 1987 kangaroo populations (red kangaroos—7.5 million, western gray kangaroos—1.7 million, and eastern gray kangaroos—4.7 million) and the fact that kangaroo conservation programs exist within individual range states as reasons for delisting the species.

The Service, in a **Federal Register** notice of June 12, 1991 (56 FR 26971), found that the action requested in the November 6, 1990, petition may be warranted and requested additional comments as part of a continuing status review of kangaroos and kangaroo management in Australia. The comment period was reopened until September 10, 1991. That comment period was later extended to September 24, 1991, in a **Federal Register** notice dated September 17, 1991 (56 FR 47060).

The Service published a proposed rule in the **Federal Register** on January 21, 1993 (58 FR 5341) proposing to remove the three species of kangaroos in mainland Australia from the list of threatened species under the Act. The Service had found that the four States that commercially harvest kangaroos (New South Wales, Queensland, South Australia, and Western Australia) had developed and implemented adequate and effective conservation programs that ensured the protection of these species. The Service additionally found that kangaroo populations were high and that the three species were protected by appropriate legislation, had their populations regularly monitored by direct and indirect procedures, and were managed by a complex licensing system which regulated the extent of the legal harvest. The Service in that **Federal Register** document also announced that it was deferring a decision on the December 20, 1989, petition by Greenpeace USA to reimpose the ban on the importation of kangaroo products until the final

decision on the proposed action was made. The Service also indicated that if the final decision was to delist the three species that it would then act to rescind the special rule allowing imports of kangaroo products from threatened populations into the United States.

The Service notes that a nonlisted status for these three species under the Act is wholly consistent with listing decisions made by other organizations. The three species of kangaroos are described as abundant by the Australian Conservation Foundation. The species are not on lists published by the Council of Nature Conservation Ministers, World Wide Fund for Nature Australia (WWF), or Fund for Animals Ltd., that variously identify species of Australian fauna they find to be endangered, threatened, or vulnerable. The status of the three species in mainland Australia is described as stable by the Species Survival Commission of the World Conservation Union's (IUCN/SSC) Australasian Marsupial and Monotreme Specialist Group in its 1992 publication (Kennedy 1992). That publication also indicates that the western gray kangaroo has declined less than 10 percent in geographic range since European settlement and that the eastern gray kangaroo and the red kangaroo may actually have increased their geographic range since European settlement. The IUCN/SSC publication also listed the three kangaroos as among those taxa for which there is no genetic concern—either because they are common in captivity, or readily available from the wild, requiring monitoring only by annual census.

Summary of Comments and Recommendations

The Service received about 740 comments in response to the January 21, 1993, request for comments published in the **Federal Register** (58 FR 5341). Virtually all correspondents supported the request to ban the importation of kangaroo products into the United States and/or advocated the retention of threatened status for the species. Most comments provided no substantive information on these issues.

The harvest of kangaroo products provides raw materials for a primary industry in Australia. Many individuals and organizations expressed dissatisfaction or distaste for this fact. For example, about 700 comments were in response to an Action Alert published by the Humane Society of the United States (HSUS) which stated that the Australian Government sanctioned the slaughter of 5.2 million kangaroos in 1992 to supply the domestic and international market for kangaroo skins. This was from a combined kangaroo population which the HSUS claimed only totaled 13.9 million. Respondents especially advocated the retention of threatened status (374 replies), or the retention of threatened status and the reimposition of the importation ban (260 replies).

The underlying concern expressed by the HSUS respondents as well as many other commentators regarded the commercial harvest and trade in these kangaroo species, which are protected species under Australian domestic legislation. Commenters frequently expressed (1) an outrage that a commercial harvest was allowed to occur by an industry that many persons characterized as illegitimate; (2) a view that market forces, if not at present, might in the future overwhelm conservation practices to the detriment of the species; and (3) a view that the threat of trade restrictions was necessary to ensure that Australian governments continue to manage kangaroos in a responsible manner.

The Service response to this recurring and significant concern is as follows. The determination to utilize, in commercial trade, kangaroo products from well-managed populations is a domestic issue that will ultimately be determined at the ballot box, in the legislatures, and in the courts of Australia. The Service has the responsibility to determine whether the species are threatened or endangered under the Endangered Species Act and to promulgate certain special rules if required. A finding of threatened or endangered is made after five specific listing criteria have been evaluated. The second of these criteria questions whether overutilization occurs, for among other reasons, commercial purposes. The Service has found, as indicated below, that the commercial quotas are related to kangaroo populations occurring within the commercial utilization area (CUA). The CUA is that portion of the range of the individual species where the commercial harvest is allowed to occur.

Kangaroo populations are known to cycle in abundance within the CUAs because much of inland Australia is an arid and drought-prone landscape where unregulated kangaroo numbers increase when water is plentiful and diminish in times of drought. Extensive annual surveys occur in South Australia, New South Wales and Queensland to estimate kangaroo populations in order to set harvest quotas for the subsequent calendar year. Those surveys using fixed-wing aircraft seem to reliably index kangaroo populations in open and arid landscapes but to significantly underestimate populations in woodlands, such as the mulga woodlands of southern Queensland. Aerial surveys conducted from helicopters seem to more reliably indicate kangaroo populations in the woodland habitats. The kangaroo populations in vast and thinly inhabited Western Australia are estimated every third year from aerial surveys and inferred in intermediate years from a variety of data.

Harvest quotas are usually established as a percentage of the estimated kangaroo population after considering potential range conditions as predicted from current rainfall data. Frequently, the harvest quota has totaled about 15–20 percent of the estimated kangaroo population and about 70 percent of the commercial harvest quota has been annually harvested. Kangaroo shooters are licensed, and can only kill kangaroos for commercial purposes on private properties after shooters have obtained permission from landowners. Commercial shooters can only sell their kangaroo hides and meat to licensed dealers. Products only from these commercially killed kangaroos can enter international commerce. The Service believes that the Commonwealth and State governments in Australia have a sincere interest in the preservation of their native wildlife species and act in a professional manner to manage these kangaroo species so they will occur in abundance into perpetuity. The Service has no reason to believe that market pressures will one day insidiously drive conservation activities in Australia, and notes that the United States and the international community could act to limit the trade in kangaroo products, should the status of these three kangaroo species be significantly reduced in the future.

The Service disagrees that threatened status should be retained for these abundant and sufficiently managed species, at this time, to ensure that a primary industry behaves or because one day the threatened status may somehow be useful in the management of kangaroos. The Service believes the lists of endangered and threatened species should only include those animals and plants whose current status fit the definitions of the Act. The Service has found that these three species of kangaroos are not threatened species (i.e., species in danger of extinction, within the foreseeable future, throughout all or a significant portion of their range).

Several comments stated that the threatened status should be retained for the three species of kangaroos because

of the current quality of kangaroo management in Australia. These comments (A–M) are treated together in this assessment because they are closely related and actually pertain to a larger issue, which is ''How much management is sufficient?'' The comments and Service responses are listed below for comments A–M and this is followed by a discussion of the ''sufficiency of management'' question.

A. *Comment*: Survey methods, especially in Queensland, are unreliable. *Response*: Nichols *et al.* (1990) stated that ''Australian biologists have been leaders in the development of aerial survey ethods for estimating animal population size. Current surveys are very extensive, properly standardized and well thought out. Some additional work needs to be done on the estimation of visibility correction factors, but such work is well underway. Current research indicates that previously-used correction factors may be too small. Published estimates of kangaroo population size thus are based on sound methodology but are probably too small.'' Additional studies have been conducted since 1990. Queensland is especially concerned about methods to more reliably estimate animal numbers in woodland habitats. Queensland has annually accomplished fixed-wing aerial surveys from 1984 to 1992, and helicopter surveys since 1991. Queensland plans to further review the results of population surveys using fixed-wing aircraft and helicopters to establish revised correction factors for use in surveys of woodland habitats.

B. *Comment*: The Commonwealth and State governments have failed to implement measures to make kangaroo plans adequate to protect kangaroos. *Response*: It is unclear whether this comment pertains to the apparent contradiction wherein different domestic statutes provide both protective status to the species and allow a commercial harvest of the species or to some perceived inadequacy in the kangaroo management plans. Any conflict in domestic legislation is an Australian domestic matter. The Service has found that the kangaroo management plans developed by the States and agreed to by the Commonwealth are sufficient to allow the species to be delisted.

C. *Comment*: The commercial slaughter of kangaroos constitutes a very real threat to the survival of the species. *Response*: For the reasons stated above, and later in this final rule, the Service has found that the current commercial harvest of these managed kangaroo species does not threaten the survival of these species in mainland Australia at present nor is it likely to in the foreseeable future.

D. *Comment*: The kangaroo slaughter is unnecessary. *Response*: The necessity and desirability of commercially harvesting kangaroos is an Australian domestic matter. The Service's assessment is only that the present managed harvest does not cause the Service to conclude that the kangaroo populations should be listed as threatened.

E. *Comment*: The development of a meat market will increase demands on kangaroo populations. *Response*: The decision to seek domestic and international markets for kangaroo meat is an Australian domestic issue. The Service believes that the present management is sufficient and notes that extensive non-use of kangaroo protein accompanies a skins-only harvest, and that a well run meat industry can more fully and more efficiently use the current harvest.

F. *Comment*: The adoption of a sustained use management principle for a protected species was accomplished without a public debate. *Response*: The Service considers this to be an Australian domestic matter and not a factor in making a listing decision under the Act.

G. *Comment*: The ''threatened'' listing was valuable because it allowed the Service to act as an international watchdog on the kangaroo industry. *Response*: The Service promotes the international conservation of species and the international enhancement of biodiversity. The Service is obligated to properly classify these species based on the criteria stipulated in the Act.

H. *Comment*: Kangaroos routinely carry such a high parasite load that they are unfit for human consumption. *Response*: It is the responsibility of the Commonwealth government to assure the citizens of Australia and the world, if such exports are allowed, about the quality of any kangaroo meat product. The Service notes this is clearly not an issue to consider when making an evaluation under the Act.

I. *Comment*: Tags placed on carcasses and skins are not species specific. *Response*: The Service agrees that species specific kangaroo tags would likely allow the States to have a better control over the kangaroo harvest and over the marketing of kangaroo products. The Service notes that the kangaroo harvest is sufficiently monitored in other ways such as the assessment of shooter's records, dealer's records, sex-age composition of the kill and descriptors of other biological attributes. These records help ensure that the kangaroo harvest is adequately managed.

J. *Comment*: Customs officers do not inspect all consignments of kangaroo products prior to their export. *Response*: The kangaroo harvest and exports are thoroughly reported and State and Federal enforcement personnel have authority for search and seizures that the Service believes will adequately control any significant illegal activities.

K. *Comment*: Harvest quotas do not include animals killed for the domestic market or for nuisance purposes. *Response*: The Service agrees that it would be beneficial to management if all kangaroos killed were tagged and reported. This effort would benefit the estimate of total harvest and would help curtail any movement of untagged animals into commerce. The Service notes that harvest quotas are based on estimates of the living population so that the establishment of a harvest quota is a function of all sources of mortality that have impacted kangaroo populations up to the time of quota determination. The Service further notes that kangaroos killed for the domestic market are part of the kill regulated by the harvest quotas but that kangaroos killed for pest control are outside the harvest quota. The kill for pest control, however, is limited. For example, the number of kangaroos killed for damage mitigation purposes is believed to be less than 1 percent of the population.

L. *Comment*: There is inadequate enforcement of animal welfare requirements. *Response*: The Service agrees that any wildlife harvest should be conducted in as humane a manner as is possible, but this is not a criterion to be considered in making listing determinations under the Act.

M. *Comment*: The State and Commonwealth governments have inadequate resources for kangaroo management. *Response*: The Service finds that resources available to conservation agencies in Australia are sufficient so these three species of kangaroos are adequately protected under present management.

A decision to list or delist species under the Act often requires a decision about the ''sufficiency of management.'' No government or agency provides perfect management but many governments and agencies provide sufficient management so individual wildlife species can be used in a sustainable manner. A reasonable standard for the Service to use to determine sufficiency of management in any country is to compare the management of the foreign species with the management of a comparable species within the United States. The

white-tailed deer in the United States is, in some ways, comparable to the kangaroo in Australia. The white-tailed deer analogy is utilized herein to provide a measure of scale. Scale is important for understanding the size of ranges, the size of populations, the size of the harvest, and the magnitude of management and law enforcement problems. It is fully understood that harvest mechanisms differ between deer (sport-hunting) and kangaroos (commercial harvest). That significant difference, however, is not directly relevant to the present discussion.

The white-tailed deer may be about as numerous in the United States as are the three kangaroos in Australia, and the white-tailed deer is sufficiently managed at about the same intensity as are the kangaroos. State and the Commonwealth governments in Australia accomplish a variety of aerial and ground censuses and computer simulations to estimate kangaroo populations, and these estimates become the basis for the establishment of harvest quotas. State governments in the United States use a variety of ground surveys and computer simulation models to estimate white-tailed deer populations, and these estimates become the basis for establishing desired levels of harvest. Some level of public comment is sought in establishing harvest levels in both countries. Some level of appraisal of habitat carrying capacity frequently occurs for both deer and the kangaroo species. The actual harvests of kangaroos in Australia and deer in the United States are regulated by complex licensing systems. Landholders seek harvest permits from State governments in Australia and professional hunters seek licenses from those State governments and hunt permission from individual landholders in order to legally kill kangaroos. The professional hunter then sells kangaroo hides and/or carcasses to licensed dealers. State governments in the United States establish hunting seasons and bag limits and sell licenses to individual hunters who must seek permission to hunt on private lands but who may also hunt on certain public lands. Deer hunters vary considerably in their hunting skills and deer products are for personal rather than commercial use. Some level of illegal kill occurs in each country because there are insufficient resources to police all levels of the kangaroo industry and all deer hunting events.

One major difference between deer and kangaroo management is that kangaroos in arid habitats seem more likely to experience large population fluctuations. A second difference between deer and kangaroo management is that in the United States 12 million licensed hunters annually kill 3 million deer for personal consumption, whereas in Australia 3 million kangaroos may be killed by about 1700 licensed professional hunters who each kill an average of 1800 kangaroos for commercial purposes. Neither species is threatened by its respective management regime, as both deer and kangaroos are managed in a way that is adequate to maintain harvestable populations over time.

The Center for International Environmental Law (CIEL) provided three comments that are answered individually, below. The first comment from CIEL stated that the proposal to delist the three species is a political action and is not a justified biological decision. CIEL maintained that Australia had put political pressure on the Bush administration, and that this delisting action was the last act of the Service during that Administration. CIEL also held that a brief 60-day comment period underscores the attempt to sneak a final rule past a new Administration.

The Service response is that the proposal to delist these species, published in the **Federal Register** on January 21, 1993, evolved from a request in a December 20, 1989, petition filed by Greenpeace USA, ''to reinstate the ban on commercial importation of kangaroos and kangaroo products''. That petition generated a review that was subsequently cited in a petition to delist the species filed on November 6, 1990, by the Wildlife Legislative Fund of America. The Service notes correspondence from the Center for International Environmental Law, dated April 9, 1992, requesting that the Service make a final decision on both petitions by the end of the summer of 1992. Consequently, the Service made every effort to arrive at a decision regarding the two petitions and to publish the required proposal in as timely a manner as possible. A Service biologist returned from a fact-finding trip to Australia on August 1, 1992, and prepared the proposed rule by mid-November. The intervening 2-month period from mid-November until publication in mid-January reflects normal Service review time and delays associated with the holiday season. The 60-day comment period on the proposed rule is not at all unusual. It is the same comment period specified in some other recent proposed rules involving foreign species such as the Queen Alexandra's Birdwing Butterfly in the March 1, 1989, **Federal Register** (54 FR 8574) and the Nile Crocodile in the August 3, 1992, **Federal Register** (57 FR 34095).

The second comment from CIEL declared that the proposal to delist the three species of kangaroos continues a pattern seen over the past few years during which time the Service has failed to add protection to, or has reduced protection for, several species of commercial interest.

The Service response is that it has not abrogated its responsibilities to world conservation and arbitrarily reduced protection to species because of their commercial value. The Service supports the sustainable use of wildlife if that use can be shown not to threaten the survival of the species. The Service, since 1989, has added foreign species to the list of endangered species under the United States Endangered Species Act (e.g., the chimpanzee, several snub-nosed monkeys, and a variety of birds, including psittacines, and turtles). The Service periodically reevaluates the status of species as new information becomes available and occasionally transfers species between lists or removes species from the lists of endangered and threatened species when justified. The Service supported the listing of the African elephant and six species of fruit bats to Appendix I at the Seventh Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1989 and successfully proposed the addition of the Goffin's cockatoo and the bog turtle to Appendix I at the Eighth Meeting of the CITES Conference of the Parties in 1992. The Service also successfully proposed five other additions to Appendix II at the 1992 meeting and offered proposals to amend Appendices, in accordance with the 10-year review process of CITES. Some of those proposals required the transfer of species between Appendices. The Service sought to suspend commercial trade in certain wild bird species of concern that are listed in Appendix II of CITES at the 1992 CITES Convention and supported the passage of domestic legislation in 1992 (The Wild Bird Conservation Act of 1992) to ensure that U.S. bird imports do not jeopardize wild bird populations.

The third comment from CIEL states that the Service must retain the kangaroos on the list of threatened species and reinstate the import ban because the long and continuing drought constitutes an important natural factor affecting the existence of these species of kangaroos.

The Service notes that enclosures submitted by CIEL on March 22, 1993, clearly indicate extensive areas in New

South Wales (NSW) and Queensland that retain a drought-declared designation as of March 1, 1993. These enclosures are presented as evidence that drought continues to devastate Australia and kangaroo populations. A February 5, 1993, letter from John Eveleigh, Assistant Regional Manager, Western Region, New South Wales, to the Director, Australian National Parks and Wildlife Service (ANPWS), clearly indicates that economic factors as well as rainfall totals determine the declaration of drought status by the Department of Agriculture.

An El Niño-related drought occurred in parts of Australia during 1991–2 and affected some populations of the three kangaroo species. Rainfall deficiencies from March through October 1991 occurred throughout nearly all of Queensland, in northcentral and northeastern New South Wales, some portions of the Northern Territory and in extreme northeastern Western Australia. Rains during November 1991 through January 1992 essentially reduced the rainfall-deficient area to the eastern two-thirds of Queensland, the northern portion of the Northern Territory and northern Western Australia. Additional rains during February 1992 further reduced the rainfall-deficient areas to southcentral Queensland and the northeastern coastal areas of Queensland, the northern portion of the Northern Territory and northern Western Australia. The rainfall-deficient area, by May 1992, was further reduced to southcentral Queensland, northcentral New South Wales, and the central and northern coasts of Queensland. The rainfall-deficient area for the 17-month period from March 1, 1991 to July 31, 1992, occurred in southcentral Queensland and extreme northcentral New South Wales. Much of this southcentral Queensland and northcentral New South Wales area experienced severe rainfall deficiencies and two small localized portions of this area recorded record rainfall deficiencies during this 17-month period. These portions of Queensland and New South Wales constitute important kangaroo habitat.

The 1991–1992 drought event ended in these kangaroo habitats because rainfall totals listed as highest on record were recorded throughout the southern portion of South Australia, southwestern New South Wales and much of Victoria from November 1, 1992 to January 31, 1993. Rainfall totals recorded as very much above average were recorded for much of the remainder of South Australia and western and central New South Wales during this same three month period. At least average rainfall fell over most of Queensland, including the most important kangaroo habitats, in the November 1, 1992 to January 31, 1993 period. Drought areas in New South Wales received reasonable rains in the first half of 1993 and even better rains in the second half of the year. Drought declarations in Queensland, by early 1994, occurred in about 46 percent of the State's land area. No rangelands are drought declared in Western Australia in early 1994, and South Australia has experienced good rainfall years from 1989–1993 in most parts of the State. The 1991–2 drought, at one time or another, affected northern New South Wales, most of Queensland, eastern and northern portions of the Northern Territory and northern Western Australia. The 1991–2 drought was not experienced in the other 60 percent of the continent.

About 70 percent of Australia is classified as arid or semi-arid and is characterized by high variability in rainfall. Drought periodically occurs to these landscapes, and its severity and duration can clearly affect pasture quality and kangaroo well-being and numbers. At least 47 major drought events have been recorded somewhere on the continent during the 100 year period from 1888 to 1988 (data provided by ANPWS and excerpted from ''Water 2000: Consultants Report No 13—Water Resources Aspects of Drought in Australia'' Dept. Resources and Energy (1983) and Bureau of Meteorology). Areas of deficient rainfall are to be expected on the Australian continent. Wildlife management specialists accept drought as a ''normal'' event and manage their resources accordingly by reducing kill during years when kangaroo populations are diminished and increasing harvest when populations are increased (see below). The 1991–1992 drought impacted kangaroos, especially in northern New South Wales and southern Queensland, but did not and does not threaten the continental population of these three species.

Drought areas were declared in most of New South Wales and some southern and eastern areas of Queensland in Australia's winter of 1994. The effect of this drought on kangaroo populations is not yet known, but as noted earlier, kangaroo populations have recovered from the previous severe drought of 1982–83 (longer in some areas). Furthermore, while 1995 kangaroo harvest quotas are not yet known, the Service has reviewed and discussed the State and Commonwealth management program and believes that appropriate quotas will be established to maintain kangaroo populations.

An additional comment expressed by several persons concerned the capability and willingness of wildlife managers to reduce the kangaroo kill when populations are diminished. They claimed that Australia's management plans do not reduce the kill quotas during droughts and the present drought has sharply reduced kangaroo populations and clearly placed the species in jeopardy.

The Service responds with a summary description of the management actions that one state, New South Wales (NSW), has undertaken to manage kangaroos during drought declared conditions in the 1980s and 1990s. NSW has about a third of the continent's population of red and gray kangaroos. This summary is excerpted from a letter from John Eveleigh, Assistant Regional Manager, Western Region, New South Wales National Parks and Wildlife Service, to the Director, Australian National Parks and Wildlife Service, dated February 5, 1993. A significant area of NSW was declared to be within a drought declared zone in 1982. A total harvest quota of 843,000 animals had previously been established for 1982, which was 12 percent of the 1981 estimated NSW population of 7 million kangaroos. A fixed quota was allocated for the first six months of 1982 and a notional quota was allocated for the second half of the year to be modified if climatic conditions dictated. The 1982 mid-winter (June-August) population survey estimated a total NSW kangaroo population of about 9.4 million animals with the population of red kangaroos still increasing but that of gray kangaroos being diminished by about 29 percent.

Because of the drought conditions the harvest quota for calendar year 1983 was maintained at 843,000, about 9 percent of the 1982 estimated population. Drought conditions prevailed throughout far western and eastern portions of NSW during 1983, but relieving rains fell throughout the central portion of the state. Quotas were allocated as in 1982. The mid-winter 1983 population estimate indicated a total NSW kangaroo population of 5.5 million, with some decline in red kangaroos and a significant decline in the number of gray kangaroos. A total harvest quota of 500,000 was established for 1984, which represented about 9 percent of the total 1983 population. The harvest quota for red kangaroos was set at 12 percent, but no culling was authorized in selected one-degree blocks within management zones. Culling of gray kangaroos was

allowed in three management zones and was disallowed in seven other zones. In addition, properties of applicants for non-commercial culling of red or gray kangaroos within the closed areas were subject to physical inspection by NSW Rangers prior to license grant considerations.

Drought conditions continued to widen across NSW in 1984. The mid-winter 1984 population estimate indicated a total NSW kangaroo population of about 2.8 million with an increasing red kangaroo population, a static gray kangaroo population in the eastern management zones, and a decline in both red and gray populations in western management zones. A harvest quota of 300,000 (11 percent of the 1984 population) was established for 1985, but no harvest was allowed in areas containing estimated population densities of one or fewer red or gray kangaroos per sq km. Drought conditions still extended across NSW in early 1985, except for the extreme southwestern portion of the state. Drought-breaking rains fell in late 1985, and early 1986 and the state was declared drought-free in 1986. The mid-winter 1985 population estimate indicated a total kangaroo population of about 4.15 million with a recovery of both red and gray kangaroo populations. Some pockets with low populations remained, and no harvest was allowed during 1986 in areas with a kangaroo density less than or equal to one per sq km. A 1986 harvest quota of 577,000 was established (14 percent of the population) but 15 percent of the quota was withheld and not allocated.

Drought conditions did not occur in NSW from 1987–1991, and populations of both red and gray kangaroos and harvest quotas progressively increased each year. The total harvest also usually increased each year. The mid-winter 1990 population estimate indicated a total kangaroo population in NSW of 8.55 million with increases in both red and gray kangaroos. A 1991 harvest quota of 1.5 million was established which was 18 percent of the population estimate. Thirteen percent of the quota was held back and not allocated. Drought conditions began to extend southward from Queensland into the northern management zones of NSW. The mid-winter 1991 population estimate indicated a total kangaroo population in NSW of 9.1 million. A harvest quota of 2.1 million was established which was about 23 percent of the 1991 population estimate. Fifteen percent of the harvest quota was held back and not allocated. By January 1992, the 1991–2 drought had extended further into NSW and was declared to cover the northern and eastern portions of the state. Kangaroos reportedly moved to the south as the drought progressed and some quota allocations were transferred from northern management zones to more southern zones. The notional quotas for July-December 1992 were reviewed in July 1992. Preliminary 1992 survey figures indicated that central and southern populations were barely impacted by the drought and kangaroo populations were increasing in the most southern management zones.

By December 1992 the drought declarations indicated that the drought had retreated to the most northern management zones of NSW. The mid-winter 1992 population estimate indicated a total NSW kangaroo population of 8.04 million. A harvest quota of 1.66 million was established which was about 21 percent of the 1992 population estimate.

The 1992 survey indicated declines of the red kangaroo throughout the northern management zones, stability in the central management zones and increases in the southern management zones. Populations of the gray kangaroo were somewhat diminished in some management zones. Harvest quotas for 1993 were diminished for populations in those management zones where kangaroo populations were found to be reduced. Fourteen percent of the potential harvest quota was held back and not allocated.

The notional quota for the second half of 1993 was reviewed when preliminary mid-winter 1993 population estimates were available. February 1993 reports indicated that drought-breaking rains were widespread in NSW and that drought conditions were retracting to the north.

This synopsis indicates how New South Wales strives to manage kangaroos on ranges periodically impacted by droughts. It is not possible to attain and maintain a specific kangaroo population on such landscapes, and such populations are expected to cycle as periodic droughts overtake portions of the continent. Management strives to follow the cycle. This requires frequent monitoring of kangaroo populations and the setting of low harvest quotas when populations are low but allows for the setting of higher quotas when kangaroo populations are expanding. This is exhibited by the NSW data where a harvest quota of 300,000 was established for 1985 when the mid-winter 1984 NSW population was estimated at 2.7 million and a harvest quota of 2.07 million was established for 1992 when the 1991 mid-winter NSW kangaroo population was estimated at 9.11 million.

Harvest quotas represent the maximum number of kangaroos that can enter domestic or international commerce in a given year after having been taken in accordance with state-approved plans. About 70 percent of the quota has been harvested during recent calendar years. The maximum allowable kill is regulated as is the relative location of that kill. New South Wales has closed management zones to harvest, has closed degree blocks within management zones to harvest, has reallocated harvest quotas between management zones as a result of new population survey information, routinely issues the second half of the harvest quota in the second half of the calendar year, and routinely holds back some percentage of the commercial quota as a safety precaution. In addition, the legal harvesting of kangaroos is a licensed operation and all aspects of licensing can be suspended at any time during the calendar year if such actions are necessary. Other harvesting States also have regulatory measures that allow the reduction of take if environmental or other factors adversely impact kangaroo populations.

A comment supporting the Service's proposed rule was provided by The Wildlife Legislative Fund of America (WLFA) which had filed the November 6, 1990, petition to delist the three kangaroo species. WLFA stated it is a strong supporter of the Endangered Species Act when it is applied to species that truly require protection from over-exploitation or critical habitat destruction. WLFA also stated that listing species like these three species overburdens the system and detracts from the ultimate goal of protecting truly endangered species. WLFA stated that recovered species should be delisted as quickly as possible to encourage recovery efforts for other listed species and to focus the limited efforts of the Service on species and populations in greater need of scientific and public attention. WLFA stated that keeping these species on the threatened list could only be interpreted as bureaucratic red tape designed to stifle the legitimate trade in a closely controlled and monitored renewable resource. WLFA further stated that delisting does not foreclose continued efforts by the Service to selectively monitor the kangaroo management programs of Australia. The Service concurs.

The Australian National Parks and Wildlife Service, now known as the Australian Nature Conservation Agency (ANCA), also submitted comments

about the extent and duration of the 1991–2 drought, the sensitivity of the kangaroo management plans of New South Wales to drought and environmental stress during the 1980s and 1990s, and the 1992 population estimates and the kangaroo harvest quotas determined for 1993.

The notice containing the proposed rule, published on January 21, 1993 (58 FR 5341), described a series of monitoring reports to be submitted annually from the Commonwealth to the Service. The Service, on January 27, 1994, received a report of the 1993 population surveys. The Service, because the additional information was received before the final rule was finalized, announced the new information and extended the comment period in a **Federal Register** notice on February 18, 1994 (59 FR 8163).

After the close of the 1993 comment period on the proposed rule, additional letters were received before the comment period was reopened. These were tallied with those received when the comment period was reopened in 1994, and all of these comments were considered in the preparation of this rule. Comments received during this combined period included 883 letters and 14 ''petitions'' containing an additional 310 signatures. Most of these letters received during the interim period continued to raise concerns about the inhumane aspects of the harvest, the effects of drought, the adequacy of management plans, high harvest quotas, and high unregulated or illegal killings. The Service's responses to these issues were addressed above in the responses to earlier comments. One commenter supported the delisting because of its perception that this would enable the species to be used in ranching. This is not relevant to our decision.

Several new comments were received in response to the February 18, 1994, **Federal Register** notice. CIEL submitted several comments that seem based on inadequate or incomplete information. In addressing those, the Service notes (1) that the information submitted by ANCA was in voluntary compliance with monitoring provisions listed in the January 21, 1993, **Federal Register** (58 FR 5341); (2) that the 1993 surveys were accomplished using standardized techniques that have been developed and improved upon for over a decade; (3) that the submitted numerical estimates represent additional data points in a long-term description of kangaroo populations in the commercial utilization areas of four different states; (4) that a substantial assessment of the status of kangaroos and kangaroo management is made in this final rule; (5) that the Service has actively sought input into the kangaroo issue by sending Service biologists to Australia in 1980, 1990 and 1992; (6) that the destructive fires of 1993 were largely outside the commercial utilization areas of New South Wales and Queensland; and (7) that the Service has a responsibility to delist species that are not presently threatened or endangered. The Service has considered and used the best available scientific and commercial information available in this decision and believes that no further data is necessary for it to make this delisting decision. The Service makes this decision based on all of the factors required by the Act as discussed specifically in this rule. In addition, the comment periods provided for consideration of this proposal met the requirements imposed by law; and this delisting will not breach the ESA duty to conserve the species as they are no longer threatened under the Act.

Other comments by CIEL pertaining to the alleged political nature of the listing decision, the perceived failure of the Service to exercise its responsibilities to provide protection to commercially utilized species, and the importance of drought as an environmental hazard threatening kangaroo populations are addressed above in this final rule.

The Kangaroo Protection Cooperative, Ltd., and the Australian Wildlife Protection Council believed the selection of large males in the commercial harvest would threaten the future fitness of the species. It is likely that this selective harvest will shorten the age structure in populations of wild kangaroos, but it is not evident whether it will adversely impact the gene pool of the species. The Species Survival Commission of the World Conservation Union (IUCN/SSC) Australasian Marsupial and Monotreme Specialist Group lists populations of the three species as stable with no genetic concerns (Kennedy 1992).

The Humane Society of the United States (HSUS), the Australian and New Zealand Federation of Animal Societies, Dr. John Auty, representing the Australian Wildlife Protection Council, and CIEL each expressed concern about the estimates of major reductions in the kangaroo populations of Western Australia, from 1990–1993, and the explanation for that decline offered by ANCA. Dr. Gerry Maynes, of the ANCA, in a March 4, 1994, letter to Mr. Chris Wold of CIEL, offered the following explanation for the Western Australian data:

''The results for 1990 may be distorted by population estimates for the two blocks 012 and 013, which together contributed 50% to the overall estimate (this contrasts with contribution of 20% and 22% in 1984 and 1987, respectively). The estimated density in the 012 block (45 per sq km) is far higher than in any previous year for either kangaroo species. This result may be an artifact of change placement in the transect line; in 1990 the flight line coincided exactly with the distinct vegetation ecotone of mallee and open plain (ideal habitat for kangaroos), but in previous years this may not have been so (navigational variation of a few kilometers is common, even with satellite navigation gear, and this could lead to such variation between years). Placement of only one line in each of these blocks in the 1990 and previous surveys would facilitate such possible random variation. We therefore suggest caution when interpreting the recent acceleration in population numbers, and recommend that in future surveys two lines be allocated to these blocks. Thus, while the long term increase is likely to be real, the estimated increase of 99% from 1987 to 1990 may be an overestimate of the increase.''

The U.S. Fish and Wildlife Service believes the kangaroo populations in Western Australia should be more intensively monitored to enhance the quality of their management.

Several commenters suggested that the recent devastating fires in New South Wales and Queensland represented environmental disasters that threatened these species. Dr. Gerry Maynes of ANCA in a March 7, 1994, letter to Dr. C. Dane, indicated that:

''The area in which fires occurred was from the Queensland border to just north of the Victorian border. These fires had no effect on population numbers of kangaroos in the commercial harvest zone of New South Wales * * * Although the fires were widespread throughout the non-commercial zone they have had variable impacts on wildlife including kangaroos due to the variable areas involved and intensities of the fires. The New South Wales National Parks and Wildlife Service has initiated follow-up research in parks which were burnt to determine the effects of the fires and the recovery of wildlife populations. While fires have had localized impacts on wildlife populations, wildfires are only a significant threat to populations of wildlife which are restricted in distribution * * * or do not possess adaptations to avoid the immediate impacts of the fire or to recover quickly after the fire.''

The HSUS indicated that the kangaroo species should be listed on CITES before

being removed from the lists of endangered and threatened species. This is not a statutory pre-condition to delisting, and is not relevant in light of the Service's finding that Australian regulatory mechanisms are adequate. Neither the HSUS nor any other group or individual petitioned the Service to list these kangaroos on the CITES Appendices when the Service published a **Federal Register** notice on July 15, 1993 (58 FR 38112) inviting CITES proposals. In addition, neither the HSUS nor any other group or individual commented on the absence of these kangaroos from the proposed list of species to be considered by the Service for possible CITES action, (59 FR 3832, January 27, 1994).

Two comments dealing with the validity of the population estimates were received after the close of the February 18, 1994, comment period and are herein addressed. The first comment alleged that the Caughley correction factors overestimated the number of red kangaroos and the second comment alleged that the Caughley correction factors overestimated the number of gray kangaroos during extended drought conditions. The Service notes that a senior FWS biometrician traveled to Australia in 1990 and evaluated the procedures currently used to estimate kangaroo populations. His assessment, summarized in item A (above), indicates that current surveys are very extensive, properly standardized, well thought out, and that additional work to improve visibility correction factors is ongoing. Results from surveys, listed in Tables 1–4, indicate trends that are interpretable using data that have driven successful kangaroo management programs for over a decade. Further development of sampling procedures, including the additional refining of visibility correction factors, should further improve census data.

Other comments submitted in response to the February 18, 1994, **Federal Register** notice are also addressed above in this final rule. These comments concern the impact that a meat market might have on the commercial utilization of kangaroos, the belief that staff cuts to the U.S. Customs Service might lead to nefarious activities in commerce, the belief that cruelty is rampant in the harvest of kangaroos, the belief that population data and management activities and trade controls are inadequate in kangaroo management, the argument that harvest quotas should consider all forms of mortality, and the perception that droughts and periodic floods represent substantial hazards to kangaroo populations.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to or deleting species from the List of Endangered and Threatened Wildlife. A species shall be listed or reclassified on the basis of the best scientific or commercial data available after conducting a review of the species' status with regard to the five following evaluation factors: (A) The present or threatened destruction, modification or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and, (E) other natural or manmade factors affecting its continued existence.

This final rule is based on an assessment of the five listing criteria within the Act. The assessment considered the present biological status of the three kangaroo species in mainland Australia. The five factors, as they apply to eastern gray kangaroo (*Macropus giganteus*), western gray kangaroo (*Macropus fuliginosus*), and red kangaroo (*Macropus rufus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Extensive kangaroo habitats have been lost or seriously degraded where urbanization and several forms of intensive agriculture have occurred. The eastern gray kangaroo has lost important habitats to development and agriculture in eastern Queensland, New South Wales (NSWNPWS 1991a) and throughout Victoria. The species, however, is considered abundant and widespread over large areas of eastern Australia where annual rainfall exceeds 250 mm but has little seasonal trend or where summer rains exceed winter rains (ANPWS 1991b). That publication summarizes habitats for the eastern gray kangaroo as including semi-arid mallee scrub, woodland, and forest. The densities of eastern gray kangaroos are frequently low in the more arid portion of their potential range, where they may be confined to narrow belts of woodland bordering watercourses, and are sometimes high elsewhere. The 1991 density of gray kangaroos, for example, was estimated at about 1 per sq km in arid extreme northwestern New South Wales and averaged more than 10 per sq km on about 125,000 sq km of habitat in mesic northcentral New South Wales (NSWNPWS 1991b). Caughley, *et al.* (1987) listed densities for eastern gray kangaroos that were greater than 20 kangaroos per sq km on some transects in extreme southcentral Queensland as determined from 1980–1982 aerial surveys. The western border of the range of the species has apparently moved westward since European settlement because of the establishment of numerous semi-permanent watering points for stock. Pastoral development is considered to have generally favored the eastern gray kangaroo (NSWNPWS 1991a). The action plan for the conservation of Australasian Marsupials and Monotremes (Kennedy 1992) listed an increased geographic range since European settlement for eastern gray kangaroos.

The red kangaroo is considered abundant over much of inland Australia in areas receiving less than 500 mm annual rainfall (ANPWS 1991). The species occurs in mulga and mallee scrub, shrubland, woodland, grassland, and desert. The species seems to prefer open plains with scattered trees or shrubs. The 1991 density of red kangaroos was estimated at less than 3 per sq km in central NSW but at more than 14 per sq km on about 125,000 sq km of habitat in arid extreme northwestern NSW (NSWNPWS 1991a). Caughley, *et al.* (1987) listed densities greater than 20 per sq km for the red kangaroo on some transects determined from 1980–1982 aerial surveys. Red kangaroos occur in almost a continuous distribution but at varying densities over all the pastoral areas and a large portion of the interior of South Australia. The red kangaroo favors the open but better watered country inside the 2000 km dingo-proof fence in lands used primarily for sheep grazing. Red kangaroo densities are much lower outside the fence (SANPWS 1991). The habitat changes associated with sheep grazing such as closely spaced stock water, the production of shrubland with ephemeral grasses, and the exclusion of the dingo are considered favorable for the red kangaroo. The action plan for the conservation of Australasian Marsupials and Monotremes (Kennedy 1992) listed an increased geographic range since European settlement for the red kangaroo.

The western gray kangaroo occurs across the south of the continent from Western Australia to extreme southcentral Queensland but generally not east of the great divide. This distribution generally corresponds to the area where winter rainfall predominates. Caughley, *et al.* (1987) listed densities greater than 10 per sq km for transects in a relatively small

area of southwestern New South Wales as determined from 1980–1982 aerial surveys. The increase of watering points to aid the pastoral industry has been beneficial to the western gray kangaroo but intensive agriculture has adversely impacted some habitats. Arnold (1990), for example, indicated that the sizes of some populations of western gray kangaroos have declined significantly where habitat fragmentation to favor intensive agriculture has occurred in southwestern Western Australia. Arnold (1990) further believes losses to kangaroo populations will continue in these areas as the remnant native vegetation continues to be degraded. The western gray kangaroo occurs widely through the southern agricultural area of South Australia and extends into the central pastoral areas. This macropod is considered to be basically a dweller of scrublands and woodlands that grazes at the edges of adjacent grasslands. That portion of the gray kangaroo's range in the pastoral zone of South Australia has been favored by management actions beneficial to sheep production. A portion of the gray kangaroo's range in the southern agricultural zone has been degraded or destroyed by extensive habitat destruction caused by the clearing of native vegetation for agricultural and industrial purposes and for urban and suburban developments (SANPWS 1991). The action plan for the conservation of Australasian Marsupials and Monotremes (Kennedy 1992) listed no change to a decline of less than 10 percent in the geographic range of the western kangaroo since European settlement.

The three species of kangaroos occur over a vast region of Australia. Census lines representative of about 2.25 million sq km of habitat are routinely surveyed by air to estimate kangaroo numbers. Kangaroos are abundant in major portions of this habitat. As indicated below, an extensive series of parks and reserves totaling over 400,000 sq km has been and is being established that will contribute directly to the conservation of macropods throughout their natural range. Current kangaroo populations could exceed those present before European man arrived on the continent. This seems possible because kangaroos have a reproductive capability efficiently attuned to the boom-or-bust nature of the usual precipitation-range forage cycle on arid lands and because kangaroos have been an impressive and inadvertent beneficiary of the sheep management system that included the clearing of woodlands, production of watering points, and the control of predators. Kangaroos that inhabit vast areas of Australia in impressive numbers cannot be considered threatened because of habitat and range conditions even though much native range is severely degraded. Kangaroos do well when habitats are in adequate condition due to sufficient rainfall and more poorly when droughts occur. This cyclic or fluctuating pattern in response to the vegetative condition of rangelands is a normal periodicity in the arid land system and does not in itself comprise a threat to the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The intent of kangaroo conservation in Australia is to maintain viable populations of the three species of kangaroos over their existing range and minimize any deleterious effects that high densities of these species could have on agricultural and pastoral products. Management is an art in the arid-zone ecosystems that comprise much of interior Australia where lands normally cycle in productivity in response to a variable rainfall. Viable kangaroo populations need to be maintained when range productivity and carrying capacities are low, but kangaroos can represent an additional range resource when populations and range productivities are increased. The ANCA and the Parks and Wildlife Services of the individual states regularly monitor population trends of red and gray kangaroos. The species are protected on National Parks and Reserves that total about 5 percent of the continental land area (over 400,000 sq km). Some of these lands represent important kangaroo habitats. The species can be legally killed, but not commercially utilized, by permitted actions in many urban, suburban, and agricultural areas for damage mitigation reasons. A major commercial harvest of kangaroos occurs in large designated areas of Queensland, New South Wales, South Australia, and Western Australia. The magnitude and characteristics of this commercial harvest are regulated by the ANCA as a wildlife management strategy. The total commercial harvest is conducted within the framework of a harvest quota system. The commercial quota is the maximum number of kangaroos of a designated species that may enter domestic or international commerce during a specific year after having been taken in accordance with approved State management plans.

The assessment of this factor did not evaluate whether the commercial utilization of kangaroos violates their protected status as provided by Australian legislation or the legitimacy of the commercial kangaroo industry. Those are Australian domestic issues. The Service assumed that kangaroo products are a legitimate product of the land if kangaroos are managed as a sustainable resource, and if Australian society approves of the harvest. The Service's evaluation in particular focused on whether the commercial enterprise threatened the existence of kangaroos, whether the Commonwealth and State governments adequately manage the kangaroo resource, and how harvest management responds to changes in kangaroo populations, especially during droughts.

Kangaroo population levels are estimated from large-scale aerial and/or ground surveys. These population estimates reflect the effects of all forms of mortality acting on kangaroos. Commercial harvest quotas are determined from estimates of the living population and are intended to regulate the harvest which is the principle human-caused form of mortality. The commercial harvesting of kangaroos is directly controlled through the licensing of shooters and their operations.

The population surveys are accomplished during winter (June-August), annually in South Australia, New South Wales, and Queensland and triennially in Western Australia. The raw data from surveys represent index values that can be compared to develop trends, or they can be expanded by the use of suitable correction factors to provide estimates of kangaroo populations. Correction factors strive to account for differences in the behavior of kangaroo species regarding their sightability and the ability to view kangaroos in different habitats. Research is ongoing to further enhance the quality of surveys and correction factors. In Western Australia, where aerial surveys are only accomplished at 3-year intervals, population status in the intervening years is assessed from monthly reports of the commercial harvest, the intermittent aerial surveys and ground surveys and patrols by appropriate staff (WADCLM 1991a and 1991b).

Harvest quotas are determined on the basis of population information, estimates of habitat quality, and the perceived or estimated requirements for damage mitigation. Conservation interests are considered to drive the establishment of harvest quotas because quotas are usually fixed as conservative proportions of the estimated populations. Individual States could temporarily set quotas at high rates if their stated management goal was to

reduce statewide or localized kangaroo populations to more sustainable levels.

Tables 1–9 provide population estimates and data about the commercial harvest of kangaroos in Western Australia, South Australia, New South Wales, and Queensland. Population estimates, except for South Australia, usually include the mean and the standard error, which is a measure of the variance around the mean. Population estimates and data about the commercial harvest of red and western gray kangaroos from the Commercial utilization areas (CUAs) of Western Australia, from 1987–1993, are listed in Tables 1 and 2. Population data within the CUAs are only collected at 3-year intervals in Western Australia so status and trend data are weaker than in the other three states. Red kangaroo populations were apparently similar in 1987 and 1990 and significantly reduced in 1993, and populations of western gray kangaroos seemed increased in 1990 and significantly reduced in 1993. Australian authorities believe the reduced estimates of kangaroo populations in 1993 could be sampling anomalies, but this will remain unknown until additional population surveys have been conducted. Harvest quotas for red and western gray kangaroos in 1994 are each about 15 percent of the mean populations estimated in 1993. Because the commercial kill is consistently less than the commercial quota, it is expected that the 1994 harvest will be less than 15 percent of the estimated 1993 populations in Western Australia.

TABLE 1.—POPULATION ESTIMATES AND DATA ABOUT THE COMMERCIAL HARVEST OF RED KANGAROOS FROM WESTERN AUSTRALIA

	Population estimate (mean +/− SE) (total survey area)	Commercial quota	Commercial kill	Percent males in kill
1987	2,335,900±177,500	200,000	150,462	58.4
1988	NA	230,000	216,834	56.8
1989	NA	290,000	186,042	58.0
1990	2,365,500±165,600	290,000	224,423	58.6
1991	NA	290,000	186,749	55.2
1992	NA	350,000	107,605	50.1
1993	1,362,700±90,200	350,000	139,833	47.8
1994	NA	220,000	NA	NA

TABLE 2.—POPULATION ESTIMATES AND DATA ABOUT THE COMMERCIAL HARVEST OF WESTERN GRAY KANGAROOS FROM WESTERN AUSTRALIA

	Population estimate (mean +/− SE) (total survey area)	Commercial quota	Commercial kill	Percent males in kill
1987	691,000±167,500	45,000	40,092	55.1
1988	NA	45,000	29,061	55.2
1989	NA	45,000	28,355	53.0
1990	1,069,100±145,600	45,000	36,868	56.8
1991	NA	45,000	38,043	58.4
1992	NA	65,000	46,694	57.1
1993	433,500±170,900	65,000	47,070	NA
1994	NA	60,000	NA	NA

Population estimates and data about the commercial harvest of red and western gray kangaroos from the commercial utilization area of South Australia, from 1987–1993, are listed in Table 3 and 4. Estimates of red kangaroo populations may not differ significantly at least from 1988–1993, and populations of the western gray kangaroo may be greater in 1992 and 1993 than in some of the earlier years. The 1993 commercial harvest of red kangaroos totaled 15 percent and that of western gray kangaroos totaled about 9 percent of the estimated 1993 populations, and the 1994 harvest quota totaled 19 percent and 14 percent, respectively, of the 1993 population estimates.

TABLE 3.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF RED KANGAROOS FROM SOUTH AUSTRALIA

	Population estimate (mean +/− SE)	Commercial quota	Commercial kill	Percent males in kill
1987	[1] 963,000	180,000	100,507	[2] NA
1988	1,491,900	146,000	118,232	NA
1989	1,428,500	260,400	124,173	NA
1990	1,950,000	276,300	172,793	NA
1991	1,669,100	408,600	213,628	NA
1992	1,647,400	317,700	219,338	NA
1993	1,483,700	290,400	227,056	55
1994	NA	286,500	NA	NA

[1] Population estimates that ANCA has received from South Australia do not include standard errors.
[2] Information is unavailable about the sex ratios of kangaroos killed in South Australia, except for 1993.

TABLE 4.—POPULATION ESTIMATES AND DATA FOR THE COMMERICAL HARVEST OF WESTERN GRAY KANGAROOS FROM SOUTH AUSTRALIA

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987	[1] 208,000	30,900	14,849	[2] NA
1988	222,600	31,700	13,778	NA
1989	253,200	33,000	11,546	NA
1990	193,900	36,850	18,593	NA
1991	272,600	31,700	14,533	NA
1992	358,100	35,500	18,999	NA
1993	380,800	48,600	32,798	67
1994	NA	55,600	NA	NA

[1] Population estimates that ANCA has received from South Australia do not include standard errors.
[2] Information is unavailable about the sex ratio of kangaroos killed in South Australia, except for 1993.

Population estimates and data about the commercial harvest of red, western gray, and eastern gray kangaroos from the commercial utilization areas of New South Wales, from 1987–1993, are listed in Tables 5 to 7. Populations of red kangaroos apparently increased to 1991 and have diminished since that time, possibly in response to locally severe drought conditions. The commercial kill in 1993 was about 13 percent of the 1993 population and the 1994 harvest quota is about 18 percent of the 1993 population estimate. The pattern of population change of western gray kangaroos also suggests a population increase to 1991 and a decrease since that time. The 1993 commercial kill was about 10 percent of the population estimated in 1993 and the 1994 commercial quota was set at about 21 percent of the 1993 population estimate. Populations of the eastern gray kangaroo on the Western Plains also increased to 1991 and have apparently diminished since that year. The 1993 commercial harvest totaled about 12 percent of the 1993 population estimate. The 1994 harvest quota has been set at 27 percent of the 1993 population estimate.

TABLE 5.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF RED KANGAROOS FROM NEW SOUTH WALES

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987	2,777,000±189,400	313,000	270,467	[1] NA
1988	3,440,000±217,000	354,000	218,086	NA
1989	4,101,000±323,200	487,000	297,029	NA
1990	4,499,000±254,200	626,000	377,155	NA
1991	4,755,000±289,500	706,000	495,986	NA
1992	3,384,900±299,300	956,000	412,189	NA
1993	2,759,800±181,700	598,800	359,820	NA
1994	NA	483,850	NA	NA

[1] NSW does not calculate percent males on a regular basis, as they have found that it varies greatly due to shooter preference—averaging 70% but varying from 50–90%.

TABLE 6.—POPULATION ESTIMATES AND DATA FOR THE COMMERICAL HARVEST OF WESTERN GRAY KANGAROOS FROM NEW SOUTH WALES

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987	741,500±61,908	75,000	62,926	[1] NA
1988	616,000±48,546	105,000	72,786	NA
1989	940,000±78,952	95,000	67,253	NA
1990	1,296,000±93,632	152,000	83,708	NA
1991	1,391,700±118,624	220,000	106,629	NA
1992	1,320,000±108,966	327,700	117,994	NA
1993	1,250,000±78,423	307,800	129,378	NA
1994	NA	268,050	NA	NA

[1] NSW does not calculate percent males on a regular basis, as they have found that it varies greatly due to shooter preference—averaging 70% but varying from 50–90%.

TABLE 7.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF EASTERN GRAY KANGAROOS FROM NEW SOUTH WALES

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987	1,906,500±159,192	189,000	140,061	[1] NA

TABLE 7.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF EASTERN GRAY KANGAROOS FROM NEW SOUTH WALES—Continued

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1988	1,442,000±113,654	271,000	130,335	NA
1989	2,007,000±168,548	222,000	136,073	NA
1990	2,755,000±198,968	394,000	170,766	NA
1991	2,957,000±252,076	584,000	253,791	NA
1992	2,683,000±221,434	790,300	264,447	NA
1993	2,440,000±153,077	757,000	284,344	NA
1994	NA	657,200	NA	NA

[1] NSW does not calculate percent males on a regular basis, as they have found that it varies greatly due to shooter preference—averaging 70% but varying from 50–90%.

Population estimates and data about the commercial harvest of red and eastern gray kangaroos from the commercial utilization areas of Queensland, from 1987–1993, are listed in Tables 8 and 9. Recent population trends are unclear in the data of Table 8 and 9 because two different techniques have been used to estimate populations. Queensland, from 1984–1992, annually surveyed over 500,000 sq km of habitat in the pastoral zone by fixed-wing (FW) aircraft and, since 1991, has surveyed selected 0.5 by 0.5 degree blocks by helicopters (Hel). Surveys from FW aircraft seem to consistently produce low estimates of kangaroo populations in woodland habitats, such as the 190,000 sq km of mulga woodlands in southcentral Queensland. Presumably the ''Caughley correction factors'' developed in the sparsely vegetated zones of western New South Wales are not adequate multipliers for estimating kangaroo populations in the woodland habitats of southcentral Queensland. Data in Table 8 suggest that the population of red kangaroos may have diminished since 1991, presumably because of locally severe drought conditions, and that 1993 populations of eastern gray kangaroos may also be diminished from 1991 levels. The commercial kill of red kangaroos in 1993 was about 20 percent of the 1993 population estimate and the commercial quota for 1994 is about 20 percent of the 1993 population estimate. The 1993 commercial kill of eastern gray kangaroos was about 12 percent of the 1993 population estimate and the 1994 commercial quota has been set at about 15 percent of the 1993 population estimate (Table 9).

TABLE 8.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF RED KANGAROOS FROM QUEENSLAND

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987 (FW)	[1] 1,476,800±102,100	375,000	365,138	75
1988 (FW)	[1] 1,758,100±145,100	320,000	359,985	77
1989 (FW)	[1] 1,538,500±121,700	480,000	473,985	66
1990 (FW)	[1] 1,817,300±176,000	480,000	476,636	67.5
1991 (FW)	[1] 1,136,400±146,300	480,000	471,643	[2] NA
1991 (Hel)	[3] 4,630,000	.....	.....	.....
1992 (FW)	[1] 1,328,800±94,468	600,000	570,885	61.5
1992 (Hel)	[4] 3,070,000±910,000	.....	.....	.....
1993 (Hel)	[5] 2,960,000±950,000	600,000	595,488	55.5
1994 (Hel)	.....	600,000	.....	.....

[1] Fixed Wing estimates have been corrected using Caughley Correction Factors for Habitat but have not been corrected for temperature.
[2] ANCA does not have this data for 1991.
[3] Estimate received from the 1992 Quota application.
[4] Estimate received from the 1993 Quota application.
[5] Estimate received from the 1994 Quota application.

TABLE 9.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF EASTERN GRAY KANGAROOS FROM QUEENSLAND

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987 (FW)	[1] 3,341,200±176,700	1,300,000	1,231,889	79
1988 (FW)	[1] 2,916,700±192,600	1,300,000	1,292,196	79
1989 (FW)	[1] 2,598,500±172,300	1,500,000	1,143,314	66
1990 (FW)	[1] 2,278,300±232,000	1,500,000	1,097,890	62.5
1991 (FW)	[1] 1,736,900±155,600	1,300,000	1,017,086	[2] NA
1991 (Hel)	[3] 10,280,000	.....	.....	.....
1992 (FW)	[1] 2,782,400±184,700	1,500,000	919,234	62.5
1992 (Hel)	[4] 10,310,000±3,260,000	.....	.....	.....
1993 (Hel)	[5] 8,360,000±2,670,000	1,500,000	989,578	58.1

TABLE 9.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF EASTERN GRAY KANGAROOS FROM QUEENSLAND—Continued

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1994		1,250,000		

[1] Fixed Wing estimates have been corrected using Caughley Correction Factors for Habitat but have not been corrected for temperature. Caughley correction factors for gray kangaroos are known to give very conservative estimates of total population numbers. They are maintained in the publicly published figures to enable comparisons in population trends with the earlier published data for gray kangaroos until an agreed revised set of correction factors is published for the species.
[2] ANCA does not have this data for 1991.
[3] Estimate received from the 1992 Quota application.
[4] Estimate received from the 1993 Quota application.
[5] Estimate received from the 1994 Quota application.

The total national commercial quota in 1992 for red and gray kangaroos in the commercial utilization areas was 4,942,000, which was about 19 percent of the estimated 1992 red and gray kangaroo population of 26.2 million (using the estimates developed for Queensland from 1992 helicopter counts, for New South Wales and South Australia from 1992 FW surveys, and for Western Australia from 1990 FW surveys). The 1992 commercial kill was 2,676,000, which was 54 percent of the commercial quota and about 10 percent of the presumed 1992 population estimate. The total national commercial quota in 1993 for red and gray kangaroos was 4,517,600 which was about 21 percent of the estimated 1993 red and gray kangaroo population of 21.4 million in the CUAs (data from 1993 helicopter counts in Queensland, and 1993 FW counts in South Australia, New South Wales, and Western Australia). The 1993 commercial kill was 2.8 million which was 62 percent of the 1993 commercial quota and 13 percent of the 1993 population estimate. The 1994 national commercial quota is set at 3.88 million, which is about 18 percent of the 1993 population estimate. An additional 153,000 red and gray kangaroos were reported killed during 1993 for damage mitigation purposes outside the commercial harvest quotas. This damage mitigation kill was an unknown small percent of the continental population of red and gray kangaroos (153,000 equals about 0.7 percent of the 1993 presumed population of red and gray kangaroos within the CUAs which comprise a fraction of the continental land area).

Queensland has received criticism in past years for its harvest management system. That system has been substantially modified in recent years (QNPWS 1992). Queensland now establishes its kangaroo harvest quota in the following manner. Survey data from aerial and ground surveys are utilized to provide population estimates. A conservative possible harvest quota is formulated from this mid-winter survey information. This statewide potential quota for the state, by management areas, is reviewed by the Area Director, Regional Director, and the Manager-Wildlife Management, Queensland. The potential quota is then passed before the Macropod Management Committee (a State Ministerial committee) to receive public input from the rural community, pastoralists, graziers, shooters, dealers, the Department of Primary Industries, conservation groups, and politicians whose constituents are impacted by kangaroos. The committee advises on the acceptability of the proposed quota and may make recommendations about the quota. The proposed quota and the comments are passed to the Queensland Minister, who determines the final quota to be submitted to the Commonwealth for approval. Commonwealth approval may be gained after the proposal has been reviewed by ANCA and the Commonwealth Minister's Scientific Advisory Committee on Kangaroos.

The CUA in South Australia occurs on about 282,000 sq km of pastoral landscape, which comprises about 28 percent of the State's land area. The harvest quota in South Australia is based on the winter aerial survey of the CUA and is developed for each of 10 kangaroo management zones within the CUA. The commercial quota is set as a best estimate of the maximum number of each species that may need to be killed to contain deleterious effects on stock, crops, or property without jeopardizing the viability of kangaroo populations (SANPWS 1991). The proposed quota has to be approved by the appropriate South Australian Minister before its submission to the Commonwealth. The Commonwealth Minister subjects the proposed quota to review by ANCA and the Minister's Scientific Advisory Committee on Kangaroos before any implementation of the kangaroo management program can occur.

The CUA covers the western two-thirds of New South Wales. The harvest quota in the State is based on population estimates from the most recent annual surveys, recent trends in population numbers and distribution, harvest monitoring data, information about nonharvest mortality and noncommercial harvest mortality, climatic conditions over at least the past year, current land use, the proportion of the population not subject to damage mitigation culling, and the demand for agricultural damage mitigation culling (NSWNPWS 1991a). The proposed quota is subject to peer review by the NSW Kangaroo Management Review Committee and must be approved by the appropriate New South Wales Minister before its submission to the Commonwealth. The quota must be approved by the Commonwealth Minister, after its review by ANCA and the Minister's Scientific Advisory Committee on Kangaroos, before the harvest program can be implemented.

The CUA may total about one-half of Western Australia. Parks, reserves, and State forest lands occupied by and providing protective status to western gray and/or red kangaroos may total 100,000 sq km within this vast state. The harvest quota in Western Australia is conservatively established on the basis of current population trends, seasonal conditions, the review of previous annual harvests, the proportion of the habitat and population not subject to harvesting, current land use practices, and the significance of the take outside the commercial quota (WADCLM 1991a and 1991b). The proposed quota is subject to peer review by the Kangaroo Management Advisory Committee and must be approved by the appropriate Western Australian Minister before being forwarded to the Commonwealth Government. The Commonwealth Minister (after review by ANCA and the Minister's Scientific

Advisory Committee on Kangaroos) must approve the quota before the harvest program can be implemented.

Individual states have the capability to monitor their kangaroo harvest. For example, Queensland has recently established a Macropod Management System that is a new and large computerized database containing information about shooters' records, dealers' records, location of kill, date of kill, sex and species of kill, etc. The capability to track harvest information helps managers assess whether populations are being overharvested. A computerized database in Western Australia, built on harvest data, allows for the analysis of total commercial take by management area, trends in the sex ratio of the commercial take, trends in the average weight of kangaroos in the commercial take, and trends in the commercial take per unit effort (WADCLM 1991a and 1991b). South Australia is collecting, but not yet utilizing in its kangaroo management program, monitoring data about catch per unit of effort, sex ratio of the kill, and average weight of carcass by sex for each species (SANPWS 1991). New South Wales obtains specific information from trappers, chillers, and faunal dealers to determine catch per unit effort, average carcass weight by sex per species, sex ratios of kill, and the distribution of the harvest. This information is available by management zone and on a statewide basis (NSWNPWS 1991a).

The monitoring and assessment of population trends and harvest returns as specified in the approved kangaroo management programs are intended to ensure the conservation of the species.

The State and Commonwealth governments have the capability to police and regulate the commercial take of kangaroos. State governments control illegal trade in kangaroos through regular and random field inspections of shooter and dealer operations and checks on the returns required from them. Law enforcement staff may also respond to public reports of illegal activities. The primary focus in law enforcement activities at the State or Territory level is to detect illegal trade long before material may be proposed for export. This is feasible because of the relatively small number of people involved in the commercial kangaroo industry and the difficulties involved in obtaining and dealing in large quantities of kangaroo meat or skins in a secretive manner. There is also little incentive to become involved in illegal activities when quotas are not being reached (on average only about 70 percent of the total quotas have been taken in recent years) (ANPWS *in litt.*).

The Commonwealth capability to control illegal trade rests primarily with Customs officers and the Australian Federal Police. Checks on permitted exports of kangaroo products by Customs officers usually are restricted to the inspection of paperwork associated with the export. Customs officers will conduct more detailed inspections and enforcement activities where intelligence indicates that illegal activities may be occurring (ANPWS *in litt.*). The Wildlife Protection Squad formed within the ANPWS in 1992 is intended to coordinate enquiries/investigations into allegations of illegal trade in wildlife.

Annual surveys are useful indicators of the comparative health of kangaroo populations over time. Drought is the major natural event that influences the numbers of red and gray kangaroos throughout the CUAs. Annual surveys in New South Wales have been conducted for a sufficient time to indicate the influence of drought on populations. Combined populations of red and gray kangaroos in the CUAs of New South Wales from 1981–1993 (with numbers of animals commercially harvested listed in parentheses) are estimated as follows (population numbers are in millions of animals): 1981=7.05(0.49), 1982=9.40(0.66), 1983=5.50(0.40), 1984=2.74(0.23), 1985=4.16(0.33), 1986=4.66(0.45), 1987=5.43(0.47), 1988=5.50(0.42), 1989=7.05(0.50), 1990=8.55(0.63), 1991=9.10(0.86), 1992=7.39(0.79), and 1993=6.45(0.77). The data, unfortunately, provide an imperfect comparison because both census procedures and evaluation areas changed somewhat during the evaluation period. The trend seems clear, however: a population buildup to 1982, a major population reduction measured in 1983 and 1984 in response to the severe drought in summer 1982–1984, a gradual population recovery to 1991, with populations again declining in 1992 and 1993 as the sheep range of New South Wales was again impacted by a severe drought in 1991–2. The commercial harvest (numerically identified in the parentheses, above) is managed as a product of current kangaroo populations, which seem ultimately to be driven by current or recent rainfall conditions. Similar trends may exist for the other states, as well, but the data bases are not as complete or as extensive as those of New South Wales. For example, the data base in Queensland reflects the original use of FW aircraft and more recent use of helicopters in aerial survey efforts, and aerial surveys have been conducted only at 3-year intervals in Western Australia.

Nevertheless, population information for 1981, 1984, and 1987 (Fletcher, M. *et al.*, 1990) clearly indicates that kangaroo populations subject to harvesting can recover from significant droughts such as occurred in Eastern Australia in 1982–1984.

The major problem in the sheep range is too little herbage and too many herbivores. Efforts to implement a total grazing management policy call for the elimination of feral herbivores and introduced rabbits coupled with reductions in numbers of either sheep and kangaroos, or both.

Skill is required to manage animal populations that tend to respond to fluctuating environmental conditions. For example, New South Wales managed its kangaroo harvest during the drought by monitoring the progression of the drought and transferring harvest quotas from northern management zones where the drought was impacting habitats to more southerly management zones where drought effects were minimal and kangaroo populations were little affected. New South Wales did not reduce the notional quota for the second half of 1992 because the mid-winter 1992 surveys indicated that kangaroo populations remained high. However, New South Wales did hold back and did not allocate 15 percent of the potential harvest quota in case extensive habitat deterioration occurred after the mid-winter surveys were accomplished.

The Service finds that State and Commonwealth governments manage kangaroo populations sufficiently well to ensure that red and gray kangaroo populations are not being overutilized in mainland Australia at this time.

C. Disease or Predation

There is no evidence that kangaroos at this time are threatened by disease or predation. Predation by dingos may have been an important limiting factor before the arrival of Europeans. Dingo predation has been severely curtailed to enhance sheep husbandry, and kangaroos have incidentally benefitted from this action. Mortality of red and gray kangaroos, believed caused by an unidentified post-flood agent, was observed in southwestern Queensland following the April 1990 floods. The impact was short-term (ANPWS 1990), however, as regenerating vegetation stimulated increases in subsequent kangaroo populations.

D. The Inadequacy of Existing Regulatory Mechanisms

Red and gray kangaroos have protected status in all parts of their respective distributional ranges throughout Australia under relevant State or Territory legislation. The responsibility for wildlife conservation rests with individual State or Territorial governments through their faunal conservation authorities (ANPWS 1991). The decision to provide for a commercial harvesting industry is determined by State or Territory government policy and legislation. The Commonwealth has no power in law to influence how States and Territories manage red and gray kangaroos except for those populations subject to export or international agreements. The Commonwealth would be powerless, for example, to directly intervene should any individual State or Territory, with no export program, develop or operate an intrastate program that was counter to the Commonwealth views of conservation and management. The ANCA, however, is aware of the level of protection provided in mainland States and Territories that do not seek to export kangaroo products, and the Commonwealth is satisfied that management in those mainland States and Territories (Victoria, Northern Territory, Australian Capital Territory) is in significant agreement with Commonwealth standards of conservation and management (ANPWS *in litt.*).

The management of kangaroos in New South Wales, Queensland, South Australia, and Western Australia is based on legal protection and regulations controlling the harvest of kangaroos. Each of these four States has a kangaroo management program that includes provisions for the establishment of harvest quotas and for the reduction of harvests, if necessary, and each State has the responsibility to implement the provisions of its individual kangaroo management programs. The largest populations of red and gray kangaroos occur in the four States, and the Commonwealth Government does have a mechanism to enhance the protection of those populations. That mechanism exists through the Wildlife Protection (Regulation of Exports and Imports) Act of 1982 (WP(REI)A). The WP(REI)A consolidated wildlife controls into a single act so the Commonwealth could more effectively implement the objectives of CITES. Commercial trade is permitted only if it has been conclusively established that the native species will not become threatened because of the inadequate control of exports or through the import of some non-native species. The Commonwealth Minister for the Arts, Sport, the Environment and Territories can approve or disapprove of proposed management programs for individual species after having been advised of their merit by the ANCA and the Minister's Scientific Advisory Committee on Kangaroos. State governments in Western Australia, South Australia, New South Wales, and Queensland have each developed kangaroo management plans that have been approved by the Commonwealth so that an export trade in kangaroo products is allowed from each of those States. The kangaroo management plan for each State has a monitoring provision for both population trends and harvest returns to ensure that conservation of the species is the foremost objective.

An approved kangaroo management program indicates that kangaroo products for export must be from kangaroos taken in a specified and approved manner. An approved kangaroo management program must contain sufficient biological information so it can be evaluated. There also needs to be ample proof that the biological information has been considered in developing the program, and discussions must have occurred between the State and Commonwealth governments so the management programs attain acceptable standards. The management program must ensure that taking in the wild will not be detrimental to the survival of the species, will be carried out at minimal risk to the continuing role of that species in the ecosystem, will occur in a humane manner, and that adequate periodic monitoring and assessment of the effects of the taking of specimens will occur to ensure the long-term survival of the species.

The kangaroo management programs are generally based on multiple-use tenets and are designed to ensure the continued survival of kangaroos throughout their range. The programs assume that kangaroos are successful native herbivores whose numbers frequently need to be controlled. The programs are based on population monitoring and use a licensing system to control the legal harvesting of animals. The individual States have the responsibility to ensure that the harvesting of kangaroos does not significantly affect the distribution and abundance of the species.

The general objectives of the kangaroo management programs are to (1) maintain viable populations of kangaroos throughout their natural range, (2) minimize the effects of kangaroos on pastoral and agricultural development, (3) maintain populations of kangaroos at levels that will not produce long-term adverse impacts to habitat, and (4) manage the species as a renewable resource. Implementation to achieve objectives includes enabling legislation and an administering organization with sufficient funding to accomplish appropriate research, management, and monitoring activities.

The New South Wales National Parks and Wildlife Service controls the harvest of kangaroos through the National Parks and Wildlife Act 1974. All kangaroos entering commercial trade must be legally taken in accordance with this Act, and it is an offense to kill kangaroos or have them in possession without an appropriate license. Landholders have to approach the NSWNPWS for a permit to kill kangaroos on their property, and tags are issued if the killing is found to be warranted. Shooters, commercial dealers, and tannery operators are each licensed so controls exist at several levels of the commercial harvest. The total allowable commercial harvest occurs within the framework of the commercial quota. The development of the quota has been described in a general manner under factor B above.

The legislation protecting and conserving nature in Queensland is the Faunal Conservation Act 1974, which has been replaced by the Nature Conservation Act 1992. The new Queensland Act has been implemented for kangaroos, replacing the existing legislation. The Nature Conservation Act 1992 creates classes of protected areas; designates classes of wildlife; and provides for development of conservation plans to protect, use, and manage protected areas, critical habitats, and classes of wildlife. The Queensland kangaroo management program describes how the activities of shooters and dealers are regulated, how the size and/or composition of the population is to be monitored, the harvest regulations and checks to prevent illegal harvest or over-harvest, and other measures to ensure the conservation of the species. The approval of Queensland's kangaroo management program by the Commonwealth Government indicates an assurance that commercialism will not threaten the survival of kangaroo populations throughout their range.

Kangaroos and all native fauna in South Australia are protected under the National Parks and Wildlife Act 1972. A permit is required to take any animal for damage mitigation purposes and any kangaroo that enters the commercial

trade must be tagged with a species-specific tag. Quotas are developed after the direct monitoring of populations on an annual basis, and individual properties may be monitored through ground surveys and property inspections before receiving a quota. Quotas are released in stages so management can respond to changes in climatic conditions. Kangaroo shooters are licensed to shoot on individual properties.

The Department of Conservation and Land Management has the responsibility for the conservation and protection of all flora and fauna under the Western Australia Conservation and Land Management Act of 1984. The Department has authority under the Wildlife Conservation Act 1950 and associated regulations to control the killing of red and gray kangaroos. Landowners and their agents may take kangaroos non-commercially for damage mitigation purposes in open-season areas. Kangaroos can only be taken under a damage license specifically issued to particular properties in non-open-season areas. The harvest is monitored by using species-specific tags and by monitoring monthly reports from licensed shooters and dealers. Population trends are monitored on a triennial basis because of the State's vast area and because kangaroo densities are frequently low.

Critics of the kangaroo management program in Australia cite the incongruity of legislation granting a measure of protection to the species and the presence of a commercial industry that is responsible for the harvest of several million kangaroos per year. Critics also state that few studies substantiate claims that kangaroos are major depredators of range and agricultural crops, so that arguments that kangaroos are harvested to reduce damage especially to range products are specious, especially when sheep numbers remain too high for fragile ranges. The Service believes that any perceived incongruity in domestic laws needs to be resolved domestically and is not a reason for an ESA listing decision. It is additionally not necessary for the Service to address the argument that the commercial killing of kangaroos is solely for damage mitigation purposes to make a decision on a listing status. Kangaroos incidentally prosper at this time because of land management accomplished for other purposes. Active kangaroo management essentially only regulates kind and level of take so that overutilization does not occur and so that sustainable populations are maintained throughout their range. Regulatory mechanisms in place are adequate to perform this function.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Kangaroo populations fluctuate in response to environmental and climatic conditions. Appropriate wildlife management agencies routinely evaluate kangaroo populations over a wide area and monitor current harvest statistics to track population trends. This activity is intended to provide a sufficient understanding so that harvest activities, can be slowed or terminated if that becomes necessary. This may be appropriate, especially during drought, when kangaroo populations may become reduced and are most vulnerable to population control activities.

There is great concern among critics that management programs both for individual States and the Commonwealth are insensitive to the plight of kangaroos during environmental stress periods as during the 1982–1984 drought. The perceived insensitivity at that time was an apparent inability or unwillingness to reduce the commercial harvest of kangaroos in what critics considered a timely manner during an environmental stress period. The critics argue that demands from the pastoral industry and the commercial kangaroo industry superseded important kangaroo management decisions. The present concern with insensitivity occurred because some important kangaroo habitats experienced droughts during 1992 at a time when a record macropod harvest quota of 5.2 million animals (including 4,942,000 red and gray kangaroos) was established. The Commonwealth indicates (ANPWS *in litt.*) that the determination of quotas during a dry period as during a normal period is on the basis of estimated kangaroo populations.

Droughts are quite variable in their duration and distribution and kangaroo populations do not automatically decline in response to dry seasonal conditions. The 1983 harvest quotas were set at high levels because kangaroo populations measured during the June-August 1982 winter period were still high. The actual harvest during 1983 was considerably less than the actual quota and the quotas in 1984 and 1985 were maintained below 2 million animals as populations recovered.

Kangaroo populations have risen across Australia since that time and quotas have correspondingly increased. For example, the 1991 mid-winter kangaroo population in New South Wales was estimated at 9.1 million and the 1992 harvest quota in NSW was fixed at 2.1 million (23 percent of the 1991 population estimate). The mid-winter 1992 kangaroo population in NSW (obtained while the 1992 drought was still ongoing) was estimated at 8.04 million and a 1993 harvest quota of 1.66 million (21 percent of the 1992 population estimate) was established. The 1992 mid-winter survey indicated that statewide the populations of red kangaroos were diminished by about 40 percent (a statistically significant reduction, $P < 0.05$) and gray kangaroo populations were diminished about 8 percent (a statistically non-significant reduction). The 1992 mid-winter survey also indicated that kangaroo populations in central and southern management zones were little-changed from 1991 levels. The NSW National Parks and Wildlife Service, in mid-year, consequently switched some harvest quotas from northern to more southerly harvest management zones. The NSWNPWS also determined in mid-year that 15 percent of the 1992 harvest quota would be held back and not allocated during 1992. The NSW commercial kangaroo harvest during 1992, when a portion of the state was involved in a drought event, totalled about 800,000 kangaroos during a year when the potential harvest quota totalled 2.1 million. The kangaroo harvest strategy was thus to actively adapt and modify management plans as a dry season developed into a drought.

States have additional regulatory mechanisms to reduce actual harvest to levels below the commercial quota. Licenses to take animals may be amended to restrict the numbers taken in a particular area, to limit harvesting to certain species, or to cease hunting altogether. Thus, management may progressively restrict and then cease all harvesting of kangaroos in response to declining populations. Following the 1982–83 drought in New South Wales, a moratorium on harvesting was applied to some of the worst affected areas to enable populations to recover. Should a severe drought occur during the 1990's, States can be expected to respond in an appropriate manner to changes in the kangaroo populations. The ultimate assurance that conservation of the species will be given primary consideration is the approval and review of ongoing operations of State management programs by the Commonwealth Government (ANPWS *in litt.*).

Control over the methods used to kill kangaroos rests with State and Territory management personnel and is determined by relevant State and Territory legislation. Thus, new harvest

technologies that could threaten kangaroo populations can not be introduced without governmental approval.

Summary of Findings

The Service finds that extensive kangaroo habitats remain in mainland Australia, that management for pastoral industries may favor kangaroo production, and that an extensive series of National Parks and Reserves have been established (some of which are important to kangaroos). The Service also finds that adequate kangaroo management plans have been developed and implemented. The application of these management plans has demonstrated their effectiveness in both drought and non-drought conditions. Kangaroo populations are systematically and periodically assessed, and population data, environmental conditions, and public consultation inputs are weighed in the development of harvest quotas. The harvest operation is found to be a licensed action that occurs on individual properties at the request and permission of landholders. Authorities within the States and the Commonwealth government have the responsibilities and capabilities to monitor the harvest so that overutilization will not threaten the substantial kangaroo populations existing within individual States. Disease and/or predation do not threaten these kangaroos species. The management of kangaroos in New South Wales, Queensland, South Australia, and Western Australia is based on legal protection and regulations controlling the kangaroo harvest. The Commonwealth has the capability to approve, disapprove or require modification of kangaroo management programs from those States wishing to export kangaroo products so a consistency in planning and implementing management actions occurs within mainland Australia. The States have the responsibility to regulate all aspects of the kangaroo harvest, to provide adequate law enforcement, to conduct appropriate management and research, to monitor populations especially during drought events, and the States have the ability to modify harvests if environmental or other variables unexpectedly impact kangaroo populations. It is the present sufficiency in kangaroo management in mainland Australia that causes the Service to find that the action to delist the three species of kangaroos is warranted.

The Service's regulations at 50 CFR 424.11(d) allow a species to be delisted by reason of extinction, recovery, or because the original listing data were in error. The Service, with this action, delists these three species of kangaroos on the basis of their successful recovery because the best scientific and commercial information available indicates the species are now not likely to become an endangered species in the foreseeable future throughout all or a significant part of its range.

The Service, with this notice, also dismisses on procedural grounds, the December 20, 1989, petition filed by Greenpeace USA. The Service has no mechanism to reimpose an import ban on these non-endangered, non-threatened species from mainland Australia.

The Monitoring of Recovered Kangaroo Species

Requirements of the Act for the monitoring of recovered species also apply to foreign species. Those requirements include the implementation of a monitoring program to ensure that the species continues to fare well after delisting occurs. The Service is primarily dependent on input from the Commonwealth Government in the monitoring of these recovered species.

Monitoring plans frequently address population parameters, the distribution and well-being of the species, the condition of important habitats for the species, and any new threats identified as relevant to the species. The monitoring plan for the three kangaroos requires that the Commonwealth Government provide an annual report to the Service for each of 5 years. The first annual report is due March 1996. The monitoring plan is listed below. All information provided by the Commonwealth Government will be available for public review. The Service, on January 27, 1994, received a monitoring report which indicated results of the 1993 population surveys, and received additional monitoring information on May 30, 1994. The following presentation lists the monitoring question posed to the Commonwealth Government and the 1994 information on each monitoring question.

1. Provide the most current population estimates for each species within each harvest State using best technologies currently available, and describe the current harvest quotas established for the calendar year following those population estimates.

The 1993 population data for the three species, the commercial kill that was reported in 1993, and the planned harvest quota for 1994 are listed for each species in each state in Tables 1–9. There were no changes in the procedures used to monitor kangaroo numbers in New South Wales and South Australia in 1993. Nine monitoring blocks were identified for ongoing annual helicopter surveys in Queensland. The blocks will form the basis for future population trend analyses. The 1993 aerial survey in Western Australia followed in a general manner the standard survey methodology used in the 1987 and 1990 surveys. About 18 percent fewer degree blocks were surveyed in Western Australia in 1993 compared to 1990. Some consideration is being given to developing a systematic survey plan for conducting some type of annual survey in the commercial utilization area of Western Australia. Queensland continues to strive to standardize a systematic survey procedure utilizing helicopters.

2. Provide details of commercial and non-commercial mortalities, using best technologies currently available. The summary for a calendar year is due in March of the subsequent year. The time lapse is to ensure that summaries will provide data for the entire calendar year.

The extent of the commercial and non-commercial kill in 1993, is summarized in Table 10 (data about the non-commercial kill is not available for Western Australia).

TABLE 10.—COMMERCIAL AND NON-COMMERCIAL KILL IN 1993

State/province	Species	Type	Kill
NSW	Red kangaroos	Commercial	359,820
		Non-commercial	10,689
	Eastern grays	Commercial	284,344
		Non-commercial	85,696
	Western grays	Commercial	129,378
		Non-commercial	6,015

TABLE 10.—COMMERCIAL AND NON-COMMERCIAL KILL IN 1993—Continued

State/province	Species	Type	Kill
WA	Red kangaroos	Commercial	139,833
	Western grays	Commercial	47,077
SA	Red kangaroos	Commercial	227,056
		Non-commercial	1,618
	Western grays	Commercial	32,798
		Non-commercial	6,938
Qld	Red kangaroos	Commercial	595,488
		Non-commercial	8,915
	Eastern grays	Commercial	989,578
		Non-commercial	33,508

3. Describe any change in population or harvest estimation technologies, including, where appropriate, how the Commonwealth's Review Committee would deal with estimates using new technologies resulting in significantly higher standard errors. Such a discussion might include what sampling changes will be instituted to acceptably reduce the standard error, or what ''alpha'' level will be used to test for change in population or harvest, or how harvest quotas have been more conservatively set, or what programs would be instituted to relate estimates from new technologies to estimates using previous technologies.

This point was not included in the proposed rule, and no information was requested or provided in 1994.

4. Describe distribution of the species, using best technologies currently available. The intent of this provision is to note any significant change in the distribution of a species within a State with suggested explanations of causes of change.

No perceived changes in the distribution of the three kangaroo species exist for New South Wales, Western Australia, or Queensland. The distribution of western gray kangaroos in South Australia may now extend northward to approximately 31 degrees of latitude south. Otherwise, there are no perceived changes in the distribution of the species.

5. Describe the extent of lands set-aside for parks and reserves that provide protected and useful habitats for kangaroos.

Minor extensions were made to Parks and Reserves in New South Wales during 1993. Queensland added 6,974 sq km to its National Park System in 1993 and these lands provide protective and useful habitats for kangaroos. Western Australia added 3,394 sq km to its system of Nature Reserves, National Parks and Conservation Parks. Additional arid and semi-arid lands have also been added to the Park system in South Australia and some of these lands are suitable but marginal kangaroo habitats.

6. Describe changes in regulatory programs that impact the well-being of the species.

The basic regulatory programs remained unchanged in 1993 in New South Wales, Western Australia, and South Australia. The Nature Conservation Act 1992 has been implemented for kangaroos in Queensland, and replaces the Faunal Conservation Act 1974, National Parks and Wildlife Act 1975, and Native Plants Protection Act 1930. The 1992 Act provides for the protection of native wildlife and their habitats. A fundamental principle of the legislation requires that the use of protected wildlife must be ecologically sustainable. A draft ''Macropod Harvesting Conservation Plan 1994'' was released for public comment in December 1993. The new legislation provides for a comprehensive approach to the conservation of protected areas and wildlife and will enhance the conservation of all protected areas and species in Queensland.

7. Describe new threats to the species.

No new threats to the kangaroo species were identified during 1993.

8. Describe progress towards the successful implementation of any Total Grazing Management Policy (TGMP) that strives to balance the forage demands of all herbivore consumers with available range resources to enhance the conservation of range ecosystems.

In New South Wales, the concept of Total Grazing Management is being marketed through Landcare Groups, Rural Organizations, and a Commonwealth/State Rural Lands Reconstruction Program. The Department of Agriculture and the Department of Conservation and Land Management in Western Australia are cooperating on programs for rangeland conservation which emphasize the limitation of grazing pressures by commercial herbivores. In South Australia, the Pastoral Land Conservation and Management Act 1990 provides an attempt to enhance the conservation of range ecosystems. The major emphasis, at this time, is on the monitoring of vegetation conditions, modifying sheep and cattle stocking rates on the basis of current land condition, and the control of feral animals to enhance land condition. The Commonwealth Government, in association with State and Territory Governments has initiated the development of a National Rangelands Strategy, which among other things is intended to address the issue of managing total grazing pressure.

The U.S. Fish and Wildlife Service has the responsibility to annually review the monitoring reports, to assess the continued recovery of the species, and to conduct any other reviews it believes may be warranted. The Service can additionally invoke emergency listing procedures at any time in response to a significant threat to the well being of any of the three species. Three alternatives exist after the 5-year monitoring program has been concluded. They are: (1) If the species no longer meet the 5-factor test for recovery then they should be relisted using the emergency listing procedures; (2) if the species continue to fare well but threats are increasing, then the monitoring efforts should continue; and (3) if the species continue to fare well, threats are not increasing, and the 5-factor test is still met, then the monitoring effort can be discontinued.

Effects of This Final Rule

A special regulation was published in 1974 regarding the red, eastern gray, and western gray kangaroos that were listed as Threatened in 1974. The regulation made it unlawful to import these species, or their parts or products, into the United States for commercial purposes until the Australian States could assure the United States that they had effective management plans for the kangaroos, and that taking would not be detrimental to the survival of kangaroos.

As threatened species, individuals could be imported into the United States, with suitable permits, for scientific purposes, enhancement of propagation or survival of the species, educational purposes, zoological exhibition, or special purposes consistent with the purposes of the Act. On April 29, 1981, the Australian States met the conditions for satisfactory management, and a special regulation was published in the **Federal Register** (46 FR 3938) that made it lawful to import the three species of kangaroos for commercial purposes provided the products were tagged or otherwise identified as removed from the wild in accordance with the management plans of the Australian States. The Service published a final rule on August 1, 1983 (48 FR 34757) permitting the commercial importation of kangaroos to continue.

The current action removes the mainland populations of these three kangaroo species from the List of Endangered and Threatened Wildlife. The effect of this delisting action will be negligible because the restrictions associated with the Threatened classification have already been largely relieved by the Special Rule at 50 CFR 17.40 (a). The eastern gray kangaroo (*Macropus giganteus,* all subspecies except *tasmaniensis*), the red kangaroo (*M. rufus*), and the western gray kangaroo (*M. fuliginosus*) are removed from the list of Endangered and Threatened Wildlife as codified in 50 CFR 17.11, with the publication of this final rule. Consequently, none of the restrictions, regulations, or prohibitions of the U.S. Endangered Species Act will apply to these three species in mainland Australia, as is presently the case.

The subspecies *M. g. tasmaniensis* is retained on the list of endangered species in § 17.11. No assessment of this subspecies or of kangaroo management in Tasmania was undertaken in this evaluation.

The special rule in 50 CFR 17.40 (a)(1)(i)(B) which allowed the import of eastern gray, red, and western gray kangaroos, including parts and products of such wildlife which have been tagged or otherwise identified as removed from the wild, in accordance with the management plans of Australian States, into the United States without permits for individual shipments, otherwise required by 50 CFR part 17(a), is hereby rescinded. *M. g. tasmaniensis* is restricted to Tasmania, and Tasmania has not prepared a kangaroo management plan for this subspecies so the Commonwealth Government has not allowed any export of *M. g. tasmaniensis* or their parts and products. The rescinding of § 17.40 (a) will therefore not be relevant to this non-traded but endangered subspecies.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References Cited

ANPWS. 1990. Australian National Parks and Wildlife Service response to the report ''Review of kangaroo management March 1990.'' Aust. Nat. Parks Wildl. Serv., Canberra. 28pp.

ANPWS. 1991a. Australian National Parks Wildlife Service reply to the United States Fish and Wildlife Service's concerns raised in its **Federal Register** notice (vol. 58, no. 113) with regard to the management plans of three harvested kangaroo species (*Macropus rufus, M. fuliginosus* and *M. giganteus*). Aust. Nat. Parks Wildl. Serv., Canberra, 13pp.

ANPWS. 1991b. Overview of background information for kangaroo management in Australia. Draft document. Wildl. Monitoring Unit, Aust. Nat. Parks Wildl. Serv., Canberra. 92pp.

Arnold, G. 1990. Can kangaroos survive in the wheatbelt? Western Australia Jour. of Agric. 31: 14–17.

Caughley, G., N. Shepherd, and J. Short. 1987. Kangaroos: their ecology and management in the sheep rangelands of Australia. Cambridge Univ. Press, Melbourne. xiv + 253pp.

Fletcher, M., C.J. Southwell, N.W. Sheppard, G. Caughley, D. Grice, G.C. Griggs, and L.A. Beard. 1990. Kangaroo Population Trends in the Australian Rangelands, 1980–87. Search 21 (1):28–29.

Kennedy, M. 1992. Australasian Marsupials and Monotremes: An action plan for their survival. IUCN/SSC Australasian Marsupial and Monotreme Specialist Group. IUCN, Gland, Switzerland, vii + 103pp.

Nichols, J.D., S.R. Singer, and J.S. Smith. 1990. Review of kangaroo management, Australia, March 1990. U.S. Fish and Wildlife Service., unpubl. report. v + 71pp + Appendices.

NSWNPWS. 1991a. The New South Wales kangaroo management programme. New South Wales National Parks and Wildlife Service., Sydney. 17pp.

NSWNPWS. 1991b. Proposed kangaroo quotas for 1992 for New South Wales. New South Wales National Parks and Wildlife Service., Sydney. 24pp.

QNPWS. 1992. 1992–1994 management program for the commercially taken macropds in Queensland. Queensland National Parks and Wildlife Service., Brisbane. 13pp + Appendices.

SANPWS. 1991. The kangaroo conservation and management program in South Australia. Part A. Management of the large kangaroos. South Australia National Parks and Wildlife Service., Adelaide. 14pp + 13 Figs.

WADCLM. 1991a. Management program for the western grey kangaroo in Western Australia 1992–1994. Western Australia Department Conservation and Land Management, Perth. 11pp + 2 Figs. + App. A.

WADCLM. 1991b. Management program for the red kangaroo in Western Australia 1992–1994. Western Australia Department Conservation and Land Management, Perth. 11pp + 2 Figs. + App A.

Author

Dr. Henry L. Short, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subpart B of chapter I, title 50 of the Code of Federal Regulations, is 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.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the three entries for the ''Kangaroo, eastern gray'', ''Kangaroo, red'', and ''Kangaroo, western gray'' under the section ''Mammals'' from the List of Endangered and Threatened Wildlife.

§ 17.40 [Amended]

3. Section 17.40(a) is removed and reserved.

Dated: February 24, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–5823 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 60, No. 46
Thursday, March 9, 1995

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

Agricultural Marketing Service

7 CFR Part 1099

[DA–95–10]

Milk in the Paducah, Kentucky, Marketing Area; Proposed Termination of Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of order.

SUMMARY: This document invites written comments on the proposed termination of the order regulating the handling of milk in the Paducah, Kentucky, marketing area. A proposed amended Paducah, Kentucky, order failed to receive the required two-thirds approval in a recent producer referendum. Since the Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the applicable statutory authority, it is necessary to consider terminating the present order.

DATES: Comments are due on or before March 24, 1995.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would eliminate the regulatory impact of the order on dairy farmers and regulated handlers.

This proposed action has been reviewed under Executive Order 12866.

This proposed termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the termination of the order regulating the handling of milk in the Paducah, Kentucky, marketing area is being considered.

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after the publication of this notice in the **Federal Register**. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures before and coordinate the termination with amendatory action being taken on milk orders for neighboring markets. The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would terminate the order regulating the handling of milk in the Paducah, Kentucky, marketing area.

On December 2, 1994, the Department issued a final decision on proposed amendments to all Federal milk orders, which was published December 14, 1994 (59 FR 64524). The final decision document contained proposed amended orders for all marketing areas, including the Paducah order. The document also included a referendum order for the Paducah, Kentucky, market to ascertain whether producers supplying that market approve the issuance of the proposed amended order. The final decision concluded that amended orders were needed to effectuate the declared policy of the applicable statutory authority.

The enabling statute requires that at least two-thirds of the producers (measured in terms of either number or volume) voting in a referendum must approve the issuance of a marketwide pool order before it can be put into effect. Only 37.8 percent of the voting producers representing 59.8 percent of the milk produced by the dairy farmers who voted in the referendum approved the issuance of the proposed amended order for the Paducah, Kentucky, marketing area. In these circumstances, where it has been concluded that the order should be amended to effectuate the declared policy of the enabling statute, and that the amended order was not approved by producers, it appears that continuation of the existing Paducah, Kentucky, order would not be in conformity with the applicable statutory authority. Therefore, it is necessary to consider terminating the present order.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

The authority citation for 7 CFR Part 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: March 3, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5806 Filed 3–8–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 93–076–5]

RIN 0579–AA59

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule regarding the establishment of standards for ''swim-with-the-dolphin'' interactive programs. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to comments on Docket No. 3–076–2 that are received on or before March 13, 1995.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. Please state that your comments refer to Docket No. 93–076–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738, (301) 734–8699.

SUPPLEMENTARY INFORMATION: On January 23, 1995, we published in the **Federal Register** (60 FR 4383–4389, Docket No. 93–076–2) a proposal to amend the Animal Welfare regulations to establish standards for ''swim-with-the-dolphin'' interactive programs.

Comments regarding the proposed rule were required to be received on or before February 22, 1995. During the comment period, we received a request that we extend the comment period beyond February 22. The requestor, a marine mammal industry association, stated that additional time was necessary to allow its members to meet and to formulate comments.

In response to this request, on February 28, 1995, we published a notice in the **Federal Register** (60 FR 10810, Docket No. 93–076–4), reopening and extending the comment period for Docket No. 93–076–2 through March 9, 1995. However, the March 9 date was an error. We had intended to extend the comment period through March 13, 1995. Therefore, in this notice, we are extending the comment period for Docket No. 93–076–2 through March 13, 1995. This will allow time for the requestor and other interested persons to develop comments on the proposed rule.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC, this 6th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–5807 Filed 3–8–95; 8:45 am]

BILLING CODE 3410–34–P

Notices

Federal Register
Vol. 60, No. 46
Thursday, March 9, 1995

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

Food and Consumer Service

Special Supplemental Food Program for Women, Infants and Children (WIC): Poverty Income Guidelines

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Food Program for Women, Infants and Children (WIC Program). These poverty income guidelines are to be used in conjunction with the WIC Regulations.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FCS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (d)(2)(A)) requires the Secretary to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced price school meals is 185 percent of the Federal Poverty Income Guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 1995 was published by the Department of Health and Human Services (DHHS) in the **Federal Register** on February 9, 1995 at 60 FR 7772. The guidelines published by DHHS are referred to as the poverty income guidelines.

Section 246.7(c)(1) of the WIC regulations specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9(b) of the National School Lunch Act for reduced price school meals or identical to State or local guidelines for free or reduced price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines established under section 9(b) of the National School Lunch Act for reduced price school meals, or which are less than 100 percent of the Federal poverty income guidelines. Consistent with the method used to compute eligibility guidelines for reduced price meals under the National School Lunch Program, the poverty income guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC poverty income limits by household size for the period July 1, 1995 through June 30, 1996. Consistent with Section 17(f)(18) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(18)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.). State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines July 1, 1995. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

EFFECTIVE JULY 1, 1995–JUNE 30, 1996

Family size	Annual poverty income guidelines (PIG)	Annual FNS income guidelines for reduced-price lunches (185% of PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:		
1	7,470	13,820
2	10,030	18,556

EFFECTIVE JULY 1, 1995–JUNE 30, 1996—Continued

Family size	Annual poverty income guidelines (PIG)	Annual FNS income guidelines for reduced-price lunches (185% of PIG)
3	12,590	23,292
4	15,150	28,028
5	17,710	32,764
6	20,270	37,500
7	22,830	42,236
8	25,390	46,972
For each additional family member add	2,560	4,736
Alaska:		
1	9,340	17,279
2	12,540	23,199
3	15,740	29,119
4	18,940	35,039
5	22,140	40,959
6	25,340	46,879
7	28,540	52,799
8	31,740	58,719
For each additional family member add	3,200	5,920
Hawaii:		
1	8,610	15,929
2	11,550	21,368
3	14,490	26,807
4	17,430	32,246
5	20,370	37,685
6	23,310	43,124
7	26,250	48,563
8	29,190	54,002
For each additional family member add	2,940	5,439

Dated: March 3, 1995.

William E. Ludwig,

Administrator.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 1995 to June 30, 1996]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 contiguous United States, District of Columbia, Guam and Territories:									
1	7,470	623	144	13,820	1,152	266	9,711	810	187
2	10,030	836	193	18,556	1,547	357	13,039	1,087	251
3	12,590	1,050	243	23,292	1,941	448	16,367	1,364	315
4	15,150	1,263	292	28,028	2,336	539	19,695	1,642	379
5	17,710	1,476	341	32,764	2,731	631	23,023	1,919	443
6	20,270	1,690	390	37,500	3,125	722	26,351	2,196	507
7	22,830	1,903	440	42,236	3,520	813	29,679	2,474	571
8	25,390	2,116	489	46,972	3,915	904	33,007	2,751	635
For each add'l family member add	+2,560	+214	+50	+4,736	+395	+92	+3,328	+278	+64
Alaska:									
1	9,340	779	180	17,279	1,440	333	12,142	1,012	234
2	12,540	1,045	242	23,199	1,934	447	16,302	1,359	314
3	15,740	1,312	303	29,119	2,427	560	20,462	1,706	394
4	18,940	1,579	365	35,039	2,920	674	24,622	2,052	474
5	22,140	1,845	426	40,959	3,414	788	28,782	2,399	554
6	25,340	2,112	488	46,879	3,907	902	32,942	2,746	634
7	28,540	2,379	549	52,799	4,400	1,016	37,102	3,092	714
8	31,740	2,645	611	58,719	4,894	1,130	41,262	3,439	794
For each add'l family member add	+3,200	+267	+62	+5,920	+494	+114	+4,160	+347	+80
Hawaii:									
1	8,610	718	166	15,929	1,328	307	11,193	933	216
2	11,550	963	223	21,368	1,781	411	15,015	1,252	289
3	14,490	1,208	279	26,807	2,234	516	18,837	1,570	363

INCOME ELIGIBILITY GUIDELINES—Continued

[Effective from July 1, 1995 to June 30, 1996]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
4	17,430	1,453	336	32,246	2,688	621	22,659	1,889	436
5	20,370	1,698	392	37,685	3,141	725	26,481	2,207	510
6	23,310	1,943	449	43,124	3,594	830	30,303	2,526	583
7	26,250	2,188	505	48,563	4,047	934	34,125	2,844	657
8	29,190	2,433	562	54,002	4,501	1,039	37,947	3,163	730
For each add'l family member add	+2,940	+245	+57	+5,439	+454	+105	+3,822	+319	+74

* Increase of 2.36% over Income Eligibility Guidelines for the period of 7/1/94–6/30/95.

[FR Doc. 95–5709 Filed 3–8–95; 8:45 am]

BILLING CODE 3410–30–P

Forest Service

Boppin Basin EIS; Kootenai National Forest; Lincoln County, Montana; Cancellation of Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Environmental impact statement cancellation notice.

SUMMARY: Notice is hereby given that the Three Rivers Ranger District, Kootenai National Forest is withdrawing its plan to prepare an Environmental Impact Statement for the Boppin Basin project. Project proposals within this area will be incorporated into the Fry-Zim Environmental Impact Statement for fire and insect mortality recovery.

The Notice of Intent, published in the **Federal Register** of January 14, 1994 is hereby rescinded (FR document is FR 94–916 Filed 1–13–94).

FOR FURTHER INFORMATION CONTACT: Jack Zearfoss. Fry-Zim EIS Team Leader, Three Rivers Ranger District (406) 295–4693.

Dated: February 28, 1995.

Robert L. Schrenk,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 95–5695 Filed 3–8–95; 8:45 am]

BILLING CODE 3410–11–M

Fry-Zim EIS; Kootenai National Forest; Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of fire recovery and salvage activities. The project is located on the Three Rivers Ranger District, Kootenai National Forest, Lincoln County, Montana, in the Northeast Yaak Phsiographic Area located about 34 air miles northeast of Troy, Montana. Part of the proposed activities lie within an Inventoried Roadless Area (IRA), Mt. Henry # 666.

The Proposed Action was developed in response to the major fire events that burned over 2,200 acres in the Fish Lakes and Zimmerman Hill areas in August 1994, and mortality caused by mountain pine beetle infestations in Basin Creek Compartment #29. The proposal is to salvage timber, construct and reconstruct roads, reduce fuel concentrations, revegetate with trees/native shrubs/grasses, and obliterate roads. These actions are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purpose of the Proposed Action's activities are to harvest fire- and insect-killed timber in a timely manner, manage road systems, reduce future potential for catastrophic fire, sustain site productivity, improve wildlife and riparian habitat (specifically for Threatened, Endangered, or Sensitive (TES) species), and accelerate watershed recovery.

Overall guidance of land management activities on the Kootenai National Forest, including timber harvest and road management, are regulated by the Kootenai National Forest Land and Resource Management Plan (Forest Plan, September, 1987). The Proposed Action was developed using various principles of Ecosystem Management. In doing so, the post-fire conditions are characterized at a broad scale with consideration to natural processes that historically shaped this ecosystem. Based on this analysis we developed a Proposed Action that would require a Forest Plan amendment to allow timber harvest in Management Area 2 (semi-primitive, non-motorized recreation). In addition, some areas previously designated as old growth which, due to the intensity of the fires no longer exhibit old growth characteristics, will be redesignated to other areas. Some of these burned areas will be harvested, meeting objectives of surrounding management areas.

DATES: Written comments should be received within 30 days following publication of this notice.

ADDRESSES: Send written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Michael L. Balboni, District Ranger, Three Rivers Ranger District, Kootenai National Forest, 1437 North Highway 2, Troy, Montana 59935.

FOR FURTHER INFORMATION CONTACT: Jack Zearfoss, Fry-Zim EIS Team Leader, Three Rivers Ranger District (406) 295–4693.

SUPPLEMENTARY INFORMATION: The timber salvage activities under consideration would occur within the 89,687 acre Northeast Yaak Physiographic Area. The general areas considered are the Fish Lakes, Windy Creek, and Basin Creek areas. Primary salvage activities would occur in two specific fire-affected areas: the Fish Fry Fire (1470 acres) located within all or portions of Sections 18 and 19, T36N, R30W, and Sections 11, 12, 13, 14, 23 and 24, T36N, R31W, PMM, Lincoln County, Montana: the Zimmerman Fire (733 acres) located within portions of Sections 3, and 4, T36N, R31W, and Sections 26 and 35, T37N, R31W, PMM, Lincoln County, Montana. Previous planning efforts (Boppin Basin Environmental Impact Statement) have identified other salvage opportunities outside of the fire-affected areas which have been incorporated into this proposal and are located within all or portions of Sections 20, 21, 22, 26, 27, 28, 29, 32, 33, and 34, T36N, R30W, PMM, Lincoln County, Montana.

Salvage harvest of dead and dying trees is proposed on 2536 acres of forested land within the two fire areas and the Basin Creek drainage.

Helicopter, conventional cable, and ground-based logging systems would be utilized for harvest operations. This includes 480 acres within the 733 acre Zimmerman fire, 798 acres within the 1470 acre Fish Fry fire, and 1,258 acres within the 11,521 acre Basin Creek Compartment #29. Openings of greater than 40 acres in size would result from this Proposed Action. Fuel reduction accomplished in conjunction with harvest includes grapple piling and prescribed burning. Watershed restoration activities are proposed within and in the vicinity adjacent to the harvest areas. This includes road obliteration with an estimated 2.90 miles of recontouring, 11.80 miles of ripping and seeding, and 8.70 miles of seeding, plus the removal of approximately 21 in-stream culverts. Placement of woody debris would occur along about 1.0 mile of stream channel, and approximately 11 acres of riparian revegetation is proposed. Replanting would occur on approximately 2694 acres of land (of which 96 acres are burned plantations), including both conifer seedlings for reforestation and native shrubs and herbaceous plants for wildlife habitat (approximately 187 acres). The timber harvest operations would require approximately 3.88 miles of new road construction, 6.58 miles of reconstruction, and an estimated 1.70 miles of temporary road construction. Road maintenance would occur on about 13.73 miles of existing road.

Approximately 498 acres proposed for harvest lie within the Mt. Henry #666 IRA. An estimated 3.60 miles (of the 3.88 miles) of road construction would occur within this area.

The decision to be made is, what action (if any) should be taken in the Northeast Yaak Physiographic Area to:

(1) Recover the fire-affected areas and move the area towards the desired conditions of the physiographic areas involved.

(2) Provide goods and services to the local economy and U.S. citizens

(3) Reduce the risk for high-intensity wildfire in the future

(4) Develop and manage the road system to facilitate the removal of timber, post-harvest treatments, reduce sedimentation, restore stream channel equilibrium, and maintain or improve wildlife habitat.

The Kootenai Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The areas of proposed activities would occur within Management Areas 2, 12, 13, 14, and 19. Timber harvest would occur in all Management Areas except Management Area 13, which would be redesignated. Road construction would occur in Management Areas 13 and 14. Below is a brief description of the applicable management direction.

Management Area 2—These areas are characterized by a natural appearing environment offering roadless recreation opportunities and are within an unsuitable timber base.

Management Area 12—These are areas that contain productive timber lands which are suitable for timber harvest, provided that big game summer habitat objectives are met.

Management Area 13—These are areas that contain special habitat characteristics which are allocated as Old-Growth. Local road construction is permitted, provided that they are restricted following use to protect snag characteristics.

Management Area 14—These are areas that contain productive timber lands which are suitable for timber harvest, provided that grizzly bear habitat objectives are met.

Management Area 19—These are areas that contain steep slopes requiring only activities which minimize surface disturbance and maintain a healthy vegetative cover.

For Management Area 2, which is classified as unsuitable for timber production, an amendment to the Forest Plan would be required to implement the ecosystem management-based proposal or any alternative which would harvest timber in these management areas.

The Forest Service will consider a range of alternatives. One of these will be the ''No Action'' alternative, in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the desired conditions, as well as to respond to the issues and other resource values identified by the public.

The principle issues identified to date are related to:

1. The effects of the Proposed Action on the characteristics of Inventoried Roadless Areas and Management Areas designated as unsuitable for timber production.

2. The effects of the Proposed Action on water quality and fish habitat.

3. The effects of the Proposed Action on ecosystem health and the risk of catastrophic wildfires and insect or disease outbreaks.

4. The effects of the Proposed Action on Threatened, Endangered, and Sensitive (TES) species.

5. The effects of the Proposed Action on the socio-economics of the area.

Other issues commonly associated with salvage harvesting and road construction include: heritage resources, soils, and scenery management. This list may be verified, expanded, or modified based on public scoping for this proposal.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on National Forest Lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis. It will start with the initial scoping process (40 CFR 1501.7) which will begin with the publication of this notice. The public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the Proposed Action. Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.

2. Identify major issues to be analyzed in depth.

3. Eliminate minor issues or those which have been covered by a previous environmental analysis, such as the Kootenai Forest Plan EIS.

4. Identify alternatives to the proposed action.

5. Identify potential environmental effects of the Proposed Action and alternatives (i.e. direct, indirect, and cumulative effects).

6. Determine potential cooperating agencies and task assignments.

Consultation with the U.S. Fish and Wildlife Service has been ongoing with regard to listed species. The Montana Department of Health and Welfare-Division of Environmental Quality, Montana Department of Fish and Game, and the Kootenai Salish Indian Tribe will also be consulted.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS, which is expected to be filed with the EPA and available for public review in July, 1995. A 45-day comment period will follow publication of a Notice of Availability of the Draft EIS in the **Federal Register**. The final

EIS is expected to be completed in November, 1995.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages Inc.* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 30 day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Robert L. Schrenk, Forest Supervisor, Kootenai National Forest, Supervisor's Office, 506 Hwy 2 West, Libby, MT 59923 is the Responsible Official. As the Responsible Official I will decide which, if any, of the proposed projects will be implemented. That decision will be documented in a Record of Decision. I have delegated the responsibility to prepare the Fry-Zim Environmental Impact Statement to Michael L. Balboni, District Ranger, Three Rivers Ranger District.

Dated: February 28, 1995.

Robert L. Schrenk,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 95–5696 Filed 3–8–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene on Monday, April 3, 1995, from 1:30 p.m. to 4:00 p.m. at the Sheraton Billings Hotel, 27 North 27th Street, Billings, Montana 59101. The purpose of the meeting is to update Committee members on the status of the project proposal and make plans for a future factfinding meeting.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Donald D. Dupuis, 406–675–2770, or Ki-Taek Chun, Acting Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 28, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–5699 Filed 3–8–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030295A]

Endangered Species; Permits

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

ACTION: Notice of the receipt of an application for a scientific research permit (P45R) and the receipt of applications for modifications to scientific research permit 823 (P503C) and incidental take stocking permit 908 (P503K).

Notice is hereby given that the National Biological Survey (NBS) in Corvallis, OR, has applied in due form for a scientific research permit (P45R) and that the Idaho Department of Fish and Game (IDFG) in Boise, ID, has applied in due form for Modification 2 to scientific research Permit 823 (P503C) and Modification 1 to incidental take stocking Permit 908 (P503K) to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

NBS requests authorization for a take of juvenile, endangered, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) as part of a study designed to provide information that will be used to: (1) Recommend siting of the bypass outfall to be constructed at the Dalles Dam; (2) evaluate the juvenile salmonid nighttime spill pattern at the Dalles Dam; (3) assess the relationship between flow rate and juvenile salmonid outmigration velocity in the Dalles pool and elsewhere; (4) evaluate juvenile salmonid passage routes at John Day Dam; (5) estimate juvenile salmonid mortality in the lower Columbia River; and (6) provide information on the vulnerability of salmonids to predation by northern squawfish (*Ptychocheilus oregonensis*). Listed fish will be collected at the John Day Handling Facility by NMFS personnel under the authority of Permit 822, anesthetized and implanted with radio telemetry transmitters (radio tags) by NBS personnel, held for 36–48 hours in tanks supplied with circulating river water to determine tag retention and delayed mortality, released near the mouth of the John Day River, and tracked to determine their fate. The requested duration of the permit is from April 15 to July 15, 1995.

Permit 823 authorizes IDFG to take endangered Snake River salmon while conducting a wide range of research activities in Idaho. For Modification 2 to the permit, IDFG requests an increase in the lethal take of juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) in Redfish Lake to optimize the evaluation of Redfish Lake fertilization/supplementation efforts in 1995 and beyond. In addition, IDFG requests to implement four other actions which will not require an increase in the take of listed species authorized in the permit. These four actions are: (1) The marking of juvenile, endangered, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) using caudal fin clips to estimate the number of fry that migrate downstream past juvenile fish traps to rear downstream from study sites; (2) a fish flush strategy designed to provide flushing flows through a seasonally dewatered stretch of the Lemhi River between the Barracks Lane Bridge and

the Clark Steelhead Bridge during times of critical adult and juvenile salmon migrations; (3) the installation of a second juvenile fish trap upstream from the existing juvenile fish trap, the Sawtooth Hatchery weir, on the upper Salmon River to optimize trapping efficiency with the aim of developing more accurate estimates of anadromous fish survival rates and migration timing; and (4) the installation of a rotary screw trap in Rapid River upstream from the Rapid River Fish Hatchery to collect natural production information on wild steelhead salmon. Modification 2 would be valid for the duration of the permit. The permit expires on November 30, 1997.

Permit 908 authorizes IDFG for an incidental take of listed Snake River salmon as a result of their resident fish stocking program designed to increase the supplies of fish in the Salmon River and its tributary streams for sport angling. For Modification 1 to the permit, IDFG requests authorization to stock Redfish Lake with hatchery rainbow trout in 1995 and beyond to provide recreational fishing opportunity in the lake. NMFS denied IDFG's request to stock Redfish Lake with rainbow trout in 1993 because of concern over possible interactions between stocked rainbow trout and listed sockeye salmon in the lake, primarily diet overlap and predation. IDFG believes that hatchery rainbow trout releases in Redfish Lake will not undermine endangered sockeye salmon recovery efforts. Permit 908 expires on December 31, 1998.

Written data or views, or requests for a public hearing on any of these applications should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: March 3, 1995.

Patricia A. Montanio,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–5817 Filed 3–8–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Wholesale Power and Transmission Rates, Negotiated Pacific Northwest Coordinating Agreement Rates, and Transmission Terms and Conditions

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Availability of Wholesale Power and Transmission Rates, Pacific Northwest Coordinating Agreement Rates and Transmission Terms and Conditions.

SUMMARY: *BPA File No:* WP–95, TR–95, TC–95. On December 28, 1994, Bonneville Power Administration (BPA) published a Notice of Intent to Revise Transmission Rates, 59 FR 66946 and Notice of Intent to Revise Wholesale Power Rates, 59 FR 66947. Subsequently, BPA also published **Federal Register** Notices of Proposed Wholesale Power Rate Adjustment (60 FR 8496), Proposed Transmission Rate Adjustment (60 FR 8505), and Hearing and Opportunity for Public Comment Regarding Proposed Comparable Transmission Terms and Conditions (60 FR 8511). In those Notices, BPA stated that Wholesale Power and Transmission Rates, the Rates for the Pacific Northwest Coordinating Agreement, and the Transmission Terms and Conditions would be published separately.

DATES: The following schedule information is provided for informational purposes. BPA's proposed schedule, as well as a schedule for additional prehearing conferences will be published later. The final schedule will be established by the Hearing Officer at the Prehearing/Settlement conference on March 15, 1995.

March 15, 1995—Settlement Conference on Scheduling

October 29, 1996—Final Record of Decision published

BPA also will be conducting public field hearings. A field hearing schedule will be announced at the prehearing conference. A notice of the dates, times, and locations of the field hearings will be made later through a **Federal Register** Notice, mailings and public advertising.

ADDRESSES: The date for written comments by participants must be received by June 16, 1995, to be considered in the Draft Record of Decision (ROD). Written comments should be submitted to the Manager, Corporate Communications—CK; Bonneville Power Administration; P.O. Box 12999; Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed above, (503) 230–4328 or call toll-free 1–800–622–4519. Information may also be obtained from:

Mr. Steve Hickok; Group Vice President, Sales and Customer Service; P.O. Box 3621; Portland, OR 97232 (503–230–5356)

Mr. George Eskridge; Manager, SE Sales and Customer Service District; 1101 W. River, Suite 250; Boise, ID 83702 (208–334–9137)

Mr. Ken Hustad; Manager, NE Sales and Customer Service District; Crescent Court, Suite 500; 707 Main; Spokane, WA 99201 (509–353–2518)

Ms. Ruth Bennett; Manager, SW Sales and Customer Service District; 703 Broadway; Vancouver, WA 98660 (360–418–8600)

Ms. Marg Nelson; Manager, NW Sales and Customer Service District; 201 Queen Anne Ave. N., Suite 400; Seattle, WA 98109–1030 (206–216–4272)

Responsible Official: Mr. Geoff Moorman, Manager for Pricing, Marginal Cost and Ratemaking, is the official responsible for the development of BPA's rates. Mr. Dennis Metcalf, BPA Transmission Team Lead, is the official responsible for development of BPA's transmission terms and conditions.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Charges Under the Amended and Integrated Pacific Northwest Coordination Agreement
III. Transmission Terms and Conditions

I. Introduction

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS)

and other costs incurred by BPA. The Federal Power Act, as amended by the Energy Policy Act of 1992, provides that BPA may institute a regional hearing process on proposed transmission terms and conditions of general applicability.

BPA has determined that its initial power rate proposal should include a stable, 5-year rate for most, if not all, of its requirements service. BPA anticipates that the work necessary to assemble such a proposal will take until late March or early April of 1995. Since such a rate would cover the bulk of BPA's firm sales, its impact on BPA's overall proposal is fundamental. Thus, the information BPA is releasing now should be considered preliminary. Information in BPA's preliminary proposal concerning rate design, product definition and pricing, revenue requirement, and other matters should provide parties valuable information that will enable them to better assess BPA's initial proposal when it is released in late March or early April.

In the **Federal Register** notices published February 14, 1995 (60 FR 8497, 60 FR 8505, and 60 FR 8511), BPA stated that it would publish its preliminary proposed rate schedules in the **Federal Register**. However, due to the length of the preliminary proposed rate schedules and developments related to BPA's tiered rates proposal, the preliminary proposed Wholesale Power and Transmission Rate schedules will not be published in the **Federal Register**. They are available from BPA's Public Information Center. To request the preliminary proposed Wholesale Power and Transmission Rate Schedules, call BPA's document request line: (503) 230–3478 or call toll free 1–800–622–4520.

II. Charges Under the Amended and Integrated Pacific Northwest Coordination Agreement

All terms contained herein have the meaning accorded them in the Amended and Integrated Pacific Northwest Coordination Agreement.

A. Interchange Energy Imbalances

1. Initial Deliveries of Interchange Energy

$$\text{Energy Charge} = \frac{(\text{heat rate} * \text{fuel price})}{1{,}000} + \text{adder}$$

Heat rate=10,000 BTU/kWh

Fuel price=Average natural gas price at Sumas, Washington, in $/MMBTU (dollars per million BTUs), as published in *Inside FERC,* for the twelve months ending the immediately preceding June 30.

Adder=4.75 mills/kWh, adjusted each August 1 beginning August 1, 1997, by the change in the Consumer Price Index (for all urban consumers as published by the Bureau of Labor Statistics) for Portland, Oregon, for the twelve-month period ending the immediately preceding June 30.

2. Return of Interchange Energy

The Energy Charge for return of Interchange Energy shall be the charge in effect for initial deliveries of Interchange Energy at the time the energy being delivered as Return of Interchange Energy was delivered as an initial delivery of Interchange Energy.

B. Interchange Energy Service Charge

1. No charge for energy returned between 7:00 a.m. and 10:00 p.m., Monday through Saturday.

2. 2.50 mills per kilowatthour of energy returned at other hours, unless such energy was supplied during such other hours, or its return during such other hours was requested, in either of which events there shall be no charge.

C. Interchange Capacity and Emergency Capacity Imbalances

$2.00 per Kilowatt Week of Demand.

D. Transfers Due to Forced Outage

1. Transfer Due to Loss of Thermal Capability

The charge for Interchange Capacity Imbalances plus the greater of a) the charge for Interchange Energy Imbalances and b) the incremental costs of operating the resource used to supply the requested energy plus 4 mills per kilowatthour.

2. Transfer of Emergency Capacity

The charge for Emergency Capacity imbalances plus the greater of a) the charge for Interchange Energy Imbalances and b) the incremental costs of operating the resource used to supply the requested energy. In the event that BPA requires the receiving party to return the energy associated with the transfer of Emergency Capacity, only the charge for Emergency Capacity imbalances shall apply.

E. Holding Interchange Energy Service Charge

1. Basic Charge

2.00 mills per kilowatthour of Holding Interchange Energy on delivery to BPA and 1.50 mills per kilowatthour of Holding Interchange Energy on return from BPA (3.50 mills per kilowatthour total). A loss of Holding Interchange Energy because of spill will result in a refund of 2.00 mills per kilowatthour of Holding Interchange Energy that is converted to Stored Energy and spilled.

2. Reshaping Charge

2.50 mills per kilowatthour of energy, applied in each hour during which the energy delivered or returned is less than the hourly average of energy delivered or returned during that day, to the difference between the daily hourly average of energy delivered or returned during that day and the amount of energy delivered or returned during such hour. The reshaping charge is in addition to the basic charge.

F. Stored Energy Service Charge

1. Charges Paid On Delivery Of Energy To A Reservoir Party

a. 2.00 mills per kilowatthour of energy delivered to BPA on Light Load Hours.

b. 1.00 mill per kilowatthour of energy delivered to BPA on Heavy Load Hours.

c. No charge for energy delivered to BPA on Peak Load Hours.

2. Charges Paid On Return Of Energy Stored Less Than Two Weeks

a. 1.00 mill per kilowatthour of energy returned from BPA on Light Load Hours.

b. 3.50 mills per kilowatthour for energy returned from BPA on Heavy Load Hours.

c. 5.00 mills per kilowatthour for energy returned from BPA on Peak Load Hours.

3. Charges Paid On Return Of Energy Stored For Two Weeks Or More

a. No charge for energy returned from BPA on Light Load Hours.

b. 2.50 mills per kilowatthour for energy returned from BPA on Heavy Load Hours.

c. 4.00 mills per kilowatthour for energy returned from BPA on Peak Load Hours.

4. Charges Paid On Return Of Energy In Cases Of Imminent Spill

a. No charge for energy returned from BPA on Light Load Hours.

b. 2.50 mills per kilowatthour for energy returned from BPA on Heavy Load Hours.

c. 2.50 mills per kilowatthour for energy returned from BPA on Peak Load Hours.

5. Refund Of Storage Charges In Cases Of Spill

In the event that stored energy is not returned to a party because of spill on

BPA's system, or in the event that BPA transfers the stored energy to another Reservoir Party to avoid spill and the transferred energy is later spilled, BPA will refund the charges paid under section F.1. in an amount equal to the the charges paid under such section, divided by the kilowatthours of energy delivered to BPA, multiplied by the kilowatt hours of stored energy that is spilled.

G. Transfers To Avoid Spill

1. No charge for stored energy transferred by a Reservoir Party to BPA in order to avoid spill.

2. The applicable Stored Energy Service charge shall apply in the event that BPA accepts the transfer of stored energy to avoid spill and then returns the stored energy to the original delivering party.

H. Transmission Service Charges

In any energy or capacity transaction that utilizes BPA transmission facilities where BPA acts solely as a transferor the following charges shall apply to both delivery and return of the energy, if applicable:

1. 1.60 mills per kilowatthour of Interchange Energy paid by the receiving party.

2. 1.75 mills per kilowatthour of Holding Interchange and Storage Energy paid by the party requesting the return.

3. No charge for In Lieu Energy, except when the supplying or receiving party requires BPA, under the terms of the PNCA, to provide transmission, in which case the charge shall be 2.00 mills per kilowatthour of In Lieu Energy paid by the party requiring BPA to provide such transmission.

4. 2.00 mills per kilowatthour of Provisional Energy paid by the Reservoir Party.

5. 2.00 mills per kilowatthour of energy associated with Interchange Capacity and FOR Capacity paid by the party requesting the delivery.

I. Special Storage Arrangements

1. Minimum Rate

a. 1.00 mills per kilowatthour for energy returned during Light Load Hours.

b. 3.00 mills per kilowatthour for energy returned at other hours.

2. Flexible Rate

The charges for special storage arrangements may be specified at a higher rate as mutually agreed between the party requesting the special storage arrangement and BPA.

III. Transmission Terms and Conditions

The following three comparable network transmission service tariffs are being released on a preliminary basis. They indicate how BPA would apply the three types of service tariffs developed by FERC's Litigation Staff to the BPA network. BPA and its customers are continuing their discussions aimed at mutual agreement on comparable network service which may be different from the following. BPA's will publish and submit its final comparable network service proposals pursuant to the schedule developed at the Prehearing/Settlement Conference.

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Proposed Network Integration Service Tariff

Bonneville will provide Network Integration Service to Eligible Customers pursuant to the terms and conditions of this Tariff.

1. Definitions

1.1 Annual Transmission Costs

The total annual cost of the Network Transmission System shall be the amount specified in the Network Integration Transmission Rate Schedule (NT–95) or its successor.

1.2 Application

A written request for Network Integration Service satisfying the provisions of this Tariff.

1.3 Bonneville Service Area

The area consisting of the States of Oregon, Washington, and Idaho; the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and any contiguous areas, not in excess of 75 air miles from the just described area, which are a part of the service area of a rural electric cooperative customer served by Bonneville on the effective date of this Tariff which has a distribution system from which it serves both within and without such area.

1.4 Commission

The Federal Energy Regulatory Commission (FERC) or any successor Federal agency having regulatory jurisdiction over this Tariff.

1.5 Control Area

The set of generating units, electrical loads, and transmission facilities managed and overseen by a utility that is responsible for matching its generation and loads on an instantaneous basis.

1.6 Control Area Services (or Ancillary Control Area Services)

Any functions, practices, or services required by North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC), Northwest Power Pool (NWPP), or Bonneville Reliability Criteria and Standards (BRCS) for the safe and reliable operation of a Control Area and the connection of loads and resources to a Control Area.

1.7 Customer

An Eligible Customer that has executed a Service Agreement for Network Integration Service pursuant to this Tariff.

1.8 Customer Electric System

The electric system operated by a Customer to serve its Network Load in accordance with the terms of this Agreement and applicable reliability and operating criteria.

1.9 Direct Assignment Facilities

Transmission facilities which are not an integral part of, and do not support, the Network Transmission System and that are constructed by Bonneville to satisfy an Application under this Tariff, the addition of a new Member System, or addition of a new Network Resource and the costs of which Bonneville may recover directly from the Customer as provided in the NT–95 Rate Schedule or its successor.

1.10 Effective Date

The date upon which the Parties execute a Service Agreement in accordance with the terms and conditions of this Tariff.

1.11 Eligible Customer

A private or public corporation, governmental agency or authority, joint action agency, municipality, rural electric membership corporation or cooperative, person, or any lawful association of the foregoing which engages in the generation, transmission or distribution of electric energy at wholesale or retail and which will rely upon Bonneville's Network Transmission System to integrate effectively its Network Load and Network Resources. Bonneville's direct service industrial customers on the effective date of this Tariff shall be considered Eligible Customers. Other than Bonneville's direct service industrial customers, an Eligible Customer shall not include any entity for which the Commission is prohibited under sections 212(g) and (h) of the Federal Power Act (FPA) from ordering the provision of transmission service. An entity shall be an Eligible Customer only to the extent that it requests service to integrate some or all of the Network Loads of Eligible Customer(s) and a comparable amount of resources that have been designated Network Resources of such Eligible Customer(s).

1.12 Facilities Study

An engineering study conducted by Bonneville to determine the required modifications to Bonneville's Transmission System, including the cost and scheduled completion date for such modifications, which may be required in order to provide a requested Network Integration Service, to add a new Network Customer, to add a new Member System, or to add a Network Resource.

1.13 Good Utility Practice

Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts.

1.14 Load Ratio Share

Ratio of a Customer's Network Load to Bonneville total load computed in accordance with the NT–95 Rate Schedule or its successor.

1.15 Member System

An Eligible Customer operating as a part of a lawful combination, partnership, association, or joint action agency composed exclusively of Eligible Customers.

1.16 Native Load Customers

Those wholesale and direct service industrial power sales customers on whose behalf Bonneville, by statute or contract, has an obligation to plan, construct and operate its system to provide reliable electric service.

1.17 Network Load

The designated load of a Customer in Bonneville's Service Area, including the entire load of all Member Systems designated pursuant to section 6. A Customer's Network Load shall not be reduced to reflect any portion of such load served by the output of any generating facilities owned, or generation purchased, by the Customer or its Member Systems.

1.18 Network Operating Agreement

An agreement that provides the technical and engineering provisions necessary to establish and operate a Customer Control Area utilizing Bonneville's Network Transmission System.

1.19 Network Resources

Designated non-Federal resources used by a Customer to provide electric service to its Network Load consistent with reliability criteria generally accepted in the region. Network Resources shall include all owned and purchased Customer non-Federal generating resources that are located in the Bonneville Control Area or connected to the Electric System of such Customer or any Member System. A Customer also may designate as Network Resources any non-Federal generating resources (or portion thereof) located in another utility's Control Area and power purchased by the Customer from another utility and used to provide reliable service to Network Load. Network Resources shall not include that portion of the capacity of any such generating resource that is committed on a firm basis for sale to third parties.

1.20 Network Transmission System

The transmission facilities owned and/or operated by Bonneville excluding interties and generation integration facilities.

1.21 Network Upgrade

Upgrades to transmission facilities that are integrated with and support Bonneville's Network Transmission System and which are constructed by Bonneville to satisfy, at least in part, an Application, the addition of a new Member System, or the addition of a new Network Resource and the costs of which Bonneville may recover directly from the Customer as provided in the NT–95 Rate Schedule or its successor.

1.22 Opportunity Costs

Net loss of revenue or the net increase in generation cost caused by displacing one transaction with another when the transmission system is so constrained that both transactions cannot be handled at the same time. Opportunity costs do not include any loss of revenues resulting from competition or foregone revenues from purchase and resale transactions to serve other than Native Load Customer or Network Load.

1.23 Service Agreement

The initial agreement and amendments thereto between Bonneville and a Customer for Network Integration Service under this Tariff.

1.24 System Impact Study

An assessment by Bonneville of: (i) the adequacy of the Network Transmission System to accommodate a request for Network Integration Service; and/or (ii) the incremental new facilities or upgrades that would be needed by Bonneville in providing such service pursuant to the terms of this Tariff.

2. Nature of Network Integration Service

2.1 Scope of Service

Network Integration Service is a transmission service that allows Customers to efficiently and economically utilize their Network Resources and other generation resources to serve their Network Load located in Bonneville's Service Area. Network Integration Service requires the Customer to provide, or purchase from Bonneville, certain Ancillary Control Area Services. Bonneville will offer these Ancillary Control Area Services, pursuant to an appropriate service agreement, on a nondiscriminatory basis to any Customer required hereunder to purchase or provide such services as a precondition to receiving Network Service.

In the event that Bonneville provides a credit for the cost of certain Customer-owned transmission facilities pursuant to section 5.6, Bonneville shall be entitled to use such facilities, at no additional charge, to provide the same scope of services for its Native Load Customers and its Network Integration Service Customers, as those services made available to the Customer pursuant to this Tariff. In the absence of such a credit, Bonneville shall be entitled to such service pursuant to a FERC-approved tariff that provides service comparable to that which the Customer provides for its own load.

2.2 Firm Service

A Customer shall have the right to use this Tariff for the delivery of power from Network Resources to Network Loads on a basis that is comparable to Bonneville's use of its Network Transmission System to reliably serve its Native Load Customers. Except as otherwise provided in section 2.5, service over Bonneville's Network Transmission System for the delivery of power from Network Resources to Network Load shall have priority over all nonfirm uses of Bonneville's Network Transmission System by Bonneville or third parties.

2.3 Nonfirm Service

A Customer also may use this Tariff to deliver energy to its Network Loads from resources that have not been designated as Network Resources. Such deliveries shall be on a nonfirm basis, subject to available capacity, but on an equal basis with Bonneville's use of economy energy to service Native Load Customers, subject to section 2.5 below, and at no additional transmission charge. Curtailments of nonfirm service shall be governed by section 10 and shall be implemented on a nondiscriminatory basis among all other nonfirm uses of Bonneville's Network Transmission System, including Bonneville's nonfirm uses of the system, except where such service is displaced pursuant to section 2.5 below.

2.4 Restrictions on Use of Service

Network Integration Service shall not be used for: (i) wholesale sales of capacity or energy by the Customer or its Member Systems to third parties; or (ii) directly or indirectly providing transmission service by the Customer to third parties. An Eligible Customer may not receive service pursuant to more than one service agreement that applies this Tariff during any billing period.

2.5 Bonneville Right to Displace

Bonneville shall have the right to displace Customer Network Resources and nonfirm purchases, at a cost which keeps the Customer whole, in the event of a transmission bottleneck to the extent that such displacement reduces the bottleneck, if Bonneville finds it necessary in order to avoid spill on the Federal power system or on the systems of Network Integration Service Customers.

3. Availability of Network Integration Service

3.1 General Conditions

In accordance with the provisions of this Tariff, Network Integration Service shall be provided by Bonneville to allow a Customer to integrate, plan, economically dispatch, and regulate designated Network Resources to serve the Customer's consolidated Network Load, via Bonneville's Network Transmission System, as a single Control Area in the same manner that Bonneville performs those functions for Bonneville's Native Load Customers.

3.2 Control Area Requirement

As a condition of obtaining Network Integration Service, the Customer shall: (i) operate as a Control Area under applicable guidelines of the NERC, the WSCC, the NWPP, and BRCS; or (ii) satisfy its responsibility to be operated as a Control Area by contract with Bonneville; or (iii) by contract with another entity which Bonneville accepts as sufficient to satisfy NERC, WSCC, NWPP, and BRCS requirements. Bonneville shall not unreasonably refuse to accept contractual arrangements with another entity for such service.

3.3 Bonneville Responsibilities

Bonneville shall plan, construct, operate, and maintain its Network Transmission System in accordance with Good Utility Practice in order to provide the Customer with Network Integration Service within and across Bonneville's Control Area in accordance with this Tariff. Bonneville shall include the Customer's Network Load in its transmission system planning and shall, consistent with Good Utility Practice, endeavor to construct and place into service sufficient transmission capacity to deliver the Customer's Network Resources to serve Network Load on a basis comparable to Bonneville's delivery of its own generating and purchased resources to Bonneville's Native Load Customers. If the Customer meets its Control Area responsibilities without placing its

loads and resources in Bonneville's Control Area, power scheduling will be provided consistent with normal utility practices for scheduling power between Control Areas.

3.4 Customer Redispatch Obligation

As a condition of receiving Network Integration Service, a Customer agrees to redispatch its Network and other resources as requested by Bonneville to create additional firm transmission capacity on Bonneville's Network Transmission System to allow Bonneville to provide new firm transmission service. Whenever a Customer redispatches its Network and other resources pursuant to this section it shall be compensated by Bonneville for the Opportunity Costs it incurs. To the extent practicable, the redispatch of resources pursuant to this section shall be on a least cost, nondiscriminatory basis as between all Network Integration Customers and Bonneville. The Customer shall be compensated for redispatching resources pursuant to the NT Rate Schedule or its successor.

4. Initiating Service

4.1 Conditions Precedent for Receiving Service

Subject to the terms and conditions of this Tariff, Bonneville shall provide Network Integration Service within Bonneville's Service Area to any Eligible Customer, provided that: (i) the Eligible Customer has completed an Application for Network Integration Service as provided under this Tariff; (ii) the Eligible Customer and Bonneville have completed the technical arrangements set forth in section 4.6 below; and (iii) the Eligible Customer has executed a Service Agreement.

4.2 Application Procedures

An Eligible Customer requesting service under this Tariff must submit a written Application to: Bonneville Power Administration, Attention: Manager, Transmission Business, P.O. Box 3621; Portland, Oregon, 97208–3621 as far as possible in advance of the calendar month in which service is to commence. A completed Application shall provide all of the following information:

(i) The identity, address, and telephone number of the party requesting service and of the party's designated contact person.

(ii) A statement that the party requesting service is, or will be upon commencement of service, an Eligible Customer under this Tariff.

(iii) A description of the Network Load (subdivided into the load of any Member Systems whose loads are designated as Network Load). This description should separately identify and provide the Eligible Customer's best estimate of the total loads to be served at each transmission voltage level, and the loads to be served from each Bonneville substation at the same transmission voltage level. The description should include a 10-year forecast of summer and winter load and resource requirements beginning with the first year after the Effective Date.

(iv) The amount and location of any interruptible loads included in the Network load. This shall include the summer and winter capacity requirements for each interruptible load (had such load not been curtailed), that portion of the load subject to curtailment, the conditions under which a curtailment can be implemented and any limitations of the amount and frequency of curtailments. An Eligible Customer should identify the amount of curtailed customer load (if any) included in the 10-year load forecast provided in response to (iii) above.

(v) A description of Network Resources (current and 10-year projection), which shall include, for each Network Resource: Data on the Eligible Customer's Network Resource characteristics in an appropriate dynamic data format (PSS/E or WSCC). Unit size and amount of capacity from that unit to be designated as Network Resource:

—Var capability of all generators
—Operating restrictions
—Any periods of restricted operations throughout the year
—Minimum loading level of unit
—Normal operating level of unit
—Any must-run unit designations required for system reliability or contract reasons
—Approximate variable generating cost ($/megawatthour) for redispatch computations.
—Arrangements governing sale and delivery of power to third parties from generating facilities located in the Bonneville control area, where only a portion of unit output is designated as a Network Resource.
—Description of purchased power designated as a Network Resource, including source of supply, Control Area location, transmission arrangements, and delivery point(s) to the Bonneville Network Transmission System.

(vi) Description of Eligible Customer's Transmission System:

—Data on the Eligible Customer's transmission system characteristics in an appropriate load flow format (PSS/E, or WSCC).
—Description of all lines and transformers operated at 50 kilovolt and higher
—Operating restrictions needed for reliability
—Operating guides employed by system operators
—Contractual restrictions or committed uses of the Eligible Customer's Transmission System, other than the Eligible Customer's Network Loads and Resources
—Location of Network Resources described in section 4.2(v)
—Ten (10)-year projection of system expansions or upgrades
—Transmission system maps that include any proposed expansions or upgrades
—Thermal ratings of Eligible Customer's Control Area transmission facilities

(vii) Service commencement date and the term of the requested Network Integration Service:

If an Application fails to meet the requirements of this Tariff, Bonneville shall notify the Eligible Customer requesting service within 10 days of receipt and specify the reasons for such failure. Whenever possible Bonneville shall attempt to remedy minor deficiencies in the Application through informal communications with the Eligible Customer.

4.3 Insufficient Capacity

In the event that there is insufficient capacity to initially meet the request, Bonneville shall offer, at Customer's expense, to make sufficient capacity available through construction, redispatch or by otherwise rearranging its own use of the Network Transmission System.

4.4 Direct Assignment Facilities

At the Customer's request, when required to make deliveries hereunder, Bonneville shall also provide Direct Assignment Facilities provided that the Customer agrees to pay for such Direct Assignment Facilities. The Customer shall pay Bonneville for such facilities in accordance with the applicable rate schedule.

4.5 Queue Priority

Applications for Network Integration Service or requests to add service for new Network Resources or new Member Systems, along with applications for other Bonneville firm transmission services, will be assigned a priority according to the date on which the application is received, with the earliest application receiving the highest priority.

4.6 Technical Arrangements to be Completed Prior to Commencement of Service

Service under this Tariff shall not commence until Bonneville and the Customer, or a third party which has contracted to provide Control Area Services, have installed all metering facilities, remote terminal units, communications equipment, and associated equipment necessary to ensure that the Customer's Network Loads and Network Resources operate in a Control Area that is consistent with NERC, WSCC, NWPP, and BRCS guidelines and any additional requirements reasonably and consistently imposed to ensure the reliable operation of the Network Transmission System. Bonneville shall exercise reasonable efforts, in coordination with the Customer, to complete such arrangements as soon as practical after the Effective Date.

4.7 Customer Facilities

Bonneville's provision of Network Integration Service shall be conditioned upon the Customer's constructing, maintaining, and operating the facilities on its side of each point of interconnection that are necessary to reliably interconnect and deliver power from the Network Transmission System to the Customer and/or its Member Systems. The Customer shall be solely responsible for constructing and/or installing and operating any incremental facilities on the Customer's side of each such interconnection point.

4.8 Termination of Service

A Customer may terminate service under this Tariff no earlier than 2 years after providing Bonneville with written notice of the Customer's intention to terminate. A Customer's provision of notice to terminate service under this Tariff shall not relieve the Customer of its obligation to pay Bonneville any rates, charges, or fees, including charges related to the construction of incremental facilities, for service previously provided under the applicable Service Agreement or the Network Operating Agreement, and which are owed to Bonneville as of the date of termination.

5. Network Resources

5.1 Designation of Network Resources

All of the owned and/or purchased resources that were serving such Customer's or its Member Systems' Network Loads under firm agreements entered into on or before the Effective Date shall be designated as Network Resources as of the Effective Date. A Customer may terminate the designation of a generating resource located within Bonneville's or the Customer's Control Area as a Network Resource if the Customer provides 30 days' written notification to Bonneville that the terminated resource will not be operated to serve any portion of the Customer's Network Load for the time period that such resource is not designated as a Network Resource. The Customer may later redesignate the resource as a Network Resource in accordance with the provision of section 5.4. The Customer also may terminate the designation of all or part of a generating resource not located within the Control Area of Bonneville or the Customer as a Network Resource upon 30 days' notice to Bonneville. If the Customer has committed to make a firm system sale (to a third party) using a portion of the capacity of more than one Network Resource, Bonneville will treat each Network Resource as making a representative portion of such capacity sale based on the likely loadings of each generating resource that will occur under representative system conditions (e.g., off-peak and on-peak).

5.2 Operation of Network Resources

A Customer shall not operate any of its generating facilities located in the Customer's or Bonneville's Control Areas such that the output of those facilities exceeds the sum of: (i) the capacity from those facilities that have been designated as Network Resources plus; (ii) the amount of power from those facilities scheduled for delivery to a third party. When a Customer sells power or energy from a Network Resource located within Bonneville's Control Area, the Customer shall arrange transmission service under the applicable Bonneville Transmission Service Tariff.

5.3 Transmission Arrangements for Network Resources Located Outside the Bonneville Control Area

It shall be the Customer's responsibility to make any transmission arrangements necessary for delivery of power produced from a Network Resource located outside the Bonneville Control Area to the Network Transmission System. If a Customer designates as a Network Resource less than the full amount of the maximum net dependable capability of a generating resource located within the Control Area of another utility, the Customer may request Bonneville to supply other transmission service for that portion of the maximum net dependable capability of the generating resource which is not designated as a Network Resource.

5.4 Designation of New Network Resources

A Customer may request the designation of a new Network Resource by providing Bonneville with as much advance written notice as practicable, but not less than 60 days. Bonneville must satisfy the requirements of applicable environmental statutes prior to committing to the additional service. In determining whether the Customer has provided sufficient notice for Bonneville to provide firm service from a newly designated Network Resource, Bonneville shall apply the same standards as it would apply to its own newly designated resources. Where a Customer proposes to substitute a new Network Resource for an existing Network Resource, Bonneville shall not unreasonably withhold agreement where agreement would impose no economic, technical, or unacceptable environmental burdens on Bonneville. To the extent insufficient notice is provided for Bonneville to construct transmission facilities or upgrades determined in accordance with section 7 as necessary for delivery of a new Network Resource to the Customer's Network Load, Bonneville shall not be obligated to deliver power from such Network Resource pursuant to this Tariff until all needed facilities or upgrades are completed and all environmental responsibilities have been satisfied. Notice of a Customer's intent to designate a new Network Resource shall include sufficient engineering, and technical information to permit Bonneville to perform a System Impact Study addressing the transmission requirements associated with delivery of such new Network Resource to the Customer's Network Load as set forth in section 4.2.

5.5 Reserve Margin Limitation on Designation of Network Resources

A Customer shall designate an amount (in MW) of Network Resources that enables the Customer to operate the Customer Control Area with an installed reserve margin not to exceed 25 percent of the Customer's reasonably forecasted consolidated Network Load. Once the designation of a Network Resource becomes effective, the Customer shall not be penalized if reasonably forecasted loads do not materialize. A Customer may designate a new Network Resource that would cause it to exceed the reserve margin limitation so long as the addition of such resource would be consistent with the Customer's obligations to serve its Network Load in

accordance with Good Utility Practice and the Customer reasonably forecasts that its projected installed reserve margin will be in compliance with this reserve criterion within 3 years of the date on which such new Network Resource becomes operational.

Bonneville shall provide an exemption from the 25 percent reserve margin limitation if the Customer demonstrates that it must maintain a higher level of reserves to operate reliably under NERC, WSCC, NWPP, and BRCS guidelines and that it has undertaken reasonable efforts to procure coordination services (such as reserve sharing) that would reduce its required level of reserves. If an exemption applies, the Customer may designate an amount of Network Resources equal to the amount necessary to operate reliably under the above referenced guidelines.

Bonneville is subject to the above referenced requirements in determining the resources it needs to operate reliably. Bonneville may not maintain a reserve margin in excess of that permitted any Network Customer under this Tariff. Each year, Bonneville submits to WSCC a 10-year resource plan indicating the generating resources Bonneville will use to operate reliably under regional and national reliability standards. This plan shall be made available to the Customer upon request.

5.6 Customer Owned Transmission Facilities

The Customer will be entitled to receive a Customer Facilities Credit as defined in the NT–95 Rate Schedule or its successors if transmission facilities as described in such rate schedule are made available for use under this Tariff.

6. Designation of Member Systems for Customers Receiving Network Integration Service

6.1 Member Systems

A Customer may designate the individual Member Systems that will be included in the Customer Control Area and on whose behalf Bonneville shall provide Network Integration Service. The Member Systems as of the Effective Date shall be specified in the Service Agreement.

6.2 New Member Systems Connected With Bonneville

A Customer shall provide Bonneville with as much written notice as reasonably practicable of the designation of additional entities that will be added to its Control Area as new Member Systems. Bonneville shall provide Network Integration Service for any such new Member System, provided that: (i) Bonneville reasonably determines in accordance with section 7 that the Network Transmission System can reliably accommodate such new Member System; and (ii) the Customer agrees to pay the costs of any incremental transmission facilities upgrades that Bonneville reasonably determines must be installed to interconnect reliably such new Member System with the Bonneville Network Transmission System. The engineering and technical specifications for any such new interconnection shall be set forth in an amendment to the Service Agreement under the Tariff. Until such incremental facilities are completed, Bonneville shall agree to provide Network Integration Service out of existing transmission capacity, pursuant to the prioritization described in section 4.5 above, to the extent such service would not impair the reliability of service to Native Load Customers, firm transmission service customers, and other Network Service Customers. In addition if the Customer so elects, to the extent the requested service can be provided in whole or in part by redispatching the system, the Customer shall be assigned the incremental costs caused by the redispatch.

6.3 New Member Systems Not Connected with Bonneville

To the extent that a Customer desires to obtain transmission service for a Member System that is not connected to the Network Transmission System, the Customer shall have the option of: (i) electing to include such Member System in the Customer Control Area by including the entire load of that Member System as Network Load for all purposes under this Tariff and designating Network Resources in connection with such additional Network Load; or (ii) excluding the load of that Member System from its Network Load and purchasing Point-to-Point Transmission for power transfers between the Customer's Control Area and the new Member System not connected to Bonneville's system. Transmission across third-party systems is not covered by this Tariff. To the extent that a Customer gives notice of its intent to add a new Member System pursuant to this section and sufficient capacity is not available on the Network Transmission System to provide the requested service pursuant to the prioritization described in section 4.5 above, without impairing reliability to Bonneville's Native Load Customers and other firm uses of the system, the Customer shall be charged for the cost of any incremental facilities determined necessary by Bonneville to provide Network Integration Service. In addition, if the Customer so elects, to the extent the requested service can be provided in whole or in part by redispatching the system, the Customer shall be assigned the incremental costs caused by the redispatch. Bonneville shall be responsible for the cost of any incremental facilities or system redispatch costs associated with adding new resources to serve its Native Load Customers, as provided in section 7.

6.4 New Interconnection Points

To the extent a Customer desires to add a newly constructed interconnection point between the Network Transmission System and a Member System, the Customer shall provide Bonneville with as much written notice as reasonably practicable; however, Bonneville shall not be obligated to provide additional service with respect to such interconnection point until such new interconnection is established. Bonneville shall add such new interconnection point provided that Bonneville reasonably determines that the Bonneville Network Transmission System can reliably accommodate such new interconnection point. The Customer shall be responsible for the costs of any incremental facilities associated with such new interconnection. The engineering and technical specifications for such new interconnection point shall be set forth in a separate interconnection agreement to be negotiated by the Parties.

7. Transmission Facilities or Upgrades Related to Designation of New Network Resources and Member System

7.1 System Impact Study

Once a Customer provides Bonneville with notice of its intent to designate a new Network Resource pursuant to section 5.4 or a new Member System pursuant to section 6, Bonneville and the Customer shall execute an agreement under which Bonneville shall perform a System Impact Study to determine the incremental transmission facilities, if any, attributable to integrating such new Network Resource or new Member System into Bonneville's Network Transmission System. In performing the System Impact Study, Bonneville shall apply the same methods and criteria that it employs in integrating new owned or purchased resources acquired by Bonneville to serve Bonneville's Native Load Customers. Bonneville shall complete the System Impact Study within 60 days or will provide the Customer a written explanation of when

the study will be completed and the reasons for the delay. A Customer shall be responsible for the cost of the System Impact Study and shall be provided with the results thereof, including relevant workpapers.

7.2 Facilities Study

Based on the results of the System Impact Study, Bonneville also may perform, pursuant to a separate agreement with the Customer, a Facilities Study addressing the detailed engineering, design, and cost of incremental transmission facilities. The Facilities Study shall be completed as soon as reasonably practicable and will be used by Bonneville to provide the Customer with an estimate of the cost for constructing incremental facilities. The Customer shall be responsible for the costs of the Facilities Study and shall be provided with the results thereof, including relevant workpapers. Bonneville shall be responsible for the costs of any Facilities Study undertaken to determine the costs of adding incremental facilities associated with Bonneville's addition of new owned or purchased resources used to serve Bonneville's load.

7.3 Due Diligence

Bonneville shall use due diligence to install any transmission facilities required to integrate a new Network Resource or to interconnect a new Member System designated by the Customer in accordance with section 6.3.

7.4 Incremental Transmission Costs Associated With Adding New Network Resources and New Member Systems

After the Effective Date, Customer and Bonneville each shall be responsible for the incremental transmission facility costs associated with integration of new Network Resources, new Member Systems and new Native Load Customers. The costs of any such incremental facilities directly assigned to Bonneville or the Customer shall not be included in the calculation of Bonneville's Annual Transmission Costs. The costs of such facilities shall be determined in a formal Bonneville rate hearing pursuant to section 7(i) of the Northwest Power Act. Any incremental facilities costs assigned to the Customer shall be reflected in an amendment to the Service Agreement.

7.5 Changes in Service Requests

Under no circumstances shall a Customer's decision to cancel or delay the addition of a new Network Resource and/or designation of a new Member System in any way reduce or relieve the Customer's obligation to pay the costs of any incremental facilities constructed by Bonneville and charged to the Customer pursuant to this section; provided, however, that upon receipt of a Customer's written notice of such a cancellation or delay, Bonneville shall use the same reasonable efforts to mitigate the costs and charges owed to Bonneville as it would to reduce its own costs and charges.

7.6 Annual Load and Resource Information Updates

A Customer shall provide Bonneville with annual updates of Network Load and Network Resource forecasts consistent with those included in its Application for Network Integration Service under this Tariff. The Customer also shall provide Bonneville with timely written notice of material changes in any other information provided in its Application relating to the Customer's Network Load, Network Resources, its transmission system, or other aspects of its facilities or operations affecting Bonneville's ability to provide reliable service under this Tariff.

8. Ancillary Services

A customer may purchase the ancillary services necessary for prudent utility operations from Bonneville or from another supplier where the purchase is technically feasible and consistent with NERC and WSCC requirements.

9. Transmission Losses

Transmission losses shall be determined on the basis of average estimated system losses. The Customer shall compensate Bonneville for losses by either providing additional energy for losses associated with service pursuant to this Tariff or by buying losses from Bonneville in accordance with Bonneville's Firm Power Products and Services Rate Schedule or its successor.

10. Curtailments

10.1 System Reliability

Notwithstanding any other provisions of this Tariff, Bonneville reserves the right, consistent with Good Utility Practice to curtail Network Integration Service, without liability on Bonneville's part, to make necessary adjustments to, changes in, or repairs on its lines, substations, and facilities, and in cases where the continuance of Network Integration Service would endanger persons or property. In the event of any adverse condition(s) or disturbance(s) on the Bonneville system or on any other system(s) directly or indirectly interconnected with the Bonneville system, Bonneville, consistent with Good Utility Practice, also may curtail Network Integration Service in order to: (i) limit the extent or damage of the adverse condition(s) or disturbance(s); (ii) prevent damage to generating or transmission facilities; or (iii) expedite restoration of service. Bonneville shall give Customers as much advance notice as is practicable in the event of such curtailments. Any curtailments of Network Integration Service will be not unduly discriminatory relative to Bonneville's use of the Network Transmission System on behalf of its Native Load Customers.

10.2 Transmission Constraints

During any period when Bonneville determines that a transmission constraint exists on the Network Transmission System, and such constraint may impair the reliability of the Bonneville system, Bonneville shall take whatever actions, consistent with Good Utility Practice, that are reasonably necessary to maintain the reliability of the Bonneville system and to avoid curtailment of service. To the extent Bonneville determines that the reliability of the Network Transmission System can be maintained by redispatching resources (including reductions in off-system purchases and sales), Bonneville shall initiate procedures pursuant to the Network Operating Agreement or pursuant to provisions in individual service agreements to redispatch Bonneville's and its Customers' resources on a least-cost basis without regard to the ownership of such resources. To the extent and for the duration that it is determined necessary to relieve a transmission constraint to reliably serve Bonneville Native Load Customers and a Customer's Network Load, Bonneville and its Customers shall be required to redispatch their resources (including reducing purchases and sales), in accordance with the least-cost redispatch procedures implemented by Bonneville pursuant to the Network Operating Agreement or other agreement. Any redispatch under this section shall not be unduly discriminatory as between Bonneville and its Customers. To the extent reasonable, practicable, and consistent with Good Utility Practice, Bonneville shall curtail, on a pro rata basis, all similarly situated uses (e.g., nonfirm uses would be curtailed first, and then firm uses) that are affected by the emergency.

10.3 Cost Responsibility for Relieving Capacity Constraints

Whenever Bonneville implements least-cost redispatch procedures to relieve a capacity constraint, Bonneville shall determine the total Opportunity Cost impact of such procedures. Bonneville and its Customers shall each bear a proportionate share of the total redispatch cost impact based on the then-current Load Ratio Shares or as otherwise agreed.

10.4 Load Curtailments

To the extent that a transmission constraint on the Bonneville transmission system cannot be relieved through the implementation of least-cost redispatch procedures and Bonneville determines that it is necessary for Bonneville and the Customer to curtail load, the parties shall curtail such load as discussed below.

10.5 Curtailment Procedures

Prior to the Effective Date, and as a precondition to the commencement of service hereunder, Bonneville and the Customer shall discuss emergency programs for the curtailment of loads with the objective of relieving loadings on the Network Transmission System. The parties shall implement such agreed programs during any period when Bonneville determines that a transmission capacity constraint exists and such curtailment of loads is necessary to alleviate such constraint.

10.6 Curtailment Allocations

To the extent practicable and consistent with Good Utility Practice, any curtailment shall be shared by Bonneville and its Customers. Bonneville shall not direct a Customer to curtail load to an extent greater than Bonneville would curtail Bonneville's Native Load Customers under similar circumstances. A Customer's failure to implement such emergency load curtailment programs may be deemed by the Bonneville to be a default under the service agreements that apply this Tariff.

11. Rates and Charges

The Customer shall pay for services provided under this Tariff as provided in rates determined in a formal Bonneville rate hearing pursuant to section 7(i) of the Northwest Power Act.

12. Billing and Payment

Billing and payment provisions identified in Bonneville's General Rate Schedule Provisions or successor shall be applicable.

13. Booking of Costs Attributable to Bonneville

Bonneville and the Customer shall keep such records as may be needed to afford a clear history of all transactions under this Tariff. The originals of all such records shall be retained for a minimum of 2 years plus the current year (or such longer period as may be required by any regulatory commission having jurisdiction, and copies shall be delivered to the other party on request.

14. Indemnification and Liability

14.1 Western Interconnected Systems Agreement

If a Customer is a party to the Western Interconnected Systems Agreement Limiting Liability, such agreement shall continue in full force and effect as between the parties to the extent that such provisions may apply to the transactions contemplated by this Tariff.

14.2 No Western Interconnected Systems Agreement

If a Customer is not a party to the Western Interconnected Systems Agreement Limiting Liability, and there is no other agreement between Bonneville and the Customer governing liability and indemnification between them, then additional provisions for the protection of electric generation and transmission facilities liability and indemnification may be required. Such additional provisions shall be set forth in the Service Agreement.

14.3 Uncontrollable Forces

Bonneville shall not be liable for any claim of damage attributable to any interruption or reduction of service due to any uncontrollable force.

15. Regulatory Filings

Nothing contained in this Tariff or any Service Agreement shall be construed as affecting in any way the right of Bonneville to unilaterally make application to the Commission for a change in rates or charges.

Nothing contained in this Tariff or any associated Service Agreement shall be construed as affecting in any way the ability of any Customer receiving Network Integration Service under the Tariff to exercise its rights under the FPA or any successor statute and pursuant to the Commission's rules and regulations promulgated thereunder.

16. Operating Arrangements

16.1 Operation of the Customer Control Area

A Customer shall plan, construct, operate, and maintain the Customer Control Area in accordance with Good Utility Practice, which shall include, but not be limited to, all applicable NERC and WSCC guidelines, or become part of Bonneville's Control Area or the Control Area of another utility whose Control Area meets WSCC and NERC guidelines.

16.2 Network Operating Agreement

The terms and conditions under which the Customer shall operate the Customer Control Area and the technical and operational matters associated with the implementation of this Tariff shall be specified in a separate Network Operating Agreement. The Network Operating Agreement shall provide for the Parties to: (i) operate and maintain equipment necessary for incorporating the Customer Control Area within the Bonneville transmission system (including, but not limited to, remote terminal units, metering, communication equipment, and relaying equipment); (ii) transfer data between control centers (including, but not limited to, heat rates and operational characteristics of Network Resources, generation schedules for units outside Bonneville's transmission system, interchange schedules, unit outputs for dispatches required under section 10, voltage schedules, loss penalty factors, and other real-time data; (iii) design and implement software programs required for data links and constraint dispatching; (iv) exchange data on forecasted loads and resources necessary for long-term planning; and (v) address any other technical and operational considerations required for implementation of this Tariff.

17. Network Operating Committee

If needed, a Network Operating Committee (Committee) shall be established to coordinate operating criteria for the Parties' respective responsibilities under this Tariff including: (i) standards for the design, operation, and maintenance of the facilities necessary to integrate Customer Electric Systems with Bonneville's Transmission System (including, but not limited to, remote terminal units, metering, communications equipment, and relaying equipment); (ii) information transfers between control centers (including, but not limited to, operational characteristics of Network Resources, generation schedules for units outside Bonneville's Transmission System, interchange schedules, unit outputs for dispatch, voltage schedules, loss penalty factors, and other real-time data); (iii) Software programs required for data links and constraint dispatching; (iv) information required

for long-term planning; (v) load curtailment procedures in the event of transmission constraints or system emergencies; (vi) least-cost redispatch procedures; and (vii) other technical and operational considerations required for implementation of this Tariff. Each Customer and Bonneville shall have at least one representative on the Committee. The Committee may establish such subcommittees as it deems necessary to carry out its functions. The Committee shall meet from time to time as need requires, but no less than once each calendar year, unless other arrangements are mutually agreed upon.

18. Procedures to Resolve Transmission Complaints

Any complaint arising concerning implementation of this Tariff may be resolved, at the Customer's discretion, by either:

(a) A voluntary dispute resolution process, which may include mediation or arbitration or both, pursuant to the terms of a regional transmission association governing agreement, or such other dispute resolution rules as may be agreed to by Bonneville and the Customer; or

(b) A transmission complaint filed with the Commission.

19. Creditworthiness

For the purpose of determining the ability of the Customer to meet its obligations related to service hereunder, Bonneville may require reasonable credit review procedures which may include, but shall not be limited to, verification that the Customer is not operating under any State or Federal bankruptcy laws, is not subject to the uncertainty of pending liquidation or regulatory proceedings in State or Federal courts, and no significant collection lawsuits or judgments are outstanding which would seriously reflect upon the Customer's ability, in Bonneville's determination, to remain solvent. This determination shall be made in accordance with standard commercial practices. In addition, Bonneville may require the Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under this Tariff or an alternative form of security proposed by the Customer and acceptable to Bonneville that protects Bonneville against the risk of nonpayment. Any disputes over the terms of such security arrangements shall be subject to the arbitration provisions of this Tariff.

Proposed Bonneville Power Administration Point-to-Point (PTP) Firm Network Transmission Service Tariff

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Bonneville Power Administration Point-to-Point (PTP) Firm Network Transmission Service Tariff

The Bonneville Power Administration (Bonneville) will provide Point-to-Point (PTP) Firm Network Transmission Service to Eligible Customers pursuant to the terms and conditions of this Tariff.

1. Definitions

1.1 Applicant

An Eligible Customer who submits a completed Application.

1.2 Application

A written request by an Eligible Customer for PTP Firm Network Transmission Service submitted to Bonneville which satisfies the provisions of this Tariff, including provisions of section 5.2.

1.3 Commission

The Federal Energy Regulatory Commission or its successor.

1.4 Control Area

The set of generating units, electrical loads, and transmission facilities managed and overseen by a utility that is responsible for matching generation with such loads on an instantaneous basis.

1.5 Customer

An Eligible Customer that has executed a Service Agreement for Network PTP Transmission Service pursuant to this Tariff or is receiving service under a proposed Service Agreement.

1.6 Delivering Party

The entity supplying the electric energy to be transmitted over Bonneville's Network PTP Transmission System Facilities.

1.7 Direct Assignment Facilities

Transmission facilities which are not an integral part of, and do not support, Bonneville's Network PTP Transmission System Facilities and that are constructed by Bonneville to satisfy an Application under this Tariff, and whose costs Bonneville may recover directly from the Customer as provided in the PTP Firm Network Transmission rate schedules (PT–95), or its successor.

1.8 Effective Date

The date upon which Bonneville and an Eligible Customer execute a Service Agreement in accordance with the terms and conditions of this Tariff.

1.9 Eligible Customer

A private or public corporation, governmental agency or authority, joint action agency, municipality, rural electric membership corporation or cooperative, person, or any lawful association of the foregoing, which engages in the generation, transmission, or distribution of electric energy at wholesale or retail and which will rely on Bonneville's Network PTP Transmission System Facilities to transmit power from a control area or resource to another control area for the purpose of satisfying the commercial transmission needs of the customer. Bonneville's direct service industrial customers on the effective date of this Tariff shall be considered Eligible Customers. Other than Bonneville's direct service industrial customers, and Eligible Customer shall not include any entity for which the Commission is prohibited under Sections 212 (g) and (h) of the Federal Power Act (FPA) from ordering the provision of transmission service. A power marketing entity (marketer) will be considered to be an Eligible Customer only to the extent that it requests service to deliver capacity or energy that will be purchased by an Eligible Customer.

1.10 Good Utility Practice

Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to produce the desired result at the lowest cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts.

1.11 Incremental Cost

The increase in Network PTP Transmission System Facilities revenue requirements incurred by Bonneville in providing the Customer's share of Network Upgrades which are required to provide Network Transmission Service as determined in a separate ratemaking process pursuant to Section 7(i) of the Northwest Power Act (16 U.S.C. § 839e(i)).

1.12 Native Load Customers

Those wholesale and direct service industrial power sale customers, other than Network Integration Service Customers, on whose behalf Bonneville, by statute, or contract, has undertaken an obligation to plan, construct, and operate its electric system to provide reliable electric service.

1.13 Network PTP Transmission System Facilities

The Integrated Network segment of the Federal Columbia River Transmission System operated by Bonneville.

1.14 Network PTP Transmission Service

Firm transmission service provided pursuant to this Tariff and an executed Service Agreement at 60 hertz, alternating current, three phase, over the Network PTP Transmission System Facilities.

1.15 Network Upgrade

Upgrades to transmission-facilities that are integrated with and support the Network PTP Transmission System Facilities and are constructed by Bonneville to satisfy, at least in part, an Application.

1.16 Opportunity Costs

Net loss of revenue or the net increase in generation cost caused by displacing one transaction with another when the transmission system is so constrained that both transactions cannot be handled at the same time. Opportunity costs do not include any loss of revenue resulting from competition, or foregone revenues from purchase and resale transactions to serve other than Native Load Customers or Network Load. or foregone revenues from purchase and resale transactions.

1.17 Point(s) of Delivery

Point(s) on Bonneville's Network PTP Transmission Facilities where Bonneville is interconnected with the Receiving Party or the Receiving Party's authorized agent and where Bonneville can deliver power transmitted pursuant to a Service Agreement.

1.18 Point(s) of Interconnection

Point(s) on Bonneville's Network PTP Transmission System Facilities where Bonneville is interconnected with the Delivering Party or the Delivering Party's authorized agent and where Bonneville can receive power transmitted pursuant to a Service Agreement.

1.19 Receiving Party

The entity receiving the electric energy to be transmitted over Bonneville's Network PTP Transmission System Facilities.

1.20 Reservation Charge

The charge the Customer must pay to reserve capacity for future use as described in the Point-to-Point (PT–95) Transmission Rate or its successor in Appendix A.

1.21 Service Agreement

The initial agreement and any supplements or amendments thereto entered into by the Customer and Bonneville in order to initiate service under this Tariff.

1.22 Study Agreement

An agreement under which Bonneville would agree to conduct a

System Impact Study, and the Customer would agrees to compensate Bonneville in advance for the cost of conducting the System Impact Study.

1.23 System Impact Study

An assessment by Bonneville to determine whether sufficient transmission capacity exists to provide the requested transmission service initially and for the term of the request. The assessment study results shall include the cost, environmental review, and scheduled completion date for such modifications, which may be determined to be required in order to provide a requested Network PTP Transmission Service.

1.24 Transmission Demand

The maximum hourly amount of electric power that Bonneville agrees to transmit for the Customer over Bonneville's Network PTP Transmission System Facilities between the Point(s) of Interconnection and the Point(s) of Delivery. Transmission Demand shall be expressed in terms of whole megawatts on a 60-minute interval (commencing on the clock-hour) basis.

2. Character and Availability of Service

2.1 Nature of Service

PTP Firm Network Transmission Service is a service that permits Eligible Customers to serve Customer load or transactions with third parties. The service provides firm transmission capacity to Eligible Customers from one control area to another through Points of Interconnection and Points of Delivery. This service also permits nonfirm wheeling through ''Secondary'' Points of Interconnection and Delivery.

2.2 Term of Service

PTP Firm Network Transmission Service is available for a minimum of 1 month.

2.3 Service Agreement Requirements

A Service Agreement must be executed prior to the commencement of service under this Tariff except as provided in section 13.4.

2.4 Control Area Requirements

As a condition to obtaining Network PTP Transmission Service, the Customer shall: (i) operate as a Control Area under applicable guidelines of the North American Electric Reliability Council (NERC), the Western Systems Coordinating Council (WSCC) the Western Systems Coordinating Council (WSCC), and the Northwest Power Pool (NWPP); or (ii) satisfy its responsibility to be operated as a Control Area by contract with Bonneville pursuant to section 2.5; or (iii) by contract with another entity which Bonneville accepts as sufficient to satisfy NERC, WSCC, WSCC, and NWPP requirements. Bonneville shall not unreasonably refuse to accept contractual arrangements with another entity for such service.

2.5 Ancillary Services

This Tariff constitutes an offer to provide only Network PTP Transmission Service. Bonneville commits either to provide the Customer with services necessary for it to take Network PTP Transmission Service under this Tariff or to cooperate with the Customer so that the Customer can utilize its own resources or the resources of third parties to provide such services. Such services if provided by Bonneville are offered on a not unduly discriminatory basis, subject to resource, engineering, and reliability limitations.

3. Interconnection and Interchange

3.1 Designation of Transmission Demand, Point(s) of Interconnection, and Point(s) of Delivery

The Transmission Demand, Point(s) of Interconnection, and Point(s) of Delivery shall be as set forth in the Service Agreement. The Points of Interconnection and Delivery so designated in the Service Agreement are the ''Primary'' Points of Interconnection and Delivery. The total Transmission Demand shall be equal to the sum of the Transmission Demands at all Points of Interconnection which shall equal the sum of the Transmission Demands at all Points of Delivery.

3.2 Bonneville Responsibility

Bonneville shall deliver the capacity and energy required from Point(s) of Interconnection to Point(s) of Delivery as pursuant to the Service Agreement up to the Transmission Demand.

3.3 Metering

Electric capacity and energy transmitted under this Tariff shall be measured as appropriate by metering equipment provided by Bonneville and the Customer at such points and voltages as set forth in the Service Agreement.

3.4 Third Party Arrangements

The Customer need not be directly interconnected with Bonneville, but shall make any and all necessary arrangements for the delivery of power to the Point(s) of Interconnection and receipt from the Point(s) of Delivery, and Bonneville shall have no responsibility for such arrangements. The Customer shall furnish Bonneville with such necessary and appropriate information with respect to such arrangements as shall permit Bonneville to carry out its responsibilities under this Tariff. The Customer shall be responsible for resolution of operating problems and for making and arranging any necessary engineering, permitting, construction, and regulatory approval of transmission or distribution facilities on third party electric systems related to any transactions provided under this Tariff and for the costs associated with resolving those problems.

4. Rates

4.1 Transmission Charge

Payment hereunder shall be calculated pursuant to the rates and formulae in Appendix A, the PTP Firm Network Transmission rate (PT–95) or its successor.

4.2 Dual Transmission Charge

Where the installation of Network Upgrades does not fully eliminate a constraint, the Transmission Demand Charge shall be treated as two transactions for payment purposes, with the portion of the Transmission Charge for which the construction of Network Upgrades will eliminate the constraint priced in accordance with section IV.D. of PT–95 or its successor in Appendix A, and the residual portion of the Transmission Charge for which a constraint is not eliminated by the Network Upgrades priced in accordance with section II of PT–95 or its successor in Appendix A. The Transmission Charge and the Dual Transmission Charge are mutually exclusive charges. Bonneville may charge one or the other, but not both.

4.3 Direct Assignment Facilities

In addition to the payments made pursuant to sections 4.1 or 4.2 above, payment shall be made to Bonneville for the cost incurred by Bonneville for providing any Direct Assignment Facilities. The calculation of the Customer's monthly payment for Direct Assignment Facilities shall be in accordance with PT–95 or its successor in Appendix A.

4.4 Termination Charge

The Customer shall pay an appropriate charge to cover the costs of facilities added for the benefit of the customer under this Tariff the Service Agreement if the Customer terminates Network PTP Transmission Service prior to the termination date of the Service Agreement. The Customer shall receive a credit for any mitigation provided by the facilities to the Network

PTP Transmission System revenues subsequently received by Bonneville for use of such facilities.

4.5 Reservation Charge

The Customer may pay a Reservation Charge pursuant to PT–95 or its successor in Appendix A, to preserve its priority for service with respect to other Applicants and Customers.

4.6 Transmission Losses

Transmission losses shall be determined on the basis of average estimated system losses. The Customer shall compensate Bonneville for losses by either providing additional energy to compensate for losses associated with the scheduled capacity or by buying losses from Bonneville in accordance with the Firm Power Products and Services (FPS–95) rate schedule or its successor in Appendix A.

4.7 Reactive Charge

The Customer shall pay for reactive power necessary to provide transmission services under this Tariff pursuant to the PTP Firm Transmission rate (PT–95) or its successor.

4.8 Control Area Services Charge

If a Customer elects to purchase Control Area services from Bonneville pursuant to the Ancillary Services in section 2.5, the Customer shall pay for such services pursuant to the FPS–95 rate schedule or its successor.

4.9 Revision to Rates, Charges, and Loss Factors

Bonneville may periodically revise rates, charges, and transmission loss factors and apply such revisions to its Service Agreements.

4.10 Commencement of Service

Within 30 days of the receipt of notice from Bonneville that service can commence, the Customer shall commence paying the Transmission Charge or Dual Transmission Charge and any other rates or charges required by section 4 hereof. Failure to do so will result in forfeiture by the Customer of all deposits and security and require immediate payment of any cost incurred by Bonneville to furnish the requested Network PTP Transmission Service; and the Customer's Application will no longer be considered valid or pending.

5. Initiating Service

5.1 Conditions Precedent for Receiving Service

Subject to the terms and conditions of this Tariff, Bonneville shall provide Network PTP Transmission Service over the Network PTP Transmission System Facilities to any Eligible Customer, provided that: (i) the Eligible Customer has completed an Application for Network PTP Transmission Service as provided below in section 5.2; (ii) the Eligible Customer and Bonneville have completed the technical arrangements set forth in section 9.4 below; and (iii) the Eligible Customer has executed a Service Agreement.

5.2 Application Procedures

For transactions of 1 month up to 1 year an Eligible Customer requesting service under this Tariff must submit a completed application to: Bonneville Power Administration, Attention: Manager, Short-Term Contracts; P.O. Box 491; Vancouver, Washington, 98666–0491.

For transactions of 1 year or more an Eligible Customer requesting Service under this Tariff must submit a completed Application to: Bonneville Power Administration, Attention: Manager, Transmission Business; Bonneville Power Administration; P.O. Box 3621; Portland, Oregon, 97208–3621. In order for an Application hereunder to be considered a ''good faith request'' for transmission service in accordance with the provisions of Section 213 of the FPA, the Application must contain the following information:

(a) The identity, address, and telephone number of the Applicant requesting a Network PTP Transmission Service;

(b) A statement that the entity requesting Network PTP Transmission Service hereunder is, or will be upon commencement of service, an Eligible Customer under this Tariff.

(c) The name and title of the contact person for the Applicant.

(d) The identity of the Delivering Party and the identity of the Receiving Party;

(e) The Primary Point(s) of Interconnection and the Primary Point(s) of Delivery;

(f) The proposed dates for initiating and terminating PTP Transmission Service hereunder;

(g) The Transmission Demand, expected load profile and load characteristics;

(h) The identity of the initial source of the power to be transmitted pursuant to the Application; and

(i) The identity of the Control Area in which the ultimate consumer of power is located.

Bonneville will notify the Applicant of receipt of the Application within 10 days of receipt. Bonneville reserves the right to ask for additional information necessary to determine the availability of transmission capacity and reliability impacts.

5.3 Notice of Deficient Application

If an Application fails to meet the requirements of this Tariff, Bonneville shall notify the party requesting service within 10 days of receipt of the Application of the reasons for such failure. Bonneville will attempt to remedy minor deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, Bonneville shall return the Application. Upon receipt of a new or revised Application that fully complies with the requirements of this Tariff, the Eligible Customer shall be assigned a new priority consistent with the date of the new or revised Application.

5.4 Identity of Ultimate Consumer

The Applicant may be required to identify the ultimate consumer of the power to be transmitted if such information is necessary for Bonneville to determine, pursuant to section 7 hereof, whether adequate transmission capacity will be available on its Network PTP Transmission System Facilities to provide the service initially and for the full term of the transaction requested by the Applicant. If the Applicant objects to a request by Bonneville under sections 5.3 or 5.4 that it provide the name of the ultimate consumer, then Bonneville shall have the right to seek an order from the Commission allowing Bonneville to require the Applicant to provide Bonneville with the identity of the ultimate consumer and the parties cannot otherwise resolve their differences, the Applicant may proceed under the provisions of section 19.

5.5 Mutually Exclusive Applications for Same Service

In order to determine whether Applications for Network PTP Transmission Service hereunder are duplicative or mutually exclusive of Applications filed by other parties, Bonneville may request further information, including, by way of illustration, a statement as to whether the Application is being made in response to a competitive solicitation. If certain requests for Network PTP Transmission Service give Bonneville a reasonable basis to believe that such requests are mutually exclusive, Bonneville may ask the Applicant making such a request to identify the ultimate purchaser of power and, if appropriate under the circumstances, Bonneville may contact the ultimate

purchaser to determine whether the Applications are mutually exclusive. Should Bonneville confirm that particular Applications hereunder are mutually exclusive (e.g., the ultimate purchaser will buy from one but not all of the Eligible Customers who have submitted Applications), Bonneville reserves the right to process all such Applications as though they were a single Application.

5.6 Applications Filed By Bonneville

Applications filed by Bonneville pursuant to section 6.2 hereof. Bonneville will file applications for firm service to serve its own firm commercial transactions which do not constitute service to Native Load Customers. Such applications will be treated in the same manner as any Application under this Tariff and assigned a priority for determining transmission capacity availability according to the provisions set forth in section 7.1.

6. Priority of Requests

All requests for Network PTP Transmission Service and all other requests for firm transmission service, other than service to Native Load Customers and to Network Load of Network Integration Service Customers, shall be evaluated. Priority shall be determined on a first-come, first-served basis based on the date when Bonneville receives an executed Service Agreement, after meeting the obligations listed in section 8.2.

7. Capacity Availability and Expansion Obligations

7.1 Determination of Capacity Availability

Upon receiving a complying Application hereunder, Bonneville will determine the requirements, if any, to interconnect the Applicant with Bonneville's electric system and whether adequate capacity will be available on Bonneville's Network PTP Transmission System Facilities to provide the service initially and for the full term of the transaction requested by the Applicant. Such determination will be made as soon as possible, not to exceed 60 days from the date of interconnection, unless the number or complexity of Applications reasonably requires additional time. If additional time is required, Bonneville shall notify the Applicant on a timely basis and provide an estimate of the time needed to reach a final determination. If Bonneville determines that adequate capacity will be available on its Network PTP Transmission System Facilities to provide service for the highest priority Application, and subject to the requirements of the National Environmental Policy Act or any other applicable environmental laws, Bonneville will notify the Applicant and tender a Service Agreement pursuant to section 8.

7.2 Conditions on Capacity Availability

In determining whether adequate capacity will be available on its Network PTP Transmission System Facilities for the requested service both initially and for the full term of the requested transaction, Bonneville shall determine if capacity is available in excess of that required to accommodate: (1) the existing and forecasted loads of its Native Load Customers; (2) Bonneville's other customers to whom Bonneville has preexisting contractual obligations commitments for firm wholesale purchases, exchanges, deliveries, and sales; and (3) existing contractual, statutory, and regulatory commitments for firm transmission service; any existing contractual commitments providing for hydroelectric system coordination or forced outage reserves, as well as (4) transmission capacity reserved for reliability, regulation, and inadvertent flows based on Bonneville's historical use or planned use for such purposes; and (5) delivery of Federal and Network Integration Service Customers' hydroelectric power in times of actual or threatened spill. In making such determination, Bonneville shall use the WSCC's and Bonneville's ''Reliability Criteria for Network PTP Transmission System Planning.'' Bonneville shall not take into consideration any other pending Application of lower priority for Network PTP Transmission Service. Network PTP Transmission Service shall also be subject to Good Utility Practice in order to take into account the physical characteristics and constraints on Bonneville's Network PTP Transmission System Facilities.

7.3 Partial Capacity Availability

If Bonneville determines to provide the requested service but that it will not have adequate capacity available on its Network PTP Transmission System Facilities to satisfy the full amount of the requested service, Bonneville will allow the Applicant to either: (a) sign a Service Agreement pursuant to section 8 hereof for the amount of Network PTP Transmission Service that can be provided immediately, and receive for the remainder of the requested service pursuant to section 9 hereof after the necessary facility upgrades and modifications have been installed; (b) sign a Service Agreement pursuant to section 8 hereof for the amount of Network PTP Transmission Service that can be provided immediately and withdraw the Application for the remainder of the service; (c) sign a Service Agreement to receive all the requested Network PTP Transmission Service pursuant to section 9 hereof after the necessary facility modifications are completed; or (d) withdraw the Application for Network PTP Transmission Service.

7.4 Withdrawal of Application or Failure to Execute Service Agreement

Should an Applicant withdraw all or part of its Application, or should an Applicant fail to execute a Service Agreement within the required time period provided in section 8.2, except as otherwise provided in section 13.4, Bonneville will reevaluate whether capacity is available on the Network PTP Transmission System Facilities which would satisfy any other Applications which could utilize such Network PTP Transmission System capacity and which had a lower priority than the withdrawn Application. Bonneville shall reevaluate such lower priority Applications in the order of their assigned priority. Should Bonneville determine that additional Network PTP Transmission System Facilities capacity is available for any Customer submitting a lower priority Application, Bonneville shall allow such Customer an option, to be exercised within 10 days to execute or to modify its Service Agreement shall offer such Customer a Service Agreement, pursuant to the provisions of this Tariff, to reflect the availability of such additional Network PTP Transmission System capacity.

7.5 Responsibility of Parties for Network PTP Transmission Facilities Modification

Where a determination is made by Bonneville that an Application for Network PTP Transmission Service pursuant to this Tariff will require modifications to the Network PTP Transmission System Facilities, or when an Applicant requests specific upgrades, Bonneville commits to use due diligence consistent with its statutory environmental obligations to make such modifications to the Network PTP Transmission Facilities within a reasonable time; provided, however, that the Applicant agrees to compensate Bonneville for the costs, determined pursuant to section 4 of all modifications to the Network PTP Transmission System Facilities reasonably required to provide such

service. Bonneville will not increase or upgrade the capacity of its existing or planned transmission facilities in order to provide service under this Tariff if doing so would unduly impair system reliability or otherwise jeopardize service to its Native Load Customers and or other Customers to whom Bonneville has a preexisting contractual obligation. Unless otherwise agreed to by Bonneville and the Customer, Bonneville will own any additional electrical facilities or upgrades constructed pursuant to this Tariff. The Customer shall cooperate with Bonneville in the construction of any required facilities and shall take all reasonable steps to assist Bonneville in obtaining any necessary permits, authorizations, and rights-of-way.

8. Subsequent Requirements Where No New Facilities Are Needed

8.1 Notification of Applicant

When, pursuant to section 8 hereof, Bonneville determines that adequate capacity and facilities will be available on its electric system to provide the requested service initially and for the full term of the transaction requested, Bonneville shall so notify the Applicant in writing and tender a Service Agreement as soon as possible, not to exceed 30 days thereafter, to the Applicant.

8.2 Applicant Responsibilities

Within 30 days, unless otherwise agreed, after receipt of such Service Agreement, the Applicant must either: (a) execute the Service Agreement; (b) withdraw its Application; or (c) inform Bonneville that the Service Agreement is unacceptable as tendered and request that Network PTP Transmission Service commence pursuant to section 134. Failure to take any one of the foregoing actions within such 30 days, unless otherwise agreed, will be deemed to be a withdrawal of the Application. Nothing herein limits the right of the Applicant to file another Application for Network PTP Transmission Service immediately upon such withdrawal.

8.3 Extension of Service Date

A Customer that has entered into a contract with an Eligible Utility for the sale, purchase, or exchange of capacity and/or energy or provides Bonneville with sufficient evidence that such a sale is likely to be consummated, can reserve capacity by paying a Reservation Charge specified in section W of the Adjustments, Charges, and Special Rate Provisions.

9. Subsequent Requirements When New Facilities Are Needed

9.1 Applicant Notification

When, pursuant to section 9 hereof, Bonneville determines that an Application will require initially, or during the term of the transaction, Network Upgrades and/or Direct Assignment Facilities; in order to either provide the required Network PTP Transmission Service or to interconnect the Applicant to Bonneville's electric system, at the earliest possible date, not to exceed 60 days of receipt of the Application, Bonneville shall inform the Customer, in writing, of the requirement to perform a System Impact Study, and shall tender a Study Agreement.

9.2 System Impact Study

Upon receipt of the executed Study Agreement, Bonneville shall commence the System Impact Study. Upon completion of the System Impact Study, Bonneville will present the results, including workpapers, to the Applicant. If Bonneville determines that construction of such facilities is feasible and consistent with its environmental obligations, it shall and tender a Service Agreement under which the Applicant would agree to receive service upon completion of the facility modifications and to fully compensate Bonneville for the facility modifications, pursuant to section 4 herein.

9.3 Applicant Responsibility and Remedies

For the Application to remain valid and pending, within 90 days of the receipt of the System Impact Study and the Service Agreement, the Applicant must execute the Service Agreement. In order to protect Bonneville against the risk of nonpayment by the Applicant for the facility modifications, the Applicant and Bonneville shall negotiate reasonable security provisions acceptable to both parties. If Bonneville and the Applicant are unable to reach agreement on the amount and form of the security provisions, then the Applicant may proceed under the provisions of section 19.

9.4 Due Diligence in Completion of Facility Modifications

Upon receipt of the executed Service Agreement and the associated security provisions, Bonneville shall use due diligence to complete the necessary modifications within a reasonable time. Bonneville shall give the Customer 90 days written notice prior to the projected completion of the facility modifications. Promptly upon completion of such modifications, Bonneville shall notify the Customer in writing that service can commence. Service shall commence pursuant to section 4.8.

9.5 Coordination of Third Party System Additions

Where the need for Network Upgrades or Direct Assignment Facilities are identified, and such upgrades require the addition of transmission facilities on other system(s), Bonneville shall have the right to coordinate construction on its own system with the construction required by other(s). Bonneville, after consultation with the Customer and representatives of such other system(s), may defer construction of new transmission facilities on its own system pending the resolution of obstacles to the timely completion of new transmission facilities on other system(s) needed to provide the requested service.

10. Electronic Bulletin Board

Bonneville shall cooperate with Customers and utilities who are members of the WSCC to develop an electronic bulletin board that is compatible with and useful to all WSCC members. The purpose of the electronic bulletin board is to make known to users the available transmission capacity and any proposals to increase that capacity.

11. Scheduling

11.1 General Conditions

All capacity and energy to be transmitted by Bonneville hereunder shall be scheduled in advance pursuant to the terms of the Service Agreement and will reflect the procedures used by Bonneville in scheduling its own transactions. Bonneville will make schedule changes on short notice if reasonably practicable. The Customer shall provide written notification to Bonneville identifying all systems involved in the transaction and authorizing such systems to schedule all capacity and energy to be transmitted by Bonneville pursuant to the Service Agreement on behalf of the Receiving Party at the Point of Delivery or the Delivering Party at the Point of Interconnection.

11.2 Customer Responsibility for Third Party Arrangements

Any arrangements necessary for scheduling power flows on third party electric systems, including compensation for any associated costs, losses, or parallel flows on such systems, shall be the responsibility of the Customer requesting service.

11.3 Flexibility Point(s) of Interconnection and Delivery

As an alternative to receiving service from Primary Points of Interconnection to Primary Points of Delivery, the Customer may request Bonneville to provide nonfirm Network PTP Transmission Service between interconnection and delivery points other than those specified in the Service Agreement (''Secondary Points of Interconnection and Delivery''), in amounts not to exceed its Transmission Demand, without incurring any additional charges, executing a new Service Agreement, or affecting its priority at Primary Points of Interconnection and Delivery. Service provided between Secondary Points of Interconnection and Delivery will be nonfirm only, on a capacity available basis and will not displace any firm or nonfirm service of higher priority previously scheduled by third parties or by Bonneville on behalf of its Native Load Customers and other customers to whom Bonneville has a preexisting contractual obligation and subject to higher priority schedules to: (1) serve Bonneville's Native Load; (2) serve Network Integration Service network load; and (3) deliver Federal and Network Integration Service hydroelectric power subject to spill or threatened spill.

11.4 Due Diligence

Bonneville and the Customer shall exercise due diligence and reasonable care and foresight in arranging for and operating their respective sources of supply and other facilities so that scheduled amounts of capacity and energy shall be delivered in accordance with section 12.1.

12. Priority of Service and Interruptions

12.1 Service Priority

Unless otherwise specified in the Service Agreement all service provided hereunder from Primary Points of Interconnection to Primary Points of Delivery shall have priority over nonfirm transmission service, including that which Bonneville provides itself and which otherwise has not been appropriately reserved by Bonneville in the Service Agreement to serve the needs of Native Load Customers or Network Integration Service Customers or to avoid spill of Federal or Network Integration Service hydroelectric power.

12.2 Bonneville Responsibilities

Bonneville will use due diligence to furnish the firm Network PTP Transmission Service available under this Tariff, but it does not guarantee uninterrupted transmission of electric energy or capacity. To the extent practicable, Bonneville will provide reasonable advance notice to the Customer of any scheduled interruptions, reductions, or other impairments of the Network PTP Transmission Service as specified in the individual Service Agreement.

12.3 Interruption of Service

Any interruption of service will not be on an unduly discriminatory basis as between Bonneville and similarly situated Customers.

13. Service Agreements

13.1 Requirement for a Signed Service Agreement

Subject only to the provisions of section 14.43 herein, Bonneville is obligated to provide Network PTP Transmission Service under this Tariff only to Customers that have signed a Service Agreement with Bonneville for the requested service. The Service Agreement shall contain a statement of service specifications, including without limitation, the amount of Transmission Demand; the term of such service; identification of Primary Point(s) of Interconnection, Primary Point(s) of Delivery, Delivering Party, Receiving Party; the rates and charges for such service, and where applicable, the cost of necessary facilities, including Direct Assignment Facilities and an appropriate allocation of Network Upgrades.

13.2 Modification or Amendment of the Service Agreement

Any request to modify Primary Points of Interconnection and/or Delivery or to increase the Transmission Demand will be analyzed in the same manner as a new Application, except that the Customer will not be obligated to pay any additional reservation fee if the additional transmission Demand does not exceed the Transmission Demand in the existing Service Agreement. While such new request is pending, the Customer shall retain its priority for service at the existing Primary Points of Interconnection and Delivery. If Demand is not available then the request will receive a service priority pursuant to section 8.

13.3 Commencement of Service in Absence of Signed Service Agreement

If Bonneville and an Applicant cannot agree on the terms of the Service Agreement, Bonneville may provide the requested service if Demand transmission capacity is available, as soon as reasonably practicable after receipt of a valid Application for transmission, subject to Good Utility Practice. Such service will be provided under terms and conditions deemed appropriate by Bonneville for the requested service. Bonneville will provide the requested service under terms and conditions ultimately determined by the Commission to be appropriate under Sections 211 and 212 of the FPA, within the constraints imposed by engineering and reliability limitations.

13.4 Customer Obligations in Absence of Signed Service Agreement

Notwithstanding any other provision of this Tariff, Bonneville is not obligated to provide Network PTP Transmission Service to a Customer until such Customer provides Bonneville with a binding written commitment to pay for any facility modifications determined by Bonneville under section 8 hereof to be reasonably necessary to provide the requested services.

13.5 Obligations on Acceptance of Service

Acceptance of service by the Customer pursuant to a Service Agreement filed under this Tariff commits the Customer both to the provisions of this Tariff and to the terms of the individual Service Agreement.

14. Billing

Bonneville shall bill in accordance with the billing information in the current General Rate Schedule Provisions, Appendix A or successor, or as they may from time to time be revised receipt.

15. Records

15.1 Recordkeeping Obligations

Bonneville and the Customer shall keep such records as may be needed to afford a clear history of all transactions under this Tariff and associated Service Agreement. The originals of all such records shall be retained for a minimum of 2 years plus the current year (or such longer period as may be appropriate) and copies shall be delivered to the other party on request.

15.2 Customer's Right to Examine Records

The Customer shall have the right, during normal business hours, to examine the accounting and other records for the last 2 calendar years relating to its transactions under this Tariff and shall have the right to make such audits and copies of records as it shall deem necessary or desirable. Such examinations shall be at the Customer's expense. Such audit shall be conducted

no more frequently than once every 2 years.

16. Liability and Indemnification

16.1 Western Interconnected Systems Agreement

If an Applicant is a party to the Western Interconnected Systems Agreement Limiting Liability, such agreement shall continue in full force and effect as between the parties to the extent that such provisions may apply to the transactions contemplated by this Tariff.

16.2 No Western Interconnected Systems Agreement

If an Applicant is not a party to the Western Interconnected Systems Agreement Limiting Liability, and there is no other agreement on file with the Commission governing liability and indemnification between Bonneville and the Applicant, then, in such event, additional provisions for protection of electric generation facilities or transmission facilities and liability and indemnification may be required. Such additional provisions shall be set forth in the Applicant's Service Agreement.

17. Sale or Assignment of Network PTP Transmission Service

17.1 Right to Sell, Assign or Transfer

Subject to the approval of Bonneville, a Customer may sell, assign, or transfer all, or a portion of, its rights under the Service Agreement executed pursuant to this Tariff, but only to an entity that qualifies as an Eligible Customer. If the second Customer so purchasing or taking an assignment does not request any change in the Primary Point(s) of Delivery of or Primary Point(s) of Interconnection, subject to section 14.32, or a change in any other material term or condition set forth in the original Service Agreement, the second Customer will receive the same service as the first Customer. If the second Customer requests a change in any material term or condition set forth in the original Service Agreement, Bonneville will consent to such change subject to the provisions of section 14 herein, but only if to do so will not unduly impair the operation and reliability of Bonneville's generation, or transmission, or distribution systems, and on the condition that the second Customer agrees to compensate the Customer Bonneville for any additional costs resulting from such change. The Customer that received the assignment shall assume responsibility for scheduling. The Customer making the assignment shall continue to have responsibility for compliance with the Service Agreement including making payment to Bonneville.

17.2 Liability for Performance

The Customer that received the assignment shall assume responsibility for scheduling. The original Customer shall remain liable for the performance of all other obligations under the Service Agreement including making payment to Bonneville, except as specifically agreed to by the parties through an amendment to the Service Agreement. Bonneville will amend the Service Agreement only if the assignee: (a) meets the creditworthiness criteria of section 19; and (b) agrees to compensate Bonneville for Direct Assignment Facilities, and allocated Network Upgrades and costs resulting from changes in service; and (c) provides security equivalent to that provided by the original Customer.

18. Creditworthiness

For the purpose of determining the ability of the Customer to meet its obligations related to service hereunder, Bonneville may require reasonable credit review procedures which may include, but shall not be limited to, verification that the Customer is not operating under any State or Federal bankruptcy laws, is not subject to the uncertainty of pending liquidation or regulatory proceedings in State or Federal courts, and no significant collection lawsuits or judgments are outstanding which would seriously reflect upon the Customer's ability, in Bonneville's determination, to remain solvent. In addition, Bonneville may require the Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under this Tariff or an alternative form of security proposed by the Customer and acceptable to Bonneville that protects Bonneville's Native Load Customers against the risk of nonpayment. Any disputes over the terms of such security arrangements shall be subject to the provisions of the Tariff.

19. Procedures to Resolve Network Transmission Complaints

Any complaint arising from an Application hereunder may be resolved, at the Customer's discretion, by either:

(a) A voluntary dispute resolution process, which may include mediation or arbitration or both, pursuant to the terms of a regional transmission association governing agreement which both parties have executed, or such other dispute resolution rules as may be agreed to by Bonneville and the Customer; and

(b) A transmission complaint filed with the Commission.

20. Regulation

Service under this Tariff is subject to all existing or future applicable local, State, and Federal laws and to all existing or future duly promulgated orders and actions of governmental authorities having jurisdiction over the matters contained herein.

Proposed Bonneville Power Administration Energy Transmission Service Tariff

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Bonneville Power Administration Energy Transmission Service Tariff

The Bonneville Power Administration (Bonneville) will provide short-term firm and nonfirm point-to-point transmission service under this Energy Transmission Tariff (ET) to Eligible Customers.

1. Definitions

1.1 Applicant

An Eligible Customer who submits a completed Application.

1.2 Application

A request by an Eligible Customer for nonfirm and/or firm Energy Transmission Service submitted to Bonneville which satisfies the provisions of this Tariff, including provisions of section 5.

1.3 Commission

The Federal Energy Regulatory Commission or its successor.

1.4 Control Area

The self-contained set of generating units, electrical loads, and transmission facilities managed and overseen by a utility that is responsible for matching generation with such loads on an instantaneous basis.

1.5 Customer

An Eligible Customer that has completed an Application for service and has executed a Service Agreement for Energy Transmission Service pursuant to this Tariff.

1.6 Delivering Party The entity supplying the electric energy to be transmitted over Bonneville's Energy Transmission Facilities.

1.7 Eligible Customer

A private or public corporation, governmental agency or authority, joint action agency, municipality, rural electric membership corporation or cooperative, person, or any lawful association of the foregoing, which engages in the generation, transmission, or distribution of electric energy at wholesale or retail. Bonneville's direct service industrial customers on the effective date of this Tariff shall be considered Eligible Customers. Other than Bonneville's direct service industrial customers, an Eligible Customer shall not include any entity for which the Commission is prohibited under Sections 212(g) and (h) of the Federal Power Act from ordering the provision of transmission service. A power marketing entity (marketer) will be considered to be an Eligible Customer only to the extent it requests service to deliver capacity or energy that will be purchased by an Eligible Customer.

1.8 Energy Transmission Facilities

The Federal Columbia River Transmission System facilities operated by Bonneville, excluding the Interties.

1.9 Native Load Customers

Those wholesale and direct service industrial power sale customers, on whose behalf Bonneville, by statute or contract, has undertaken an obligation to plan, construct, and operate its electric system to provide reliable electric service.

1.10 Point(s) of Delivery

Point(s) on Bonneville's Energy Transmission Facilities where Bonneville is interconnected with the Receiving Party or the Receiving Party's authorized agent and where Bonneville can deliver power transmitted pursuant to a Service Agreement.

1.11 Point(s) of Interconnection

Point(s) on Bonneville's Energy Transmission Facilities where Bonneville is interconnected with the Delivering Party or the Delivering Party's authorized agent and where Bonneville can receive power transmitted pursuant to a Service Agreement.

1.12 Receiving Party

The entity receiving the electric energy to be transmitted over Bonneville's Energy Transmission Facilities.

1.13 Service Agreement

The initial agreement and any supplements or amendments thereto entered into by the Customer and Bonneville in order to initiate service under this Tariff. For nonfirm Energy Transmission Service, the Service Agreement may be in the form of a standard umbrella agreement for Energy Transmission Service which provides for maximum flexibility in using Point(s) of Delivery and Point(s) of Interconnection, standard scheduling provisions and interruption rights, and billing information. For short-term firm Energy Transmission Service, the Service Agreement may be in the form of a transaction specific agreement for Energy Transmission Service which documents the terms and conditions of that transaction.

2. Character of Service and Availability

2.1 Nature of Service

Energy Transmission Service is a control area to control area service. The service delivers energy over transmission paths that may be nonfirm or short-term firm, consolidated by the Customer into a schedule, from one control area to another through Points of Interconnection and Points of Delivery. Short-term firm Energy Transmission Service shall be provided on a take-or-pay basis, unless curtailed by Bonneville.

2.2 Term of Service

Nonfirm Energy Transmission Service hereunder may only be prescheduled. Prescheduling is done in hourly increments up to a maximum of 24 hours from 1 working day to the next. Short-term Firm Energy Transmission Service may be provided for periods up to 1 month.

2.3 Priority of Service

Energy Transmission Service shall be provided over transmission capacity available after Bonneville meets its obligations to serve: (1) its existing and forecasted requirements to serve Native Load Customers; (2) its existing contractual commitments for firm wholesale purchases, exchanges, and sales; (3) its existing contractual, statutory, and regulatory commitments for firm transmission service; (4) transmission capacity reserved for reliability, regulation, and inadvertent flows based on Bonneville's historic use or planned use for such purpose; (5) delivery of Federal and Network Integration Customers' hydroelectric power in times of actual or threatened spill.

Priority to available capacity shall be provided to requests for firm service. All requests for nonfirm Energy Transmission Service hereunder, all other requests for nonfirm transmission service pursuant to Bonneville's other network transmission tariffs and Bonneville's own nonfirm network transmission uses, with the exception of Bonneville's and Network Integration Customers' economy energy purchases, and sales to avoid hydroelectric spill, shall be evaluated on a first-come, first-served basis.

2.4 Commencement of Service

A Service Agreement must be executed prior to the commencement of service under this Tariff.

2.5 Control Area Requirements

As a condition to obtaining Energy Transmission Service, the Customer shall: (i) operate as a Control Area under applicable guidelines of the North American Electric Reliability Council (NERC), the Western Systems Coordinating Council (WSCC), and the

Northwest Power Pool (NWPP); or (ii) satisfy its responsibility to be operated as a Control Area by contract with Bonneville pursuant to section 2.6 by contract with another entity which Bonneville accepts as sufficient to satisfy NERC, WSCC, and NWPP requirements. Bonneville shall not unreasonably refuse to accept contractual arrangements with another entity for such services.

2.6 Ancillary Services

This Tariff constitutes an offer to provide only Energy Transmission Service. Bonneville commits either to provide the Customer with services necessary for it to take Energy Transmission Service under this Tariff; or to cooperate with the Customer so that the Customer can utilize its own resources or the resources of third parties in order to provide such services. Such services offered by Bonneville are offered on a not unduly discriminatory basis, subject to resource, engineering, and reliability limitations.

3. Interconnection and Interchange

3.1 Bonneville Responsibility

Bonneville shall deliver the energy required from Point(s) of Interconnection to Point(s) of Delivery pursuant to the Service Agreement up to the amount of designated energy.

3.2 Metering

Electric energy transmitted under this Tariff shall be measured as appropriate by metering equipment provided by Bonneville and the Customer at such points and voltages as set forth in the Service Agreement.

3.3 Third Party Arrangements

The Customer need not be directly interconnected with Bonneville, but shall make any and all necessary arrangements for the delivery of power to the Point(s) of Interconnection and receipt from the Point(s) of Delivery, and Bonneville shall have no responsibility for such arrangements. The Customer shall furnish Bonneville with such necessary and appropriate information with respect to such arrangements as shall permit Bonneville to carry out its responsibilities under this Tariff. The Customer shall be responsible for scheduling arrangements and resolution of operating problems on third party electric systems related to any transactions provided under this Tariff and for the costs associated with resolving those problems.

4. Rates

4.1 Transmission Charge

Payment hereunder shall be calculated pursuant to the rates and formulae in Appendix A, the ET–95 rate schedule or its successor.

4.2 Transmission Losses

Transmission losses shall be determined on the basis of average estimated system losses. The Customer shall compensate Bonneville for losses by either providing additional energy for losses associated with the scheduled energy or by buying losses from Bonneville in accordance with the Firm Power Products and Services (FPS–95) rate schedule in Appendix A as specified in the Service Agreement.

4.3 Reactive Charge

The Customer shall pay for reactive power necessary to provide transmission services under this Tariff pursuant to the Firm PTP Transmission rate (PT–95) or its successor as specified in the Service Agreement.

4.4 Revision to Rates, Charges, and Loss Factors

Bonneville may periodically revise rates, charges, and transmission loss factors and apply such revisions to Service Agreements.

5. Initiating Service

5.1 Nonfirm Umbrella Service Agreement

To initiate nonfirm service an Applicant must submit a completed Application to Bonneville Power Administration; Attention, Manager, Short-Term Contracts; P.O. Box 491; Vancouver, Washington, 98666–0491. Such Application shall include:

(a) The identity, address, and telephone number of the Applicant;

(b) A statement that the Applicant is, or will be upon commencement of service, an Eligible Customer under this Tariff pursuant to section 1.7;

(c) The name, title, and phone number of the contact person for the Applicant;

(d) The proposed dates for initiating and terminating the Service Agreement.

The Application shall be used to prepare an 'umbrella' Service Agreement as discussed in section 8.1.

5.2 Short-Term Firm Service Agreement

To initiate short-term firm service, the Application shall include in addition to the above information the following additional information:

(a) The identity of the Delivering Party and Receiving Party;

(b) The Point(s) of Interconnection and the Point(s) of Delivery;

(c) The amount of power, including peak demand and total amount of energy;

(d) The identity of the Control Area(s) in which the resource and ultimate consumer of power is/are located.

The information in sections 5.1 and 5.2 shall be used to prepare a ''short-term firm'' Service Agreement as discussed in section 8.1.

6. Electronic Bulletin Board

Bonneville shall cooperate with Customers and utilities who are members of the WSCC to develop an electronic bulletin board that is compatible and useful to all WSCC members. The purpose of the electronic bulletin board is to make known to users the available transmission capacity and any proposals to increase that capacity.

7. Scheduling

7.1 General Conditions

All energy to be transmitted by Bonneville on a nonfirm basis hereunder shall be scheduled one working day prior to the day service is to commence, but changes may be made up to the hour preceding the hour of service when reasonably practicable which is the procedure used by Bonneville in scheduling its own Energy Transmission transactions. All power to be transmitted by Bonneville on a short-term firm basis hereunder shall be scheduled in advance pursuant to the terms of the Service Agreement and will reflect the procedures used by Bonneville in scheduling its own transactions. Bonneville will make schedule changes on short notice if reasonably practicable.

7.2 Due Diligence

Bonneville and the Customer shall exercise due diligence and reasonable care and foresight in arranging for and operating their respective sources of supply and other facilities so that scheduled amounts of energy shall be delivered in accordance with section 7.1.

7.3 Curtailment

In the event Bonneville is forced to curtail deliveries of Energy Transmission Service, Bonneville shall notify the Receiving Party. Recipients of nonfirm Energy Transmission Service shall be curtailed prior to other transmission services customers and on the same basis as Bonneville's and Network Integration Service Customers' economy transactions, except where necessary to deliver Bonneville's and

Network Integration Customers' hydroelectric power subject to spill or threatened spill. The Receiving Party shall have responsibility for curtailing unless otherwise provided in the Service Agreement.

8. Service Agreements

8.1 Requirement for a Signed Service Agreement

Bonneville shall provide Energy Transmission Service under this Tariff only to Customers that have signed a Service Agreement with Bonneville. For nonfirm service hereunder, Bonneville and the Customer may enter into an ''umbrella'' Service Agreement that would provide the Customer transmission access to the Bonneville system to the extent that capacity is available on Bonneville's system, subject to the scheduling provisions set forth in section 7. The ''umbrella'' Service Agreement shall contain, among other provisions, the term, scheduling provisions and interruption rights, a statement that any Points of Interconnection or Points of Delivery on Bonneville's Energy Transmission Facilities may be used for transmitting and receiving energy, and billing information, including the rates and charges for such service. For short-term firm service hereunder, Bonneville and the Customer may enter into a transaction specific ''short-term firm'' Service Agreement that would provide the Customer transmission access to the Energy Transmission Facilities to the extent capacity is available on Bonneville's system. Such Service Agreement shall contain the same information that appears in the ''umbrella'' Service Agreement except that the Point(s) of Interconnection and the Point(s) of Delivery shall be specified. In addition, the ''short-term firm'' Service Agreement shall include both the demand and total amount of energy to be delivered.

8.2 Obligations on Acceptance of Service

Acceptance of service by a Customer pursuant to a Service Agreement under this Tariff commits the Customer and Bonneville both to the provisions of this Tariff and to the terms of the individual Service Agreement.

9. Billing

Bonneville shall bill in accordance with the billing information in Appendix A, General Rate Schedule Provisions, or successor, or as they may from time to time be revised.

10. Records

10.1 Recordkeeping Obligations

Bonneville and the Customer shall keep such records as may be needed to afford a clear history of all transactions under this Tariff. The originals of all such records shall be retained for a minimum of 2 years plus the current year (or such longer period as may be appropriate and copies shall be delivered to the other party on request.)

10.2 Customer's Right to Examine Records

The Customer shall have the right, during normal business hours, to examine the accounting and other records for the last 2 calendar years relating to its transactions under this Tariff and shall have the right to make such audits and copies of records as it shall deem necessary or desirable. Such examinations shall be at the Customer's expense and may be conducted no more frequently than once every 2 years.

11. Liability and Indemnification

11.1 Western Interconnected Systems Agreement

If an Applicant is a party to the Western Interconnected Systems Agreement Limiting Liability, such agreement shall continue in full force and effect as between the parties to the extent that such provisions may apply to the transactions contemplated by this Tariff.

11.2 No Western Interconnected Systems Agreement

If an Applicant is not a party to the Western Interconnected Systems Agreement Limiting Liability and there is no other agreement on file with the Commission governing liability and indemnification between Bonneville and the Customer, then in such event additional provisions for protection of electric generation facilities or transmission facilities and liability and indemnification may be required. Such additional provisions shall be set forth in the Applicant's Service Agreement.

12. Creditworthiness

For the purpose of determining the ability of the Customer to meet its obligations related to service hereunder, Bonneville may require reasonable credit review procedures which may include, but shall not be limited to, verification that the Customer is not operating under any State or Federal bankruptcy laws, is not subject to the uncertainty of pending liquidation or regulatory proceedings in State or Federal courts, and no significant collection lawsuits or judgments are outstanding which would seriously reflect upon the Customer's ability, in Bonneville's determination, to remain solvent. In addition, Bonneville may require the Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under this Tariff or an alternative form of security proposed by the Customer and acceptable to Bonneville that protects Bonneville's Native Load Customers against the risk of nonpayment. Any disputes over the terms of such security arrangements shall be subject to the provisions of the Tariff.

13. Procedures to Resolve Transmission Complaints

Any complaint arising from an Application hereunder may be resolved, at the Customer's discretion, by either:

(a) A voluntary dispute resolution process, which may include mediation or arbitration or both, pursuant to the terms of a regional transmission association governing agreement, or such other dispute resolution rules as may be agreed to by Bonneville and the Customer; or

(b) A transmission complaint filed with the Commission.

Issued in Portland, Oregon, on February 17, 1995.

Jack Robertson,

Deputy Chief Executive Officer.

[FR Doc. 95–5816 Filed 3–8–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. EL95–26–000 and QF90–104–002]

Richmond Power Enterprises, L.P.; Notice of Extension of Comment Date

March 3, 1995.

Take notice that the date for filing of protests, motions to intervene or comments, in response to the notice issued February 16, 1995 (60 FR 10380, February 24, 1995) has been extended to May 25, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5714 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–119–000]

Steuben Gas Storage Co.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Thomas Corners Gas Storage Field Project and Request for Comments on Environmental Issues

March 3, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the Thomas Corners Gas Storage Field 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

Steuben Gas Storage Company (Steuben) requests Commission authorization to convert a depleted natural gas production field to storage use. It proposes to construct and operate:

- 13 injection/withdrawal wells (11 new wells drilled from one central location and two converted from existing gas production wells);
- One observation well;
- 0.6 mile of 4-inch-diameter well laterals;
- 0.3 mile of 12-inch-diameter well laterals;
- A 3,284-horsepower compressor station;
- 6.48 miles of 12-inch-diameter gathering header including a pipeline drip and storage tank; and
- Dehydration facilities.

Steuben indicates that the proposed storage field, when fully developed, would have a working gas capacity of 5,300,000 thousand cubic feet of gas. Customers interested in using Steuben's proposed storage service would have to arrange for their own transportation. Steuben's existing facilities are interconnected with the facilities of CNG Transmission Corporation (CNG) in the town of Woodhull, Steuben County, New York. The 6.48 miles of gathering header would connect the Thomas Corners Gas Storage Field to Steuben's existing facilities.

Steuben states that the storage facility would be developed in the nearly depleted Thomas Corners gas production reservoir. It lies about 2,000 feet below the surface. The areal extent of the reservoir is about 430 acres.

The location of the project facilities is show in appendix 1.[2]

Land Requirements for Construction

Steuben proposes to use a nominal 70-foot-wide right-of-way for construction of the 6.48 miles of 12-inch-diameter pipeline. Following construction, a 50-foot-wide easement would be permanently maintained; the remaining 20 feet would be restored and allowed to revert to its former use.

Additional working right-of-way width would be needed in areas of steep side slopes and in agricultural areas where topsoil would be segregated. Additional working space would also be needed adjacent to road and stream crossings. About 60 acres would be required for construction of the 12-inch diameter gathering header.

A total of 37 acres would be needed for construction of the Thomas Corners Storage Field. All new injection/withdrawal wells would be directionally drilled from one central pad area covering approximately 31 acres. The wells would be drilled at 150-foot centers around the perimeter of the pad area. All of the 4- and 12-inch diameter well laterals would be constructed within the central well pad area.

An additional 6-acre work space would be required adjacent to the pad area for drilling, completion, maintenance operations, and equipment staging. After construction is complete, this area would be used for the dehydration facilities.

The proposed compressor station would be located on Steuben's existing Adrian Compressor Station site.

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. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

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.
- Public safety.
- Land use.
- Cultural resources.
- Hazardous waste.
- Air quality and noise.

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 Steuben. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The proposed project would cross three perennial streams: Mud Hollow Brook, the Canisteo River, and an unnamed tributary of the Canisteo River.
- About 32 acres of upland forest would be disturbed.
- A new 3,284-horsepower compressor station would be constructed adjacent to Steuben's existing Adrian Compressor Station

[1] Steuben Gas Storage Company's application was filed with the Commission under section 7 of the Natural Gas Act and Parts 157 and 284 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 and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

which may increase existing sound levels.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. you should focus on the potential environmental effects of the proposal, alternatives to the proposal (including 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., N.E., Washington, D.C. 20426;
- Reference Docket No. CP95–119–000;
- Send a copy of your letter to: Mr. Howard J. Wheeler, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before April 10, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Wheeler 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 section 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 from Mr. Howard Wheeler, EA Project Manager, at (202) 208–2299.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5712 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–182–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, proposed to be effective April 1, 1995:

Original Sheet No. 75A
Original Sheet No. 75B
Original Sheet No. 75C
Original Sheet No. 75D
Original Sheet No. 75E
Original Sheet No. 75F
Second Revised Sheet No. 155
Second Revised Sheet No. 156
Second Revised Sheet No. 159
Second Revised Sheet No. 160
Original Sheet No. 160A
Third Revised Sheet No. 161

ANR states that the above-referenced tariff sheets are being filed to streamline ANR's capacity release program. Specifically, ANR proposes (a) to reduce the time for submitting and posting bids and for making awards for released capacity; (b) to change the time for closing the bidding period to accommodate better ANR's nomination process; (c) to allow one service agreement to cover multiple release transactions; (d) to provide shippers the maximum feasible time to execute an agreement once capacity has been awarded; (e) to make conforming tariff changes; and (f) to treat releases that do not exceed thirty-one days or one calendar month as short-term releases.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 10, 1995. 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. 95–5715 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–181–000]

ANR Pipeline Co. Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that, on February 28, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, proposed to be effective March 1, 1995:

Ninth Revised Sheet No. 18
Second Revised Sheet No. 185

ANR States that the above-referenced tariff sheets are being filed to implement a true-up of its recovery of Above-Market Dakota Costs, as requirement by its currently effectively tariff mechanism. ANR advises that the filing proposes a negative reservation surcharge adjustment of $(0.021) to its currently effective, firm service Rate Schedules. ANR further advises that it is seeking to modify the currently effective mechanism, to provide for a more effective methodology for the implementation of the true-up mechanism in future filings, and to clarify its intent to include in the true-up calculation the 10% of Above-Market Dakota Costs that are not allocated to firm services.

ANR states that all of its Second Revised Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests must be filed on or before March 10, 1995. 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 application are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5716 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–180–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its Second Revised Volume No. 1 FERC Gas Tariff, the following tariff sheets, with an effective date of March 1, 1995:

Sixth Revised Sheet No. 8
Eighth Revised Sheet No. 9
Eighth Revised Sheet No. 13
Eighth Revised Sheet No. 16
Eighth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its tariff to implement recovery of $10.4 million of costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR Proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2 so as to recover the remaining ten percent (10%). ANR has requested that the Commission accept the tendered sheets to become effective March 1, 1995.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 10, 1995. 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 application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5717 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1297–000]

Black Creek Hydro, Inc.; Notice of Filing

March 3, 1995.

Take notice that on February 15, 1995, Black Creek Hydro, Inc. tendered for filing a Certificate of Concurrence in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 17, 1995. 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. 95–5718 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–22–000]

CNG Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, CNG Transmission Corporation (CNG), pursuant to Section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations, filed the tariff sheets listed below, for inclusion in Second Revised Volume No. 1 of its FERC Gas Tariff:

Fourth Revised Sheet No. 31
Seventh Revised Sheet No. 32
Seventh Revised Sheet No. 33
Fourth Revised Sheet No. 34
Fifth Revised Sheet No. 35
Fifth Revised Sheet No. 36

CNG requests that these tariff sheets be made effective on April 1, 1995. CNG states that the purpose of this filing is to revise CNG's rates to reflect its semi-annual TCRA rate adjustment. CNG submits this filing in compliance with Section 15.1 of the General Terms and Conditions of CNG's FERC Gas Tariff. This filing reduces the transportation costs from CNG's November 14, 1994, filing in Docket No. TM95–2–22, by $3.8 million. As more fully detailed in the attached workpapers, this decrease is mainly because of a reduction in rates by Tennessee Gas Pipeline Company.

CNG further states that copies of the filing were served upon affected customers and interested state commissions, reflected on the service list attached to its filing.

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, D.C., 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 March 10, 1995. 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. 95–5719 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM95–3–32–000 and TM94–4–32–002]

Colorado Interstate Gas Co.; Notice of Tariff Filing

March 3, 1995.

Take notice that on February 28, 1995, Colorado Interstate Gas Company (CIG), filed Eleventh Revised Sheet No. 11 of its FERC Gas Tariff, First Revised Volume No. 1, reflecting a decrease in the quarterly fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.46% to (1.08%) to be effective April 1, 1995.

Take further notice that CIG's February 28, 1995 filing included Third Revised Sheet No. 230 in compliance with the February 15, 1995 Order on Docket No. TM94–4–32–000, *et al* (70 FERC ¶ 61,183), to provide for the use of the three-year average to compute storage fuel usage retention and the most recent twelve months data to compute the transportation fuel usage retention, effective April 1, 1995.

CIG states that copies of this filing have been served on CIG's jurisdictional

customers and public bodies, and that the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

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, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and procedure (18 CFR Sections 385.214 and 385.211). All such motions or protests should be filed on or before March 10, 1995. 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. 95–5720 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–196–000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Columbia Gas Transmission Corporation (Columbia), tendered for filing proposed changes to the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Tenth Revised Sheet No. 25
Tenth Revised Sheet No. 26
Tenth Revised Sheet No. 27
Eleventh Revised Sheet No. 28
Sixth Revised Sheet No. 29
Sixth Revised Sheet No. 30
First Revised Sheet No. 395
First Revised Sheet No. 452
First Revised Sheet No. 453

The proposed tariff sheets bear an issue date of March 1, 1995 and a proposed effective date of April 1, 1995.

Columbia states that this filing comprises Columbia's annual filing pursuant to Section 36, Transportation Costs Rate Adjustment (TCRA), of the General Terms and Conditions (GTC) of Columbia's FERC Gas Tariff, Second Revised Volume No. 1. The first six of the above referenced tariff sheets reflect changes to Columbia's TCRA rates as a result of this filing. First Revised Sheet No. 395 is a modification of GTC Section 20, discounting, in Columbia's FERC Gas Tariff, Second Revised Volume No. 1, to reflect Columbia's implementation of the Commission's change in policy in *Natural Gas Pipeline Company of America,* 69 FERC 61,029 (1994). First Revised Sheet Nos. 452 and 453 reflect revisions to the TCRA provision to also take into account *Natural,* and provide for its administration by separating the TCRA Adjustment into two portions: a Current Operational TCRA Rate and a Current Stranded TCRA Rate. These two components will continue to be calculated in the same manner as the TCRA Adjustment has been. Columbia is requesting a waiver to include certain refunds received in 1995 within the deferral period addressed in this annual filing.

Columbia states that copies of its filing have been mailed to all firm customers and affected state regulatory 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, N.E., Washingtonm, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5721 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–194–000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Columbia Gas Transmission Corporation (Columbia), tendered for filing the following tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 1, 1995:

First Revised Sheet No. 44
First Revised Sheet No. 405

Columbia states that the instant filing represents Columbia's annual filing pursuant to Section 35, Transportation Retainage Adjustment (TRA), of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1. Columbia states that its transportation retainage percentage or factor consists of a current and an unrecovered component for company-use, lost, and unaccounted for quantities. In this filing, Columbia is not adjusting the current component of the transportation retainage factor. The unrecovered component is being adjusted to account for an under recovery of these quantities during the deferral period.

Furthermore, Columbia is requesting a waiver to permit using a 14-month deferral period in calculating the unrecovered component. First Revised Sheet No. 44 sets forth the transportation retainage factors as a result of this filing. First Revised Sheet No. 405 is being filed to correct a typographical error in GTC Section 25.3(d), Gas Quality, to correctly refer to Sheet No. 44.

Columbia states that copies of its filing have been mailed to all firm customers and affected state regulatory 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5722 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–195–000]

Columbia Gulf Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective April 1, 1995:

Fifth Revised Sheet No. 018
Fifth Revised Sheet No. 019

Columbia Gas states that the instant filing represents Columbia Gulf's annual filing pursuant to Section 33, Transportation Retainage Adjustment (TRA), of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Columbia Gulf states that it currently has retainage factors for each of its three zones. Each factor consists of a current and an unrecovered component for company-use, lost, and unaccounted for quantities. In this filing, Columbia Gulf is adjusting the current component of each retainage factor to reflect a change in the estimate for company-use, lost and unaccounted for quantities. The uncovered component for each of the retainage factors is also being adjusted in this filing to account for an over recovery of these quanties during the deferral period.

Furthermore, Columbia Gulf is requesting a waiver to permit using a 14-month deferral period in calculating the unrecovered component.

Columbia Gulf states that copies of its filing have been mailed to all firm customers and affected state regulatory 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, North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5723 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–118–000]

East Tennessee Natural Gas Co.; Notice of Site Visit

March 3, 1995.

On March 9 and 10, 1995, the OPR staff, accompanied by representatives of East Tennessee Natural Gas Company (East Tennessee), will inspect the proposed location of East Tennessee's Roanoke Expansion Project. The proposed facilities would be in Washington County, Virginia and Morgan County, Tennessee.

Parties to the proceeding may attend. Those planning to attend must provide their own transportation. For further information, call John Wisniewski, (202) 208–1073.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5713 Filed 3–8–95; 8:45 am]

BILLING CODE 6718–01–M

[Docket No. TM95–4–34–000]

Florida Gas Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Florida Gas Transmission Company (FGT), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective April 1, 1995, the following tariff sheets:

2nd Revised Eighth Revised Sheet No. 8A
Second Revised Sheet No. 8A.01
1st Revised Original Sheet No. 8A.02
1st Revised Seventh Revised Sheet No. 8B
1st Revised Original Sheet No. 8B.01

FGT states that the instant filing is submitted in conformance with the requirements of Section 27 of its FERC Gas Tariff, Third Revised Volume No. 1, which provides that FGT will file a Fuel Reimbursement Charge Adjustment to be effective each April 1 and October 1, as applicable.

Section 27A of FGT's tariff provides for the submission of workpapers supporting any revisions to the Fuel Reimbursement Charge Percentage at least thirty days prior to the proposed effective date of the adjustment. Further, Section 27C states that the Current Fuel Reimbursement Charge Percentage will be the quotient resulting from fuel used and lost and unaccounted for gas divided by volumes delivered during the six-month period commencing one year prior to the effective date of the Fuel Reimbursement Charge Adjustment.

The ratio of fuel usage and unaccounted for volumes to deliveries for the period April 1, 1994 through September 30, 1994, determined in accordance with Section 27 and reflected on the attached workpaper is 2.89%.

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, D.C. 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. 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. 95–5724 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–188–000]

NorAm Gas Transmission Co.; Notice of Filing

March 3, 1995..

Take notice that on March 1, 1995, NorAm Gas Transmission Company (NGT), tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to become effective April 1, 1995:

First Revised Sheet No. 13

NGT states that the revised tariff sheet is filed in compliance with the Stipulation and Agreement (Stipulation) approved by Commission order in Docket No. RP91–49–000 on March 31, 1992. 58 FERC ¶ 61,359 (1992).

Pursuant to the Stipulation, NGT is making its third annual filing, proposing to continue to hold its CSC rate at $0.03.

Any person desiring to be heard or protest the proposed tariff sheets 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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 10, 1995. 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. 95–5725 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–184–000]

North Penn Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995

Take notice that on March 1, 1995, North Penn Gas Company (North Penn), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Sixteenth Revised Sheet No. 3A, with a proposed effective date of April 1, 1995.

North Penn states that the purpose of the filing is to terminate North Penn's annual take-or-pay surcharge.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective April 1, 1995, as proposed.

North Penn states that copies of the letter of transmittal and all enclosures are being mailed to each of North Penn's affected customers and State Commissions shown on the service list attached to the filing.

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, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. 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. 95–5730 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–178–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858–R.A. surcharges, both of which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Sixteenth Revised Sheet Nos. 50 and 51 to revised these surcharges effective April 1, 1995.

Northern states that copies of this filing were served upon the Company's 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, N.E., Washington, D.C. 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 March 10, 1995. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5726 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–179–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current GSR surcharge which is designed to recover Northern's gas supply realignment costs. Therefore, Northern has filed Seventeenth Revised Sheet Nos. 50 and 51 to revise the GSR surcharge, effective April 1, 1995.

Northern states that copies of this filing were served upon the Company's 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, D.C., 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. All protests will be considered by the Commission in determing the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5727 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–185–000]

Northern Natural Gas Co.; Notice of Proposed Changes In FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the revised tariff sheets set forth in Appendix A to the filing (Revised Tariff Sheets) to effectuate changes in the rates and terms applicable to Northern's jurisdictional service. The overall cost of service has increased approximately $31 million over the costs underlying Northern's current rates.

Northern also is submitting several proposals to enhance service flexibility and operational and economic efficiency on the Northern system. The changes reflected in the Revised Tariff Sheets to be effective April 1, 1995 are required to effectuate the rate increase and to make certain changes to Northern's Order No. 636 tariff, which was implemented by Northern on November 1, 1993, based on Northern's operating experience since that time. The Pro Forma Tariff Sheets reflect further changes to become effective prospectively from the effective date of a settlement or a Commission order on the merits in this proceeding. Northern reserves the right to supplement this Section 4 case with alternative pricing proposals pending the outcome of the Commission's Rulemaking proceeding in Docket No. RM95–6–000.

Northern proposes an effective date of April 1, 1995, for the Revised Tariff Sheets except for changes to Northern's deferred delivery (storage) services, which Northern requests be effective June 1, 1995, the beginning of the cycle period.

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 protest should be filed on or before March 10, 1995. Protests will be considered by the Commission but will not serve to make protestors a party to the proceeding. Copies of Northern's filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5728 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–187–000]

Northwest Pipeline Corp.; Notice of Proposed Change in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing as part of its FERC Gas Tariff the following tariff sheets with a proposed effective date of April 1, 1995:

Third Revised Volume No. 1

Fourth Revised Sheet No. 14
Third Revised Sheet No. 231
Original Sheet No. 231–A
Alternate Fourth Revised Sheet No. 14
Alternate Third Revised Sheet No. 231
Alternate Original Sheet No. 231–A

Original Volume No. 2

Fourteenth Revised Sheet No. 2.1
Alternate Fourteenth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to change fuel use requirements factors (Factors) for Rate Schedules TF–1, TF–2, TI–1, T–1 contained in Third Revised Volume No. 1 and for transportation service rate schedules contained in Original Volume No. 2 of Northwest's FERC Gas Tariff. Factors are determined each year to become effective April 1 pursuant to Section 14.12 of the General Terms and Conditions contained in Northwest's FERC Gas Tariff, Third Revised Volume No. 1, and pursuant to Section 5 of Sheet No. 2.1 in Northwest's FERC Gas Tariff, Original Volume No. 2.

Northwest states that it concurrently submitted another filing on March 1, 1995 with tariff sheets proposing new Factors to become effective April 1, 1995 for Northwest's transportation and storage rate schedules. Northwest states that the preferred and alternate proposals in the instant filing revise the methodology for calculating the Factors.

Under the preferred methodology, Northwest states that it would eliminate its past unrecovered volumetric investment in lost and unaccounted-for gas through a one-time catch-up adjustment to be amortized over a three-year period. Northwest would also propose to remain current prospectively in recovering such gas by projecting lost and unaccounted-for gas expected for each year the tariff provisions will be in effect, as compared to the current method of recovering such gas after the fact on a lag basis. Northwest states that the projection methodology would serve to improve the accuracy of the Factors, and customers would be protected from the consequences of any errors in the projections by the proposed true-up procedure. An alternative to the preferred methodology, which establishes carrying charges to be computed on a volumetric basis and calculated on Northwest's investment in gas purchases to fund lost and unaccounted-for gas, is also proposed by Northwest.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon relevant 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, N.E., Washington, D.C. 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 March 10, 1995. 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. 95–5729 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–176–000]

Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice on February 28, 1995, that Panhandle Eastern Pipe Line Company (Panhandle), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets listed on Appendix A to the filing. The proposed effective date of these revised tariff sheets is April 1, 1995.

Panhandle states that the purpose of this filing is to eliminate from Panhandle's rates the take-or-pay settlement and contract reformation volumetric surcharges and the associated provisions of Section 18.4 of the General Terms and Conditions of Panhandle's tariff which were the subject of Panhandle's filing in Docket No. RP92–118–000. The volumetric surcharge was established in Article VI, Sections 1(a) and 2(a) of Panhandle's Stipulation and Agreement (Settlement) dated July 15, 1992, for a 36-month period commencing April 1, 1992 and terminating on March 31, 1995, and approved by the Commission on August 28, 1992. With the expiration of the approved three year recovery period on March 31, 1995, Panhandle now is proposing to remove the agreed upon 0.31¢ from the current 1.50¢ TOP Volumetric Surcharge, thus reducing the surcharge to 1.19¢. In addition, Panhandle is proposing to cancel Section 18.4 of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1.

Panhandle states that copies of this filing are being served on all customers subject to the tariff sheets, applicable state regulatory agencies, and parties to the proceeding.

Any person desiring to be heard or to protest this 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 10, 1995. 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. 95–5731 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–177–000]

Southern Natural Gas Co.; Notice of GSR Cost Recovery Filing

March 3, 1995.

Take notice that on February 28, 1995, Southern Natural Gas Company (Southern), set forth its revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs

associated with the payment of price differential costs under realigned gas supply contracts or contract buyout costs associated with continuing realignment efforts during the period November 1, 1994 through January 31, 1995. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636. Southern submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the proposed effective date of April 1, 1995.

Sixteenth Revised Sheet No. 15
Sixteenth Revised Sheet No. 17
Sixteenth Revised Sheet No. 18
First Alternate Sixteenth Revised Sheet No. 15
First Alternate Sixteenth Revised Sheet No. 17
Thirteenth Revised Sheet No. 29
Thirteenth Revised Sheet No. 30
Thirteenth Revised Sheet No. 31

Southern submits alternate sheets to comply with the Commission's November 30, 1994 Order requiring Southern to recover its Account No. 858 costs and Southern Energy LNG costs through the same type of quarterly mechanism as the one currently in place for the recovery of Southern's gas supply realignment costs. Southern notes that the instant filing is made without prejudice to Southern's request for rehearing of the November 30, 1994 Order.

Southern states that copies of the filing were served upon Southern's 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1995. 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 Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5732 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–221–000]

Southern Natural Gas Co.; Notice of Request Under Blanket Authorization

March 3, 1995.

Take notice that on February 23, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–221–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point, including measurement and appurtenant facilities for service to South Carolina Pipeline Corporation (SCPC), in Jasper County, South Carolina, under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that SCPC, in turn, would provide natural gas service to South Carolina Electric and Gas Company for service to a new residential retirement community known as Sun City Hilton Head. The estimated cost of construction, it is said, is approximately $178,400 and the Maximum Daily Delivery Quantity would be 1,032 Mcf per day.

Southern states further that the installation of the proposed facilities would have no adverse effect on its ability to provide its firm deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5733 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–197–000]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing certain tariff sheets to Third Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed changes would generate additional jurisdictional revenues of approximately $132 million annually based upon the 12 month period ended November 30, 1994, as adjusted. The proposed effective date of the filing is April 1, 1995.

Transco states that the principal causes of the rate increase are (1) an increase in rate base resulting from additional plant and higher working capital requirements and a reduction in Accumulated Deferred Income Taxes; (2) an increase in operation and maintenance expenses; and (3) an increase in Transco's cost of capital resulting from an increase in the equity component of the capital structure used (this filing is based on the Transco pipeline capital structure) and in the cost of equity from the pre-filed rate of 14.45 percent to the proposed rate of return on equity of 15.25 percent.

Transco states that since its last rate case filing the Commission approved, in a series of orders in Transco's restructuring proceeding under Order No. 636 in Docket Nos. RS92–86 and RP92–137, the basic rate design and cost allocation methods which are reflected in this filing. Specifically, the instant filing reflects, among other things, continuation of the following Commission-approved methods: (1) straight fixed-variable (SFV) rate design for Transco's firm transportation rates; (2) the unbundling of system storage pursuant to order No. 636 reflected in Transco Rate Schedule ESS contract storage service; (3) the roll-in of Transco's Mobile Bay facilities; (4) separately-stated gathering charges; (5) a tracking mechanism to recover costs incurred by Transco on CNG Transmission Corporation in rendering Transco's Rate Schedule GSS service; and (6) a tracking mechanism to recover stranded Account No. 858 costs incurred by Transco under arrangements with upstream pipelines.

Transco states that the instant filing also reflects the continuation of other rate design and cost allocation methodologies which are being litigated in Transco Docket Nos. RP92–137, *et al.*

These methodologies are (1) Transco's IT-feeder rate design; (2) a systemwide cost of service; (3) interruptible transportation (IT) rates designed on a 100 percent load factor basis; (4) Transco's so-called volumetric costs being recovered on the basis of the same charge being applied to each dekatherm of throughput (rather than on a distance-sensitive basis); and (5) a single separately-stated gathering charge applicable to all non-Tilden gathering facilities and a different gathering charge applicable to sue of the Tilden facilities.

Transco states that changes reflected in the instant filing compared to the pre-filed methods in place on the Transco system are principally: (1) elimination of the Non-Gas Demand Charge under Rate Schedule FS; (2) refunctionalization of certain jointly owned transmission facilities to the gathering function pursuant to Commission orders issued since Transco's last rate case filing; (3) elimination of the IT revenue crediting mechanism based upon Transco's allocation of almost $87 million to interruptible transportation and gathering services which reflects the trend of Transco's operating experience under Order No. 636; (4) elimination of a reverse South Georgia adjustment due to the fact that as of September 1995 Transco will have flowed back to ratepayers the entirety of its formerly-overfunded deferred taxes; (5) elimination of revenue credits to cost of service for the transportation of liquefiables (because such transactions are herein reflected as part of the projection of IT throughput); (6) reduced FASB No. 106 expense resulting, in part, from flowback of a regulatory liability created during the Docket No. RP92–137 rate period; and (7) miscellaneous tariff revisions as described in the Statement of Nature, Reasons, and Basis.

Finally, the instant filing proposes on a prospective only basis the following changes to the pre-filed methods: (1) a new Rate Schedule ICTS (Interconnect Transfer Service) that provides short-haul transfer service between pipeline interconnects or third-party facilities connected to TGPL; (2) a new Rate Schedule GMS (Gas Management Service) that provides for the borrowing or parking of gas at designated pooling points; and (3) elimination of the ''at-risk'' certificate condition governing Transco's Mobile Bay facilities. These changes are proposed to be effective prospectively only after Commission approval.

Transco also has included in Statement Q a pro forma tariff sheet reflecting market-based IT rates for non-IT-feeder transactions. If the Commission, in response to interventions in this docket, sets the issue of Transco's IT rate design for hearing in this docket, the pro forma tariff sheet gives notice of Transco's position on IT rate design, i.e., that rates for non-IT-feeder IT service should be marked-based.

Transco states that copies of the filing have been served upon Transco's 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, N.E. Washington, D.C. 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 March 10, 1995. 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 pubic inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5734 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–34–008]

Transwestern Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, 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 date of April 1, 1995:

111th Revised Sheet No. 5
7th Revised Sheet No. 5A.05

On November 23, 1993, Transwestern filed a Stipulation and Agreement (Settlement) to resolve all issues in Docket No. RP93–34–000. On March 30, 1994, the Commission issued an order approving the beforementioned Settlement. The Settlement became effective on April 1, 1994.

Under the terms of the Settlement Transwestern agreed to a four-year phase-in period to reach a Field Area Services (''FAS'') rate that reflects the unbundling resulting from the net allocation to FAS of $84 million of gross plant. As part of the four-year phase-in mechanism under which the costs allocated to FAS are increased, there is a corresponding phase-in under which costs allocated to Transwestern's FTS–1 service from East of Thoreau to California are decreased.

Transwestern states that the purpose of the instant filing is to file tariff sheets in compliance with the terms of the Settlement.

Transwestern also 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, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 10, 1995. 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. 95–5735 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–183–000]

West Texas Gas, Inc.; Notice of Petition for Waiver

March 3, 1995.

Take notice that on February 28, 1995, West Texas Gas, Inc. (WTG), filed with the Federal Energy Regulatory Commission a request for waiver of Sections 154.304 and 154.308 of the Commission's Regulations, to the extent necessary to permit a 15–day extension of time within which to file its Quarterly PGA filing in the referenced docket, which is currently due to be filed on March 1, 1995, to be effective April 1, 1995.

WTG states that because of its small size, WTG has not had a chance to compile all of the information necessary to file WTG's Quarterly PGA filing by March 1. WTG requests that the Commission grant an extension of the filing deadline to March 15, 1995.

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, D.C. 20426 in accordance with § 385.211

and 385.214 of the Commission's Rule and Regulations. All such motions or protests should be filed on or before March 10, 1995. 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. 95–5736 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–2–000]

Williams Natural Gas Co.; Notice of Technical Conference

March 3, 1995.

In the Commission's order issued on February 14, 1995 in the above-captioned proceeding, the Commission ordered that a technical conference be convened to resolve issues raised by the filing.[1] The technical conference to address the issues has been scheduled for March 30, 1995, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5737 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–28–000]

Williams Natural Gas Co.; Notice of Technical Conference

March 3, 1995.

In the Commission's order issued on November 30, 1994 in the above-captioned proceeding, the Commission ordered that a technical conference is convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for March 29, 1995, at 1:00 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5738 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Williams Natural Gas Company, 70 FERC ¶ 61,170 (1995).

[Docket No. RP95–190–000]

Williams Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that Williams Natural Gas Company (WNG), on March 1, 1995, tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of March 31, 1995:

Fourth Revised Sheet No. 9
Third Revised Sheet No. 10

WNG states that this filing is being made pursuant to Section 4 of the Natural Gas Act and Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, WNG proposes to recover approximately $1.2 million in unrecovered purchased gas costs. As provided in Article 14.1, WNG proposes to direct bill such amount to parties who were customers under WNG's former Rate Schedules F, PR(A), PR(B) and P on May 18, 1992 based on each customer's purchases as a percentage of total purchases by all customers under the above rate schedules during the twelve-month period ending September 30, 1993. Each customer's allocated amount is shown on Sheet Nos. 9 and 10. WNG proposes that payment be made in a lump sum or over an amortization period of no more than 36 months as provided by WNG's tariff, with interest determined pursuant to Section 154.67(c) of the Commission's regulations.

WNG states that a copy of its filing was served on all 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 95–5739 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–193–000]

Williston Basin Interstate Pipeline Co.; Notice of Tariff Filing

March 3, 1995.

Take notice that on March 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Williston Basin states that the revised tariff sheets are being filed to make minor tariff modifications and housekeeping changes necessary to correct and clarify its tariff in light of experience gained since implementing Order Nos. 636, et seq. on November 1, 1993.

Williston Basin is requesting that the tariff sheets be made effective on April 1, 1995.

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 385.214). All such motions or protests should be filed on or before March 10, 1995. All such 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 to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5740 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–192–000]

Williston Basin Interstate Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being submitted to revise its Rate Schedule ST–1 to implement a provision whereby customers currently served under Rate Schedule ST–1 which were classified to such Rate Schedule for cost mitigation purposes will be billed under a two part rate structure, including a one part SFV designed reservation rate applicable to the Maximum Daily Delivery Quantity (MDDQ) at all point(s) listed on the applicable Service Agreement.

In addition, Williston Basin states it has revised the Gas Supply Realignment Tariff provisions included as Section 39 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, to bill Rate Schedule ST–1 shippers which were classified to such Rate Schedule for cost mitigation purposes only, the GSR cost surcharge applicable to Rate Schedule FT–1 customers and remove the associated MDDQ from the development of the Rate Schedule ST–1 GSR cost surcharge.

Williston Basin has requested that the Commission accept this filing to become effective April 1, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5741 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–191–000]

Williston Basin Interstate Pipeline Co.; Notice of Tariff Filing

March 3, 1995.

Take notice that on March 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing certain revised tariff sheets to Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being filed pursuant to the Service Agreement applicable to Rate Schedule X–13 service between Williston Basin and Northern States Power Company. The rate for firm transportation hereunder has been restated to reflect the first biennial restatement under the terms of the Service Agreement. The restated rate reflects a reservation charge of $17.56792 per Mcf per month, excluding applicable surcharges.

Williston Basin has requested that the Commission accept this filing to become effective March 1, 1995.

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5742 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2060]

Petition for Reconsideration of Actions in Rulemaking Proceedings

March 6, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed on or before March 24, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Transport Rate Structure and Pricing. (CC Docket No. 91–113)

Number of Petition Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5787 Filed 3–8–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011391–002.

Title: TMM/Tecomar Space Charter and Sailing Agreement.

Parties:

Transportacion Maritima Mexicana, S.A. DE C.V.

Tecomar, S.A. DE C.V.

Synopsis: The proposed amendment adds authority to the Agreement which would permit the parties to discuss rates, charges, classifications, rules, service items, and other matters of mutual concern. Adherence to any agreement reached is voluntary. It also restates the Agreement.

Agreement No.: 203–011490.

Title: Mitsui O.S.K. Lines, Ltd., Nedlloyd Lines B.V. and Orient Overseas Container Line, Inc. Space Charter and Sailing Agreement in the U.S. East Coast-Central America Trades.

Parties:

Mitsui, O.S.K. Lines, Ltd.

Nelloyd Lines B.V.

Orient Overseas Container Line, Inc.

Synopsis: The proposed Agreement authorizes the parties to charter and sub-charter space on each others vessels, and to rationalize sailings in the trade between U.S. Atlantic Coast ports and points and ports and points in Central and South America and the Caribbean. It also permits the parties to discuss rates, terms and conditions of service contracts and tariffs on a voluntary basis.

Agreement No.: 224–200589–003.
Title: Jacksonville Port Authority/Green Cove Maritime, Inc. Terminal Agreement.
Parties:
Jacksonville Port Authority
Green Cove Maritime, Inc.
Synopsis: The proposed amendment provides for annual rate increases to the Agreement.
Agreement No.: 224–200923.
Title: Tri-State Container Freight Station Association Agreement.
Parties:
John A. Steer & Company
Galasso Trucking Service, Inc.
S.T.S. International, Inc.
Rail Head Services Philadelphia
Evans Century Transportation Co.
Eastern America Trans. & Whrs.
Sea Bridge Container Transport, Inc.
Synopsis: The proposed Agreement authorizes the parties to establish a conference and provides for fixing and adherence of rates, charges, practices and conditions of service relating to marine terminal facilities.

By Order of the Federal Maritime Commission.

Dated: March 6, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–5804 Filed 3–8–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

Licensed Number: 2767
Name: Stiebel International Shipping, Inc.
Address: 116 Marlborough, Bloomfield Hills, MI 48302
Date Revoked: January 27, 1995
Reason: Failed to furnish a valid surety bond.

Licensed Number: 3632
Name: Transcontinental Marketing Corporation dba TRAMACO
Address: 7425 No. Mona Lisa Rd., Ste. 4, Tucson, AR 85741
Date Revoked: February 3, 1995
Reason: Failed to furnish a valid surety bond.

Licensed Number: 3641
Name: Kudley Trans-Port Service, Inc.
Address: 1714 Casery Blvd., Jacksonville, FL 32211
Date Revoked: February 4, 1995
Reason: Failed to furnish a valid surety bond.

Licensed Number: 3541
Name: C Port Miami Corporation
Address: 6960 N.W. 186th St., Ste 324, Miami, FL 33015
Date Revoked: February 11, 1995
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–5805 Filed 3–8–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Wells Fargo & Company; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 3, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Wells Fargo Bank (Arizona), National Association, Phoenix, Arizona, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5783 Filed 3–8–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

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. 18a, 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: 021395 AND 022495

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
First Empire State Corporation, Paul E. Scherer, Statewide Funding Corporation	95–0934	02/13/95
First Empire Corporation, Christopher Schmid, Statewide Funding Corporation	95–0935	02/13/95
Argosy Gaming Company, Mr. Steve Urie, Jazz Enterprises, Inc	95–1012	02/13/95
Creighton University, GKH Investments, L.P., GKH Investments, L.P	95–0894	02/14/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 021395 AND 022495—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
K N Energy, Inc., Burlington Resources, Inc., Meridian Oil Hydrocarbons Inc., Meridian Oil Storage	95–0899	02/14/95
Harnischfeger Industries, Inc., Rochling Industrie Verwaltung GmbH, Jagenberg Papiertechnik GmbH and Jagenberg Inc	95–0458	02/15/95
The Hillhaven Corporation, The Hillhaven Corporation, The Hillhaven Corporation	95–0987	02/16/95
Shurgard Storage Centers, Inc., Shurgard Incorporated, Shurgard Incorporated	95–0933	02/17/95
American International Group, Inc., Robert H. Ledbetter, Cobb Retail Associates	95–0938	02/17/95
American International Group, Inc., Stephen H. Whisenant, Cobb Retail Associates	95–0940	02/17/95
Harvest States Cooperative, H.J. Heinz Company, Portion Pac Inc	95–0941	02/17/95
Mitsui & Co., Ltd., H.J. Heinz Company, Portion Pac Inc	95–0950	02/17/95
Apache Corporation, DEKALB Energy Company, DEKALB Energy Company	95–0964	02/17/95
The Parsons Corporation, Sidney Epstein, A. Epstein and Sons International, Inc	95–0991	02/17/95
WHX Corporation, Ohio Coatings Company (Joint Venture), Ohio Coatings Company (Joint Venture)	95–0994	02/17/95
Dong Yang Tinplate Ind. Co., Ltd., Ohio Coating Company (Joint Venture), Ohio Coating Company (Joint Venture)	95–0995	02/17/95
Tostem Corporation, Alumax Inc., Washington Newco and Maryland Newco	95–1010	02/17/95
Mitsui & Co., Ltd., Alumax Inc., Washington Newco and Maryland Newco	95–1011	02/17/95
CPF Acquisition Co., Inc., William H. Kopman, Universal Premium Acceptance Corporation	95–0917	02/21/95
The Superior Gen. & Councilors/Franciscan Sisters Mercy, Oklahoma Orthopedic and Arthritis Foundation, Inc., Oklahoma Orthopedic and Arthritis Foundation, Inc	95–0919	02/21/95
Catholic Healthcare West, Daughters of Charity National Health System, Inc., Daughters of Charity National Health System-West, Inc	95–0936	02/21/95
K–III Communications Corporation, Jonathan Adler, The Adler Group, Inc, and WJA, Inc	95–0973	02/21/95
K–III Communications Corporation, Warren Adler, The Adler Group, Inc., and WJA, Inc	95–0974	02/21/95
The Travelers Inc., Warburg Pincus Investors, L.P., HealthSpring, Inc	95–0975	02/21/95
Metropolitan Life Insurance Company, Warburg Pincus Investors, L.P., HealthSpring, Inc	95–0976	02/21/95
Warburg, Pincus Investors, L.P., The Travelers, Inc., The MetraHealth Companies, Inc	95–0977	02/21/95
The Jaguar fund N.V., Peter Munk, Clark USA, Inc	95–1005	02/21/95
Tiger (a limited partnership), Peter Munk, Clark USA, Inc	95–1009	02/21/95
Credence Systems Corporation, EPRO Corporation, EPRO Corporation	95–1017	02/21/95
Wictor Forss, E.I. DuPont de Nemours and Company, Conoco	95–1018	02/21/95
Svenska Cellulosa Aktiebolaget SCA, Scott Paper Company, Scott Health Care (SHC) Health Care Company (HCC)	95–1021	02/21/95
A. Schulman Inc., J.M. Huber Corporation, J.M. Huber Corporation	95–1027	02/21/95
Fairview Hospital and Healthcare Services, Ebenezer Society, Ebenezer Society	95–1037	02/21/95
Renal Treatment Centers, Inc., Robert I. Falk, Healthcare Corporation	95–1044	02/21/95
Robert I. Falk, Renal Treatment Centers, Inc., Renal Treatment Centers, Inc	95–1045	02/21/95
Consolidated Electrical Distributors, Inc., Hughes Supply, Inc., Hughes Supply, Inc	95–0968	02/22/95
D & K Wholesale Drug, Inc., Krelitz Industries, Inc., Krelitz Industries, Inc	95–1000	02/22/95
Thayer Hotel Investors II L.P., Great Western Financial Corporation, Twinbrook Business Center Incorporated	95–1001	02/22/95
Ricoh Company, Ltd., Savin Corporation, Savin Corporation	95–1029	02/22/95
Ronald W. Burkle, Dodi Family L.L.C., Dodi, Inc	95–1038	02/22/95
National Medical Enterprises, Inc., South Dade Health Care Ventures, L.L.C., South Dade Health Care Ventures, L.L.C	95–0951	02/23/95
South Miami Health System, Inc., South Dade Health Care Ventures, L.L.C., South Dade Health Care Ventures, L.L.C	95–0952	02/23/95
AT&T Corp., LiteSpec Limited Liability Company, LiteSpec Limited Liability Company	95–0966	02/23/95
Ira Leon Rennert, UNR Asbestos-Disease Claims Trust, UNR Industries, Inc	95–1028	02/23/95
California Microwave, Inc., Microwave Networks Incorporated, Microwave Networks Incorporated	95–1007	02/24/95
Arthur W. Epley III, California Microwave, Inc., California Microwave, Inc	95–1008	02/24/95
Holland Chemical International, B.V., Philip M. Segal, Jr., Worth Chemical Corporation	95–1025	02/24/95
American Home Products Corporation, Affymax N.V., Affymax N.V	95–1049	02/24/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–5788 Filed 3–8–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3557]

American Home Products Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair method of competition—in connection with American Home Products Corporation's acquisition of American Cyanamid Company—this consent order requires, among other things, the New Jersey-based corporation to divest its tetanus and diphtheria vaccine business to a Commission-approved buyer; to license Cyanamid's rotavirus vaccine research to a Commission-approved licensee; and to change a previously established licensing agreement to ensure that it does not obtain certain competitively sensitive information. The consent order also prohibits, for ten years, the respondent from acquiring any interest in any entity engaged in the clinical development, manufacture, or sale of tetanus, diphtheria, or rotavirus vaccines in the United States without prior Commission approval.

DATES: Complaint and Order issued February 14, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Claudia Higgins or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Monday, November 28,1994, there was published in the **Federal Register**, 59 FR 60807, a proposed consent agreement with analysis In the Matter of American Home Products Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–5787 Filed 3–8–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951 0002]

Boston Scientific Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, Boston Scientific Corporation, a Massachusetts-based manufacturer and marketer of catheters, to proceed with the proposed acquisitions of Cardiovascular Imaging Systems, Inc., and SCIMED Life Systems, Inc., but would require the respondent to grant a non-exclusive license to a specified package of patents and technology related to the manufacture, production and sale of intravascular ultrasound (IVUS) imaging catheters to the Hewlett-Packard Company or another Commission-approved licensee. When the consent becomes final, the license would have to be granted within ten days to Hewlett-Packard or within six months to another licensee. In addition, the consent agreement would require the respondent to obtain Commission approval, for ten years, before acquiring an interest greater than one percent in a company engaged in researching, developing or manufacturing IVUS catheters for sale in the United States.

DATES: Comments must be received on or before April 10, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Howard Morse or Robert Tovsky, FTS/S–3627, Washington, D.C. 20580. (202) 326–2949 or 326–2634.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisitions by Boston Scientific Corporation of Cardiovascular Imaging Systems, Inc. and SCIMED Life Systems, Inc., and it now appearing that Boston Scientific Corporation, hereinafter sometimes referred to as ''proposed respondent,'' is willing to enter into an agreement containing an order to license or divest certain assets, and to cease and desist from making certain acquisitions, and providing for other relief:

It Is Hereby Agreed by and between proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed respondent Boston Scientific Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1 Boston Scientific Place, Natick, Massachusetts, 01760–1537.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to license, divest and cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to license, divest and cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute

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[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that is has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered that, as used in this Order, the following definitions shall apply:

A. ''Respondent'' or ''Boston Scientific'' means Boston Scientific Corporation, its predecessors, successors, assigns, subsidiaries, divisions, and groups and affiliates controlled by Boston Scientific, their successors and assigns, and the directors, officers, employees, agents, and representatives of each.

B. ''CVIS'' means Cardiovascular Imaging Systems, Inc.

C. ''SCIMED'' means SCIMED Life Systems, Inc.

D. ''Commission'' means the Federal Trade Commission.

E. ''CVIS Acquisition'' means the acquisition by Respondent of CVIS voting securities that is the subject of an Agreement and Plan of Merger and Reorganization entered into on or about August 31, 1994.

F. ''SCIMED Acquisition'' means the acquisition of SCIMED voting securities that is the subject of an Agreement and Plan of Merger entered into on or about November 8, 1994.

G. ''IVUS Catheters'' means intravascular ultrasound catheters, intracardiac ultrasound catheters, removable imaging cores used in intravascular or intracardiac ultrasound imaging, and intravascular imaging guidewires.

H. ''IVUS Technology Portfolio'' means:

1. all rights of Boston Scientific, CVIS and SCIMED under United States and foreign patents and patent applications filed in any country relating to IVUS Catheters, including rights under patents issued in the future in any country based upon patent applications filed, or inventor's certificates and invention disclosures made, on or before the License Date, and rights under all substitutions, continuations, continuations-in-part, divisions, renewals, reissues and extensions based on said patents and patent applications, including but not limited to the right to manufacture, use, sell, or offer for sale for any purpose or application any product suitable for use as an IVUS Catheter;

2. all trade secrets, technology and know-how of CVIS and SCIMED relating to IVUS Catheters, including but not limited to, books and records, the results of research and development efforts, filings with the United States Food and Drug Administration, scientific and clinical reports, designs, manuals, drawings, and design, material and equipment specifications and any know-how used by CVIS or SCIMED in conjunction with the research and development, manufacturing or marketing of IVUS Catheters;

3. a copy of the IVUS Catheter customer lists of Boston Scientific and CVIS.

I. ''SCIMED IVUS Technology'' means all assets of SCIMED relating to IVUS Catheters, including but not limited to:

1. United States and foreign patents and patent applications filed in any country relating to IVUS Catheters;

2. all trade secrets, technology, and know-how of SCIMED relating to IVUS Catheters, including but not limited to, books and records, the results of research and development efforts, filings with the United States Food and Drug Administration, scientific and clinical reports, designs, manuals, drawings, and design, material and equipment specifications and any know-how used by SCIMED in conjunction with the research and development, manufacturing or marketing of IVUS Catheters; and

3. all IVUS Catheter prototypes.

J. ''License Date'' means the date on which the IVUS Technology Portfolio is licensed following Commission approval pursuant to Paragraph II or Paragraph V of this Order.

K. ''Licensee'' means the person to whom the IVUS Technology Portfolio is licensed pursuant to Paragraph II or Paragraph V of this Order.

L. ''IVUS Consoles'' means instruments used to deploy IVUS Catheters and to convert into display images signals transmitted by IVUS Catheters.

II

It Is Further Ordered that:

A. Within six (6) months of the date this Order becomes final, Respondent shall, absolutely and in good faith, grant pursuant to Paragraph II.B of this Order, at no minimum price and with no continuing royalties, a perpetual, non-exclusive license of the IVUS Technology Portfolio, together with the right to grant exclusive sub-licenses to any part of such IVUS Technology Portfolio, the right to grant exclusive sub-licenses to manufacture or sell any product pursuant to such IVUS Technology Portfolio, and the right to have IVUS Catheters manufactured and sold on its behalf by any person.

B. Respondent shall license the IVUS Technology Portfolio.

1. to Hewlett-Packard Company, within ten days after the date this Order becomes final, pursuant to, and in accordance with, the February 21, 1995 agreement between Respondent and Hewlett-Packard Company, which agreement is in Confidential Appendix II; or

2. to a person that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The purpose of the license is to create an independent competitor in the development, production and sale of IVUS Catheters and to remedy the lessening of competition resulting from the CVIS Acquisition and the SCIMED Acquisition as alleged in the Commission's Complaint.

C. For a period of three (3) years after the date this Order becomes final, upon reasonable notice and reasonable request from the Licensee, Boston Scientific shall provide to the Licensee information, technical assistance and advice sufficient to effect the transfer to the Licensee of the IVUS Technology Portfolio, and to enable the Licensee to obtain all necessary United States Food and Drug Administration approvals or certifications obtained by CVIS or Boston Scientific with respect to, and to enable the Licensee to manufacture, all IVUS Catheters manufactured by CVIS at any time during the period commencing twelve (12) months prior to the date this Order becomes final and extending through the License Date. Upon reasonable notice and reasonable request from the Licensee, Boston Scientific shall also provide to the Licensee consultation with knowledgeable employees of Boston Scientific and training at the Licensee's facility for a period of time, not to exceed two (2) years, sufficient to satisfy the Licensee's management that its personnel are adequately trained in the design and manufacture of IVUS

Catheters. Respondent may require reimbursement from the Licensee for all its direct out-of-pocket expenses incurred in providing the services required by this Paragraph II.C of this Order.

D. Respondent shall not restrict any person employed by CVIS or SCIMED prior to the date this Order becomes final from accepting employment with the Licensee or, following employment of any such person by the Licensee, communicating to the Licensee any intellectual property included in the IVUS Technology Portfolio.

E. Pending the licensing of the IVUS Technology Portfolio, Respondent shall take such actions as are necessary to maintain the viability and marketability of the IVUS Technology Portfolio and to prevent the destruction, removal, wasting, deterioration, or impairment of the IVUS Technology Portfolio.

F. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this Order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as specified in the Agreement to Hold Separate.

III

It Is Further Ordered that Respondent shall supply to the Licensee, for such period as the Licensee may request, up to three (3) years, on reasonable commercial terms and provisions, at Boston Scientific's cost or at such lower price as Boston Scientific and the Licensee may otherwise agree, for distribution and sale by the Licensee, such quantities and types of IVUS Catheters as may be requested by the Licensee, upon reasonable notice, from among the various types manufactured and sold by Boston Scientific during the period of such supply arrangement.

IV

It Is Further Ordered that, for a period of five (5) years from the date this Order becomes final, Respondent shall not offer, renew, extend or enter into any exclusive contract or agreement, or enforce directly or indirectly any exclusivity provision thereof, with any manufacturer of IVUS Consoles, relating to the development, manufacture or distribution of such units or relating to compatibility between the IVUS Consoles produced by such manufacturer and IVUS Catheters produced by any person.

V

It Is Further Ordered that:

A. If Boston Scientific has not licensed the IVUS Technology Portfolio as required by Paragraph II of this Order, the Commission may appoint a trustee to license the IVUS Technology Portfolio and to divest CVIS together with the SCIMED IVUS Technology. In the event that the Commission or the Attorney General brings an action pursuant to 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Boston Scientific shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

B. If a trustee is appointed by the commission or a court pursuant to Paragraph V of this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions, divestitures, and licensing. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to license the IVUS Technology Portfolio and to divest CVIS together with the SCIMED IVUS Technology.

3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the licensing or divestiture required by this Order.

4. The trustee shall have—

a. six (6) months from the date the Commission approves the trust agreement described in Paragraph V.B.3. to accomplish the licensing of the IVUS Technology Portfolio, which license shall be subject to the prior approval of the Commission. If, however, at the end of this six (6)-month period, the trustee has submitted a licensing candidate or believes that licensing can be achieved within a reasonable time, the licensing period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; and

b. if the trustee has not licensed the IVUS Technology Portfolio within the six (6)-month period described in Paragraph V.B.4.a., above, the trustee shall have an additional twelve (12) months to accomplish the divestiture of CVIS together with the SCIMED IVUS Technology, which divestiture shall be subject to the prior approval of the Commission. If, however, at the end of this twelve (12)-month period, the trustee has submitted a divestiture candidate or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the IVUS Technology Portfolio, CVIS and the SCIMED IVUS Technology and to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the licensing or divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to license or divest at no minimum price. The licensing or divestiture shall be made in the manner and to a Licensee or acquirer approved by the Commission; provided, however, if the trustee receives bona fide offers from more than one entity, and if the Commission determines to approve more than one such entity, the trustee shall license or divest, as applicable, to the entity selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the licensing or divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's licensing the IVUS Technology Portfolio, or divesting CVIS and the SCIMED IVUS Technology.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph V.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the licensing or divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the IVUS Technology Portfolio, CVIS or the SCIMED IVUS Technology.

12. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the licensing or divestiture.

VI

It Is Further Ordered that, for a period of ten (10) years from the date this Order becomes final, Respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than one (1) percent of the stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in the research, development, or manufacture of IVUS Catheters for sale in the United States;

B. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture of IVUS Catheters for sale in the United States; or

C. Acquire exclusive rights to any patent or other technology relating to the manufacture or sale of IVUS Catheters in the United States

Provided, however, that this Paragraph VI shall not apply to the acquisition of products or services in the ordinary course of business.

VII

It Is Further Ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondent has fully complied with the provisions of Paragraphs II and V of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of the Order, including a description of all substantive contacts or negotiations for the licensing and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning licensing.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VIII

It Is Further Ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure of Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

IX

It Is Further Ordered that Respondent, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on five day's notice to Respondent, shall permit any duly authorized representative(s) of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Without restraint or interference from Respondent, to interview Respondent's officers, directors, or employees, who may have counsel present, regarding such matters.

X

It Is Further Ordered that this order shall terminate twenty (20) years from the date this order becomes final.

Appendix I

Agreement To Hold Separate

[Docket No. C– , File No. 951–0002]

Agreement To Hold Separate

This Agreement to Hold Separate (the ''Hold Separate'') is by and among the Boston Scientific Corporation (''Boston Scientific''), a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 1 Boston Scientific Place, Natick, Massachusetts, 01760–1537, and the Federal Trade Commission (the ''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* (collectively, the ''Parties'').

Premises

Whereas, on August 31, 1994, Boston Scientific entered into an agreement with Cardiovascular Imaging Systems, Inc. (''CVIS'') providing for the acquisition (hereinafter the ''CVIS

Acquisition'') of the voting securities of CVIS; and

Whereas, CVIS, with its principal office and place of business at 595 North Pastoria Avenue, Sunnyvale, California 94086, manufactures and sells intravascular ultrasound catheters and high frequency imaging units for use with such catheters; and

Whereas, on November 8, 1994, Boston Scientific entered into an agreement with SCIMED Life Systems, Inc. (''SCIMED'') providing for the acquisition (hereinafter the ''SCIMED Acquisition'') of the voting securities of SCIMED; and

Whereas, SCIMED, with its principal office and place of business at One SCIMED Place, Maple Grove, Minnesota 55311–1566, is conducting research and development with respect to IVUS Catheters; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (''Consent Order''), the Commission will place it on the public record for a period of at least thirty (30) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of CVIS, during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the 30-day public comment period), divestiture resulting from any proceeding challenging the legality of the CVIS Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the CVIS Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of CVIS and the Commission's right to seek a viable competitor to Boston Scientific; and

Whereas, the Commission has filed suit in the United States District Court for the District of Columbia (Civil Action No. 1:95 CV00198) seeking a preliminary injunction with respect to the CVIS Acquisition pending an administrative trial, and the Commission has authorized its staff to seek a preliminary injunction with respect to the SCIMED Acquisition pending an administrative trial; and

Whereas, the purpose of the Hold Separate is to:

(i) Preserve CVIS as a viable and competitive business, independent of Boston Scientific, and engaged in the research and development, manufacture and sale of IVUS Catheters and IVUS Consoles, pending final acceptance or withdrawal of acceptance of the Consent Order by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules;

(ii) Preserve CVIS as a viable and competitive business, independent of Boston Scientific, and engaged in the research and development, manufacture and sale of IVUS Catheters and IVUS Consoles, pending licensing of the IVUS Technology Portfolio pursuant to Paragraph II of the Consent Order or pending licensing of the IVUS Technology Portfolio or divestiture of CVIS and the SCIMED IVUS Technology pursuant to Paragraph V of the Consent Order; and

(iii) Remedy any anticompetitive effects of the CVIS Acquisition; and

Whereas, Boston Scientific's entering into this Hold Separate shall in no way be construed as an admission by Boston Scientific that the CVIS Acquisition or the SCIMED Acquisition is illegal or would have any anticompetitive effects; and

Whereas, Boston Scientific understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate.

Now, Therefore, the Parties agree, and in consideration of the Commission's agreement that, unless it determines to reject the Consent Order, it will not seek further relief from Boston Scientific with respect to the CVIS Acquisition or the SCIMED Acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate and the Consent Order, once it becomes final, and in the event that the required licensing is not accomplished, to appoint a trustee to seek divestiture of CVIS and the SCIMED IVUS Technology, pursuant to the Consent Order, as follows:

1. Boston Scientific agrees to execute and be bound by the attached Consent Order.

2. If the Commission accepts the Consent Order for public comment, Boston Scientific and the Commission will move to stay the action for preliminary injunction pending in United States District Court with respect to the CVIS Acquisition until such time as the Commission withdraws such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules or finally accepts and issues the Consent Order; and, in the event the Commission finally accepts the Consent Order, the Commission will move to dismiss the preliminary injunction action.

3. The terms ''IVUS Catheters,'' ''IVUS Consoles,'' ''IVUS Technology Portfolio,'' and ''SCIMED IVUS Technology'' have the same definitions as in the Consent Order;

4. Boston Scientific agrees that from the date this Hold Separate is accepted until the earliest of the dates listed in subparagraphs 4.a, 4.b, 4.c or 4.d, it will comply with the provisions of paragraph 5 of this Hold Separate:

a. May 26, 1995, if the Commission has not made the Consent Order final or withdrawn its acceptance of the Consent Order by that date;

b. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules;

c. the date the licensing required under Paragraph II or V of the Consent Order is completed.

d. the date the divestiture required under Paragraph V of the Consent Corder is completed.

5. Boston Scientific shall hold CVIS as it is constituted on the date the CVIS Acquisition is consummated, separate and apart on the following terms and conditions:

a. CVIS, as defined in Paragraph I.B. of the Consent Order, shall be held separate and apart and shall be operated independently of Boston Scientific (meaning here and hereinafter, Boston Scientific excluding CVIS and excluding all personnel connected with CVIS as of the date this Hold Separate is signed) except to the extent that Boston Scientific must exercise direction and control over CVIS to assure compliance with this Hold Separate or with the Consent Order.

b. Boston Scientific shall not exercise direction or control over, or influence directly or indirectly, CVIS, the New Board (as defined in subparagraph 5.d), or any of its operations or businesses; provided, however, that Boston Scientific may exercise only such direction and control over CVIS as is necessary to assure compliance with this Hold Separate or with the Consent Order and provided further that Boston Scientific may (a) direct CVIS to consent that patent litigation between Boston Scientific and CVIS be stayed; (b) direct CVIS to consent to acceptance of SCIMED's position in the arbitration proceeding pending between CVIS and SCIMED; and (c) direct that Boston Scientific and CVIS enter into a non-exclusive, royalty-free cross-license of all their IVUS Catheter patents, provided however no such cross-license shall limit rights conferred to CVIS except to the extent it imposes identical limits on rights conferred to Boston

Scientific, and provided further that no such cross-license shall exclude any Boston Scientific patents relating to IVUS Catheters; and following execution of such cross-license, direct that the patent litigation between Boston Scientific and CVIS be dismissed.

c. Boston Scientific shall maintain the marketability, viability and competitiveness of CVIS, and shall not take such action that will cause or permit the destruction, removal, wasting, deterioration or impairment of CVIS, except in the ordinary course of business and except for ordinary wear and tear, and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of CVIS.

d. Boston Scientific shall elect a three-person Board of Directors for CVIS (the ''New Board''). The New Board shall consist of two persons knowledgeable about IVUS Catheters, one of whom shall be named Chairman of the New Board, and who shall remain independent of Boston Scientific and competent to assure the continued viability and competitiveness of CVIS, and one New Board Member who is also an officer, agent or employee of Boston Scientific (the Boston Scientific New Board Member''). Except for the Boston Scientific New Board Member, Boston Scientific shall not permit any director, officer, employee or agent of Boston Scientific also to be a director, officer, employee or agent of CVIS. Each Board member shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions of this Hold Separate.

e. Except as required by law and except to the extent that necessary information is exchanged in the course of evaluating and consummating the CVIS Acquisition, defending investigations or litigation, obtaining legal advice, or complying with this Hold Separate or the Consent Order, Boston Scientific shall not receive or have access to, or the use of, any material confidential information of CVIS or the activities of the New Board, not in the public domain. Boston Scientific may receive on a regular basis from CVIS aggregate financial information necessary and essential to allow Boston Scientific to file financial reports, tax returns and personnel reports. Boston Scientific and CVIS may also exchange confidential information, subject to appropriate confidentiality agreements, pursuant to agreements between CVIS and Boston Scientific for joint research or contract manufacture, on arms-length commercial terms, to the extent such agreements would be permissible between competitors under the antitrust laws. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. (''Material confidential information,'' as used in this Hold Separate, means competitively sensitive or proprietary information not independently known to Boston Scientific from sources other than CVIS or the New Board, as applicable, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets).

f. Except as permitted by this Hold Separate, the New Board member appointed by Boston Scientific (''Boston Scientific New Board Member'') who is also an officer, agent, or employee of Boston Scientific shall not receive any CVIS material confidential information and shall not disclose any such information obtained through his or her involvement with CVIS to Boston Scientific or use it to obtain any advantage for Boston Scientific. The Boston Scientific New Board Member shall participate in matters that come before the New Board only for the limited purpose of considering any capital investment of over one million dollars ($1,000,000), approving any proposed budget and operating plans, authorizing dividends and repayment of loans consistent with the provisions hereof, reviewing any material transactions described in paragraph 5.g, and carrying out Boston Scientific's responsibilities under Hold Separate and the Consent Order. Except as permitted by the Hold Separate, the Boston Scientific New Board Member shall not participate in any other matter.

g. All material transactions, out of the ordinary course of business and not precluded by paragraph 5 hereof, shall be subject to a majority vote of the New Board (as defined in paragraph 5.d hereof).

h. Boston Scientific shall not change the composition of the New Board unless the Chairman of the New Board consents, or unless it is necessary to do so in order to assure compliance with this Hold Separate or with the Consent Order. The Chairman of the New Board shall have the power to remove members of the New Board for cause and to require Boston Scientific to appoint replacement members of the New Board. Boston Scientific shall not change the composition of the management of CVIS except that the New Board shall have the power to remove management employees for any legal reason. If the Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraph 5.d. Boston Scientific shall circulate to the management employees of CVIS and appropriately display a notice of the Hold Separate and the Consent Agreement at a conspicuous place at all CVIS offices and facilities.

i. All earnings and profits of CVIS shall be retained separately by CVIS. If necessary, Boston Scientific shall provide CVIS with sufficient working capital to operate at current rates of operation, upon commercially reasonable terms.

j. Should the Federal Trade Commission seek in any proceeding to compel Boston Scientific to divest itself of CVIS or SCIMED or to compel Boston Scientific to divest any assets or businesses of CVIS and SCIMED that it may hold, or to seek any other injunctive or equitable relief, Boston Scientific shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the CVIS Acquisition or the SCIMED Acquisition. Boston Scientific also waives all rights to contest the validity of this Hold Separate.

6. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request and five day's notice to Boston Scientific, Boston Scientific shall permit any duly authorized representative(s) of the Commission:

a. Access during the office hours of Boston Scientific and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Boston Scientific or CVIS relating to compliance with this Hold Separate;

b. Without restraint or interference from Boston Scientific, to interview Boston Scientific's or CVIS' officers, directors or employees, who may have counsel present, regarding any such matters.

7. This agreement shall not be binding until approved by the Commission.

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission (''the Commission'') has accepted, for public comment, from Boston Scientific Corporation (''Boston Scientific''), an agreement containing a consent order. This agreement has been placed on the public record for thirty days for

reception of comments from interested persons.

Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisitions by Boston Scientific of Cardiovascular Imaging Systems, Inc. (''CVIS'') and SCIMED Life Systems, Inc. (''SCIMED''). The Commission's proposed complaint alleges that Boston Scientific and CVIS each develop, produce and market intravascular ultrasound (''IVUS'') catheters for use throughout the world. It also alleges that SCIMED has been working on the development of these products, has manufactured and tested prototypes, and is a likely entrant into the IVUS catheter market. IVUS catheters are used in the diagnosis and treatment of artery disease.

The agreement containing a consent order would, if finally accepted by the Commission, settle charges that the acquisitions may substantially lessen competition in the production and sale of IVUS catheters in the United States. The Commission has reason to believe that the acquisitions would have anticompetitive effects and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The Commission has filed suit in the United States District Court for the District of Columbia to enjoin Boston Scientific's proposed acquisition of CVIS. That action is stayed by Commission acceptance of the proposed order for public comment, and would be dismissed in the event that the Commission makes final the order.

The Commission's proposed complaint in this matter alleges that Boston Scientific's proposed acquisition of CVIS would eliminate ongoing competition, result in substantially increased concentration, and allow Boston Scientific to exercise market power. It further alleges that Boston Scientific's proposed acquisition of SCIMED would eliminate ongoing competition between Boston Scientific and SCIMED in IVUS catheter research and development, and would eliminate SCIMED as a potential entrant into the IVUS catheter market. The effect of these acquisitions, the complaint alleges, is likely to be higher prices for IVUS catheters and diminished product innovation.

The order accepted for public comment contains provisions that would require Boston Scientific to license to Hewlett-Packard Company or to another person that receives the prior approval of the Commission a broad package of patents and technology relating to IVUS catheters. This package would include rights to Boston Scientific's IVUS catheter patents, as well as the patents and technology that Boston Scientific proposes to acquire from both CVIS and SCIMED.

The order also would require Boston Scientific to provide, on request by the licensee, certain technical assistance sufficient to facilitate the licensee's use of the licensed technology and patents to enter the IVUS catheter market. For IVUS catheters of the type currently offered by CVIS, this requirement includes assistance for a period of three years in manufacturing and obtaining regulatory approvals. It also requires Boston Scientific to allow the licensee, for a period of two years, to consult with Boston Scientific employees for training in the design and manufacture of IVUS catheters. The order would also require Boston Scientific to permit CVIS' and SCIMED's current employees to take employment with the licensee. In order to further facilitate entry into IVUS catheters, the order would prohibit Boston Scientific from entering into exclusive contracts with manufacturers of IVUS consoles that would exclude a new IVUS catheter producer from the market.

The order would further provide for an interim supply agreement between Boston Scientific and the licensee, to extend for a period of three years, which covers the time that such a licensee could be expected to require to enter the IVUS catheter market with commercial products that have obtained regulatory approval.

Under the terms of the order, Boston Scientific must, if it does not license Hewlett-Packard, grant a license to a Commission approved licensee within six months of the date the order becomes final. If Boston Scientific fails to do so, the Commission may appoint a trustee to license the IVUS patents and technology, and, if necessary, to divest CVIS together with SCIMED's IVUS technology and patents.

A hold separate agreement made a part of the consent requires Boston Scientific, until it accomplishes the licensing required by the order, or until the trustee accomplishes the licensing or divestiture required by the order, or until May 26, 1995 if the order is not made final by that date, to hold separate and preserve all of the assets and businesses acquired from CVIS.

For a period of ten years from its effective date, the order would also prohibit Boston Scientific from acquiring, without prior Commission approval, more than one percent of the stock of, or any other interest in, any company engaged in the research, development, or manufacture for sale of IVUS catheters in the United States, assets used or previously used for the manufacture of IVUS catheters for sale in the United States, or exclusive rights to patents or other technology used for the manufacture or sale of IVUS catheters in the United States.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part, in Boston Scientific Corporation, File 951–0002

Today the Commission decides to publish for comment a proposed consent order to settle concerns arising from the proposed acquisitions by Boston Scientific of CVIS and SciMed. Although I have reason to believe that the proposed acquisitions would be unlawful and the proposed consent agreement appears likely to provide an appropriate remedy for the violations, two provisions of the proposed settlement are troubling: one is the negotiated agreement to curtail the public comment period; the second is the fixed date for the expiration of the hold separate agreement.

Although Boston Scientific may be able to show good reason why the public comment period under Section 2.34 of the Commission's Rules of Practice, 16 C.F.R. § 2.34, should be curtailed from the usual 60 days, it has made no attempt to do so. Instead, without any proffered justification, Boston Scientific and the staff have negotiated a 30-day public comment period. It should go without saying that the requirements of the Commission's Rules of Practice should not be a matter for negotiation.[1] The Commission's

[1] The rules have the force and effect of law and should not be taken lightly. Departing from the rules without justification leads to inequality of treatment and leaves the Commission open to charges of arbitrary and capricious decisionmaking.

The duration of the public comment period is not a trivial matter. *Cf.* the Tunney Act, 15 U.S.C. § 16,

acceptance of the negotiated term creates an unfortunate precedent. Future respondents are likely to seek comparable concessions, increasing both the public and private costs of law enforcement negotiations. To the extent that the order reduces the length of the period for public comment and no good cause for that departure from the Commission's rules having been shown, I dissent.

Nor should the commission condone fixing a date certain for termination of the hold-separate agreement.[2] This means that to preserve its options, the Commission must decide the matter by a date certain, which trivializes the decisionmaking process. The Commission can expedite matters and has done so when appropriate,[3] as consistent with a careful review of the merits. A willingness to act expeditiously is quite different from acquiescing in advance to a ''drop dead date'' that may leave the Commission unable fully to consider issues and conditions as they may then exist or as they may be revealed during the public comment period.[4]

[FR Doc. 95–5790 Filed 3–8–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–411]

The H.D. Lee Co., Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1965 consent order—which settled allegations that the respondent discriminated in the offering of advertising or promotional payments to its customers in connection with the resale of its wearing apparel—and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued May 1, 1963.* Set aside order issued February 14, 1995.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, FTC/S–2115, Washington, DC 20580. (202) 326–2861.

SUPPLEMENTARY INFORMATION: In the Matter of The H.D. Lee Co., Inc. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1526; 25 U.S.C. 13)

In the Matter of The H.D. Lee Co., Inc., a corporation; Order Reopening Proceeding and Setting Aside Order.

[Docket No. C–411]

Commissioners: Janet D. Steiger, Chairman Mary L. Azcuenaga, Roscoe B. Starek, III, Christine A. Varney.

On October 26, 1994, The Lee Apparel Company, Inc., formerly The H.D. Lee Co., Inc. (''Lee'') filed its Petition To Reopen and Set Aside Consent Order (''Petition'') in this matter. Lee requests that the Commission set aside the 1965 consent order in this matter pursuant to Rule 1.51 of the Commission's Rules of Practice, 16 C.F.R. § 2.51, and the *Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders,* issued July 22, 1994, published at 59 Fed. Reg. 45,286–92 (Sept. 1, 1994) (''Sunset Policy Statement''). In the Petition, Lee affirmatively states that it has not engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on December 15, 1994. No comments were received.

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that ''effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years.'' [1] The Commission's order in Docket No. C–411 became final on August 9, 1965, and has been in effect for more than twenty-nine years. Consistent with the Commission's July 22, 1994, Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. C–411.

Accordingly, it is ordered that this matter be, and it hereby is, reopened:

It is further ordered that the Commission's order in Docket No. C–411 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–5791 Filed 3–8–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951 0012]

Service Corporation International; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition—in connection with Service Corporation International's acquisition of Uniservice Corporation—this consent agreement, accepted subject to final Commission approval, would require, among other things, the Texas corporation to divest, to a Commission-approved acquirer, the Uniservice Corporation assets and businesses in Medford, Oregon, within twelve months or transfer responsibility for the divestiture to a trustee appointed by the Commission, and to obtain prior Commission approval, for a period of ten years, before acquiring any interest in funeral establishments or cemeteries in Jackson County, Oregon.

DATES: Comments must be received on or before May 8, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: K. Shane Woods or Charles A. Harwood, FTC/Seattle Regional Office, 915 Second Ave., Suite 2806, Seattle, WA. 98174. (206) 220–6350.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will

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which requires a 60-day public comment period for Department of Justice antitrust consent orders. The Tunney Act also provides that the 60-day public comment period ''shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest.'' 15 U.S.C. § 16(d).

[2] A hold separate agreement preserves a viable and competitive business, independent of the acquirer, in part to ensure the Commission's ability to require a divestiture. When the hold separate agreement expires, the parties are free to consummate their transaction.

[3] Expedited treatment for one respondent means moving that matter to the front of the queue. The Commission ordinarily has required a showing that such treatment is warranted.

[4] The Commission and the public interest would be disserved to the extent that useful comments from the public are abbreviated or perhaps not even submitted because of the shortened public comment period.

* The consent order was made effective on August 9, 1965.

[1] *See* Sunset Policy Statement, 59 FR at 45,289.

be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Service Corporation International, a corporation. File No. 951–0012.

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the acquisition of the voting securities of Uniservice Corporation by Service Corporation International, SCI Oregon Funeral Services, Inc., and UC Acquisition Corp. (collectively, ''SCI''), and it now appearing that SCI, hereinafter sometimes referred to as ''proposed respondent,'' is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts, and providing for other relief:

It is hereby agreed by and between proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that

1. Proposed respondent Service Corporation International is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. ''Respondent'' or ''SCI'' means Service Corporation International, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Service Corporation International, their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. ''Commission'' means the Federal Trade Commission.

C. ''Funerals'' means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony concerning the deceased at which ceremony the body is present; this group of services ordinarily includes, but it not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

D. ''Funeral establishment'' means the Assets and Businesses of a facility that provides funerals.

E. ''Cemetery services'' means the provision of plots of land for, and the services associated with, the final disposition of human remains by burial.

F. ''Cemetery'' means the Assets and Businesses of a facility that provides cemetery services.

G. ''Cremation'' means the incineration of human remains.

H. ''Crematory'' means the Assets and Businesses of a facility that performs cremations.

I. ''Assets and Businesses'' include all assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, cemetery or crematory, including but not limited to, the following:

1. all right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

2. all right to serve as directors on the Board of the Siskiyou Memorial Park;

3. all vendor lists, management information systems and software used on-site, and all catalogs, sales promotion literature and advertising materials, except that SCI may delete from such materials the Uniservice name, trademark or other identification;

4. all machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

5. all right, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bids and performance bonds), supplies, sales representatives, distributors, agents,

personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. all right, title and interest in the trade name of each funeral establishment, cemetery or crematory;

7. all right, title and interest in the books, records and files pertinent to any of the Properties to be Divested; and

8. a license to use the trade name ''Carillon'' in connection with the final disposition of cremains, a license to use the trademark ''Life Centered Funeral Services'' in connection with the sale of funerals, and a license to use the trademark ''Life Trust'' in connection with the sale of pre-need contracts, but in each case only in Medford and its environs.

J. ''Properties to be Divested'' means all of the Assets and Businesses of the following funeral establishment, cemeteries and crematories:

1. Perl Funeral Home, 426 W. 6th Street, Medford, OR 97501–2713
2. Perl With Siskiyou Funeral Service, 2100 Siskiyou Boulevard, Medord, OR 97504–8048
3. Siskiyou Memorial Park (cemetery), 2100 Siskiyou Boulevard, Medford, OR 97504–8048
4. Siskiyou Memorial Park (crematory), 2100 Siskiyou Boulevard, Medford, OR 95704–8048

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve months of the date this order becomes final, the Properties to be Divested, including resigning as directors of the Siskiyou Memorial Park and appointing individuals specified by the acquirer or acquirers to fill the vacancies created by those resignations; provided, however, that if the acquirer or acquirers choose not to acquire the Assets and Businesses of the crematory at 2100 Siskiyou Boulevard, because the acquirer or acquirers do not need such assets to engage in the business of providing funerals and cemetery services, respondent shall not be required to divest such assets; and provided further that if the acquirer or acquirers choose not to acquire any of the licenses described in Paragraph I I. 8 of this order, respondent shall not be required to divest such asset or assets.

B. Respondent shall divest the Properties to be Divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Properties to be Divested is to ensure the continued use of the Properties to be Divested in the same business in which the Properties to be Divested are engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the properties to be Divested, respondent shall take such actions as are necessary to maintain the viability and marketability of the Properties to be Divested and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Properties to be Divested except for ordinary wear and tear.

D. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as respondent has divested all the Properties to be Divested as required by this order.

III

It is further ordered that:

A. If SCI has not divested, absolutely and in good faith and with the Commission's prior approval, the Properties to be Divested within twelve months of the date this order becomes final, the Commission may appoint a trustee to divest the Properties to be Divested. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, SCI shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III A of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent and its counsel of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Properties to be Divested.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Properties to be Divested or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the

Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Properties to be Divested.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Properties to be Divested.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the sale of funerals or cemetery services in Jackson County, Oregon; or

B. Acquire any assets used for or used in the previous two years for (and still suitable for use for) the sale of funerals or cemetery services in Jackson County, Oregon.

Provided, however, that this Paragraph IV shall not apply to new facilities constructed or developed by respondent.

V

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs II and III of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture as required by this order.

B. One year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph IV of this order.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VII

It is further ordered that, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

Appendix I—Agreement To Hold Separate

In the matter of Service Corporation International, a corporation. File No. 951–0012.

This Agreement to Hold Separate (''Agreement'') is by and between Service Corporation International (''SCI''), a corporation organized and existing under the laws of the State of Texas, with its principal executive offices located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission (''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et. seq. (collectively, ''Parties'').

Premises

Whereas, on or about October 5, 1994, SCI entered into an Agreement and Plan of Merger with Uniservice Corporation (''Uniservice''), in which (1) UC Acquisition Corp., a wholly-owned subsidiary of SCI, would be merged into Uniservice, and (2) Uniservice shareholders would receive cash ''Acquisition''); and

Whereas, both SCI and Uniservice own interests in funeral establishments that provide funerals, cemeteries that

provide cemetery services and crematories that provide cremations to consumers; and

Whereas, the Commission is now investigating the Acquisition to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (''SCI/Uniservice Consent Agreement''), the Commission must place the SCI/Uniservice Consent Agreement on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the status quo ante and holding separate the assets and businesses of certain Uniservice funeral establishments, a cemetery and a crematory (''Hold Separate Assets'') listed in Exhibit A attached hereto and made a part hereof until the divestitures contemplated by the SCI/Uniservice Consent Agreement have been made, divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and

Whereas, the purposes of this Agreement are to: (1) preserve the Hold Separate Assets as viable independent businesses pending the divestitures described in the SCI/Uniservice Consent Agreement; (2) preserve the Commission's ability to require the divestitures of the funeral establishments, a cemetery and a crematory as specified in the SCI/Uniservice Consent Agreement; and (3) remedy any anticompetitive aspects of the Acquisition; and

Whereas, SCI's entering into this Agreement shall in no way be construed as an admission by SCI that the Acquisition is illegal; and

Whereas, SCI understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that at the time it accepts for public comment that proposed order in the SCI/Uniservice Consent Agreement it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the SCI/Uniservice Consent Agreement, it will not seek further relief from SCI with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the SCI/Uniservice Consent Agreement to which it is annexed and made a part, and the order, once it becomes final, and in the event that the required divestitures are not accomplished, to appoint a trustee to seek divestiture of the Hold Separate Assets pursuant to the SCI/Uniservice Consent Agreement, as follows:

1. SCI agrees to execute and be bound by the SCI/Uniservice Consent Agreement.

2. SCI shall hold the Hold Separate Assets separate and apart from the date this Agreement is accepted until the first to occur of (a) ten business days after the Commission withdraws its acceptance of the SCI/Uniservice Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules or (b) the date the divestitures required by the order contained in the SCI/Uniservice Consent Agreement are accomplished. SCI's obligation to hold the Hold Separate Assets separate and apart shall be on the following terms and conditions:

a. SCI shall hold separate and apart the Hold Separate Assets.

b. Except as provided herein and as is necessary to assure compliance with this Agreement and the Consent Order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.

c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability. During the term of this Agreement, SCI shall provide the Hold Separate Assets with the same or better quality of support services, including without limitation, payroll processing, accounting, management information systems, and computer support, as Uniservice provided to the Hold Separate Assets prior to the acquisition.

d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.

f. SCI shall maintain separate financial and operating records and shall prepare separate quarterly and annual financial statements for the Hold Separate Assets and shall provide the Commission with such statements for each funeral establishment, cemetery and crematory within ten days of their availability.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, SCI shall not receive or have access to, or the use of, any of the Hold Separate Assets' material confidential information not in the public domain, except as such information would be available to SCI in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. (''Material confidential information,'' as used herein, means competitively sensitive or proprietary information not independently known to SCI from sources other than Uniservice, and includes but is not limited to pre-need customer lists, prices quoted by suppliers, or trade secrets.)

h. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.

i. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business.

3. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of the shares of Uniservice stock that SCI may acquire, or to compel SCI to divest any assets or businesses of Uniservice that it may hold, or seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the early termination of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. SCI also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this

agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

b. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

This agreement shall not be binding until approved by the Commission.

Exhibit A

Hold Separate Assets

1. Perl Funeral Home, 426 W. 6th Street, Medford, OR 97501–2713
2. Perl With Siskiyou Funeral Service, 2100 Siskiyou Boulevard, Medford, OR 97504–8048
3. Siskiyou Memorial Park (cemetery), 2100 Siskiyou Boulevard, Medford, OR 97504–8048
4. Siskiyou Memorial Park (crematory), 2100 Siskiyou Boulevard, Medford, OR 97504–8048

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has provisionally accepted an agreement containing a proposed consent order with Service Corporation International (''SCI''), and has placed the proposed consent on the public record for sixty (60) days. Anyone interested in the proposed order may comment on it during this time. After sixty (60) days, the Commission will again review the agreement and any comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed consent order.

The proposed consent order stems from SCI's proposed acquisition of certain assets and businesses of Uniservice Corporation (''Uniservice''). According to the proposed complaint, this acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the markets for funerals and perpetual care cemetery services in Medford, Oregon, and its immediate environs.

The proposed consent order would remedy this alleged violation by requiring that SCI either divest the Uniservice assets and businesses in this region within one (1) year (Order Paragraph II.A) or transfer responsibility for divestiture to a trustee appointed by the Commission (Order Paragraph III). Uniservice's crematory and trade names are among these assets and businesses because they may be important to a buyer's competitive viability in the markets for funerals or perpetual care cemetery services, but SCI's obligations with regard to them would cease if the buyer does not wish to purchase them. However divestiture is accomplished, SCI could sell only to an acquirer or acquirers approved in advance by the Commission (Order Paragraphs II.B and III.B.2).

Pending divestiture, the proposed order would preserve the status quo in two respects. First, to preserve the properties to be divested, SCI must maintain the viability and marketability of the properties and protect them from harm (Order Paragraph II.C). Second, to preserve competition between SCI and the properties to be divested, SCI must hold the properties separate from SCI's operations (Order Paragraph II.D).

In the remainder of the order, SCI agrees for ten (10) years to obtain prior approval from the Commission before acquiring any interest in funeral establishments or cemeteries in Jackson County, Oregon (Order Paragraph IV), report to the Commission concerning its efforts to divest and comply with the prior approval requirement (Order Paragraph V), notify the Commission of any changes in SCI that might affect its compliance with the order (Order Paragraph VI), and permit Commission representatives to review documents and interview employees to ensure compliance with the order (Order Paragraph VII).

The purpose of this analysis is to assist public comment on the proposed order. It is not an official interpretation of the order or the accompanying settlement and is not intended to modify their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–5792 Filed 3–8–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Tentative Schedule of Meetings for 1995

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 1995. At the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. The IOM recommended that the agency publish an annual tentative schedule of its meetings in the **Federal Register**. In response to that recommendation, FDA is publishing its annual tentative schedule of meetings.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report, the IOM recommended that FDA adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**. FDA has implemented this recommendation. A tentative schedule of forthcoming meetings will be published annually in the **Federal Register**. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. The schedule is tentative and amendments to this notice will not be published in the **Federal Register**. FDA will, however, publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, announcing the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 1995:

Committee name	Dates of meetings
OFFICE OF THE COMMISSIONER	
Board of Tea Experts	February 27–28
Science Board to the Food and Drug Administration	June 27–28
	October 24–25
National Task Force on AIDS Drug Development	January 19
	February 6–7 (subcommittee meeting; Drug Discovery Issues)
	February 23–24
	June 1–2
	September 21–22
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH	
Allergenic Products Advisory Committee	March 10
	May 18–19
	November 20–21
Biological Response Modifiers Advisory Committee	April 10–11
	July 13–14
	November 13–14
Blood Products Advisory Committee	March 15
	March 23–24
	June 22–23
	September 28–29
	December 14–15
Vaccines and Related Biological Products Advisory Committee	January 26–27
	March 17
	April 26–27
	July 6–7
	October 26–27
CENTER FOR DRUG EVALUATION AND RESEARCH	
Anesthetic and Life Support Drugs Advisory Committee	January 17–18
	July 10–11
	November 13–14
Anti-Infective Drugs Advisory Committee	April 20–21
	September 21–22
Antiviral Drugs Advisory Committee	January 11–12 (joint meeting with Nonprescription Drugs Advisory Committee)
	March 30–31 (subcommittee meeting; Immunosuppressive Drugs)
	April 3–4
	June 12–13
	October 19–20
Arthritis Advisory Committee	March 27–28 (joint meeting March 28, with Nonprescription Drugs Advisory Committee)
	May 25–26
	September 18–19
	December 4–5
Cardiovascular and Renal Drugs Advisory Committee	February 23–24
	June 1–2
	October 19–20
Dermatologic and Ophthalmic Drugs Advisory Committee (formerly Dermatologic Drugs Advisory Committee).	
	April 27–28
	November 3–4
Drug Abuse Advisory Committee	May 2–3
	August 2–3
	December 4–5
Endocrinologic and Metabolic Drugs Advisory Committee	January 19–20
	February 23–24
Fertility and Maternal Health Drugs Advisory Committee	June 29–30
Gastrointestinal Drugs Advisory Committee	July 13–14
Generic Drugs Advisory Committee	June 14–15
	September 28–29
Medical Imaging Drugs Advisory Committee	June 22–23
Nonprescription Drugs Advisory Committee	January 11–13 (joint meeting January 11–12 with Antiviral Drugs Advisory Committee)
	March 27–28 (joint meeting with Arthritis Advisory Committees)
	July 13–14
	September 28–29
	November 16–17
Oncologic Drugs Advisory Committee	February 14

Committee name	Dates of meetings
	June 8–9
	September 18–19
	December 4–5
Peripheral and Central Nervous System Drugs Advisory Committee	June 5–6
	September 18–19
	December 4–5
Psychopharmacologic Drugs Advisory Committee	February 6
	April 24–25
	July 17–18
	October 16–17
Pulmonary-Allergy Drugs Advisory Committee	April 13–14
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION	
Food Advisory Committee	February 22 (subcommittee meeting)
	May 8–9
	August 14–15
	November 6–7
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH	
Device Good Manufacturing Practice Advisory Committee	June 6–7
Medical Devices Advisory Committee	
Anesthesiology and Respiratory Therapy Devices Panel	January 20
	April 21
	September 8
	November 17
Circulatory System Devices Panel	May 8–10
	August 14–15
	December 11–12
Clinical Chemistry and Clinical Toxicology Devices Panel	April 6–7
	July 27–28
	September 25–26
Dental Products Panel	April 3–5 (Plaque subcommittee meeting)
	April 18–20
	August 8–10
	August 15–17 (Plaque subcommittee meeting)
	December 4–6 (Plaque subcommittee meeting)
	December 5–7
Ear, Nose, and Throat Devices Panel	April 20–21
	July 20–21
	October 19–20
Gastroenterology-Urology Devices Panel	January 20
	April 21
	July 20–21
	October 19–20
General and Plastic Surgery Devices Panel	July 18–19
General Hospital and Personal Use Devices Panel	July 17–18
Hematology and Pathology Devices Panel	June 9
	September 22
Immunology Devices Panel	March 31
	June 23
	September 15
	December 1
Microbiology Devices Panel	April 27–28
Neurological Devices Panel	September 14–15
Obstetrics-Gynecology Devices Panel	April 24–25
	July 20–21
	October 23
Ophthalmic Devices Panel	January 26
	July 20–21
	October 19–20
Orthopedic and Rehabilitation Devices Panel	June 12
Radiological Devices Panel	March 6
	June 19
	September 11
	December 11
National Mammography Quality Assurance Advisory Committee	January 23–25
	April 24–26
	July 17–19
	October 16–18
Technical Electronic Product Radiation Safety Standards Committee	No meetings planned
CENTER FOR VETERINARY MEDICINE	
Veterinary Medicine Advisory Committee	May 10–11
	October 18–19

Committee name	Dates of meetings
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH	
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee).	February 13–14
Science Board to the National Center for Toxicological Research	May 9

Dated: March 2, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–5824 Filed 3–8–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services

Administration Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of April 1995:

Name: Advisory Committee on Infant Mortality.

Date & Time: April 6–7, 1995, 9:00 a.m.

Place: Embassy Row Hotel, 2015 Massachusetts Ave., NW., Washington, DC 20037.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; how best to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People: 2000: National Health Promotion and Disease Prevention Objectives.*

Agenda: Topics that will be discussed include: Presentation on Quality Assurance in Managed Care and Medicaid Waiver Programs; updates on the Healthy Start Program; Welfare Reform; Prenatal Care Issues; and swearing in of new Committee members.

Anyone requiring information regarding the Committee should contact Dr. Peter van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18–44, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2204.

Persons interested in attending any portion of the meeting should contact Ms. Kerry P. Nesseler, Maternal and Child Health Bureau, Health Resources and Services Administration, Telephone (301) 443–2204.

Name: National Commission on Allied Health.

Date & Time: April 17–18, 1995, 8:00 a.m.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 920–3230.

The meeting is open to the public.

Purpose: The National Commission on Allied Health shall: (1) make recommendations to the Secretary of Health and Human Services, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives, with respect to: (A) The supply and distribution of allied health personnel throughout the United States; (B) current and future shortages or excesses of allied health personnel, particularly in medically underserved and rural communities; (C) priority research needs within the allied health professions; (D) appropriate Federal policies relating to the matters described in subparagraphs (A) through (C), including policies concerning changes in the financing of undergraduate and graduate allied health programs, changes in the types of allied health education, and the appropriate Federal role in the development of a research base in the allied health professions; (E) appropriate efforts to be carried out by health care facilities, schools and programs of allied health, and professional associations with respect to the matter referred to in subparagraph (A), including efforts for changes in undergraduate and graduate allied health education programs, and private support for research initiatives; (F) deficiencies and needs for improvements in existing data bases concerning the supply and distribution of training programs for allied health in the United States and steps that should be taken to eliminate such deficiencies; and (G) problems, and recommendations for the resolution of such problems, relating to the roles and functions of professionals within the allied health fields and other fields such as medicine and dentistry; and (2) encourage entities providing allied health education to conduct activities to voluntarily achieve the recommendations of the Commission.

Agenda: The agenda includes review by the Commission members of the Final Report incorporating materials from the four Committees (education, data, research, and workforce) and white papers; presentation of cross-cutting issues and final recommendation; discussion of issues and recommendations with professional associations, educators, licensing boards, third-party payers, consumer groups, and others.

Anyone requiring information regarding the Committee should contact Mr. Neil H. Sampson, Executive Secretary, National Commission on Allied Health, Bureau of Health Professions, Health Resources and Services Administration, room 8–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6853.

Name: National Advisory Council on Migrant Health.

Date and Time: April 22–23, 1995—8:00 a.m.

Place: Doubletree Hotel, 201 Marquette, NW., Albuquerque, NM 87102, 505/247–3344.

The meeting is open to the public.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The agenda includes a overview of Council general business activities and priorities. In addition, the Council will review and discuss the 1995/96 National Advisory Council on Migrant Health Recommendations.

The Council meeting is being held in conjunction with the National Association of Community Health Centers, Annual Migrant Health Conference, April 24–27, 1995.

Anyone requiring information regarding the subject Council should contact Susan Hagler, Migrant Health Program, Staff Support to the National Advisory Council on Migrant Health, Bureau of Primary Care, Health Resources and Services Administration, 4350 East West Highway, Room 7A6–1, Rockville, Maryland 20857, Telephone (301) 594–4302.

Name: National Advisory Council on Nurse Education and Practice.

Date and Time: April 27, 1995—8:30 a.m. to 5:00 p.m.

Place: Woodmont Room, Crown Plaza Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Date and Time: April 28, 1995—8:30 a.m. to 3:00 p.m.

Place: Conference Room E, 3rd Floor, B Wing, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the Public 8:30 a.m.–5:00 p.m., April 27 and on April 28 from 8:30 a.m.–10:30 a.m. and from 1:00 p.m. for the remainder of the meeting.

Closed April 28, 10:30 a.m.–1:00 p.m.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nursing Education and Practice Improvement Amendments of 1992 (P.L. 102–148). The Council also performs final review of selected grant applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: Agenda items for the meeting will cover announcements, considerations of minutes of the previous meeting, the reports of the Administrator, Health Resources and

Services Administration, the Director, Bureau of Health Professions, the Director, Division of Nursing, and staff reports. The council will also meet in breakout groups to discuss current issues related to nurse education and practice.

The meeting will be closed to the public on April 28, 10:30 a.m. to 1:00 p.m. for review of grant applications for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact R. Margaret Truax, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5786.

Agenda Items are subject to change as priorities dictate.

Dated: March 3, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–5693 Filed 3–8–95; 8:45 am]

BILLING CODE 4160–15–P

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New Routine Use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we are issuing public notice of our intent to establish a new routine use applicable to the system of records entitled Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058. Under agreement with participating States, the proposed routine use will allow SSA to disclose Social Security numbers assigned to newborn children to the State in which the births are registered.

We invite public comment on this publication.

DATES: We filed a report of a new routine use with the Chairman, Committee on Government Reform and Oversight of the House of Representatives, the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on February 28, 1995. The routine use will become effective as proposed, without further notice, on April 18, 1995, unless we receive comments on or before that date which would warrant preventing the routine use from taking effect.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. (FAX number: 410/966–0869). All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Thomas E. Price, Social Insurance Specialist, Confidentiality and Disclosure Branch, Office of Disclosure Policy, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–6011.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Routine Use

More than four million children are born each year in the United States. The Social Security Administration (SSA) has encouraged application for, and assignment of, Social Security account numbers (SSN) to children at birth since 1989. To that end, SSA's Enumeration at Birth (EAB) program allows parents of newborn infants in most States to request an SSN as part of the State's birth registration process. When the EAB program is not used, parents can apply for a child's SSN for income tax purposes at a local SSA field office. State bureaus of vital statistics (BVS) accumulate the birth registration information received from hospitals and periodically send SSA an electronic file with the data needed to assign SSNs to the individuals in the file. SSA processes the file, assigns the SSNs, and sends an SSN card for each newborn to the child's parents.

Under the EAB program, SSA does not send the child's SSN to the State BVS unless the parents have agreed. Seven States now ask for parental consent to allow the child's SSN to become part of the birth record.

The proposed routine use would permit SSA to send the SSNs of newborns, and as a one time disclosure, the SSNs of children born since December 31, 1990, to the State BVS in which a birth is recorded without having to secure parental consent. The SSN would become part of the confidential portion of the birth record. Parents would also be given the option of requesting that their child's SSN not be included in the birth record.

States could use these SSNs as the primary identifying numbers in administering public health and income maintenance programs and in statistical research and evaluation projects. Public health program uses of the SSNs would include, but are not limited to, establishing public immunization registries, ensuring complete birth record registration by matching vital records with neonatal test results, conducting studies of factors contributing to infant mortality by linking birth and death records, and evaluating the efficacy of intervention programs such as the Women, Infants and Children (WIC) nutrition program, ''Healthy Start'' or other health maintenance programs. Income maintenance program purposes for which the States could use the SSNs include verifying the identity of applicants for services to families and children.

In all research and statistical studies involving record linkages with other data bases, the SSNs provided under this routine use would serve as the primary matching key, but would not be released for public use. Once the records are linked and a data set created, the personal identifying information (including SSNs) is usually removed. The resulting data set is used for aggregate analysis. Personal identifiers are retained in the data set only when they are determined to be necessary to the outcome of the study by an Institutional Review Board (IRB). Internal IRBs review all proposals for health research on human subjects in institutions conducting such research. IRBs also examine proposed protocols of investigations to determine if any unwarranted harm to individuals would result from the use of identifying data.

One benefit of the proposed new routine use is the potential value of the SSN to statewide Childhood Immunization Registries. Ensuring that all children complete the recommended series of immunizations (14 to 15 doses of vaccines by the second birthday) is the main goal of immunization programs. Although approximately 95% of all children in the United States begin the recommended series of immunizations, only about half complete the series by two years of age, a critical period for childhood disease prevention.

Statewide immunization information systems are a partial response to the problem of incomplete immunizations. Evaluating the immunization status of individuals is difficult because roughly 40% of children receive their immunizations from two or more providers and many parents do not

maintain accurate records. In a joint effort, State and Federal agencies are working together to create, in each State, a statewide childhood immunization registry which contains, for each individual, not the details of the immunization history, but the location of the immunization information system that contains the history.

In such a system, immunization details would be maintained locally by providers themselves in their own data systems. Subject to applicable privacy safeguards and requirements, including the consent of parents or guardians when legally required, a statewide record system would provide a means for exchanging immunization information between providers when (and only when) necessary, transferring immunization histories when individuals move from one State to another, and assessing the immunization status of the State and nation. Using the SSN as the primary identifying record number would facilitate the process and lower the cost of creating and operating a national network of coordinated statewide immunization registries. To ensure that the registries contain a complete census of preschool children for the purposes described in the routine use proposal, SSA will, on a one time, retroactive basis, provide the participating States' BVSs with the SSNs of children born after December 31, 1990.

SSA discloses information from its systems of records to certain entities that use the information for a purpose that is compatible with the purpose for which SSA collects it. Such disclosures may include providing an individual's correct SSN to an entity which has either no record of the individual's SSN or an incorrect one, or verifying only the fact that an entity has an individual's correct SSN. In the case of State BVSs, SSA would provide the correct SSN or verify correct SSNs under the proposed routine use.

The proposed routine use will read as follows:

To State vital records and statistics agencies, the SSNs of newborn children for administering public health and income maintenance programs, including conducting statistical studies and evaluation projects.

We are not publishing in its entirety the notice of the system of records to which we are adding the new routine use statement. A notice of that system, the Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058, was last published in the **Federal Register** at 60 FR 2144, January 6, 1995.

II. Compatibility of Proposed Routine Use

We are proposing the changes discussed above in accordance with the Privacy Act of 1974 (5 U.S.C. 552a(a)(7), (b)(3), and (e)(11)) and our disclosure regulation (20 CFR 401.310).

As discussed above, the Privacy Act permits us to disclose information about individuals without their consent for a routine use, i.e., for a purpose that is compatible with the purpose for which we collected the information. Consistent with the Privacy Act, under 20 CFR 401.310 we may disclose information under a routine use for administering our programs, for income or health maintenance programs of other agencies, and for epidemiological and similar research. SSA assigns SSNs to children as personal identifiers for efficient administration of the Social Security Act (Act), based in part on section 205(c)(2)(B)(i)(IV) of the Act, which authorizes SSA to take affirmative measures to assure that SSNs are assigned to below school age children at the request of their parents or guardians, and for helping detect and deter the illegal conduct described in section 208(a)(7) of the Act. States have authority under their own laws to create and maintain State registries of births. They have a compelling interest in protecting the integrity of their birth registries and in preventing birth certificate fraud. The internal use by States of SSNs for identification purposes, efficient administration of health and income maintenance programs, and statistical studies is compatible with the purposes for which SSA assigns and maintains SSNs and, thus, meets the criteria for the establishment of a routine use under the Privacy Act and the regulation.

III. Effect of the Proposal on Individual Rights

As discussed above, the proposed new routine use will permit SSA to send the SSNs of newborns to State BVSs in which the births are recorded. The SSN would thus become part of the confidential portion of the birth record and would be available only for State use in health and income maintenance administration and research. It would not appear on the public portion of the record, the birth certificate. Strict protection of the confidentiality of the SSN by the State is required by Federal law. SSA will follow all statutory and regulatory requirements for disclosure. Agreements between SSA and the States will govern access to the SSNs and will incorporate the required statutory and regulatory safeguards. In addition, the agreements will include a provision that requires States to notify parents that they may request that their child's SSN be removed from the birth record. Thus, we do not anticipate that the proposed disclosure to the States will have any adverse effect on the privacy or other rights of individuals.

Dated: February 28, 1995.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 95–5632 Filed 3–8–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–95–3897]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before April 10, 1995. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its

proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 2, 1995.

Kay Weaver,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Customer Service Initiative Questionnaire.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: Complainants and respondents to Fair Housing cases will be interviewed as part of Fair Housing and Equal Opportunity's response to Executive Order part of Fair Housing and Equal Opportunity's response to Executive Order 12862, ''Setting Customer Service Standards.'' This order sets customer standards to ensure that the Federal Government is providing the highest quality of service possible. The overall plan provides a comprehensive framework of customer satisfaction studies to determine the kind and quality of services the customers want and their satisfaction level with existing services.

Form Number: None.

Respondents: Individual or Households.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Questionnaire	350		1		.25		88

Total Estimated Burden Hours: 88.

Status: New.

Contact: Leon Garrett, HUD, (202) 708–2740; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 2, 1995.

[FR Doc. 95–5801 Filed 3–8–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–95–3898]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before April 10, 1995. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice list the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1995.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Land Sales Registration, Purchaser's Revocation Rights, Sales Practices and Standards, and Formal Procedures and Rules of Practice.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Interstate Land Sales Full Disclosure Act requires certain subdivision developers to register with the Department of Housing and Urban Development or to operate under certain exemptions. The addition of the Multiple Site Subdivision Exemption will alleviate certain developers of subdivisions, unique in nature, from complying with registration requirements.

Form Number: None.

Respondents: Individuals or Household and Businesses or Other For-Profit.

Report Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,230		10.7		1.43		18,913

Total Estimated Burden Hours: 18,913.

Status: Extension with changes.

Contact: Maurice D. Gulledge, HUD, (202) 708–0502; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 27, 1995

[FR Doc. 95–5802 Filed 3–8–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management (BLM)

[AA–810–1820–01]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paper Work Reduction Act

The proposal for 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 and related forms may be obtained by contracting the Bureau's clearance officer at the telephone listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance office and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone (202) 395–7340, with copies to Anges Sutphin, BLM NPR Team, Mail Stop 2464, 1849 C Street NW., Washington, DC 20240.

Title: BLM's Generic Customer Satisfaction Surveys and Focus Groups

Abstract: Annually, millions of individuals, and thousands of groups and businesses, contact the Bureau of Land Management by mail, in person, or by telephone to obtain information and/or products or services. The collections will obtain information for determining the level of satisfaction, customers values, and areas where improvements could be made in providing products and services by the Bureau of Land Management from the various customer segments and groups

Bureau Form Number: None

Frequency: On occasions, annually

Description of Respondents: Individuals; local, county, and state governments; Indian Alottees and Tribes; businesses and for-profit organizations, Federal Agencies or employees, non-profit institutions, small businesses and organizations

Estimated Time of Completion: 30 minutes

Annual Responses: 15000

Annual Burden Hours: 7500 hours

Bureau Clearance Officer: Mae Bowman (202) 452–5011.

Dated: January 10, 1995.

Nina Rose Hatfield,

Assistant Director Business and Fiscal Services.

[FR Doc. 95–5762 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–84–M

[CA–020–510–10–B039; CACA–31406, NVN–57250]

Notice of Availability of a Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior, Susanville District Office, California.

ACTION: Notice of Availability of a Draft Impact Statement (DEIS).

SUMMARY: The Bureau of Land Management (BLM) and the California Public Utilities Commission (CPUC) have prepared a draft Environmental Impact Report/Statement (EIR/S) for the Alturas 345 Kilovolt (KV) transmission line project proposed by Sierra Pacific Power Company (SPPCo) in BLM application number CACA–31406. The draft EIR/S has been prepared to satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

The BLM and CPUC believe, subject to public comment, the approval of the proposed project, with appropriate mitigation measures, has the potential to significantly impact the environment. The draft EIR/S includes an evaluation of the proposed project. The draft EIR/S assesses the environmental impacts of the approval, construction, operation and maintenance of a 345KV overhead electric power transmission line approximately 164 miles long, from the vicinity of Alturas, California through Modoc, Lassen, and Sierra Counties, California, through Washoe County, Nevada to the vicinity of Reno, Nevada. The proposed project would affect Federal, State and private lands. The proposed project also includes the construction of two new electrical substations, one northwest of Alturas and one in Sierra County, California, just west of Border Town, Nevada, and the expansion of SPPCo's existing North Valley Road Substation.

The impact analysis in the draft EIR/S includes the identification of feasible mitigation measures and alternatives to the proposed project, which, if incorporated into the Project, would avoid or minimize impacts.

The draft EIR/S has been placed in the public files of the CPUC and the BLM, and is available for public inspection at:

California Public Utilities Commission, Central Files, 505 Van Ness Avenue, San Francisco, CA 94102, (415) 703–2045

Bureau of Land Management, Susanville District Office, 705 Hall Street, Susanville, CA 96130, (916) 257–5381

Copies of the DEIR/S are available for inspection at BLM offices in Alturas and Susanville, California, in Carson City, Nevada, and Washington, DC.; at the Modoc National Forest in Alturas and the Toiyabe National Forest in Sparks, NV; at public libraries in Alturas, Susanville and Reno, and at the City Hall in Loyalton. Copies have also been sent to interested Federal, State and local agencies and interested groups. An Executive Summary of the key issues and impacts addressed in the EIR/S will be available upon request.

DATES AND ADDRESSES: Any person wishing to comment on the draft EIR/S may do so. Comments should be filed as soon as possible, but must be received no later than May 3, 1995. Written comments on the draft EIR/S must reference CPUC Application No. 93–11–018 and BLM Application No. CACA–31406. Comments on the draft EIR/S and request for the Executive summary should be addressed to: Julie Halligan/Peter Humm, CPUC/BLM, c/o Aspen Environmental Group, 30423 Canwood Street, Suite 218, Agoura Hills, CA 91301.

In addition to asking for written comments, the public is invited to attend any of the public workshops and hearings that will be held at the times and locations listed below. The public workshops will be informal and will serve to help affected communities understand the project and the draft EIR/S and its findings.

The CPUC and BLM will hold public hearings near the end of the public review period to receive oral comments on the draft EIR/S. The hearings will be conducted before an Administrative Law Judge. A court reporter will record each hearing so that any comments will be accurately entered into the public record.

Locations and schedules for the workshops and hearings are:

	Workshops	Hearings
Alturas, CA, City Hall, 200 North Street	Monday, 3/13/95, 6 p.m	Monday, 4/17/95, 6 p.m.
Susanville, CA, Monticola Club, 140 S. Lassen St	Tuesday, 3/14/95, 6 p.m	Tuesday, 4/18/95, 6 p.m.
Loyalton, CA, Loyalton High School, 700 Fourth Street	Wednesday, 3/15/95, 6 p.m	Wednesday, 4/19/95, 6 p.m.
Reno/Sparks, NV, Best Western, Airport Plaza Hotel, 1981 Terminal Way, Reno	Thursday, 3/16/95, 6 p.m	Thursday, 4/20/95, 6 p.m.

FOR FURTHER INFORMATION CONTACT: This Federal Notice of Availability of Draft EIR/S is issued by the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130. For further information write to the District Manager or call Peter Humm, BLM Project Manager, at (916) 257–0456.

Dated: February 28, 1995.

Herrick E. Hanks,

District Manager.

[FR Doc. 95–5694 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–40–M

Bureau of Land Management

[WY–040–05–1310–01]

Texaco's Stagecoach Draw Unit; Wyoming; Availability of Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft environmental impact statement (EIS).

SUMMARY: The Bureau of Land Management (BLM) announces the availability of Texaco's Stagecoach Draw Draft EIS analyzing the environmental consequences of a proposed natural gas development and production operation in the Stagecoach Draw Unit approximately 7 miles southwest of Farson, Wyoming, Sweetwater County. The project area encompasses 23,575 acres within portions of Townships 22, 23, and 24 north, ranges 107 and 108 North.

DATES: Comments on the Draft EIS will be accepted for 45 days following the date that the Environmental Protection Agency (EPA) publishes their Notice of Availability in the **Federal Register**. The EPA notice is expected to be published on March 10, 1995. There are presently no plans to hold a public hearing on the Texaco Stagecoach Draw Unit Draft EIS because of apparent lack of substantial environmental controversy concerning the proposed project. Reviewers are encouraged to visit the local BLM offices in Cheyenne and Rock Springs, Wyoming and talk with the Managers about any concerns. If enough people indicate a desire to testify by returning the tear-out sheet provided in the Draft EIS, a public hearing(s) will be scheduled. Information on the hearing(s) will be published in state and local newspapers and other media sources, and direct mailing to the recipients of the Draft EIS to give the public enough notice.

ADDRESSES: Comments on the Draft EIS should be sent to Bureau of Land Management, Bill McMahan (Project Coordinator), P.O. Box 1869, Rock Springs, WY 82902–1869.

SUPPLEMENTARY INFORMATION: The Draft EIS analyzes a proposed action, one development alternative, and the no action alternative. Texaco USA proposes to develop a 23,575 acre natural gas field by drilling 72 wells on an average spacing of 320 acres over the next 6 to 10 years. Texaco's plans and drilling schedules would be contingent upon both an increased demand for natural gas supplies in response to the Clean Air Act amendments of 1990 and an adequate price for the gas at the wellhead. The Draft EIS describes the physical, biological, cultural, historic, and socioeconomic resources in and surrounding the project area. The focus for impact analysis was based upon resource issues and concerns identified during the public scoping. Potential impacts of concern from development were to antelope migrations and crucial winter range; sage grouse and raptor breeding and nesting; sediment increases to the Big Sandy River; groundwater contamination; Oregon, Mormon Pioneer, Pony Express, and California Historic Trails condition and viewshed; changes in livestock and wild horse management; and cumulative effects. The Draft EIS, in compliance with Section 7(c) of the Endangered Species Act (as amended), includes the Biological Assessment for the purpose of identifying any endangered or threatened species which are likely to be affected by the proposed action.

Dated: March 2, 1995.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 95–5765 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–22–M

[ID–015–05–1430–01; IDI–30841]

Notice of Realty Action, Sale of Public Lands in Owyhee County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public lands in Owyhee County.

SUMMARY: The following-described public land has been examined and through the public-supported land use planning process has been determined to be suitable for disposal by direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 at no less than appraised fair market value. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Boise Meridian, Idaho

T. 5 S., R. 3 W.,
Sec. 6: Lot 70.

The area described contains .06 acres, more or less.

DATES: Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provision of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Kelley Moore, Land Law Examiner, at the address shown above or (208) 384–3452.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to Kenneth M. and Linda R. Jantz, and Erik A. Jantz, of Elkhorn, Nebraska, the current building owners, at fair market value in order to give the Silver City community a more permanent character and the building owners a tenure interest in the land on which the building is located. Selling this parcel to the building owners will provide incentive to maintain the building in the historical nature in which it was built, thus maintaining a valuable part of our

early history in this historic mining district.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Boise District, at the above address. Any adverse comments will be reviewed by the District Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review of the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

The reservations, terms and conditions of this sale are as follows:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890, (43 U.S.C. 945).

2. All mineral deposits in the lands so patented pursuant to the Act of October 21, 1976, (90 Stat. 2757; 43 U.S.C. 1719), and to it, or persons authorized by it the right to prospect, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. Excepting and reserving to the public a right-of-way for existing roads over the lot for public access.

4. The patent will be subject to Silver City Zoning Ordinance No. 88–03, dated October 11, 1988.

Dated: March 1, 1995.

J. David Brunner,

Ecosystem Manager.

[FR Doc. 95–5764 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–GG–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–799196

Applicant: Patricia Wainright, New Brunswick, NJ.

The applicant request a permit to import dropped feathers and blood taken from captive Cuban parrots (*Amazona leucocephala*) in Cuba for the purpose of the survival of the species through scientific research.

PRT–799556

Applicant: Charles Whitlow, Nunica, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by J.B. Pohl, Shenfield, Grahamstown, Riebeek East, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 3, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–5708 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–55–P

Withdrawal of Proposed Guidelines on African Elephant Sport-hunted Trophy Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of withdrawal of proposed guidelines.

SUMMARY: The Fish and Wildlife Service (Service) announces the withdrawal of the proposed guidelines for the issuance of Scientific Authority advice on permit applications under the Convention on International Trade in Endangered Species on Wild Fauna and Flora (CITES) for the import of sport-hunted African elephant trophies.

SUPPLEMENTARY INFORMATION:

Background

At the seventh meeting of the CITES Conference of the Parties, held on October 9–20, 1989, the Party nations voted to transfer the African elephant from Appendix II to Appendix I, and this action became effective on January 18, 1990. As a result of this action, Appendix I import permits for the importation of the sport-hunted African elephant trophies are required under CITES.

Under CITES, Appendix I import permits can be issued if the Scientific Authority of the importing country has advised the Management Authority of the importing country that the import will be for purposes not detrimental to the survival of the species. Additional guidance for issuance of such advice was provided by CITES resolution Conf. 2.11 on ''Trade in Hunting Trophies of Species Listed in Appendix I,'' which had been adopted at the second meeting of the Conference of the Parties in 1979. Paragraph c of that resolution called for the Scientific Authority to conduct a ''comprehensive examination concerning the question of whether the importation is serving a purpose which is not detrimental to the survival of the species,'' including whether the killing of the animals whose trophies are intended for import would enhance the survival of the species.

In reviewing permit applications for the importation of sport-hunted African elephant trophies, the Service believes that the populations to be hunted should be of sufficient size and stability to allow for the projected off-take and that the country's management and enforcement authorities should have the ability to ensure adequate management of the species. In addition, the Service has considered whether the activity associated with the importation would enhance the survival of the elephant. For these reasons, the Service developed internal guidelines that described all of the factors that might be considered in issuing a Scientific Authority advice, especially if the expected off-take approached the maximum allowable to sustain a population. One aspect of the guidelines called for clear evidence that the sport hunting activities enhance the survival of the species.

In response to the Service's use of these guidelines, Safari Club International filed suit challenging the procedure and substantive adequacy of the guidelines, *see Safari Club International* v. *Lujan, Civ. No. 91–2523* (D.D.C., filed Oct. 8, 1991). As a consequence, the Service voluntarily sought public review and comments on its guidelines through a February 9, 1993, **Federal Register** notice of proposed guidelines (58 FR 7813).

The U.S. Scientific Authority has issued general ''non-detriment'' advices covering African elephant trophies lawfully taken in South Africa and Zimbabwe and has issued ''non-detriment'' advices for trophies taken in

Namibia, Tanzania, and Cameroon. During 1993 and 1994, permits were issued for over 400 sport-hunted African elephant trophies (1 for Cameroon, 28 for Namibia, 31 for South Africa, 109 for Tanzania and 254 for Zimbabwe).

On June 10, 1994, the Government of Namibia submitted a proposed amendment to paragraph c of CITES resolution Conf. 2.11 to remove the expectation that the importing country's Scientific Authority would consider whether the killing of the animals whose trophies are intended for import would enhance the survival of the species. The amendment also proposed that the ''Scientific Authority of the importing country accept the finding of the Scientific Authority of the exporting country that the exportation of the hunting trophy is not detrimental to the survival of the species''. In November 1994, at the ninth meeting of the Conference of the Parties to CITES, Namibia's proposal was revised by adding the phrase, ''unless there are scientific or management data to indicate otherwise,'' in recognition of the requirement in Article III.3.a of CITES that the Scientific Authority of the importing country make an independent assessment. With this revision, the CITES Parties adopted the proposal to revise paragraph c of Conf. 2.11.

Because of the revision of paragraph c of CITES resolution Conf. 2.11 and the perception, not intended by the Service, that the proposed guidelines would preclude the importation of sport-hunted African elephant trophies from properly managed populations, the Service is hereby withdrawing the proposed guidelines. In evaluating applications to import African elephant trophies, the Service will follow the guidance set forth in Conf. 2.11, as revised, as well as other appropriate authorities. A summary of relevant authorities is discussed later in this notice.

Comments on Proposed Guidelines

The Service received 27 letters from wildlife professionals, safari operators, and national wildlife department representatives; 105 letters from private individuals, and petitions from safari and hunting clubs containing 956 signatures. In addition, the Service received a petition with 3,360 signatures representing rural Zimbabweans participating in Communal Areas Wildlife Management Programme for Indigenous Resources (CAMPFIRE). The majority of responses indicated that there was significant confusion on the scope and intent of the internal guidelines.

Although the Service is withdrawing the proposed guidelines a discussion of some of the issues raised in the comments on the proposed guidelines is useful.

Comment: Sport-hunting is beneficial to elephant conservation and local economies. It is small scale, taking less than 1 percent of the elephant population annually.

Response: The Service has always accepted the premise that sport-hunting of non-endangered, properly managed wildlife populations can be beneficial to the survival of the population.

Comment: In lieu of populations estimates, other measures such as weight limits for female and male tusks or surveys of trophy sizes and numbers would be sufficient to determine whether or not the level of harvest is sustainable.

Response: The Service agrees that other population indices or measures to ensure long-term population maintenance may be appropriate, and could be included in Scientific Authority findings by the exporting country.

Comment: Sport hunting provides needed revenue to local residents and governments.

Response: All such revenues may be used for purposes unrelated to the conservation of the African elephant, and monies may benefit an individual or group only for the immediate hunting season. The Service believes that when revenues are directed to management or enforcement activities or when there is long-term benefit to individuals or groups with proprietary interest in ensuring a viable elephant population, there is benefit to the survival of the elephant.

Comment: Some respondents felt that the guidelines should be a mechanism to allow dialogue with the exporting states.

Response: Although the guidelines are being withdrawn, the Service agrees that dialogue with the exporting states is important, and will endeavor to increase such dialogue when implementing the new CITES resolution Conf. 2.11 provisions.

Comment: The proposed guidelines are not stringent enough.

Response: Although the Service is withdrawing the proposed guidelines, the Service believes that its review of import permits for sport-hunted African elephant trophies is sufficient to ensure compliance with the Act and CITES.

Comment: Policies towards range states should be individually developed to support their strengths and ''work against their weaknesses''.

Response: The Service agrees that there may be significant differences in management situations in the different countries which should be considered.

African Elephant Conservation Act and CITES Quotas

Although the Service is withdrawing the proposed guidelines, the Service continues to be responsible for evaluating applications to import African elephant trophies based on applicable requirements of the African Elephant Conservation Act, the Endangered Species Act, and CITES, including Conf. 2.11, as revised.

The African Elephant Conservation Act authorizes individuals to import sport-hunted African elephant trophies ''that have been legally taken in an ivory producing country that has submitted any ivory quota'' to the CITES Secretariat. See 16 U.S.C. 4222(e). Before permit applications for sport-hunted African elephant trophies will be reviewed by the Service, the country in which the specimens are harvested must have submitted an ivory export quota for the year of export to the CITES Secretariat, and confirmation of receipt of this quota must be received by the Service (see discussion of the Endangered Species Act requirements later in this notice). This has led to some misunderstanding, because some trophy import permit applications have been received by the U.S. Management Authority almost a year before a CITES quota has been received from the country of origin. This has meant that final action on the applications had to be delayed until the Service received confirmation that the quotas had been received by the CITES Secretariat.

Before an importation can occur the importer must, in addition to having an import permit, have a valid CITES export permit from the country of origin, and the ivory specimens being imported must be marked in accordance with the marking requirements contained in the revised African Elephant special rule discussed in the next paragraph.

Endangered Species Act

The African elephant is listed as a threatened species under the U.S. Endangered Species Act (Act). Pursuant to section 4(d) of the Act, 16 U.S.C. 1533(d), the Service has promulgated a ''special rule'' for the African elephant (50 CFR 17.40(e)) that was most recently revised in 1992 (57 FR 35486, August 10, 1992). The special rule allows the import of sport-hunted elephant trophies into the United States subject to several provisos. First, the trophy must originate in a country for which

the Service has received notice of an ivory quota for the year of export (50 CFR 17.40(e)(3)(iii)(A)). In addition, the trophy may not be imported unless the Service determines that the killing of the animal whose trophy is intended for import would enhance the survival of the species (50 CFR 17.40(e)(3)(iii)(C)). The Service has been able to make this finding for trophy import permit applications that have been submitted in the last few years.

CITES

Also applicable to the Service's procedures is the CITES requirement that the import permit be issued before the export permit, and it is obviously desirable for the sportsman to obtain, or at least have reasonable assurance of obtaining, the necessary import and export permits before committing to the safari hunt. Consistent with revised Conf. 2.11(c), the U.S. Scientific Authority will accept a ''not detrimental'' finding of the exporting country for that year, unless there are scientific or management data to indicate otherwise. If the scientific or management data indicate a concern about the reasonableness of an exporting country's ''not detrimental'' finding, the Service will consult with that country's Scientific and Management Authorities. Obviously, for the Scientific Authority advice and the subsequent export permit issued by the Management Authority to be accepted, the exporting country must have designated its Scientific Authority.

This notice was prepared under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*).

Dated: March 2, 1995.

George T. Frampton, Jr.,

Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 95–5771 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Availability of Outer Continental Shelf Official Protraction Diagrams

AGENCY: Minerals Management Service, Interior.

ACTION: Publication of New North American Datum (NAD) 83 Outer Continental Shelf Official Protraction Diagrams (OPD's).

Notice is hereby given that effective with this publication, the following NAD 83-based outer continental shelf (OCS) Official Protraction Diagrams (OPD's) for the Gulf of Alaska/Yakutat area are on file and available in the Alaska OCS Region office, Anchorage, Alaska. They reflect current baseline and boundary information portrayed on a metric NAD 83 cadastre. These OPD's should be used for the Offshore Program within the Gulf of Alaska/Yakutat area.

Description	Date
NP 06–08, Cordova	September 1, 1994.
NP 07–07, Bering Glacier	September 1, 1994.
NO 06–02, Middleton Island.	September 1, 1994.
NO 07–01, Icy Bay	September 1, 1994.
NO 07–02, Yakutat	September 1, 1994.
NO 07–03, (Unnamed)	September 1, 1994.
NO 07–04, Alsek Valley	September 1, 1994.
NO 08–03, Mt. Fairweather.	September 1, 1994.

ADDRESSES: Copies of these OPD's may be purchased for $2.00 each from the Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Room 603, Anchorage, Alaska 99508–4302, Attention: Library, (907) 271–6435.

FOR FURTHER INFORMATION CONTACT: Technical comments or questions pertaining to these maps should be directed to Leasing and Environment, Chief, Leasing Activities Section, at the address stated above, or at (907) 271–6691.

Dated: February 22, 1995.

Judith C. Gottlieb,

Regional Director, Alaska OCS Region.

[FR Doc. 95–5766 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Mississippi River Corridor Study Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: March 27, 1995, 8 a.m. until 4:30 p.m.; March 29, 1995, 8 a.m. until 12 noon.

ADDRESSES: Radisson Barcelo Hotel, 2121 P Street NW., Hershwin Room, Washington, DC.

This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Alan M. Hutchings, Acting Associate Regional Director, Planning and Resource Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, or call 402–221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 29, 1990.

Dated: February 24, 1995.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 95–5692 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–372]

Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 1, 1995, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Crucible Materials Corporation, State Fair Boulevard, P.O. Box 977, Syracuse, New York 13201–0977. A supplement to the complaint was filed on February 23, 1995. The complaint alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain neodymium-iron-boron magnets, magnet alloys, and articles containing the same, by reason of direct and induced infringement of claims 1–3 of U.S. Letters Patent 4,588,439. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation

and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Final Rules of Practice and Procedure, 59 FR 39020, 39043 (August 1, 1994).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on March 3, 1995, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain neodymium-iron-boron magnets, magnet alloys, or articles containing the same, by reason of infringement of claims 1, 2, or 3 of U.S. Letters Patent 4,588,439, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For purposes of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Crucible Materials Corporation State Fair Boulevard P.O. Box 977 Syracuse, New York 13201–0977

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

San Huan New Material Research and Development, Inc., No. 8 South 3rd Street, Zhong Guam Gun Road, P.O. Box 603, Beijing 10080, People's Republic of China

Ningbo Konit Industries, Inc., Ningbo Economic and Technical Development Zone, Zhejiang Province, People's Republic of China,

San Huan/Tridus International, Inc., 8527 Alondra Boulevard, Suite 205, Paramount, California 90723

Novel Hightech, Limited, Room 404, 3rd Floor, 18 Cheung Lee Street, Chai Wan, Hong Kong

Hennaco Industrial Enterprises, Inc., 39 Alba Place, Parsippany, New Jersey 07054

Hennaco Excell, Inc., 39–01 Main Street, Suite 210, Flushing, New York 113354

Sino American Products, Ltd., 358 Fifth Avenue, New York, New York 10001

Injohnson Precision Industrial Co., Ltd., 3rd Floor, No. 166, Fu-Ho Road, Yung-Ho, Taipei, Taiwan.

(c) Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–M, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Final Rules of Practice and Procedure, 59 FR 39020, 39045 (August 1, 1994). Pursuant to 19 C.F.R. § 201.16(d) and section 210.13(a) of the Commission's Final Rules, 59 FR at 39045, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: March 3, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–5811 Filed 3–8–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203. Comments on the following assessment are due 15 days after the date of availability:

AB–3 (Sub-No. 121X), Missouri Pacific Railroad Co.—Abandonment Exemption—In Morris and Dickinson Counties, Kansas (Hoisington Subdivision). EA available 3/3/95.

AB–167 (Sub-No. 1144X), Consolidated Rail Corp.—Abandonment Exemption—In Cumberland and Dauphin Counties, Pennsylvania. EA available 3/3/95.

AB–32 (Sub-No. 60X) and AB–355 (Sub—no. 12X), Boston and Maine Corp., and Springfield Terminal Railway Co.—Abandonment and Discontinuance of Service—Hillsboro County, New Hampshire. EA available 3/3/95. Comments on the following assessment are due 30 days after the date of availability:

AB–55 (Sub—no. 500, CSX Transportation, Inc.—Abandonment Between Tygart Jct. and Bergoo in Barbour Randolph, Pocahontas, and Webster Counties, West Virginia. EA available 2/28/95.

AB–425, Lone Star Railroad, Inc.—Abandonment and Discontinuance of Trackage Rights—In Wichita, Archer, Baylor, Knox, Haskell and Jones Counties, TX.

AB–426, Southern Switching Co.—Discontinuance of Service—In Wichita, Archer, Baylor, Knox, Haskell and Jones, TX. EA available 3/3/95.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5795 Filed 3–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32549]

Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 10; notice of issuance of new procedural schedule.

SUMMARY: The Commission is issuing a new procedural schedule, which follows the Santa Fe Pacific Corporation (SFP) shareholders' and Burlington Northern Inc. (BNI) shareholders' vote on February 7, 1995, to approve the proposed BNI/SFP merger. This schedule will provide for issuance of a final decision no later than August 23, 1995. The Commission also is setting a 50-page limitation for briefs, which must be filed in accordance with the requirements at 49 CFR 1104.2. In addition, the Commission is requiring that a Preliminary Draft Environmental Assessment (PDEA) be submitted, where applicable, with each inconsistent and responsive application.

EFFECTIVE DATE: The effective date of this decision is March 9, 1995. All comments, protests, requests for conditions, and any other opposition evidence and argument are due on May 10, 1995. For further information, see the attached procedural schedule.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549, Interstate Commerce Commission, 1201 Constitution Ave., N.W., Washington, DC 20423. Parties are encouraged also to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Stephen L. Grossman, Federal Energy Regulatory Commission, Office of Hearings, 825 North Capitol Street, N.E., Washington, DC 20426 and to each of applicants' representatives: (1) Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, DC 20036–1795; and (2) Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Julia Farr or Dugie Standeford, (202) 927–7513. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: On October 13, 1994, an application was filed for approval of BNI's acquisition of, control of, and merger with SFP, the resulting common control of Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) by the merged company, the consolidation of BN and Santa Fe railroad operations, and the merger of BN and Santa Fe. Applicants also seek exemption from regulation for the merged holding company and merged railroad to control The Wichita Union Terminal Railway Company [Finance Docket No. 32549 (Sub-No. 1)] and for 11 construction projects related to the primary application [Finance Docket No. 32549 (Sub-No. 2 through Sub-No. 12)]. We accepted the application in our Decision No. 5, served and published in the **Federal Register** (59 FR 56089) on November 10, 1994, and we set certain filing dates under the procedural schedule previously adopted in our Decision No. 4, served October 5, 1994.[1]

In Decision No. 7, served December 5, 1994, we granted the requests of several parties and postponed the procedural schedule set forth in Decision Nos. 4 and 5 pending the outcome of an SFP shareholder vote. In Decision No. 7, we stated that upon approval of the proposed BNI/SFP merger by the shareholders, we would immediately issue a new schedule.[2] On February 7, 1995, the shareholders approved the proposed BNI/SFP merger.

By petition filed January 27, 1995, BNI, BN, SFP, and Santa Fe requested that we adopt a modified, expedited procedural schedule which tracks the schedule proposed by the Commission for public comment in Ex Parte No. 282 (Sub-No. 19).[3] In Decision No. 9 in this proceeding, served February 3, 1995, we requested public comments on the applicants' proposal to revise the procedural schedule to provide for the service of a final decision no later than 165 days from the date the Commission publishes its decision restarting the schedule for processing the proceeding. Additionally, we requested public comments on proposed page limitations on certain filings, on whether a preliminary scoping order should be issued, and on the feasibility of meeting all environmental review requirements within the proposed compressed schedule. Public comments on these issues were due on February 21, 1995.

Over 170 public comments were received in response to Decision No. 9. The vast majority of these comments were from shippers; however, comments were also filed by several Members of Congress, government parties, railroads, electric utilities, other shipper interests, and rail labor unions. In addition, the applicants responded to Decision No. 9.

Approximately 55 commenters specifically supported the applicants' proposed 165-day procedural schedule. There were a number of statements in support of a 180-day schedule as proposed by the Commission in New Procedures in Rail Acquisitions, Mergers and Consolidations, Ex Parte No. 282 (Sub-No. 19) (ICC served Jan. 26, 1995), and several parties suggested alternative 180-day schedules. Over 25 shippers approved an expedited merger process, but suggested no time limits.

By contrast, approximately 65 commenters stated their opposition to the proposed 165-day schedule, although not all of these entities specifically objected to the total time of 165 days; rather, some were more concerned with having only 30 days to comment on the application. Many of the opposing commenters asked the Commission to lengthen the review process to at least 9 months.

We have determined after review of all the comments that a 165-day procedural schedule will allow us time to consider fully all of the issues in this proceeding and to ensure that all parties are accorded due process.[4] We will agree, however, to giving additional time to interested parties, including the

[1] SP contends that the Supplemental Materials filed by applicants on February 17, 1995 (BN/SF–25) contain certain deficient information about the additional debt that applicants will incur in order to consummate their tender offers for SFP common stock. SP's concern relates to form rather than substance. Adequate information about this financing and its possible effects on applicants' pro forma projections of merged operations is ascertainable from information contained in the application filed October 13, 1994, and in the Supplemental Materials, primarily the Supplemental Verified Statement of Thomas N. Hund and Don S. Snyder and the Amendments to SEC Form S–4, filed by BNI and BNSF Corporation.

[2] In Decision No. 7, we stated that the new schedule would require comments to be filed 30 days later and adjust other schedule dates accordingly. As explained later in this decision, comments will not be due until 62 days from the date of publication of this decision.

[3] In New Procedures in Rail Acquisitions, Mergers and Consolidations, Ex Parte No. 282 (Sub-No. 19) (ICC served Jan. 26, 1995 and published at 60 FR 5890, January 31, 1995), we requested comments, due March 2, 1995, on our proposed establishment of more timely procedures for processing applications for major and significant rail combinations. We also served a copy of the notice on all parties on the service list in this merger proceeding and asked for comments on whether this case should be governed by the schedule originally adopted or the schedule proposed in Ex Parte No. 282 (Sub-No. 19).

[4] Technically, Appendix A to this decision envisions a 167-day procedural schedule. We found it necessary to add two additional days to the schedule so that no date on the schedule would fall on a Saturday, a Sunday, or a legal holiday.

Department of Justice (DOJ) and the Department of Transportation (DOT), in which to file written comments and protests on the primary application (including any comments in opposition to the primary application), as well as requested conditions. These filings will be due 62 days after publication of this notice, which is the same date that inconsistent and responsive applications are due. All descriptions of anticipated inconsistent or responsive applications, as well as petitions for waiver or clarification, will be due 32 days after publication of this notice.

There were a few comments on the proposed page limitations. Most commenters were generally opposed, but were willing to accept some page limitations on briefs. To facilitate meeting the expedited deadline set out in this notice, the Commission will limit briefs to 50 pages, but will impose no page limitations on evidentiary submissions. Briefs must be filed in accordance with the requirements at 49 CFR 1104.2. Because reply briefs appear to be unnecessary to complete our review of a merger, we do not anticipate granting any requests to file reply briefs. Based on the lack of response to our proposed preliminary scoping order, we do not anticipate issuing such an order at this time. However, in pursuing discovery and in preparing pleadings, we encourage the parties (and will instruct the Administrative Law Judge) to focus strictly on relevant issues, as identified by the applicable statutory standards and our control regulations, including our merger policy statement (49 CFR 1180.1). For example, arguments that the transaction will cause competitive harm should be accompanied by a clear statement of how rates will be raised, service degraded, or both, in some identifiable market. Responses countering such competitive arguments should explain clearly why those adverse impacts will not occur.

In order for us to fulfill our responsibilities under the National Environmental Policy Act and other environmental laws, inconsistent applications and responsive applications must contain certain environmental information. Anyone desiring to file an inconsistent or a responsive application involving significant operational changes or an action such as a rail line abandonment or construction under 49 CFR 1105.6(b)(4) of our environmental rules must include, with its application, a preliminary draft environmental assessment (PDEA). Generally, these types of actions require an environmental report under 49 CFR 1105.6(b)(4) which would form the basis of a subsequent environmental assessment (or environmental impact statement, if warranted). Here, because of the accelerated time frames, a PDEA is necessary at the outset.

The preparation of a PDEA should not be burdensome. Although the information would be presented in a somewhat different format, the PDEA should address essentially the same environmental issues that would have been covered by an environmental report. The PDEA, like the environmental report, should be based on consultations with the Section of Environmental Analysis (SEA) and the various agencies set forth in 49 CFR 1105.7(b). SEA will be available to provide assistance as needed.

SEA will use the PDEA to expedite the environmental review process. If a PDEA is not submitted or is insufficient, we will not process the inconsistent or responsive application.

If an inconsistent or responsive application does not involve significant operational changes or an action such as an abandonment or construction, it generally is exempt from environmental review. The applicant must certify, however, that the proposal meets the exemption criteria under 49 CFR 1105.6(c)(2).

Anyone desiring to file an inconsistent application or responsive application should consult with SEA as early as possible regarding the appropriate environmental documentation.

If the parties wish to engage in any discovery or establish any discovery guidelines (see, e.g., the proposed discovery guidelines in BN/SF–24; see also the proposed discovery guidelines in KCS–3, Ex. D, pp. 4–7), they are directed to consult with Stephen L. Grossman, Administrative Law Judge. Judge Grossman is authorized to convene a discovery conference, if necessary and as appropriate, in Washington, DC, and to establish such discovery guidelines, if any, as he deems appropriate. However, Judge Grossman is not authorized to make adjustments to, or to modify, the dates in the procedural schedule. We believe the schedule as adopted allows sufficient time for meaningful discovery. Any interlocutory appeal to a decision issued by Judge Grossman will be governed by the stringent standard of 49 CFR 1115.1(c): ''Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.'' *See* Union Pacific Corporation, Union Pacific Railroad Company And Missouri Pacific Railroad Company—Control—Chicago And North Western Transportation Company And Chicago And North Western Railway Company, Finance Docket No. 32133, Decision No. 17, at 9 (ICC served July 11, 1994) (applying the ''stringent standard'' of 49 CFR 1115.1(c) to an appeal of an interlocutory decision issued by former Chief Administrative Law Judge Paul S. Cross).[5]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 3, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

Appendix A—Final Procedural Schedule

April 10, 1995—Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due.

May 10, 1995—Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence and argument due. DOJ and DOT comments due.

May 25, 1995—Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register**.

June 9, 1995—Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition due. Rebuttal in support of primary application due.

June 19, 1995—Rebuttal in support of inconsistent and responsive applications due.

June 29, 1995—Briefs due, all parties (not to exceed 50 pages).

July 14, 1995—Oral argument (at Commission's discretion).

July 24, 1995—Voting Conference (at Commission's discretion).

August 23, 1995—Date for service of final decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise

[5] For the purposes of the present proceeding, we think it appropriate to tighten the deadlines provided by 49 CFR 1115.1(c). Accordingly, the provisions of the second sentence of 49 CFR 1115.1(c) to the contrary notwithstanding, any appeal to a decision issued by Judge Grossman must be filed within 3 working days of the service date of his decision, and any response to any such appeal must be filed within 3 working days thereafter. Likewise, any reply to any procedural motion filed with the Commission itself in the first instance must also be filed within 3 working days.

protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive and inconsistent applications will begin immediately upon their filing. The Administrative Law Judge assigned to this proceeding will have the authority initially to resolve any discovery disputes.

[FR Doc. 95–5799 Filed 3–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32624]

Northern Nevada Railroad Corporation—Modified Rail Certificate—Between Cobre and McGill Junction, NV

On December 2, 1994, Northern Nevada Railroad Corporation (NNRC), filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, subpart C—*Modified Certificate of Public Convenience and Necessity*, to operate over a line of railroad owned by the Department of Water and Power of the City of Los Angeles (Los Angeles) between Cobre, Elko County NV (milepost 0.0) and McGill Junction, White Pine County, NV (milepost 128.0), a total distance of 128.0 miles.

Prior to Los Angeles acquiring the line, the line was formerly owned and operated by Nevada Northern Railway Company. Department of Water and Power of the City of Los Angeles—Acquisition and Operation Exemption—The Nevada Northern Railway Company, Finance Docket No. 31030 (ICC served June 8, 1987). Subsequently, in Los Angeles Department of Water and Power D/B/A Nevada Northern Railway Company—Abandonment Exemption—Line in Nevada, Docket No. AB–285 (Sub-No. 1X) (ICC served Oct. 3, 1988), the line was authorized to be abandoned.

NNRC's notice indicates that the line will connect with the Southern Pacific Transportation Company at Cobre (milepost 0.0); with the Union Pacific Railroad Company at Shafter, NV (milepost 18.8); and with NNRC at McGill Junction (milepost 128.0). Los Angeles has entered into an operating agreement with NNRC which planned to begin operation during January 1995. Operations consist of moving about one train per week over the line in each direction. Operations will increase to daily service once NNRC's connecting line is constructed.[1]

The Commission's Section of Environmental Analysis (SEA), reviewed the proposed start up operations that are the subject of the modified certificate. Specifically, by letter dated January 13, 1995, NNRC sought clarification under 49 CFR 1105.6(d) that the start up operations under the modified certificate do not require environmental review. NNRC provided supporting data concerning commodities and the nature of the proposed operations. By letter dated January 27, 1995, based on the information available at that time, SEA notified NNRC that the modified certificate operations had independent utility and that no environmental review would be required to transport the commodities NNRC had identified. Accordingly, this modified certificate is issued only as to those identified commodities and, under the certificate, NNRC may conduct those operations prior to completion of the construction exemption proceedings in Finance Docket No. 32476.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, 50 F Street NW., Washington, DC 20001, and on the American Short Line Railroad Association, 1120 G Street NW., Suite 520, Washington, DC 20005.

Decided: March 1, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5797 Filed 3–8–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Northern Nevada Railroad Corporation—Construction and Operation Exemption—White Pine County, NV, Finance Docket No. 32476 (ICC served Feb. 24, 1995).

[Finance Docket No. 32623]

Northern Nevada Railroad Corporation—Modified Rail Certificate—Between McGill Junction and Keystone, NV

On December 2, 1994, Northern Nevada Railroad Corporation (NNRC), filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, subpart C—*Modified Certificate of Public Convenience and Necessity*, to operate a line of railroad owned by the City of Ely between McGill Junction, NV, (milepost 128.0) and Keystone, NV, (milepost 146.152), a total distance of 18.152 miles. The line will connect at each end with another line operated by NNRC. NNRC planned to begin operation during January 1995. Operations consist of moving about one train per week over the line in each direction. Operations will increase to daily service once NNRC's connecting line is constructed.[1]

Prior to the City of Ely acquiring the line, the line was owned and operated by Nevada Northern Railway Company, a subsidiary of Kennecott Copper Corporation. In Nevada Northern Railway Company—Abandonment Exemption in White (Pine) County, NV, Docket No. AB–285X (ICC served July 6, 1987), the Commission authorized Nevada Northern Railway Company to abandon the line. Since that time, the line has been operated for the City of Ely by the White Pine Historical Railroad Foundation (WPHRR). WPHRR has entered into an operating agreement with NNRC.

The Commission's Section of Environmental Analysis (SEA), reviewed the proposed start up operations that are the subject of this modified certificate. Specifically, by letter dated January 13, 1995, NNRC sought clarification under 49 CFR 1105.6(d) that the start up operations under the modified certificate do not require environmental review. NNRC provided supporting data concerning commodities and the nature of the proposed operations. By letter dated January 27, 1995, based on the information available at that time, SEA notified NNRC that the modified certificate operations had independent utility and that no environmental review would be required to transport the commodities NNRC had identified. Accordingly, this modified certificate is issued only as to those identified commodities, and, under the certificate, NNRC may conduct those operations prior to completion of the construction exemption proceedings in Finance Docket No. 32476.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, 50 F Street NW., Washington, DC 20001, and on the American Short Line Railroad Association, 1120 G Street NW., Suite 520, Washington, DC 20005.

Decided: March 1, 1995.

[1] Northern Nevada Railroad Corporation—Construction and Operation Exemption—White Pine County, NV, Finance Docket No. 32476 (ICC served Feb. 24, 1995).

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5798 Filed 3–8–95; 8:45 am]

BILLING CODE 7035–01–P

Release of Waybill Data

The Commission has received a request from Harkins Cunningham and Southern Pacific Lines (SP) for permission to use certain data from the 1992 and 1993 I.C.C. Waybill Samples. A copy of the request (WB470—1/30/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196

Vernon A. Williams,

Secretary.

[FR Doc. 95–5796 Filed 3–8–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

March 2, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills ({202} 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10102, Washington, DC 20503 ({202} 395–7316).

Type of Review: Extension

Agency: Occupational Safety and Health Administration

Title: Occupational Exposure to Bloodborne Pathogens

OMB Number: 1218–0180

Frequency: On occasion

Affected Public: Business or other for-profit

Number of Respondents: 3,248

Estimated Time per Respondent: .08 hours

Total Burden Hours: 261

Description: The Bloodborne Pathogen Standard and its information collection requirements provide protection for employees from the adverse health effects associated with occupational exposure to bloodborne pathogens. The Standard requires that the Occupational Safety and Health Administration have access to the employer's exposure control plan as well as the employee's training and medical records to ensure that employers are complying with the disclosure provisions of the Bloodborne Pathogen Standard.

Type of Review: Extension

Agency: Employment Standards Administration

Title: Survivor's Claims for Benefits Under the Black Lung Benefits Act

OMB Number: 1215–0069

Agency Number: CM–912

Frequency: On occasion

Affected Public: Individuals or households

Number of Respondents: 1,200

Estimated Time per Respondent: 25 minutes

Total Burden Hours: 500

Description: A survivor of a coal miner must file a claim for benefits under the Black Lung Benefits Act, as amended, in order to receive benefits. The claim and support documentation are reviewed by claims examiners to determine the survivor's eligibility for benefits.

Type of Review: Extension

Agency: Employment Standards Administration

Title: Miner's Claim for Benefits Under the Black Lung Benefits Act; Employment History; Miner Reimbursement

OMB Number: 1215–0052

Agency Number: CM–911; CM–911a; CM–915

Affected Public: Individuals or households

Collection	Frequency	Respondents	Average time per respondent
CM–911	On occasion	4,800	45 minutes.
CM–911a	On occasion	5,900	40 minutes.
CM–915	On occasion	42,000	10 Minutes.

Total Burden Hours: 14,533

Description: The CM–911 is the standard application form, filed by the miner, for benefits under the Black Lung Benefits Act. The CM–911a lists the coal miner's work history, and is completed by all applicants, miners, and survivors. The CM–915 is used by the miner or survivor for requesting reimbursement of medical expenses incurred and paid by the miner beneficiary.

Type of Review: Extension

Agency: Employment Standards Administration

Title: Claims for Compensation by Dependents Information Reports

OMB Number: 1215–0155

Agency Numbers: CA–5, CA–5b, CA–1031; CA–1074; CA–1085; CA–1093; CA–1615; CA–1617; CA–1618

Affected Public: Individuals or households

Form	No. respondents	Average time per respondent	Frequency
CA–5	235	90 minutes	On occasion.
CA–5b	70	90 minutes	On occasion.
CA–1615	120	30 minutes	On occasion.
CA–1617	600	30 minutes	Semi-annually.
CA–1085	450	45 minutes	On occasion.
CA–1031	1,700	15 minutes	On occasion.
CA–1074	70	60 minutes	On occasion.
CA–1093	50	30 minutes	On occasion.
CA–1618	320	30 minutes	Semi-annually.

Total Burden Hours: 1,835

Reports are claims for compensation by survivors due to the death of a Federal employee, and supplemental reports concerning dependency status in various types of cases.

Type of Review: Extension
Agency: Employment Standards Administration
Title: 29 CFR Part 516—Records to be Kept by Employers
OMB Number: 1215–0017
Frequency: Recordkeeping
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local, or Tribal Government
Number of Respondents: 3.7 million
Estimated Time per Respondent: Time ranges from 15 minutes–1 hour
Total Burden Hours: 632,288
Description: These records are maintained in order that employer compliance with the Fair Labor Standards Act can be determined by the U.S. Department of labor.

Type of Review: Reinstatement
Agency: Employment and Training Administration
Title: Job Corps Placement and Assistance Record
OMB Number: 1205–0035
Agency Number: ETA 678
Frequency: On occasion
Affected Public: State, Local or Tribal Government; Business or other for-profit
Number of Respondents: 60,000
Estimated Time per Respondent: 30 minutes
Total Burden Hours: 30,000
Description: This information is used in evaluating overall program effectiveness. It provides placement agencies with basic information regarding terminated students and provides the Department of Labor with information on the status of students subsequent to termination from the program.

Type of Review: New
Agency: Bureau of Labor Statistics
Title: May 1995 CPS Supplement on Race and Ethnicity
Frequency: One-time
Affected Public: Individuals or households
Number of Respondents: 55,000 respondents
Estimated Time per Respondent: 9.1 minutes per response
Total Burden Hours: 8,342
Description: This supplement will gather information on different methods for measuring and/or classifying racial and ethnic groups. The information will assist OMB's review of possible changes to Statistical Policy Directive No. 15. These changes may be needed to more accurately reflect the characteristics of the current U.S. population.

Type of Review: New
Agency: Employment and Training Administration
Title: Youth Fair Chance Program Evaluation
Frequency: On occasion
Affected Public: Individuals or households

Form	Respondents	Average time per respondent	Total
Participant:			
Information Form	2,700	10 minutes	450 hours.
Community Survey Interviews:			
Initial Screening	21,870	5 minutes	1,823 hours.
Interviews	3,600	25 minutes	1,500 hours.

Total Burden Hours: 3,773 (1st year)
Description: Public Law 102–367, the 1992 Amendments to the Job Training Partnership Act, authorizes the Youth Fair Chance (YFC) program. The purpose of the YFC program is to expand community-based programs providing education, training, and complementary services for youth living in high-poverty areas. This information collection is designed to provide a thorough, independent evaluation of the YFC program and to assess the outcomes of youth participating in the program. This baseline information form and the community survey questionnaire are essential for addressing the legislated objectives of the evaluation.

Type of Review: Reinstatement
Agency: Mine Safety and Health Administration
Title: Safety Defects; Examination, Correction and Records
OMB Number: 1219–0089
Agency Number: MSHA–422
Frequency: On occasion
Affected Public: Business or other for-profit
Number of Respondents: 486,560
Estimated Time per Respondent: .083303 minutes
Total Burden Hours: 40,532
Description: Requires equipment operators to inspect equipment, machinery, and tools that are to be used during a shift for safety defects before the equipment is placed in operation. Reports of uncorrected defects are required to be recorded by the mine operator and retained for MSHA review until the defect has been corrected.

Type of Review: Extension
Agency: Mine Safety and Health Administration
Title: Program to Prevent Smoking in Hazardous Areas

OMB Number: 1219–0041
Frequency: On occasion
Affected Public: Business or other for-profit
Number of Respondents: 200
Estimated Time per Respondent: 30 minutes
Total Burden Hours: 100
Description: Requires coal mine operators to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as in or around oil houses, explosives, magazines, etc. Mine operators are further required to submit the programs to MSHA for approval.
Type of Review: Extension
Agency: Mine Safety and Health Administration
Title: Certificate of Training
OMB Number: 1219–0070
Agency Number: MSHA Form 5000–23
Frequency: On occasion
Affected Public: Business or other for-profit
Number of Respondents: 28,610
Estimated Time per Respondent: 1.84 hours
Total Burden Hours: 52,642
Description: The Mine Safety Health Administration (MSHA) Form 5000–23 is a mandatory form used to record training received by miners. The form provides the mine operator with a recordkeeping form, the miner with a certificate of training, and MSHA a monitoring tool for determining compliance requirement.

Kenneth A. Mills,
Departmental Clearance Officer.

[FR Doc. 95–5778 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–27–M

Glass Ceiling Commission; Criteria and Application Process for the National Award for Diversity and Excellence in American Executive Management

SUMMARY: The Glass Ceiling Commission is announcing the procedure for applying for the Frances Perkins/Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management. The award is an annual Presidential award to recognize a United States business for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

DATES: Applications are due by April 30, 1995.

ADDRESSES: Applications should be sent to: The Glass Ceiling Commission, Perkins-Dole Award, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–2313, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: René A. Redwood, Executive Director, The Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210. Telephone (202) 219–7342.

Background

The Frances Perkins/Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management was established pursuant to Public Law 102–166, The Glass Ceiling Act of 1991. The glass ceiling is defined as those artificial barriers based on attitudinal or organizational bias that prevent qualified minorities and women from advancing in their organizations into management and decisionmaking positions.

Purpose

The Frances Perkins/Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management is an annual Presidential award to recognize a United States business for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

Business Defined

For the purposes of this award, business includes:

1. Corporation including nonprofit corporations;
2. Partnerships;
3. Professional association;
4. Labor organization;
5. Business entity similar to any entity described in 1 through 4;
6. An education referral program, a training program, such as an apprenticeship or management training program or similar program; and
7. Joint program formed by a combination of any entities described in 1 through 6.

Evaluation Criteria

The business must demonstrate that it has made substantial effort and progress to promote the opportunities and developmental experiences of minorities and women in order to foster advancement to management and decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of minorities and women, and deserves special recognition as a consequence. Demonstration of substantial effort in promoting work force diversity initiatives must include a formal process that is quantifiable and emulatable and must be designed to:

—Create a work environment where all employees are able to achieve their full potential within the organization;
—Eliminate barriers to the advancement of minorities and women;
—Share information on successful diversity management and its benefits

In addition, the business must provide its definition of what constitutes senior management and a detailed demographic breakout of the total number of women and men within each management level by race and ethnicity.

The policies, programs, achievements, of each applicant will be evaluated in the following areas.

Leadership

The CEO and senior executives must demonstrate personal involvement and leadership in developing and maintaining an environment for diversity management excellence. The applicant must describe how the requirements for such excellence are communicated and reinforced for all managers and supervisors and integrated into day-to-day leadership, management and supervision. Key methods of evaluating and improving the effectiveness and accountability of such leadership and involvement should be addressed. The result of effective leadership should also be discussed.

Recruitment, Selection, and Retention Practices

The applicant must demonstrate how the practices for filing management and decisionmaking positions take into consideration the diversity of the candidate pool for such positions. The applicant must describe the human resource recruitment practices as related to monitoring search firm referrals; word-of-mouth recruitment; designation of high potential employees and other strategies for recruiting. The selection procedures, including identification and selection of high potential employees must be described. The applicant must also describe successful results of recruitment and selection of a well diversified candidate pool for management and decisionmaking positions. Practices for retaining minorities and women must also be discussed.

Development Practices

The applicant must describe: the mechanisms for selecting employees for developmental experiences; the kinds of developmental practices provided, e.g.,

on-site and off-site training, rotational assignments, special projects, etc.; the extent to which the nature of the developmental opportunities reflect the race, ethnicity and sex characteristics of the total management candidate pool; the role of relocations and overseas assignments in advancement and the extent to which diversification of such assignments is assured; and to what extent and how this is monitored.

Successful Initiatives

In addition to the elements above, the applicant must describe how all other factors are combined to create a complete initiative which has resulted in a diverse management work force for both minorities and women. These initiatives may include, for example, family friendly workplace policies, antiharassment, training or prevention, anti-discrimination procedures, pay equity evaluations and adjustments and the like. The applicant must discuss the innovative aspects of the initiative, the key factors of success and what makes this initiatives worthy of special recognition.

Other Evaluation Considerations

There must be no indications based on recent or current EEO Compliance reviews, complaint investigations or other federal enforcement activity of substantial noncompliance by the applicant with any civil rights laws. Considerations shall be given to whether or not businesses that have been cited for specific EEO violations, such as unlawful discrimination, sexual harassment, etc., have been required to take corrective actions during the period for which the business is being considered for this award.

Evaluation Process

Applicants will be ranked based on the criteria outlined above. An on-site tour to each business ranked in the top five will be made and interviews with selected officials and other employees may also be conducted.

The Commission shall select the Perkins-Dole awardee from businesses ranked in the top three. Recognition may also be given for successful efforts in eliminating the glass ceiling for businesses ranked from two to five.

Publicity

A business that received this award may publicize the receipt of the award and use the award in advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and developmental experiences of minorities and women to management and decisionmaking positions.

Application Procedures

Businesses wishing to be considered for the Frances Perkins/Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management shall submit a written application to the Glass Ceiling Commission. The application shall be in the form of a letter and shall include information that demonstrates that the business has made substantial effort and progress to promote the opportunities and developmental experiences of minorities and women to foster their advancement into senior management positions and deserves special recognition as a consequence.

The letter shall specifically address the following areas: (See Evaluation Criteria)

Leadership

Recruitment, Selection and Retention

Developmental Practices

Successful Initiatives

The application should also include statistical information relative to the business work force profile for middle and upper management race, ethnicity and gender for at least the period covered by the initiative, but no less than five years. This information will be held in strict confidence.

The application package should be no more than 40 pages, including exhibits. Send one original and four copies. The cover sheet should contain the following information:

1. Name of the organization.

2. Number of establishments.

3. Number of employees in each establishment.

4. Address, telephone and fax number.

5. Name of highest ranking official.

6. Name, address, telephone and fax number of contact person.

The letter and other material should be sent to: The Glass Ceiling Commission, Perkins-Dole Award, U.S. Department of Labor, 200 Constitution Avenue NW., Room C2313, Washington, DC 20210.

Applications should be received no later than April 30, 1995.

Signed at Washington, DC, this 3rd day of March, 1995.

René A. Redwood,

Executive Director, Glass Ceiling Commission.

[FR Doc. 95–5779 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–23–M

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health: Appointment of Members

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of appointment of members to the Maritime Advisory Committee for Occupational Safety and Health (MACOSH).

SUMMARY: The Secretary of Labor has established an advisory committee to advise the Assistant Secretary for the Occupational Safety and Health Administration (OSHA) on issues relating to the delivery of occupational safety and health programs, policies, and standards in the maritime industries of the United States. The committee will provide a collective expertise not otherwise available to the Secretary to address the complex and sensitive issues involved. Committee members have been appointed from government agencies, the shipbuilding industries and longshoring, labor and professional associations.

ADDRESSES: Any written comments in response to this notice should be sent to the following address: OSHA, Office of Maritime Standards, Room N–3621, 200 Constitution Avenue NW., Washington, DC 20210. Phone (202) 219–7234, fax (202) 219–7477.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Office of Maritime Standards, OSHA, (202) 219–7234.

SUPPLEMENTARY INFORMATION: MACOSH is intended to address the concerns of the entire maritime community, focusing on the shipyard and marine cargo (longshoring) handling industries.

This committee will continue the efforts of the previously chartered Shipyard Employment Standards Advisory Committee as well as provide a more focused forum for ongoing discussions with the marine cargo handling community. MACOSH is consistent with the President's initiative to make the U.S. shipyard industry competitive in the worldwide community. Furthermore, MACOSH will be able to focus on the resolution of controversial issues, particularly those with international implications, that impact the longshoring and shipyard communities. The specific objectives of this committee are to make recommendations on issues related to: (1) Reducing injuries and illnesses in the maritime industries, (2) expanding OSHA's outreach and training programs through the use of innovative

partnerships, and (3) expediting the development and promulgation of OSHA standards.

Committee Members

MACOSH is composed of approximately 15 members who have been selected to represent the divergent interests of the maritime community. The makeup of the membership complies with Section 7 (b) of the OSH Act which requires the following: at least one member who is a designee of the Secretary of Health and Human Services; at least one designee of a state safety and health agency; and equal numbers of representatives of employees and employers, respectively. Other members have been selected based on their knowledge and experience and include representatives from professional and other governmental organizations with specific maritime responsibilities. MACOSH is a comprehensive representation of the maritime community.

Appointees to the Committee include these representatives from labor, industry, public interests and government agencies. The appointees represent groups interested in or affected by the outcome of rulemaking. The 15 members are:

Labor Representatives

Charles Brasford—Director of Occupational Safety and Health, International Association of Machinists and Aerospace Workers.
Al Cernados—Executive Vice President, International Longshoremen's Association.
Chico McGill—Chairman, Safety and Health Committee, Local 733, International Brotherhood of Electrical Workers, Ingalls Shipyard
Richard Olsen—Coastal Committee, International Longshoremen's and Warehousemen's Union

Industry Representatives

Katherine Chumley—Chair, Environmental Safety and Health Committee, Shipbuilders Council of America, Atlantic Marine.
John Faulk—Safety and Health Director, Ryan Walsh Stevedoring.
Chet Mathews—Safety and Health Director, Bath Iron Works
Frank Scanlan—General Counsel and Secretary, National Maritime Safety Association.

Government and Professional Organizations

Lieutenant Julie Gahn—Hazardous Materials Division, U.S. Coast Guard.
Alexander Landsburg—Systems Safety and Human Factors Division, Maritime Administration.
Fran Lavelle—American Association of Port Administrators.
Elsie Munsel—Safety and Environmental Programs, U.S. Navy.
Larry Reed—Assistant Director for Policy, National Institute for Occupational Safety and Health.
Pete Schmidt—Specialty Compliance Programs, State of Washington.
James Thornton—American Industrial Hygiene Association.

Signed at Washington, DC this 3rd day of March 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–5894 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–26–M

Maritime Advisory Committee for Occupational Safety and Health, Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health (MACOSH); notice of meeting.

SUMMARY: Notice is hereby given that the Maritime Advisory Committee for Occupational Safety and Health, established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor on matters relating to occupational safety and health programs, policies, and standards in the maritime industries of the United States will meet March 22 and 23, 1995 in Room C–5320, Seminar Room No. 6, of the Department of Labor, 200 Constitution Avenue NW., Washington, DC.

ADDRESSES: Any written comments in response to this notice should be sent to the following address: OSHA, Office of Maritime Standards, Room N–3621, 200 Constitution Avenue NW., Washington, DC 20210. Phone (202) 219–7234, fax (202) 219–7477.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Office of Maritime Standards, OSHA, (202) 219–7234.

SUPPLEMENTARY INFORMATION: The first meeting of the Marine Advisory Committee on Occupational Safety and Health will be held March 22 from 1 to 5, and March 23 from 9 to 5 in Room C–5320, Seminar Room 6, of the Department of Labor, 200 Constitution Avenue NW., Washington, DC. At this first meeting the newly appointed members will be introduced and then the Committee will establish committee goals, plan for future meetings, discuss OSHA's compliance programs, outreach and training initiatives, and standards setting process, and hear about the current agenda and direction of OSHA.

All interested persons are invited to attend the public meetings of MACOSH, including the first one at the time and place indicated above. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Theda Kenney at 202–219–8061, no later than March 17, 1995, to obtain appropriate accommodations.

MACOSH will meet as a whole and also in small focus groups. Written data, views or comments for consideration by the Committee may be submitted, preferably with 20 copies, to Larry Liberatore at the address provided above. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. Members of the general public may request an opportunity to make oral presentations at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants unless these questions have been specifically approved by the chairperson. Anyone wishing to make an oral presentation should notify Larry Liberatore before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chair of the Advisory Committee.

Signed at Washington, DC this 3rd day of March 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–5895 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–1–95]

Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of interpretation.

SUMMARY: This notice announces the Occupational Safety and Health Administration's (OSHA) clarification of the types of programs and procedures

that Nationally Recognized Testing Laboratories (NRTL) may engage in under the OSHA/NRTL recognition program, 29 CFR 1910.7. This notice addresses in particular those programs under which the NRTL controls and audits, but does not itself generate, the data relied upon for product certification. OSHA invites currently recognized NRTLs as well as new applicants to request approval for any of these acceptable procedures.

EFFECTIVE DATE: March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1984, (49 FR 8326), the Occupational Safety and Health Administration proposed a comprehensive overhaul of its regulatory procedures related to OSHA's requirements for safety testing or certification of certain workplace equipment and materials. The goals of the proposal were:

(1) To assure that products required to be tested and certified would be reliably tested and certified;

(2) To implement testing and certification requirements and procedures which would be administratively workable; and

(3) To take advantage of developments by others in organizing and evaluating product certification systems and in accrediting laboratories for testing.

In the proposal, OSHA stated that it was attempting to build upon the self regulatory efforts of the private sector, particularly in the fields of electrical and fire safety. OSHA intended to take full advantage of the mechanisms which existed in the private sector or in government, and to keep its long-term involvement in these activities to a minimum (see 53 FR 12103 second column, first paragraph). A three day informal public hearing was held on September 25, 26, and October 1, 1984. Based on the comments received and a review of the testimony in the record, the Agency modified its original proposal and, on April 12, 1988, (53 FR 12102), promulgated a new section, 1910.7—Definition and requirements for a nationally recognized testing laboratory, and a new Appendix A to section 1910.7—OSHA Recognition Process for Nationally Recognized Testing Laboratories.

The cornerstone of this regulation is the definition of the regulatory term ''NRTL'', with respect to specific elements. There are four elements that are identified as NRTL requirements: capability to test and evaluate equipment; control of certified products; independence; and procedures to produce creditable findings. These four elements that define an NRTL are incorporated into the criteria for the various types of procedures which OSHA approves and, when followed, provide OSHA with a reasonable degree of assurance that the products may be used safely in the workplace.

As noted above, capability to test and evaluate equipment, and independence are two of the elements required of an NRTL. These elements are discussed in the preamble to the final rule.

Capability to test does not mean that all testing will be done by the NRTL. OSHA stated in the preamble that while it expected generally that most applicants would do the testing in-house this was not a requirement of the standard. OSHA recognized that, in some cases, laboratories would subcontract out the testing of a certain product or aspect thereof due to unique or special testing needs. Anticipating this occurrence, OSHA stated that the laboratory actually doing the work must have the necessary capability to conduct the tests, and the laboratory applying for recognition would retain primary responsibility for fulfilling the requirements of the standard and complying with the procedures set out in Appendix A.

Independence also does not mean that an NRTL has to carry out all of its functions totally separate from other entities, including the manufacturer. Simply put, the independence requirement means that the analytical and decision making processes, which are the critical functions that must be performed, are accomplished by an organization which is financially independent of manufacturers, vendors, and users of certified products. As long as the NRTL retains these functions, the credibility of the testing and approval process will be maintained.

OSHA believes that this understanding of the concept of independence was implicit in the rule from the time of its adoption. Thus the OSHA rule was intended to build upon the system of testing and certification already in existence, not to supplant it. The existing system did not require a rigid barrier between NRTL and manufacturer, for example, which would completely prevent the NRTL from utilizing the manufacturer's testing or other information sources. As long as the NRTL, which was not economically affiliated with the manufacturer, had ultimate authority and responsibility for the approval of the product and use of the certification mark, the needs of independence would be satisfied. The current clarification is consistent with and fleshes out the past practice.

OSHA intended a pragmatic application of the elements of independence and capability to perform testing, as well as the other elements that go into defining an NRTL. This can be seen from the general discussion in the preamble to the final rule, and specifically from the decision to grandfather the operations of UL and FMRC for a five-year period.

Thus, in the final rule, OSHA grandfathered some of the procedures that were in existence at the time of the rule. ''It seems reasonable that product testing systems already in place should be able to continue their operations without Agency rulemaking on the testing standards, methods and procedures they are using now and have successfully used in the past. The operation of already existing product testing systems, such as UL and FMRC, could be seriously disrupted if the Agency attempted to undertake rulemaking on the testing standards, methods and procedures they are using.'' (See 53 FR 12108, second column, last paragraph). The initial assessment for renewal of UL and FMRC in 1993 and 1994, identified mature and functioning procedures, some over thirty years old, which included the acceptance of test data from other sources and use of contract organizations for other services.

In addition, OSHA's intent in the 1988 rule was to allow a level of flexibility in meeting the mandatory requirements. OSHA recognized that procedures may operationally vary from laboratory to laboratory, and still be acceptable. For example, the preamble to the final rule stated that, ''. . . while the record indicates that current safety testing standards and practices may vary slightly among the third party safety testing organizations, the testing laboratories themselves indicate that they have compensating mechanisms and controls built into their particular systems which are intended to assure that the ultimate result will fall within an acceptable range'' (TR 534,550). ''The laboratories claim that they use those testing standards, methods and procedures which adequately address all necessary safety concerns and thereby justify their decision to ''pass'' the item in question and to allow the use of the laboratory's listing or identifying mark'' (Ex 38, p 3; TR 552,

553). (53 FR 12108, third column, first paragraph).

Thus, OSHA recognized that there were testing practices that might vary and differ among laboratories. OSHA also recognized that the compensating mechanisms and controls for each system and laboratory depends upon the confidence the laboratory has in the final result leading to use of the mark.

OSHA's review of the applications for renewal of recognition submitted by UL and FMRC have lead to the conclusion that it is appropriate to provide further clarification of acceptable NRTL procedures. In order for other NRTLs and future applicants to utilize these types of procedures, OSHA has provided specific criteria that will identify the critical elements of the various procedures. These criteria, as discussed earlier, were derived from the four elements that define an NRTL. By providing such criteria, an NRTL may tailor its methods and testing techniques to any procedure the NRTL would like to include.

The identification of criteria discussed in this document will provide guidance to applicants utilizing the various procedures, while still allowing the flexibility that was identified in the discussion of the regulation.

Clarification

The Occupational Safety and Health Administration is clarifying the types of testing and certification procedures which may meet the requirements for acceptance under section 1910.7.

The Agency has previously determined that an NRTL may, but is not obligated to, accept test data, component or product approvals, or other information or data from another NRTL, as long as it is satisfied with their appropriateness. The NRTL has the prerogative to retest or reapprove, as it deems necessary.

OSHA is aware that in addition to the procedures which were previously clearly understood to be acceptable, NRTLs also utilize procedures involving entities such as contractors, manufacturers, and other laboratories, for the performance of many of their functions. These other procedures are acceptable with certain controls in place. OSHA recognizes that to maintain credibility of these procedures, a higher level of expertise and controls by the NRTL will be required. Therefore, applicants for these will be assessed and audited by OSHA to more stringent guidelines. Generally, all acceptable procedures fall within one or more of the following.

1. The basic procedure where all product testing and evaluation is performed in-house by the NRTL that will certify the product
2. Acceptance of testing data from independent organizations, other than NRTLs
3. Acceptance of product evaluations from independent organizations, other than NRTLs
4. Acceptance of witnessed testing data
5. Acceptance of testing data from non-independent organizations
6. Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing)
7. Acceptance of continued certification following minor product modifications by the client
8. Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme
9. Acceptance of services other than testing or evaluation performed by subcontractors or agents

Certain procedures are unacceptable. Included among these are manufacturer self-declaration, client self-certification, and other similar procedures that permit non-NRTLs to determine conformance with the product standard, i.e., certify the product.

A number of procedures encountered during on-site investigations by OSHA assessors have existed in one form or another prior to the existence of the NRTL program in 1988. Most of these procedures appear to have matured to a degree necessary to maintain product safety in the workplace and included controls necessary for conformity with NRTL program requirements.

This Notice discussed procedures and criteria to be utilized by OSHA assessors and auditors in evaluating each of them. OSHA will continue to closely monitor progress under these criteria and evaluate the effectiveness of the procedures.

The specific criteria utilized for evaluating the procedures of an applicant for recognition as a nationally recognized testing laboratory are based upon ''national consensus standards and international guides''.

Three basic principles, to assure that product certifications would provide necessary levels of safety, were derived from the rule.

These principles are as follows:

(1) The NRTL shall be capable of performing all aspects of a product certification scheme on its own.

- The NRTL shall be recognized to perform the tests, evaluations, and other services before it can accept such services from other organizations.

(2) Where the services of other organizations are used, the NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall have procedures consistent with the appropriate national standards and international guides for granting, maintaining, and extending its qualification of an organization or service.
- The NRTL shall use assessors who met the competence requirements of the appropriate national standards and international guides to evaluate the organization.
- The NRTL shall ensure that all aspects of certification work performed by others—including participants, locations of testing, witnessing, and evaluations—are identified in the NRTL and client records and reports.

(3) The NRTL shall ensure that each organization providing data, product evaluations, or other services to the NRTL is capable of doing so, and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall be able to demonstrate that each organization it employs is capable of providing data, product evaluations, or other services that meet, or exceed, the quality of those provided by the NRTL.
- The NRTL shall maintain reports of its assessments of such organizations; these assessments shall conform to appropriate national standards and international guides.
- The NRTL shall have a documented surveillance program to ensure continued compliance with the NRTL's qualification procedures; this surveillance program shall be consistent with the appropriate national standards and international guides.
- The NRTL shall not be economically affiliated with any of these outside organization.

Procedures and specific criteria for each, were then developed from the basic principles. These principles, wherever they are applicable, shall be an integral requirement of the following procedures.

1. The Basic Procuredure—All Product Testing and Evaluation is Performed In-House by NRTL That Will Certify the Product

This is the basic procedure utilized by an NRTL under conditions where it is feasible. The first and second basic principles are applicable to this procedure.

2. Acceptance of Testing Data From Independent Organizations, Other Than NRTLS

As was noted previously in reference to the preamble to the final rule, OSHA anticipated that most testing by an NRTL would be done in-house, but did not make this a requirement of the standard. Subcontracting out of some of the tests was anticipated by OSHA, when it noted that the laboratory actually doing the work must have the necessary capability to conduct the tests, and the laboratory applying for recognition would retain primary responsibility for fulfilling the requirements of the standard and complying with the procedures set out in Appendix A.

An NRTL may accept testing conducted by an independent organization provided the following criteria are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall review each test package and complete the product evaluations required by the test standards.
- The NRTL shall ensure that all data in the test data package originated with an organization that the NRTL qualified.

The NRTL shall ensure that each organization providing testing data is capable of conducting the test and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall have a written program for assessing the qualification of the organization to perform testing for each product type it may be required to test.
- This qualification program shall include procedures for evaluating the organization's independence, facilities, utilities, environmental controls, personnel, testing and calibration equipment, written testing procedures, calibration procedures, quality assurance program, and other elements as outlined in the appropriate national concensus standards and international guides.

3. Acceptance of Product Evaluations From Independent Organizations, Other Than NRTLS

Although no clear distinction between testing and evaluation is made in the final rule (29 CFR 1910.7), such distinction exists.

Many NRTLs utilize outside organizations for specific or unique tests. In these instances, the NRTL stipulates the tests and defines the testing procedures to be utilized and, finally, evaluates the test results to determine conformance of the product to the product standard and certifies the product where it does conform.

In this type procedure, the outside organization both tests and evaluates the results of the tests to determine conformance of a product to a standard, and them issues a test and evaluation report to the NRTL. The NRTL, in return, weighs the report for validity and conformance of the product to the product standard in order to decide whether the product is certifiable.

Authorization for an NRTL to accept product evaluations significantly expands the scope of the services which may be provided to the NRTL from an outside source. Acceptance of product evaluations will require the NRTL to establish a more formalized, long-term relationship with the independent organization to acquire confidence in its evaluation procedures.

An NRTL may accept product evaluations prepared by an independent organization provided the following criteria, in addition to the requirements in Procedure 1, are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall review each evaluation package, and complete the product evaluations required by the test standards before the product certification is issued.
- The NRTL shall ensure that evaluations are obtained from an organization which it has qualified.
- The NRTL shall ensure that data relied upon have been developed under the program established by the NRTL.
- The NRTL shall require the organization to establish and maintain a system to document technical correspondence and test standard interpretations.
- The NRTL shall assure that the organization, in preparing the evaluation package, follows the written procedures established by the NRTL.

The NRTL shall ensure that each organization providing product evaluations is capable of conducting the tests and performing the evaluations, and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL's qualification program shall be used to assess the organization's procedures and personnel to determine its qualifications relative to each product type it may be asked to evaluate.
- The qualification program shall establish a minimum period and level of mutual effort between the NRTL and the organization for confidence-building. During this period the NRTL will witness evaluations, verify the evaluations through inter-organizational comparisons, and validate the competence of personnel to perform product evaluations.

4. Acceptance of Witnessed Testing Data

This procedure involves technical personnel from the NRTL witnessing product testing generally carried out at a location other than that of the NRTL. The organization carrying out the tests may or may not be independent.

The majority of testing witnessed by representatives of the NRTL is consistent with the statement in the preamble to the final rule that * * * in some cases, laboratories may wish to subcontract out the testing of a certain product or aspect thereof due to unique or special testing needs.

Representatives of an NRTL may witness testing provided the following criteria are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall train its own personnel to take an active role in witnessing each phase of the tests.
- This training shall include specific testing procedures for each product type the trainees may witness.

The NRTL shall assure that the organization providing the testing data is capable of conducting the tests and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall have a written program for assessing the qualification of the organization to perform testing for each product type it may be required to test.
- This qualification program shall include procedures for evaluating the outside organization's facilities, utilities, personnel, testing and calibration equipment, written testing procedures, calibration procedures, environmental controls, and other elements as outlined in the appropriate national consensus standards and international guides.
- The NRTL shall qualify the outside organization using the NRTL's own staff.

5. Acceptance of Testing Data From Non-Independent Organizations

This program involves test data generated by an organization that has a vested interest in the outcome of the test results.

Data submitted under this program shall not include products intended for use in hazardous (classified) locations

(see 29 CFR 1910.307). A substantial number of tests of products intended for use in hazardous locations involves subjective analysis and have levels of complexity well beyond that required for tests of products meant for use only in ordinary locations.

An NRTL may accept testing conducted by a non-independent organization provided the following criteria are complied with, in addition to the requirements in Procedure 1, with the exception for the need to document the independence of the organization:

The NRTL shall establish procedures and maintain records which will demonstrate that the test data are unbiased.

The NRTL shall ensure that the organization providing the data is capable of conducting the tests and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL's qualification procedures shall establish a minimum time period for confidence-building. During this period the NRTL will witness tests and verify them by duplicate testing at the NRTL's facility.
- The NRTL's surveillance program shall include annual site evaluations, review of test packages, random samples and retests by the NRTL, and other controls outlined in the appropriate national standards and international guides.

6. Acceptance of Evaluation Data From Non-Independent Organizations (Requiring NRTL Review Prior To Marketing)

This type of procedure enables an organization to evaluate a product in which it has a vested interest. However, the product shall not be released to the market until the NRTL has reviewed and concurred with the evaluation.

An NRTL may accept product evaluations prepared by a nonindependent organization provided the following criteria are complied with:

Except for the requirement for independence, the specific program criteria in Procedures 1, 2, and 4 shall apply to product evaluations by non-independent organizations. The following additional program criteria shall also be required:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall establish and maintain records of procedure and product deficiencies identified, and the corrective actions taken by it and the organization.
- The NRTL shall establish and maintain a program to monitor and confirm the organization's evaluations.
- The NRTL shall assure that no product is released to the market until it has verified the organization's testing data and concurred with its evaluation of the product.

The NRTL shall assure that each organization providing data and evaluations is capable of performing these functions and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall establish and maintain records that demonstrate that the organization continues to be proficient in testing and evaluation.
- The NRTL shall demonstrate that the organization's laboratory has sustained the quality of its performance in testing before being considered for this program.

7. Acceptance of Continued Certification After Minor Product Modifications by the Manufacturer

This type of procedure would allow a manufacturer to make minor changes to a certified product, test and evaluate the change or changes, and continue to use the certification mark on the modified product.

With all the controls in place and a clear understanding of what a ''minor'' product modification encompasses, there should be no reason to consider this procedure as not falling within the scope of the NRTL program. A minor product modification is one which involves the use of an interchangeable component in a previously accepted product. Examples are the substitution of an equivalent switch from a different manufacturer, or the replacement of a motor with a comparable one of different horsepower.

An NRTL may accept minor product modifications from a manufacturer without requiring recertification provided the following criteria, as well as the criteria in Procedures 1, 2, 4, and 5 (except for the requirements for independence), are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall clearly define what is meant by ''minor'' modifications.
- The NRTL shall review each test and evaluation report for each product modification.

The NRTL shall assure that each manufacturer providing the test data and evaluation is capable of conducting the tests and making the product evaluations, and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall demonstrate that the client has sustained the quality of its performance in both testing and product evaluation before being considered for this program.

8. Acceptance of Product Evaluations From Organizations That Function As Part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme

The IEC–CB scheme authorizes organizations accredited as certified bodies to exchange product test data and evaluation reports with each other.

An NRTL may accept product evaluations from organizations that are part of the IEC–CB scheme provided the following criteria are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall physically evaluate each product.
- The NRTL shall review each test and evaluation report and certificate of certification to determine that the correct nationally recognized standards has been used to test the product and, where applicable, that the US deviations have been properly applied.
- The NRTL shall have written procedures for the evaluation of products, and for the interpretation of any results.
- The NRTL shall establish records that demonstrate that the organizations furnishing test and evaluation reports continue to be competent. These records will include documentation to demonstrate that the organization understands the US deviations and has correctly applied them.
- The NRTL shall determine that the components used in the product are tested to a standard comparable to the appropriate nationally recognized standard.
- The NRTL shall determine that components used in the product have been certified through an appropriate regulatory authority's scheme, and that the scheme includes routine evaluation of the manufacturer's process.

9. Acceptance of Services (Other Than Testing or Evaluation) Performed by Subcontractors or Agents

Services under this heading include follow-up activities, calibration activities, and equipment maintenance accomplished by subcontractors or agents.

Athough there do not appear to be any references in 29 CFR 1910.7 or in the preamble to the final rule that specifically address this issue, testing

laboratories, including the larger organizations, have historically contracted for certain activities. Most common are activities such as repair and calibration of test and measurement instrumentation, security services, and quality system accreditation. Assuming proper controls for such activities by the NRTL, they should not affect the ability of the NTRL to produce credible findings. It was never OSHA's intent to discourage or limit activities such as the use of national or international standards for quality assurance qualification and registration of a manufacturer by organizations other than the NRTL. Such accreditation and services can be useful tools for an NRTL as long as the NRTL retains ultimate control and responsibility.

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall assure that subcontractors or agents performing service which may affect the certification of a product have been assessed and qualified by the NRTL.
- The NRTL shall assure that subcontractors agents use the follow-up procedures established by the NRTL.
- The NRTL shall maintain records of the results of the follow-up visits.

The NRTL shall assure that each agent or subcontractor providing a service is capable of performing that service and that the relationship between the agent or subcontractor does not compromise the NRTL's independence.

- The NRTL shall be able to demonstrate that all subcontractors and agents are capable of providing services equivalent to that provided by the NRTL.
- The NRTL shall have written procedures to qualify subcontractors or agents, to monitor their performance, to communicate effectively with them, and to maintain manufacturer confidentiality.
- The NRTL's qualification rpocedures shall include: qualification requirements; the subcontractor's or agent's quality assurance and self-auditing programs; the NRTL's monitoring program; and the documentation requirements for both the NRTL and the subcontractor or agent.
- The NRTL's records shall include documentation to demonstrate that the subcontractor or agent complies with the NRTL's program.
- The NRTL shall use its own staff to qualify the subcontractor or agent.
- The NRTL shall have the means to ensure that only follow-up inspectors who are qualified for the task are utilized.
- The NRTL's surveillance program shall include routine audits of the facilities, staff, and procedures involved in its follow-up program.
- The follow-up procedures in foreign countries shall be as stringent as those required in the US.
- The follow-up program shall include an initial assessment of the manufacturers' procedures, the quality control system, maintenance procedures, recordkeeping and other elements from the appropriate national standards and international guides.
- The follow-up program shall have the capability to identify variations in the manufacturers' ability to control the quality of production.
- The NRTL shall periodically inspect samples of products for compliance.

The Use of An "NRTL" Certification Mark for Products Tested and Certified In Accordance With OSHA's Requirements

OSHA has received requests from several NRTL participants to initiate action that would implement a requirement for the use of a unique mark for the NRTL certified products. As a result of these requests, OSHA will publish a separate document in the **Federal Register** explaining how such a program may be implemented, as well as describing the requirements which are considered to be part of such a program.

In this separate document, OSHA will request comments on the advantages and disadvantages of implementing such a program and invite suggestions as to the proper approach OSHA should take. The document will include the concerns of the Agency and will seek public information that will enable it to determine the appropriate action.

Authority

Section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033).

Signed at Washington, DC, this 3rd day of March 1995.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95–5780 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–26–M

Maryland State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart O to part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated September 9 and October 7, 1994, from Henry Koellein, Jr., Commissioner of the Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) Amendments, corrections, additions and revisions to 29 CFR 1910.132, 1910.133, 1910.136, and 1910.138, pertaining to the Personal Protective Equipment Standard for General Industry, as published in the **Federal Register** of April 6, 1994 (59 FR 16360); (2) amendments, corrections, and additions to 29 CFR 1910.146, pertaining to the Permit-Required Confined Spaces Standard for General Industry, as published in the **Federal Register** of May 19, 1994 (59 FR 26115); and (3) an amendment to 29 CFR 1926.62, pertaining to the Lead in Construction Standard for the Construction Industry, as published in the **Federal Register** of May 4, 1993 (58 FR 26627). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after public hearings on April 15 and July 22, 1994. These standards became effective on August 29 and September 26, 1994, respectively.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. Location of the Supplements for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 191204; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, U.S. Department of Labor, Room N3700, 3rd Street and Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Maryland State plan as proposed changes the making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting the requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 9, 1995.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Philadelphia, Pennsylvania, this 26th day of January 1995.

Linda R. Anku,

Regional Administrator.

[FR Doc. 95–5776 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–26–M

Maryland State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1593.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart O to part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated January 10 and January 30, 1995, from Henry Koellein, Jr., Commissioner of the Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to amendments, corrections, and revisions to: (1) amendments, corrections, additions and revisions to 29 CFR 1910.137 and 1910.269, pertaining to the Electric Power Generation, Transmission and Distribution Standard and the Electrical Protective Equipment Standard for General industry, as published in the **Federal Register** of June 30, 1994 (59 FR 33660); (2) amendments, corrections, additions and revisions to 29 CFR 1910.120, pertaining to the Hazardous Waste Operations and Emergency Response Standard for General Industry, as published in the **Federal Register** of August 22, 1994 (59 FR 43270); (3) amendments, corrections, additions and revisions to 29 CFR 1910.132, 1910.133, 1910.136, and 1910.138, pertaining to the Personal Protective Equipment Standard for General Industry, as published in the **Federal Register** of July 1, 1994 (59 FR 33910); (4) amendments to 29 CFR 1910.1201, 1926.21, and 1928.21, pertaining to the Retention of Department of Transportation Markings, Placards and Labels, as published in the **Federal Register** of July 19, 1994 (59 FR 36700); (5) amendments, corrections, additions and revisions to 29 CFR 1926.1101, including Appendices A, B, D, F, H, I, and K, pertaining to the Occupational Exposure to Asbestos Standard for General Industry, as published in the **Federal Register** of August 10, 1994 (59 FR 41131); and (6) amendments to 19 CFR 1926.500–.503, including Appendices A–E, Safety Standards for Fall Protection in the Construction Industry, and related amendments, corrections, additions and revisions to 29 CFR 1910.169(g)(2)(i); 1926.104; 1926.753; 1926.105; 1926.107 (b), (c) and (f); 1926.250(b)(2); 1926.550 (c)(2) and (g)(4)(i)(C); 1926.651(l); 1926.701(f)(2); and 1926.951(b)(4)(i), as published in the **Federal Register** of August 9, 1994 (59 FR 40729). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after public hearings on September 8 and October 28, 1994. These standards became effective on January 2 and January 30, 1995, respectively.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. Location of the Supplements for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry. 501 St. Paul Place, Baltimore, Maryland 21202, and the OSHA Office of State Programs, U.S. Department of Labor, Room N3700, 3rd Street and Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 9, 1995.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania, this 8th day of February 1995.

Linda R. Anku,

Regional Administrator.

[FR Doc. 95–5777 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Achives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before April 24, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency, or origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Defense (N1–330–95–3). Database relating to imagery requirements.
2. Department of Labor, Office of Labor-Management Standards (N1–317–95–1). Annual reports filed by surety companies that issue bonds under the Labor-Management Reporting and disclosure Act.
3. Department of State (N1–76–93–2). Administrative and duplicative records relating to the arbitration over the U.S. embassy in Moscow.
4. Department of State (N1–84–94–4). Records relating to fine and decorative art maintained at Foreign Service Posts.
5. Commission on the Social Security Notch Issue (N1–220–95–3). Petitions, mass mailings and other routine public correspondence.
6. Defense Logistics Agency (N1–361–95–1). Records relating to Foreign Military Sales (FMS) Transportation Case Files.
7. Environmental Protection Agency, Office of Pesticides Programs (N1–412–92–3). Administrative records such as correspondence, status reports, budget and inspection records maintained in chemical disposal case files.
8. Federal Aviation Administration (N1–237–95–1). Administrator's Hotline Files.
9. Federal Energy Regulatory Commission (N1–138–91–2). Hydropower Licensing Case Files.
10. National Aeronautics and Space Administration (N1–255–94–1). Agency-wide organizational, administrative. legal and technical records (Chapters 1 and 2 of the NASA Records Retention Handbook).
11. United States District Courts, Northern District of Texas (N1–21–95–1). Paper copies of judgments and orders (record copy is preserved on microfiche).
12. Office of Technology Assessment (N1–444–95–1). Library reference files.

Dated: February 27, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–5711 Filed 3–8–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Integrated Performance Assessment Process (IPAP); Public Information Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing its plans to conduct a public meeting to discuss its proposed Integrated Performance Assessment Process (IPAP) for commercial, operating, nuclear power plant licensees. The IPAP was developed to improve the NRC's integration of objective information related to the performance of reactor licensees. In addition, the IPAP will provide a check on the effectiveness of NRC's integration and planning processes and will provide feedback on the effectiveness of regulatory programs.

This notice also announces the availability of background material in the NRC Public Document Room (PDR). The following background documents are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington DC:

- IP 93XXX, ''Integrated Performance Assessment Process.'' This document describes the IPAP.
- SECY–94–210, ''Customized Inspection Planning Process—Trial Activity.'' This document describes the IPAP and provides the results of the first trial assessment.
- NRC Inspection Report 50–498/94–25; 50–499/94–25. This document provides the results of an IPAP trial assessment.
- NRC Inspection Report 50–369/94–14; 50–370/94–14. This document provides the results of an IPAP trial assessment.
- NRC Inspection Report 50–272/94–201; 50–311/94–201. This document provides the results of an IPAP trial assessment.

• NRC Inspection Report 50–334/94–81; 50–412/94–81. This document provides the results of an IPAP trial assessment and will be placed in the NRC PDR when issued.

The objectives of the public meeting are to provide a brief description of the Integrated Performance Assessment Process, answer questions on the process, and receive feedback from interested members of the public.

DATES: The meeting will be held on April 11, 1995, from 8:30 a.m. to 12:30 p.m. Persons planning to attend the public information meeting should submit a completed registration form (see below) by April 3, 1995. Interested persons unable to attend the meeting may submit written comments. Submit comments by April 18, 1995. Comments received after this date will be considered if practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: The meeting will be held at the United States Nuclear Regulatory Commission, Two White Flint North, Auditorium, 11545 Rockville Pike, Rockville, MD.

Send completed registration forms to Mr. David L. Gamberoni, M/S OWFN 12–E–4, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Send comments to Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Copies of the comments received may be examined or copied for a fee at the NRC Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Gamberoni, M/S OWFN 12–E–4, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC, 20555. Telephone (301) 415–1144.

SUPPLEMENTARY INFORMATION: The Integrated Performance Assessment Process (IPAP) is a four phase process for systematically evaluating nuclear power plant licensee's safety performance. The IPAP also develops inspection recommendations that customize the inspection program for the next inspection period based on licensee strengths and weaknesses, and provides feedback to improve the effectiveness and implementation of regulatory programs.

The four IPAP phases include:

• Integrated Review of Licensee Performance

• Site Assessment Visit

• Final Analysis and Inspection Recommendation Development

• Assessment of Regulatory Programs

The NRC staff intends to make a brief presentation on the contents of the IPAP at the meeting. However, the main focus of the meeting will be to address any questions regarding the process and solicit comments. The NRC staff will consider the comments received during this public meeting as well as written comments in finalizing its recommendations to the Commission on the Integrated Performance Assessment Process.

Dated at Rockville, Maryland, this 2nd day of March 1995.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Chief, Performance Evaluation and Assessment Section, Inspection Program Branch, Directorate for Inspection and Support Programs, Office of Nuclear Reactor Regulation.

(Attachment to Notice of Meeting (IPAP))

Registration Form—United States Nuclear Regulatory Commission Integrated Performance Assessment Process Public Information Meeting TWFN, Auditorium, Rockville, Maryland

April 11, 1995.

Name _____

Title _____

Company/Organization _____

_____

_____

Address _____

_____

_____

Telephone Number _____

Comments _____

_____

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[FR Doc. 95–5775 Filed 3–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northwest Utilities, Millstone Nuclear Power Station, Unit 1, License No. DPR–21; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated January 15, 1995, Anthony J. Ross (Petitioner) has requested that the Nuclear Regulatory Commission take action with regard to Northeast Utilities. The Petition was submitted as a supplement to a letter submitted by the Petitioner on October 28, 1994, in which he requested that ''accelerated'' enforcement action be taken against Northeast Utilities for violations at Millstone involving procedure compliance, work control, and tagging control. As a basis for his request, the Petitioner alleges that since August 1993 violations in these areas have increased significantly when compared to previous like periods, that many of these violations have never been assigned a severity level, and that when the repetitive nature and duration of these violations are considered, and these violations are considered collectively together with violations that have been assigned a severity level, escalated enforcement action is warranted. By letter dated February 8, 1995, the Petitioner provided additional information in support of his Petition.

The request, as supplemented, is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation.

A copy of the Petition and the February 8, 1995, supplement are available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC, and at the local public document room for Millstone Unit 1 located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 23rd day of February 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of the Nuclear Reactor Regulation.

[FR Doc. 95–5772 Filed 3–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Exemption

In the Matter of Consumers Power Co. (Palisades Plant).

I

The Consumers Power Company (the licensee) is the holder of Facility Operating License No. DPR–20, which authorizes operation of the Palisades Plant at a steady-state reactor power level not in excess of 2530 megawatts thermal. This facility consists of one pressurized water reactor located at the licensee's site in Van Buren County, Michigan. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

The regulation 10 CFR 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Light-water Nuclear Power Reactors for Normal Operation,'' states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the ASME Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure (LTOP) system. The system includes pressure-relieving devices called power-operated relief valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water-solid condition, the operating pressure must be maintained below the PORV setpoint. In addition, in order to maintain seal integrity of the reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee LTOP analysis indicates that using the ASME Appendix G safety margins to determine the PORV setpoint would result in a pressure setpoint within its operating window, but there would be no margin for normal operating pressure surges. Therefore, operating with these limits could result in the lifting of the PORVs and cavitation of the rector coolant pumps during normal operation.

The licensee proposed in a letter dated February 10, 1995, that in determining the design setpoint for LTOP events for the Palisades Plant, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins currently required by Appendix G to 10 CFR part 50. Designated Code Case N-514, the proposed alternate methodology, is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. Code Case N–514, ''Low Temperature Overpressure Protection,'' has been approved by the ASME Code Committee but not yet approved for use in Regulatory Guide 1.147. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. The NRC is revising 10 CFR 50.55a, which will endorse the 1993 Addenda and Appendix G of Section XI into the regulations.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for the LTOP setpoint. By application dated February 10, 1995, the licensee requested an exemption from 10 CFR 50.60 for this purpose.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

The underlying purpose of 10 CFR 50.60, Appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter of the vessel wall thickness and a length of 6 times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Palisades reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Using the licensee's proposed safety factors instead of ASME Appendix G safety factors to calculate the LTOP setpoint will permit a higher LTOP setpoint than would otherwise be required, but will provide added margin to prevent normal operating surges from lifting the PORVs or cavitation of the reactor coolant pumps. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will

provide adequate margins of safety to the reactor vessel during LTOP transients, thus providing an acceptable level of quality and safety. Accordingly, the use of the Code case will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements for normal operation and anticipated operational occurrences.

IV

For the foregoing reason, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), such that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants the Consumers Power Company an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the ASME Appendix G curves for P/T limits are not exceeded by more than 10% in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has prepared an environmental assessment and determined that the granting of this exemption will not have a significant effect on the quality of the human environment (February 27, 1995, 60 FR 10615).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of March 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5774 Filed 3–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–282 and 50–306]

Exemption

In the Matter of Northern States Power Co. (Prairie Island Units 1 and 2)

I

Northern States Power Company (NSP, the licensee) is the holder of Facility Operating Licenses Nos. DPR–42 and DPR–60 which authorize operation of Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2. The units are pressurized water reactors (PWR) located in Goodhue County, Minnesota. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

Section III.G.1 of Appendix R to 10 CFR part 50 requires, in part, that fire protection features shall be provided for structures, systems, and components important to safe shutdown so that one train of systems necessary to achieve and maintain hot shutdown conditions be free of fire damage. The staff has interpreted these provisions as requiring that features shall be such that one train of safe shutdown systems remains operable, notwithstanding a fire or consequences therefrom, without one having to perform any repair. In this context, the staff considers manually pulling fuses to isolate certain systems as a repair. Accordingly, the staff interprets Section III.G.1 of Appendix R as not permitting the pulling of fuses in order to be in compliance.

By letter dated May 2, 1994, the licensee requested an exemption to permit it to manually remove fuses from the power-operated relief valve control circuit in the event of a fire, in lieu of modifying plant hardware which would otherwise be required to achieve compliance with Section III.G.1 of Appendix R. The licensee's submittal initially referenced Section III.G.2 of Appendix R as providing the requirements from which the licensee was seeking an exemption, but in a follow-up telephone conversation with the staff the licensee concurred that Section III.G.1 is the appropriate reference.

This exemption was requested by the licensee in response to inspection findings identified in inspection reports 50–282/87–004, 50–282/88–013, 50–282/92–011 and 50–282/94–004. These findings addressed a concern with circuit failure modes that could adversely affect the ability to maintain hot shutdown in the event of a control room fire. This condition could occur if the power operated relief valves (PORV) block valves were not shut and a hot short damaged the PORV control circuit causing the PORV to open and remain open. Specifically, this involves the high/low pressure interface spurious signal concerns associated with Unit 1 PORVs CV–31231 and CV–31232 and their associated block valves MOV–32195 and MOV–32196 and with Unit 2 PORVs CV–31233 and CV–31234 and their associated block valves MOV–32197 and MOV–32198. As a precaution to prevent the potential loss of reactor coolant system (RCS) inventory during a control room fire, the licensee has proposed to close the PORV block valves prior to control room evacuation. The licensee also proposed to remove the PORV control circuit fuses to prevent a hot short or short to ground which may cause the PORV to open or be maintained open. As stated above, removal of fuses for isolation in such circumstances is considered a repair and, therefore, does not meet Appendix R, Section III.G.1, as interpreted by the staff.

The licensee's proposed actions of closing the PORV block valves and removing the control circuit fuses was reviewed by the staff and was found to be an effective means of assuring that a control room fire will not result in a sustained loss of RCS inventory.

The substance of the licensee's submittal was reviewed by Region III inspectors during the inspection conducted from July 18–22, 1988. The inspection findings were documented in NRC Inspection Report No. 50–282/88–013 and 50–306/88–013. The inspectors walked down the control room evacuation shutdown procedures. Step 3.3.1 of Procedure F5, Appendix B, ''Control Room Evacuation (Fire),'' directs the operators to remove/pull the fuses for the PORVs as an immediate action in response to a control room evacuation. The inspectors found that the fuse panels were readily accessible and the fuses were clearly identified in the panels. The inspectors also found that sufficient space is available to permit access for pulling fuses and that emergency lights and the fuse pullers had been provided in the vicinity of each panel. A training program has been established for all plant operators to enhance the familiarity with and proper response to the control room evacuation. Additionally, as a part of Emergency Operating Procedures (EOP) training, all the operators are trained on

the above-mentioned procedures to ensure their familiarity with respect to the removal of fuses during hot shutdown. Therefore, operators are trained and experienced in removing the fuses.

On the basis of this evaluation, the Commission concludes that the proposed action to close the PORV block valves prior to control room evacuation and to remove fuses from the PORV control circuit provides reasonable assurance that safe shutdown can be achieved in the event of a control room fire and is acceptable.

III

The Commission has determined, pursuant to 10 CFR Part 50.12, that this exemption as described in Section II above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Furthermore, the Commission has determined that special circumstances as provided in 10 CFR 50.12(a)(2)(ii), are present in that application of the regulation, as interpreted by the staff, in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of Section III.G.1 of Appendix R is to ensure that safe shutdown can be achieved notwithstanding a fire or the consequences therefrom. Application of this section to the extent it precludes the removal of fuses as a fire protection feature is not necessary to achieve the underlying purpose of the rule because the licensee's proposal still provides reasonable assurance that one safe shutdown train will be operable and free of fire damage.

IV

Accordingly, the Commission hereby grants an exemption from the requirements of Section III.G.1 of Appendix R to 10 CFR Part 50 to allow removal of fuses from the PORV control circuit in the event of a control room fire.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (59 FR 62415).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of February 1995.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5773 Filed 3–8–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Notice of Commission Visits

March 3, 1995.

Notice is hereby given that members of the Postal Rate Commission and certain advisory staff members will visit the facilities of the following businesses to observe their operations:

Penton Press, Cleveland, Ohio and then meet with officials from Lands End, Inc. in Milwaukee, Wisconsin on March 7, 1995.

Quad/Graphics, Hartford, Wisconsin on March 8, 1995.

Hallmark Cards, Kansas City, Missouri, March 9, 1995.

Reports of these visits will be placed on file in the Commission's Docket Room. For further information contact Margaret P. Crenshaw, Secretary of the Commission at 202–789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–5813 Filed 3–8–95; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Placement Service.

(2) *Form(s) submitted:* ES–2, ES–20a, ES–20b, ES–21, ES–21c, UI–35.

(3) *OMB Number:* 3220–0057.

(4) *Expiration date of current OMB clearance:* April 30, 1995.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit, State, Local or Tribal Government.

(7) *Estimated annual number of respondents:* 27,700.

(8) *Total annual responses:* 31,250.

(9) *Total annual reporting hours:* 1,981.

(10) *Collection description:* Under the RUIA, the Railroad Retirement Board provides job placement assistance for unemployed railroad workers. The collection obtains information from job applicants, railroad and non-railroad employers, and State Employment Service offices for use in placement, for providing referrals for job openings and reports of referral results and for verifying and monitoring claimant eligibility.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–5767 Filed 3–8–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35437; File No. SR–CBOE–95–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Buy-Write Options Unitary Derivatives

March 2, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 1, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. 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, pursuant to Rule 19b–4 under the Act, proposes to amend its rules to permit trading in Buy-Write Options Unitary Derivatives (''BOUNDs''). As described in more detail below, BOUNDs are long term options which the CBOE believes have the same economic characteristics as a covered call writing strategy.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

The CBOE believes the purchase of a BOUND will be substantially equivalent to a ''buy-write'' transaction (*i.e.,* the simultaneous writing of a call option and purchase of the underlying stock). Unlike an actual buy-write transaction, however, the purchase of a BOUND is effected in a single exchange transaction. The Options Clearing Corporation (''OCC'') will be the issuer of all BOUNDs traded on the Exchange.

As with OCC issued options, BOUNDs will be created when an opening buy and an opening sell order are executed. The execution of every such order will increase BOUNDs open interest. Except as described herein, BOUNDs will be subject to the rules governing standardized options.

A BOUND holder will be in essentially the same economic position as a covered call writer except that a BOUND is not subject to exercise before expiration. BOUND holders will profit from the stock's movement up to the strike price and will receive payments equivalent to the cash dividends paid on the underlying stocks. On the ex-date for a stock dividend, OCC will debit all short BOUND accounts and credit all long BOUND accounts with an amount equal to the dividend on the underlying stock.

Like put and call options, BOUNDS will trade in standardized contract units of 100 shares of underlying stock per BOUND contract. At expiration, BOUND holders will receive 100 shares of the underlying stock for each BOUND contract held if on the last day of trading, the underlying stock closes at or below the strike price. However, if at expiration the underlying stock closes above the strike price, the BOUND holder will receive a payment equal to 100 times the BOUND's strike price for each BOUND contract held. Persons who have sold BOUND contracts will be required to deliver either 100 shares of the underlying stock for each BOUND contract or the strike price multiplied by 100 at expiration, depending on the price of the underlying stock at that time. This is the same economic result that accrues to a covered call writer who holds the position to the expiration of the call option.

For example, if the XYZ BOUND has a strike price of $50 and XYZ stock closes at $50 or less at expiration, the holder of an XYZ BOUND contract will receive 100 shares of XYZ stock. This is the same result as if the call option in a buy-write position had expired out of the money; i.e., the option would expire worthless and the writer would retain the underlying stock. If XYZ closes above $50 per share, then the holder of an XYZ BOUND contract will receive $5,000 in cash (100 times the $50 strike price). This mimics the economic result to the covered call writer when the call is in the money at expiration and is exercised, i.e., the writer would receive an amount equal to 100 shares times the strike price and, because he would be required to deliver the stock, would forfeit any appreciation above that price.

The criteria for stocks underlying BOUNDs will be the same as the criteria for stocks underlying stock options. The Exchange anticipates that it will list BOUNDs on the same underlying securities on which Long-Term Equity Option Series (''LEAPs'') are listed. BOUNDs will be listed at the same strike prices and expiration dates as their respective LEAPs except that BOUNDs will be listed only at strike prices that are at (or very near) or below the then current price of the underlying stock. BOUNDs will be listed with up to 39 months until expiration.

It is anticipated that the sum of the market prices of a LEAP and a BOUND on the same underlying stock with the same expiration date and exercise price will approximate the market price of the underlying stock. If the combined price of the LEAP and BOUND diverge from that of the underlying stock, it is anticipated that arbitrage activity will tend to bring the price relationships back into line.

There is also a relationship between the settlement at expiration of a LEAP and a BOUND having the same underlying security, strike price and expiration date. If at expiration the underlying stock closes at or below the strike price, the LEAP call will expire worthless, and the holder of a BOUND contract will receive 100 shares of stock from the seller of a BOUND position. if, on the other hand, the LEAP call is in the money at expiration, the holder of the LEAP call is entitled to 100 shares of stock from a short LEAP upon payment of the strike price, and the holder of a BOUND contract is entitled to the strike price times 100 in cash from the short BOUND. While it seems unlikely that an investor would be long both a LEAP and a BOUND at expiration, it is illustrative to consider how such a position would be settled. To continue with the above example where XYZ closes above the $50 strike price at expiration, an investor long both a LEAP and a BOUND contract would be entitled to receive $5,000 in cash from the short BOUND and, upon exercise of the LEAP, would be obligated to pay $5,000 to receive 100 shares of XYZ stock.

The settlement of the LEAP and BOUND at expiration are equally well harmonized from the perspective of the writer. For example, if a writer of both instruments is covered with the underlying stock and the stock closes above the strike price, at expiration, the writer delivers the stock to the long LEAP call and receives in return payment of the strike price times 100, which amount is then delivered to the long BOUND. A covered writer's position, therefore, effectively is closed upon the delivery of the covering stock. If a writer of both instruments has deposited cash or securities other than the underlying stock as margin for a short LEAP call and BOUND, then the writer delivers 100 shares of stock (purchased on the open market) to the long LEAP call upon payment of the strike price times 100. The writer of the BOUND then delivers 100 times the strike price to the holder of the long BOUND.

It should be noted that LEAPs are American-style options whereas BOUNDs are European-style in that they cannot be ''exercised'' prior to expiration.[1] The Exchange believes that a European-style BOUND will have greater acceptance among investors than an American-style product since a European-style BOUND will permit purchasers to enjoy the enhanced yield that the BOUND provides for a certain period of time. Furthermore, because some type of performance—either delivery of the underlying stock or payment of the strike price—is always required at expiration, the CBOE believes that notice of exercise is not necessary and, therefore, will not be required.

[1] A European-style option may only be exercised during a limited period of time before the option expires. An American-style option may be exercised at any time prior to its expiration.

Customer Margin. The Exchange proposes to apply options margin treatment to BOUNDs as explained below.

A. Long BOUND Positions

Long BOUND positions will be given no loan value and payment in full will be required at the time of purchase. As described more fully below, however, there will be a credit for long BOUNDs in BOUND spread positions.

B. Short BOUND Positions

The BOUND seller receives the full value of the BOUND at the time of the initial sale and receives no further payment when the contract is settled either by payment of the strike price or delivery of the underlying stock. Short BOUND positions, therefore, will be margined in an amount equal to the current market price of the BOUND plus an amount equal to the ''add on'' percentage used to margin short call options times the market value of the BOUND. Since the maximum obligation of the seller of a BOUND cannot exceed the strike price, however, the amount of margin will never exceed the strike value. Examples of the margin treatment for a short BOUND position follow:

1. Assume a stock price of $50, a margin add-on percent of 20% and the BOUND trading at $40. In this case, the short seller would have to pay $48 to margin the position, *i.e.*, $40 BOUND price plus 20% of $40 ($8), or $48.

2. Assume a stock price of $60, an exercise price of $50, a margin add-on of 20% and the BOUND trading at $45. In this case, the calculated margin would be $54, *i.e.*, $45 BOUND price plus 20% of $45 ($9) or $54. However, since the maximum margin for a short BOUND is the strike value, the margin would be $50.

3. Assume a stock price of $40, an exercise price of $50, a margin add-on percent of 20% and the BOUND trading at $35. In this case, the margin would be $42, *i.e.*, $35 BOUND price plus 20% of $35 ($7), or $42.

C. Covered Positions

Short BOUND positions offset by the equivalent number of shares of the underlying stock will not require any additional margin since the seller's obligation to the buyer will, in all cases, be covered by the position in the underlying stock. Further, since the sum of the prices of a LEAP and a BOUND will be approximately equal to the price of the underlying stock, a long stock position is cover for both a short BOUND and a short LEAP position.

D. Spread Positions

Same Expiration—Different Strike Prices

There will be no margin requirement for BOUND positions which are long the higher strike price and short the lower strike price since the long BOUND more than covers the obligation of the short side of the position. For positions short the higher strike price and long the lower strike, a customer will be required to post the difference between the strike prices.

Different Expiration—Same Strike Price

No margin will be required for positions long the nearest expiration and short the longer expiration since the value of the long BOUND will cover the obligation on the short leg of the position. Positions that are short the near expiration and long the distant expiration will require full margin on the short position less 80% of the market value of the long position.

Different Expiration—Different Strike Prices

There will be no margin required for positions that are long the near expiration and short the distant expiration when the strike price on the near expiration is higher than the strike on the distant expiration. For positions which are long the near expiration and short the distant expiration when the strike price on the near expiration is lower than the strike on the distant contract, the margin will be the difference in the strike between the near term and distant strikes. For positions which are short the near expiration and long the distant expiration, full margin will be required on the short position less 80% of the market value of the long position.

Sales Practices

BOUNDs will be subject to the sales practice and suitability rules applicable to standardized options.

Adjustments for Corporate Transactions

BOUNDs will be subject to adjustments for corporate and other actions in accordance with the rules of The Options Clearing Corporation.

Positions Limits

BOUNDS will be subject to the position limits for equity options set forth in Exchange Rule 4.11. In addition, BOUNDs will be aggregated with equity options on the same underlying stock for the purpose of calculating position limits. However, since BOUND, to the holder, is a ''bullish'' position (*i.e.*, it is the equivalent of a short put position where the strike price has been prepaid), long BOUNDS will be aggregated with long call and short put positions. Similarly, since the BOUND, to the seller, is a ''bearish'' position (*i.e.*, it is the equivalent of a long put position where the strike price has been prepaid), short BOUNDS will be aggregated with short call and long put positions.

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 9(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

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

Comments were neither solicited nor received.

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, S.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by March 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5702 Filed 3–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35438; File No. SR–NASD–95–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Subscriber Fees For Non-NASD Members Receiving the Nasdaq Workstation™ II Functionality

March 2, 1995.

On January 9, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] a proposed rule change to extend to non-NASD members (*e.g.*, institutional investors) receiving the second generation of Nasdaq Workstation™ functionality (''NWII'') the same subscriber fees that members must now pay. The Commission published notice of the proposed rule change in the **Federal Register** on February 2, 1995.[2] No comments were received in response to the notice. For the reason discussed below, the Commission is approving the proposed rule change.

I. The Terms of Substance of the Proposed Rule Change

On December 14, 1994, the NASD submitted a proposed rule change—File No. SR–NASD–94–76—to the Commission that established a new fee schedule for NASD member firms receiving the second generation of NWII.[3] The fee schedule contained in File No. SR–NASD–94–76 became effective upon receipt by the SEC in accordance with Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(a) thereunder.[4] As specified in File No. SR–NASD–94–76, the new subscriber fees for NWII will add to Sections A(9) and E(5) of Part VIII of Schedule D to the NASD By-Laws.

The NASD then filed the instant rule change to extend to non-NASD members (*e.g.*, institutional investors) receiving NWII functionality the same subscriber fees that members must now pay: (a) a service charge of $100/month per server; (b) a display charge of $500/month per presentation device; and (c) a charge of $1,150/month for additional circuits. This rule change does not, however, entail any further modification to the fee schedule language for NWII that was set forth in File No. SR–NASD–94–76.

The sole purpose of this rule change is to extend to non-NASD members receiving the NWII, the same fees that now apply to NASD members that subscribe to the NWII. Currently, non-NASD members can access Level 2 Nasdaq Workstation service by subscription to the original version of the Nasdaq Workstation service (''NWI''). The NASD, however, is in the process of replacing NWI with NWII.[5] As the NWII roll-out proceeds, it will completely replace the existing NWI for all classes of subscribers. The instant rule change will ensure that the same NWII charges are paid by all subscribers, including those that are not members of the NASD.

II. Commission Findings

The Commission believes that the rule change is consistent with the requirements of Section 15A(b)(5) of the Act. Section 15A(b)(5) specifies that the rules of a national securities association shall provide for the equitable allocation of reasonable dues, fees, and other changes among members, issuers, and other persons using any facility or system that the Association operates or controls. This rule provides that the newly established fees for members receiving the NWII functionality will also be paid by non-member subscribers receiving the NWII.[6] This, in turn, effectuates fairness in the recovery of the applicable costs from the entire subscriber base. As described in this notice, NWII is being implemented in phases with all current NWI subscribers in a defined area being converted to NWII. Also non-NASD members that are converted to NWII will be liable for the new fees; NWI subscribers (i.e., members and non-members) will continue to pay the NWI service fees until they are converted. The extension of the new NWII fees schedule to non-members will result in the imposition of uniform fees and an equitable allocation of operating costs among all subscribers receiving the NWII functionality.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–01 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5701 Filed 3–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35435 File No. SR–NASD–94–61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Filing Requirements Under Article III, Section 44 of the NASD Rules of Fair Practice Regarding Modified Guaranteed Annuity Contracts and Modified Guaranteed Life Insurance Contracts

March 2, 1995.

On January 12, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change[2] that amends

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[2] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 35284 (January 27, 1995), 60 FR 6582.

[3] The computer facilities that support the provision of NWII are operated by the Nasdaq Stock Market, Inc. (''NSMI''), a wholly-owned subsidiary of the NASD.

[4] *See* Release No. 34–35189 (January 3, 1995), 60 FR 3014 (January 12, 1995).

[5] The NWII roll-out will occur in five phases with the final phase scheduled for completion in mid-1996. Each phase consists of installing NWII at all subscriber sites in a defined geographic area. Thus, while the roll-out proceeds, some subscribers will continue to utilize NWI and will pay the existing charges for that service.

[6] NWI and NWII both permit the delivery of either Level 2 or Level 3 Nasdaq service. Subscription to Level 3 is limited to NASD members that meet the financial and operational requirements for market making. Subscription to Level 2 Nasdaq service is open to non-members as well as members because it does not provide the functionality needed to enter quotations as a market maker.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The NASD originally submitted the proposed rule change on November 21, 1994. On December 1, 1994 and January 12, 1995, the NASD filed amendments to its filing.

Subsection 44(b)(8) to Article III of the NASD Rules of Fair Practice (''Corporate Financing Rule''). The Commission published notice of the proposed rule change in the **Federal Register** on January 30, 1995.[3] For the reasons discussed below the Commission is approving the proposed rule change.

I. The Terms of Substance of the Proposed Rule Change

The rule change amends Subsection 44(b)(8) of the Corporate Financing Rule to exempt modified guaranteed annuity contracts and modified guaranteed life insurance contracts (collectively, ''Contracts'') from the filing requirements under Subsection 44(b). The Corporate Financing Rule requires members to file with the NASD documents and information relating to a public offering of securities for review of the fairness of underwriting compensation and arrangements. The filing requirements in the Corporate Financing Rule also apply to Schedule E of the NASD By-Laws and Article III, Section 34 of the NASD Rules of Fair Practice.[4] The Corporate Financing Rule filing requirements apply to public offerings of debt, equity and public limited partnership securities, and provide that certain offerings of securities shall be exempt from the filing requirement under Subsection 44(b)(8) of the Rule. The exemptions in Subsection 44(b)(8) include, among others, open-end investment company securities registered under the Investment Company Act of 1940 (except closed-end investment company securities) and variable contracts. In addition, the exemptions include securities defined as ''exempt securities'' under Section 3(a)(12) of the Act and securities exempt from registration with the SEC pursuant to Sections 4(1), 4(2) and 4(6) of the Securities Act of 1933 (''1933 Act'') and Rules 504 (unless considered a public offering), 505 and 506 adopted under the 1933 Act.

The Contracts did not fall within any of the exemptions contained in the Corporate Financing Rule filing requirements. The Contracts are similar to variable annuity contracts in that they are issued by an insurance company, offered on a continuous basis, subject to the registration requirements and regulatory scheme of state insurance law, and, shift investment risk to the contract owner by offering variable, non-guaranteed rates of return under certain circumstances. That is, the Contracts are subject to a market value adjustment upon a Contract surrender or partial withdrawal prior to the end of a guarantee period. However, unlike variable annuities, the individual account values of the Contracts do not reflect the investment experience of one or more separate accounts registered under the Investment Company Act of 1940. Instead, like traditional fixed annuities, the Contracts are backed by the general account assets of the insurance issuer and are registered only as insurance contracts under state insurance law.

The review of the fairness and reasonableness of underwriting terms and arrangements is the central requirement of the Corporate Financing Rule. The issuance and sale of the Contracts on an open-ended basis does not raise the kinds of underwriting issues with which the Corporate Financing Rule is primarily and traditionally concerned. The structures of the instruments are that of insurance products which traditionally have been regulated under state insurance law and the terms of the Corporate Financing Rule were not developed to address such products. The Commission is therefore approving the NASD's proposal to amend the Corporate Financing Rule by adopting as new Subsection 44(b)(8)(E) an exemption from the filing and other requirements of the Corporate Financing Rule for the Contracts and to reletter the remaining sections accordingly. The amended rule thus exempts such Contracts from the filing and review requirements of the Corporate Financing Rule.[5] Listed below is the text of the rule change approved by the Commission. New language is italicized; proposed deletions are in brackets.

The Corporate Financing Rule Underwriting Terms and Arrangements

Sec. 44

* * * * *

(b) Filing Requirements

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(8) Exempt Offerings

Nothwithstanding the provisions of paragraph (1) above, the following offerings are exempt from this Section, Schedule E to the By-Laws, and Article III, Section 34 of the Rules of Fair Practice. Documents and information relating to the following offerings need not be filed for review:

(A) securities exempt from registration with the Securities and Exchange Commission pursuant to the provisions of Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 (unless considered a public offering in the states where offered), Rule 505 or Rule 506 adopted under the Securities Act of 1933, as amended;

(B) securities which are defined as ''exempt securities'' in Section 3(a)(12) of the Securities Exchange Act of 1934, as amended;

(C) securities of investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as a ''closed-end company'' in Section 5(a)(2) of that Act;

(D) variable contracts as defined in Article III, Section 29(b)(1) of the Rules of Fair Practice;

(E) modified guaranteed annuity contracts and modified guaranteed life insurance policies, which are deferred annuity contracts or life insurance policies the values of which are guaranteed if held for specified periods, and the nonforfeiture values of which are based upon a market-value adjustment formula for withdrawals made before the end of any specific period;

[(E)]*(F)* offerings of municipal securities as defined in Section 3(a)(29) of the Securities Exchange Act of 1934, as amended;

[(F)]*(G)* tender offers made pursuant to Regulation 14D adopted under the Securities Exchange Act of 1934, as amended; and

[(G)]*(H)* securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the Public Utility Holding Company Act of 1935, as amended.

II. Commission Findings

The Commission believes that the rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which require that the rules of the Association promote just and equitable principles of

[3] Securities Exchange Act Release No. 35266 (January 23, 1995), 60 FR 5744.

[4] Under Subsection 44(b)(1) of the NASD Rules of Fair Practice ''[n]o member or person associated with a member shall participate in any manner in any public offering of securities subject to this Section, Schedule E to the By Laws, or Article III, Section 34 of the Rules of Fair Practice unless documents and information as specified herein relating to the offering have been filed and reviewed by the NASD.'' (Emphasis added).

[5] In addition, Article III, Sections 26 and 29 of the NASD Rules of Fair Practice are not applicable, since the Contracts are not within the definition of ''variable contract'' and do not include a separate account registered under the Investment Company Act of 1940. However, as securities, sales of the Contracts are subject to other applicable Rules of Fair Practice when sold by associated persons of a member and the rules and regulations of the Commission, particularly the antifraud provisions thereof.

[6] 15 U.S.C. Sec. 78o–3.

trade and protect investors and the public interest since the issuance and sale of the Contracts on an open-ended basis does not raise the kinds of underwriting issues with which the Corporate Financing Rule is primarily and traditionally concerned; the structures of the instrument are that of insurance products which traditionally have been regulated under state insurance law; the terms of the Corporate Financing Rule were not developed to address such products.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–61 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5705 Filed 3–8–95; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

[Release No. 34–35439; File No. SR–NYSE–94–38]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendment to Exchange Rule 104.13

March 2, 1995.

On October 26, 1994, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 104.13 regarding investment account transactions of specialists and related parties.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35019 (November 29, 1994), 59 FR 62762 (December 5,6, 1994). No comments were received on the proposal.

Rule 104 provides that a specialist may not effect any purchase or sale of a security in which the specialist is registered (''specialty stocks'') for the account of an approved person associated with the specialist's organization, unless such transaction is reasonably necessary to permit the specialist to maintain fair and orderly markets. Currently, NYSE Rule 104.13 requires that transactions in specialty stocks for the accounts of specified persons affiliated with or related to a specialist must be for investment purposes and executed in accordance with certain restrictions relating to the price at which transactions may take place (''tick'' restrictions).[3] The rule applies to the accounts of employees or parties active in the business of a specialist or persons active in the specialist business, and any approved person (individual or entity in a control relationship) of the specialist, other than an approved person entitled to an exemption under NYSE Rule 98.[4]

The Rule change expands the restrictions contained in NYSE Rule 104.13 to transactions in specialty stocks effected ''for the benefit of'' the specified parties. This rule change will apply the Rule 104.13 restrictions to transactions that, although not effected directly for the ''account'' of a specified party, are effected for an account in which a specified party has a beneficial interest.

The rule change also extends to affiliated persons the Rule 104.13 restriction against specialists' originating orders in speciality stocks for any accounts over which they exercise investment discretion.[5] In addition, the rule change specifies that the restrictions in Rule 104.13 apply to transactions effected for trust accounts that benefit the specialist or affiliated persons.

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. The Commission believes that the rule change is consistent with Section 11(a) of the Act[6] which generally makes it unlawful, with certain exceptions, for any member of a national securities exchange to effect a transaction on such exchange for his own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion. The Commission also believes that the rule change is consistent with Section 6(b)(5) of the Act[7] which requires that the rules of an exchange be designed to promote just and equitable principles of trade to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that extending the restrictions on transactions in specialty stocks to those effected ''for the benefit of'' affiliated parties in appropriate and consistent with prohibiting or restricting certain interested transaction that may involve potential conflicts of interest. The rule change is designed to ensure that affiliated persons will not be permitted to effect transactions in specialty stocks, whether or not they use accounts in their own names, outside of the restrictions contained in NYSE Rule 104.13. The Commission believes that the rule change will further the purpose of the NYSE Rule and will prevent affiliated persons from avoiding the Rule 104.13 restrictions.

The Commission further believes that the rule change to extend to affiliated persons the Rule 104.13 restrictions against specialists' originating orders in specialty stocks for any accounts over which they exercise investment discretion is consistent with Sections 6 and 11(a) of the Act.[8] The Commission believes that the rule change is an appropriate limitation on specialists' and affiliated persons' trading and is designed to prevent fraudulent and manipulative actions. In addition, the Commission believes that it is appropriate to specify in the rule that the restrictions in Rule 104.13 apply to transactions effected for trust accounts that benefit the specialist or affiliated persons.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–94–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5703 Filed 3–8–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] The tick restrictions provide that acquisitions may only be made at prices below the last different price—on ''minus'' or ''zero minus'' ticks, and liquidations may only be made at prices above the last different price—on ''plus'' or ''zero plus'' ticks. *See* NYSE Rule 104.13(b).

[4] NYSE Rule 98 and its Guidelines provide exemptions from various NYSE rules affecting approved persons affiliated with specialist, including Rule 104.13. The exemptions are predicated on the existence of procedures to achieve a functional separation between the specialist organization and the approved person. The rule change amends the reference to Rule 104.13 in Rule 98 so that it reflects the changes to Rule 104.13 being approved herein.

[5] Currently, the restriction states that specialists should not originate orders in specialty stocks for any accounts over which they may have discretion.

[6] 15 U.S.C. 78k(a)(1988).

[7] 15 U.S.C. 78f(b)(1988).

[8] The Commission approved the Rule 104.13(d) restriction against specialists originating orders in specialty stocks for any account over which they may have investment discretion in Securities Exchange Act Release No. 34231 (June 17, 1994), 59 FR 32722 (June 24, 1994).

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(A)(12) (1994).

[Rel. No. IC–20938; File No. 812–9314]

The Northwestern Mutual Life Insurance Company, et al.

March 3, 1995.

AGENCY: Securities and Exchange Commission (the ''Commission'' or the SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: The Northwestern Mutual Life Insurance Company (''Northwestern''), NML Variable Annuity Account B (''Account B'') and Northwestern Mutual Investment Services, Inc. (''NMIS'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of Account B under certain flexible premium variable annuity contracts (the ''Contracts'') and any materially similar contracts offered in the future by Account B.[1]

FILING DATE: The application was filed on November 3, 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 Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 28, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

[1] Applicants represent that they will amend the application during the Notice Period to reflect this representation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Northwestern, a mutual life insurance company organized under the laws of Wisconsin, is licensed to do business in all fifty states and the District of Columbia.

2. Northwestern established Account B as a separate account under Wisconsin law to fund the Contracts. Account B is registered as a unit investment trust under the 1940 Act. Account B has nine subdivisions (''Divisions''), each of which invests in shares of the corresponding portfolio (''portfolio'') of Northwestern Mutual Series Fund, Inc. (''Fund''), which is registered under the 1940 Act as an open-end management investment company. Shares of each Portfolio are purchased by Northwestern for the corresponding division of Account B at net asset value.

3. NMIS, a wholly-owned second tier subsidiary of Northwestern, is the underwriter of the Contracts and is the investment adviser for the Fund.

4. The Contracts are individual periodic payment deferred variable annuity contracts that are intended to be used in connection with retirement plans qualified under Sections 403(b), 408, and 457 of the Internal Revenue Code (''Code'') or by other purchasers in situations which do not qualify for special treatment under the Code, and for roll-over of termination benefits from tax qualified corporate or HR–10 plans or trusts. A contract owner may allocate purchase payments and/or the accumulation value among the Divisions of Account B. The Contract owner may select among annuity payment options that include variable or fixed annuity options.

5. The Contracts are offered as either Front Load or Back Load Contracts. The minimum initial purchase payment for the Front Load Contracts is $10,000. For the Back Load Contracts, the minimum is $25 for plans qualified under Sections 403(b), 408 (except individual retirement annuities (''IRAs'')) and 457 of the Code; $100 for IRAs and non-tax qualified Contracts; and $3,500 for roll-over of termination benefits from tax-qualified corporate or HR–10 plans.

6. Front Load Contracts have a maximum front-end sales load of 4% deducted from each purchase payment. There are no withdrawal charges for Front Load Contracts. Back Load Contracts have no front-end sales load deducted from purchase payments. Withdrawals for Back Load Contracts are subject to a contingent deferred sales load at a maximum rate of 8%, and up to 10% of the Contract's accumulated value as of the last Contract anniversary can be withdrawn without a withdrawal charge subject to restrictions described in the Contract. The withdrawal charge reduces by 1% per year.

7. The withdrawal charge for current and future Contracts will not exceed 8.5% of the purchase payments under the Contract. Applicants are relying on Rule 6c–8 under the 1940 Act to deduct the contingent deferred sales load.

8. Contract owners may make unlimited transfers among the Divisions during the accumulation period, subject to a minimum of the lesser of $100 or the entire amount in the Division from which the transfer is made. A transfer fee of $25 may apply for each transfer in excess of twelve per Contract year.

9. The Contracts are subject to an annual Contract fee of $30 which will be deducted on each Contract anniversary in proportion to the values in each Division. Applicants represent that the amounts collected will not exceed the corresponding administrative costs as defined by the applicable standards of Rule 262–1 under the 1940 Act.

10. The Contracts permit, after the first Contract anniversary, deduction from purchase payments or from Contract benefits paid of premium taxes incurred. Northwestern currently waives this deduction by administrative practice.

11. Northwestern reserves the right to charge for any tax liability it pays or reserves for resulting from the maintenance or operation of Account B or any of its Divisions.

12. Northwestern imposes a charge as compensation for bearing certain mortality and expense risks under the Contracts. The charge is assessed daily and is based on the net asset value of Account B. The mortality and expense risk charge will not exceed .75% of the net assets of Account B attributable to the Front Load Contracts, and 1.25% of the net assets of Account B attributable to the Back Load Contracts. Northwestern intends to charge at the annual rate of .40% of the net asset value of Account B attributable to Front Load Contracts, of which .15% is for the mortality risk and .25% is for the expense risk, but reserves the right to increase or decrease the charge for these risks subject to a maximum of .75%. For the Back Load Contracts, the mortality and expense risk charge will be deducted on a daily basis at an annual rate of 1.25%, of which .50% is for the mortality risk and .75% is for the expense risk. For contracts offered in

the future that are materially similar to the Front Load Contracts and the Back Load Contracts all charges and expenses will be identical to, or lower than, the corresponding charges and expenses for the Front Load Contracts and the Back Load Contracts, respectively, as described in the application.[2]

13. The mortality risk borne by Northwestern under both versions of the Contracts arises from its obligation to make annuity payments regardless of how long an annuitant may live. The mortality risk is the risk that annuitants will live longer than Northwestern's actuarial projections indicate, resulting in higher than expected annuity payments.

14. The expense risk borne by Northwestern under the Contracts is the risk that the charges for administering the Contracts, which are guaranteed for the life of each Contract, may be insufficient to cover the actual costs of issuing and administering the Contracts.

15. The mortality and expense risk is higher for the Back Load Contracts than for the Front Load Contracts for several reasons. Collection of a significant front end load inherently reduces the risk that charges will fall short of corresponding expenses since receipt of deferred loads is far less certain. The Front Load Contracts require a minimum initial purchase payment of $10,000, compared with $25, $100 or $3,500 for Back Load Contracts. The economies of scale associated with larger units reduce the expense risk. Northwestern asserts that an additional mortality risk for the Back Load Contract exists because the withdrawal charge does not apply upon the death of the annuitant.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent any relief is necessary to permit the deduction from Account B of the mortality and expense risk charges under the Contracts. Applicants request that the order also permit the deduction of the mortality and expense risk charges described herein from the assets of Account B pursuant to other contracts offered in the future through Account B, to the extent that such contracts are materially similar to the Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants submit that their request for an order that applies to materially similar contracts offered in the future by Account B is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity contract market by eliminating the need for Northwestern to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring Northwestern to seek repeatedly exemptive relief regarding the same issues addressed in the application.

4. Applicants represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charges under variable annuity contracts comparable to the Front Load Contracts and the Back Load Contracts currently being offered in the insurance industry taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of expense and annuity rate guarantees and the markets in which the Contracts will be offered. Based upon this review, Applicants represent that the mortality and expense risk charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation. Similarly, prior to making available any materially similar contracts through Account B, Applicants will represent that the mortality and expense risk charges under any such contracts will be within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying such representation.

5. Applicants represent that Account B will invest only in underlying funds which undertake, in the event they should adopt a plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not interested persons as defined under Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

6. Applicants do not expect the front-end sales load or contingent deferred sales load imposed under the Contracts will necessarily cover the expected costs of distributing the Contracts. Any shortfall will be made up from Northwestern's general assets which will include amounts derived from the mortality and expense risk charges. Northwestern has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit Account B and the Contract owners. Northwestern will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts, or under materially similar contracts offered in the future by Account B, meets the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5814 Filed 3–8–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Applicants represent that they will amend the application during the Notice Period to reflect the representations in this paragraph.

[Release No. 34–35436; File No. SR–PSE–95–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Buy-Write Options Unitary Derivatives (''BOUNDs'')

March 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 6, 1995, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'') or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 PSE, pursuant to Rule 19b–4 under the Act, proposes to amend its rules to permit trading in Buy-Write Options Unitary Derivatives (''BOUNDs'').[1] As described in more detail below, BOUNDs are long term options which the PSE believes have the same economic characteristics as a covered call writing strategy.

The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory 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 section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to list for trading BOUNDs. The Options Clearing Corporation (''OCC'') will be the issuer of all BOUNDs traded on the Exchange. As with all OCC issued options, BOUNDs will be created when an opening buy and an opening sell order are executed. The execution of such orders will increase the open interest in BOUNDs. Except as described herein, BOUNDs will be subject to the rules governing standardized options.

The Exchange anticipates listing BOUNDs with respect to those underlying securities that have listed LEAPs. The criteria for stocks underlying BOUNDs will be the same as the criteria for stocks underlying LEAPs.

It is anticipated that the sum of the market prices of a LEAP and a BOUND on the same underlying stock with the same expiration and exercise price will closely approximate the market price for the underlying stock. If the combined price of the LEAP and BOUND diverge from that of the underlying common stock, there will be an arbitrage opportunity which, when executed, should bring the price relationships back into line.

BOUNDs will have the same strike prices and expiration dates as their respective LEAPs except that the Exchange will list only a strike price that is at or very close to the price of the underlying stock at the time of listing, or that is below the price of the stock at that time. For example, at the time of initial listing, the strike prices for a BOUND with the underlying stock trading at $50 per share, would be set at $40 and $50. The Exchange would not list a BOUND with a strike price of $60 in this example.

The Exchange anticipates that it will list new complementary LEAPs and BOUNDs on the same underlying securities annually, or at more frequent intervals, depending on market demand. The Exchange has the current authority to list LEAPs with up to 39 months until expiration and, therefore, seeks to introduce BOUNDs with up to the same 39 month duration.

BOUNDs will offer essentially the same economic characteristics as covered calls with the added benefits that BOUNDs can be traded in a single transaction and are not subject to early exercise. BOUND holders will profit from appreciation in the underlying stock's price up to the strike price and will receive payments equivalent to any cash dividends declared on the underlying stock. On the ex-dividend date for the underlying stock, OCC will debit all accounts with short positions in BOUNDs and credit all accounts with long positions in BOUNDs with an amount equal to the cash dividend on the underlying stock.

Like regular options, BOUNDs will trade in standardized contract units of 100 shares of underlying stock per BOUND so that at expiration, BOUND holders will receive 100 shares of the underlying stock for each BOUND contract held if, on the last day of trading, the underlying stock closes at or below the strike price. However, if at expiration the underlying stock closes above the strike price, the BOUND contract holder will receive a payment equal to 100 times the BOUND's strike price for each BOUND contract held. BOUND writers will be required to deliver either 100 shares of the underlying stock for each BOUND contract or the strike price multiplied by 100 at expiration, depending on the price of the underlying stock at that time. This settlement design is similar to the economic result that accrues to an investor who has purchased a covered call (*i.e.*, long stock, short call) and held that position to the expiration of the call option.

For example, if the XYZ BOUND has a strike price of $50 and XYZ stock closes at $50 or less at expiration, the holder of the XYZ BOUND contract will receive 100 shares of XYZ stock. This is the same result as if the call option in a buy-write position had expired out of the money; i.e., the option would expire worthless and the writer would retain the underlying stock. If XYZ closes above $50 per share, then the holder of an XYZ BOUND will receive $5,000 in cash (100 times the $50 strike price). This mimics the economic result to the covered call writer when the call expires in the money, i.e., the writer would receive an amount equal to 100 shares times the strike price and would forfeit any appreciation above that price.

The settlement mechanism for the BOUNDs will operate in conjunction with that of LEAP calls. For example, if at expiration the underlying stock closes at or below the strike price, the LEAP call will expire worthless, and the holder of a BOUND contract will receive 100 shares of stock from the short BOUND. If, on the other hand, the LEAP call is in the money at expiration, the holder of the LEAP call is entitled to 100 shares of stock from a short LEAP upon payment of the strike price, and the holder of a BOUND contract is entitled to the cash equivalent of the strike price times 100 from the short BOUND. An investor long both a LEAP and a BOUND, where XYZ closes above the $50 strike price at expiration, would be entitled to receive $5,000 in cash from the short BOUND and, upon exercise of the LEAP, would be obligated to pay $5,000 to receive 100 shares of XYZ stock.

The Exchange believes the settlement of the LEAP and BOUND at expiration are equally well harmonized from the perspective of the writer. For example, an investor long the underlying stock, and who writes both a LEAP and a BOUND, will be obligated to deliver the stock to the long LEAP call if the underlying stock closes above the strike price, and will receive in return payment of the strike price times 100, which amount will then be delivered to the long BOUND. Accordingly, the Exchange believes a covered writer's position is effectively closed upon the delivery of the underlying stock. If a writer of both instruments has deposited cash or securities other than the underlying stock as margin for a short LEAP call and BOUND, then the writer delivers 100 shares of stock (purchased on the open market) to the long LEAP

[1] The PSE notes that BOUNDs is a service mark of The American Stock Exchange, Inc.

call upon payment of the strike price times 100. The writer of the BOUND then delivers the cash value of 100 times the strike price to the holder of the long BOUND.

It should be noted that LEAPs are American-style options whereas BOUNDs are European-style.[2] The Exchange believes that it would be inappropriate for the BOUND holder to have an American-style exercise right since the BOUND will tend to trade at a discount to the stock and strike price.

Sales Practices

BOUNDs will be subject to the Exchange's sales practice and suitability rules applicable to standardized options set forth in Rule 9.

Adjustments

BOUNDs will be subject to adjustments for corporate and other actions in accordance with the rules of OCC.

Position Limits

BOUNDs will be subject to the position limits for equity options set forth in Exchange Rule 6.8. In addition, BOUNDs will be aggregated with other equity options on the same underlying stock for purposes of calculating position limits. According to the Exchange, since a BOUND to holder is a bullish position (i.e., the equivalent of a short put position where the strike price has been prepaid), the Exchange proposes that long BOUNDs be aggregated with long call and short put positions in the related equity options. Similarly, since the Exchange believes the BOUND, from the perspective of the seller, is a ''bearish'' position (*i.e.,* it is the equivalent of a long put position where the strike price has been prepaid), it proposes to aggregate short BOUNDs with short call and long put positions in the related equity options.

Customer Margin

The Exchange proposes to apply options margin treatment to BOUNDs as follows:

1. *Long BOUND Positions:* Full payment required at the time of purchase. As described more fully below, however, there will be a credit for long BOUNDs in BOUND spread positions.

2. *Short BOUND Positions:* The BOUND seller receives full value of the BOUND at the time of the initial sale and receives no further payment when the contract is settled either by payment of the strike price or delivery of the underlying stock. Short BOUND positions, therefore, will be margined in an amount equal to the current market price of the BOUND plus an amount equal to an ''add-on'' used to margin short call options times the market value of the BOUND. Since the maximum obligation of the seller of a BOUND cannot exceed the strike price, however, the amount of margin will never exceed the strike value. For example:

A. Assume a stock price of $50, an exercise price of $50, a margin add-on percent of 20% and the BOUND trading at $40. In this case, the short seller would have to pay $48 to margin the position, *i.e.,* $40 BOUND price plus 20% of $40.

B. Assume a stock price of $40, an exercise price of $50, a margin add-on percent of 20% and the BOUND trading at $35. In this case, the margin would be $42, *i.e.,* $35 BOUND price plus 20% of $35.

3. *Covered Positions:* Short BOUND positions offset by the equivalent number of shares of the underlying stock will not require any additional margin since the seller's obligation to the buyer will, in all cases, be covered by the position in the underlying stock. Further, since the sum of the prices of a LEAP and a BOUND will be approximately equal to the price of the underlying stock, a long stock position is cover for both a short BOUND and a short LEAP position.

4. Spread Positions

i. *Same Expiration—Different Strike Prices:* There will be no margin requirement for BOUND positions which are long the higher strike price and short the lower strike price since the long BOUND more than covers the obligation of the short side of the position. For positions short the higher strike price and long the lower strike, a customer will be required to post the difference between the strike prices.

ii. *Different Expiration-Same Strike Price:* No margin will be required for positions long the nearest expiration and short the longer expiration since the value of the long BOUND will cover the obligation on the short leg of the position. Positions that are short the near expiration and long the distant expiration will require full margin on the short position less 80% of the market value of the long position.

iii. *Different Expiration-Different Strike Prices:* There will be no margin required for positions that are long the near expiration and short the distant expiration when the strike price on the near expiration is higher than the strike on the distant expiration. For positions which are long the near expiration and short the distant expiration where the strike price on the near expiration is lower than the strike on the distant contract, the margin will be the difference in the strike between the near term and distant strikes. For positions which are short the near expiration and long the distant expiration, full margin will be required on the short position less 80% of the market value of the long position.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW.,

[2] A European-style option may only be exercised during a limited period of time before the option expires. An American-style option may be exercised at any time prior to its expiration.

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5704 Filed 3–8–95; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

Privacy Act System of Records

AGENCY: Small Business Administration.

ACTION: Notice of Amendment to the Ageny's Privacy Act System of Records.

SUMMARY: The Small Business Administration (SBA) is amending the Agency's Privacy Act System of Records SBA 145, Temporary Disaster Employees. This System is being amended to expand the categories of individuals covered.

DATES: This amendment is effective on March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Associate Administrator for Disaster Assistance, U.S. Small Business Administration, 8th floor, 409 3rd Street, SW, Washington, DC 20416; 202–205–6734.

SBA 145

SYSTEM NAME:

Former and Current Disaster Employees—SBA 145.

SYSTEM LOCATION:

Office of Disaster Assistance, Central Office, See Appendix A for location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have been previously employed within the Office of Disaster Assistance and some current employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Former employees within the Office of Disaster Assistance and some current employees. These records contain name, address, telephone number where person can be reached, SSN, Disaster Area where employed, series and grade, job title, dates of employment and reason for termination, name and job title of supervisor, and summary of supervisor's evaluation. Also included is information, if any, concerning violations of the Agency's Standards of Conduct (13 CFR Part 105) and information, if any, concerning official investigations and disciplinary actions taken with regard to the employee. Special skills and bilingual capabilities are also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 834(b)(6), 44 U.S.C. 101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The records will be used by Disaster Area Directors and personnel officers assigned to each Disaster Area to verify previous SBA disaster assistance employment history when a former employee is considered for reemployment and to locate current or former employees with special skills or language capabilities needed in special situations.

Disclosures may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosures may be made to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components

is a party to litigation or has an interest in such litigation, and the use of such records by the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OR RECORDS IN THE SYSTEM:

These records will be maintained in card files and in a computer database.

RETRIEVABILITY:

These records will be filed alphabetically by the individual's last name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosures.

RETENTION AND DISPOSAL:

Destroy when no longer necessary.

SYSTEMS MANAGER(S) AND ADDRESS:

Privacy Act Officer and Associate Administrator for Disaster Assistance, Central Office. See Appendix A for address.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to him or her by addressing a request in person or in writing to the manager(s) listed above.

RECORDS ACCESS PROCEDURE:

In response to a request by an individual to determine whether the

system contains a record pertaining to him or her, the system manager will set forth the procedures for gaining access to these records. If there is no record of the individual, he or she will be so advised.

CONTESTING RECORD PROCEDURES:

Individual desiring to contest or amend information maintained in the system should direct their requests to the official listed in the above paragraph, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Disaster Area Directors.

Dated: February 23, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–5815 Filed 3–8–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2178]

Extension of the Restriction on the Use of United States Passports for Travel To, In, or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73 (a)(2) and (a)(3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed because armed hostilities then were taking place in Iraq and Kuwait, and because there was an imminent danger to the safety of United States travelers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restrictions on the ground that such exemptions were in the national interest. The restriction was extended for additional one year periods on February 18, 1992, February 23, 1993, and February 26, 1994.

Although armed hostilities have ended, conditions in Iraq remain unsettled and hazardous. Regional conflicts continue in northern Iraq between Kurdish ethnic groups and Iraqi security forces. In southern Iraq, military repression of the Shia communities is severe, rendering conditions unsafe. Iraq's economy was severely damaged during the Gulf War and continues to be affected by the U.N. economic sanctions. Basic modern medical care and medicines may not be available to our citizens in case of emergency.

U.S. citizens and other foreigners working inside Kuwait near the Iraqi borders have been detained by Iraqi authorities in the past and sentenced to lengthy jail terms for illegal entry into the country. Athough our interests are represented by the Embassy of Poland in Bagdad, its ability to obtain consular access to detained U.S. citizens and to perform emergency services is constrained by Iraqi unwillingness to cooperate.

In light of these circumstances, I have determined that Iraq continues to be a country ''* * * where there is imminent danger to the public health or physical safety of United States travelers.''

Accordingly, United States passports shall continue to be invalid for use in travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. The restriction shall not apply to American citizens residing in Iraq on February 1, 1991, who continue to reside there, or to American professional reporters or journalists on assignment there.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless sooner extended or revoked by Public Notice.

Dated: March 3, 1995.

Warren Christopher,

Secretary of State.

[FR Doc. 95–5822 Filed 3–8–95; 8:45 am]

BILLING CODE 4710–10–M

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Water Supply Development for the Duck River Region, South Central Tennessee

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will cooperate with the Tennessee Duck River Development Agency (TDRDA) to prepare an Environmental Impact Statement (EIS) on water supply development and alternatives for the Columbia Dam component of the Duck River project. Located on the Duck River in south central Tennessee, the Columbia Dam cannot be completed as originally planned due to the presence of endangered species. This EIS will consider a range of alternatives to provide an adequate and reliable water supply for the Columbia area, including Bedford, Marshall, Maury, and southern Williamson counties. Alternatives to be considered will include construction of a water supply dam and impoundment on Fountain Creek; installation of one or more water pipelines from existing reservoirs or streams; use of groundwater wells; and other alternatives identified during the scoping process. With this notice, TVA and TDRDA invite comments on the scope of this EIS. This notice is provided in accordance with the National Environmental Policy Act (NEPA) and TVA's implementing procedures.

DATES: Written comments on the scope of the EIS must be received at the address below on or before June 5, 1995.

ADDRESSES: Comments should be sent to Dale V. Wilhelm, NEPA Liaison, Tennessee Valley Authority, WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Jack L. Davis, Manager, Water Resource Projects, Tennessee Valley Authority, WT 10C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499, phone (615) 632–7183.

SUPPLEMENTARY INFORMATION: TVA and local officials in the upper Duck River watershed area, south central Tennessee, began a cooperative effort in 1964 to advance economic growth and provide an adequate and dependable water supply for the region. As the TDRDA, a State agency, worked to develop a water supply system to connect the five largest cities in the watershed, TVA was requested to investigate water resource development. In 1965, TVA concluded that multipurpose reservoir development on the mainstem of the Duck River offered the best potential for meeting the area's water supply needs. The construction of dams on the river would control flooding, create water supply sources, and provide opportunities for water-based recreation. After further study, TVA proposed construction of two dams: one at Duck River Mile (DRM) 136.7, near Columbia, and an upstream dam at DRM 248.6 near Normandy. The proposed dams and reservoirs were presented in a 1968 planning report as components of the Duck River Project.

Following the enactment of NEPA, TVA issued a draft EIS on the Duck River Project in June 1971. A public hearing was held in August 1971 and a final EIS (TVA–OHES–EIS–72–5) was issued in April 1972. The final EIS was

supplemented in June 1974 to correct identified deficiencies.

Construction of the 3,230-acre Normandy Dam and Reservoir was completed in 1976 and is currently in operation. Construction of the 12,600-acre Columbia Dam and Reservoir began in 1973. Construction was slowed in the mid-to-late 70s and eventually halted in 1983 because consultation with the U.S. Fish and Wildlife Service indicated that the reservoir could jeopardize the continued existence of two endangered species. These two species, the birdwing pearly mussel and the Cumberland monkeyface pearly mussel, had been listed as endangered in 1975 under provisions of the 1973 Endangered Species Act (ESA). Subsequent fieldwork and ESA listings indicated that two additional endangered Mussel species (tan riffleshell and pale lilliput pearly mussel) and an endangered plant (leafy prairie clover) also occurred in the Columbia Dam area. Other species known to occur in the area were proposed for endangered status or were identified as candidates for possible ESA listing. The presence of those endangered species in the project area is the basis for TVA not being able to complete Columbia Project as originally planned.

During the dry times of the year, water supplies and water quality are stressed in the Duck River watershed area of middle Tennessee. During periods of drought, instream water quality is primarily sustained by minimum flows from Normandy Dam. Projected growth for the region indicates a worsening of the situation. TVA and TDRDA will evaluate alternatives to meet the water supply needs of the area. Analysis of water supply needs will include domestic, industrial, and agricultural uses; water quality; flood protection; and recreation uses. For planning purposes, projected benefits and costs will be evaluated for a 30 to 50 year period, depending on the alternative under consideration. Conservation effects on water use will also be considered.

In addition to assisting TDRDA In the analysis of water supply needs and alternative water supplies, TVA may be involved in several other ways depending on the outcome of the analysis. This could include making available some of the property acquired for the Columbia Reservoir for a smaller reservoir, approving any new dam structure under Section 26a of the TVA Act, and/or providing design assistance. TDRDA would be responsible for financing any water supply project that may be pursued as a result of the analysis.

The first step in the preparation of the EIS will be the determination of the scope of the EIS. It is anticipated that the scope will include possible construction of a surface impoundment on Fountain Creek (TVA already owns most of the land) and other potential water supply sources including in-stream flows, pumped storage, and pipeline sources. Different design concepts will also be addressed. Potentially important issues for discussion in the EIS include:;

1. Effects on stream discharge, water quality, and availability;

2. Impacts on terrestrial and aquatic ecology, including threatened and endangered species;

3. Impacts on floodplains, wetlands, recreation, and existing land uses; and

4. Socioeconomic, historic, archaeological, and cultural effects associated with completion of the project and alternatives to it.

This list is not intended to be all inclusive, nor is it intended to be a predetermination of impacts. As scoping and preparation of the EIS proceeds, other issues may be revealed which will necessitate further analyses.

TVA and TDRDA invite comments on the above issues. The agencies also request comments on environmental issues which should not be viewed as important and which should not be discussed in detail in the EIS.

A public meeting will be held on May 2, 1995, at 7 p.m. CDT at Culleoka School, Culleoka, Tennessee, in Maury County to receive oral comments about the scope of this EIS. Details about this meeting will be announced in area newspapers. Comments received at this meeting will be accorded the same weight as written comments.

The United States Army Corps of Engineers (Nashville District) will participate in this EIS process as a cooperating agency. The U.S. Fish and Wildlife Service may also become a cooperating agency.

After the scoping process and the initial environmental analysis are completed, TVA and TDRDA will prepare a draft EIS. A Notice of Availability of the draft EIS, soliciting public comments, will be published in the **Federal Register** and area newspapers. Those persons who choose not to comment on the scope of the document at this time but wish to receive a copy of the draft for their review and comment should send their names and addresses to Dale V. Wilhelm at the address listed above. TVA anticipates releasing a final EIS on this project in about 24 months.

Dated: March 3, 1995.

Kathryn J. Jackson,

Senior Vice President, Resource Group, Tennessee Valley Authority.

[FR Doc 95–5770 Filed 3–8–95; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which NHTSA will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, the National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on March 28, beginning at 1:30 p.m. and ending at approximately 5 p.m.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro, 8270 Wickham Rd., Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the ninth of a series of quarterly public meetings to provide detailed information about its research and development programs. This meeting will be held on March 28, 1995. The meeting was announced on February 17, 1995 (60 FR 9424). For additional information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5 p.m., NHTSA's Office of Research and Development will discuss the following topics:

* Improved frontal crash protection,
* Head and neck injury research,
* Critical Outcome Data Evaluation System (CODES)—Linkage of databases on police accident reporting and medical outcomes.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by February 28, 1995, in response to the announcement published February 17, 1995.

As announced on February 17, 1995, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing by 4:15 p.m. on March 21, 1995, to George L. Parker,

Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590, FAX number: 202/366–5930.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4730. Fax number: 202–366–5930.

Issued: March 3, 1995.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 95–5769 Filed 3–8–95; 8:45 am]

BILLING CODE 4910–59–M

Office of Commercial Space Transportation

Environmental Impact Statement; Sierra and Doña Ana Counties, NM; Correction

AGENCY: Office of Commercial Space Transportation (OCTS), U.S. DOT.

ACTION: Correction.

SUMMARY: On February 23, 1995 the Office of Commercial Space Transportation (OCST), DOT; published a Notice of Intent at 60 FR (10139). The Notice gave the wrong date and location for the second scoping meeting. The date was given as March 23, 1995 and should have been March 21, 1995. The location was given as the Convention Center, 300 Daniel Street. The correct location should have been listed as Council Room, City Council Chambers, 400 West 4th. This notice makes correction to the Notice of Intent. In FR DOC 95–4392, 3rd Column, para 1, make the following correction:

* * * ''(2) March 21, 1995, 7:00–9:00 pm, Council Room, City Council Chambers, 400 West 4th, Truth or Consequences, New Mexico.''

Dated: March 3, 1995.

Sharon D.W. Boddie,

Office of Commercial Space Transportation.

[FR Doc. 95–5768 Filed 3–8–95; 8:45 am]

BILLING CODE 4910–62–M

UNITED STATES INFORMATION AGENCY

Support to Develop and Facilitate Access to Exchange Opportunities for Post-Secondary International Students

ACTION: Notice; request for proposals.

SUMMARY: The Advising and Student Services Branch of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public or private non-profit organizations or consortia meeting the provisions described in IRS regulation 501(c)(3) may apply to provide an administrative mechanism to develop and facilitate exchanges between post-secondary school students enrolled at institutions in the United States and in other countries of the world. Preference will be given to the organization which maximizes the number of participants from all world regions and presents the most flexible mechanism for administering the exchanges. The applicants must clearly demonstrate how the proposed project differs from traditional ''junior year abroad'' programs and how it will create accessibility to international exchange for students who otherwise would not able to have an overseas study experience. USIA anticipates awarding up to $350,000 to one organization to administer this program

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations. * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and project must conform with Agency requirements and guidelines outlined in the Solicitation Package. The USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/ASA–95–13.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, April 21, 1995. Faxed documents will not be accepted, nor will documents postmarked on April 21 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Advising and Student Services, E/ASA, Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Tel: (202) 619–5434, Fax: (202) 401–1433, E-mail: ahatteme@usia.gov, to request a Solicitation Package, which includes all application forms and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the USIA Program Officer, Alexandria Hattemer, on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to E/ASA or submitting their proposals. Once the RFP deadline has passed, E/ASA may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package and send only complete applications to: U.S. Information Agency, Ref.: E/ASA–95–13, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

An ideal proposal should describe an administrative mechanism capable of developing and facilitating exchanges between post-secondary students enrolled at institutions in the United States and their counterparts in Europe, Latin America, the Middle East, South Asia, Africa and East Asia (including Oceania). Numbers of incoming and outgoing students should be approximately equal. A minimum of forty percent of the exchanges must take place outside of Western Europe within a broad range of non-traditional study abroad countries, although preference will be given to applicants who can demonstrate a higher number of non-European exchanges. All world regions must be represented in this program; the

applicant should especially target exchanges with Africa, the Near East, South and East Asia.

Exchange students should be drawn from the broadest possible range of universities and colleges. These institutions should be diverse—representing both public and private institutions, offering the greatest possible choice of location, academic discipline, size, and cost; and allowing the use of financial aid for study abroad when at all possible. Recruitment of student populations not usually involved in international exchanges should be stressed. A funding level of up to $350,000 is available for this program.

Guidelines

The proposal should describe how colleges and universities in the U.S. and abroad will be recruited to participate, the standards established for participation, and the means to evaluate compliance with those standards. The proposal should describe the criteria for student participation, the obligations of the student (including financial), and the services which the applicant will provide to the student and why this assistance is not available from other sources. The proposal should describe methods of evaluating the effectiveness of the exchange mechanism (See Review Criteria for further information). Programs must comply with J–1 visa regulations.

Proposed Budget

The applicant is required to submit a comprehensive administrative line item budget, based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down of the administrative budget. USIA's grant assistance, up to $350,000 in total, is expected to constitute only a portion of the total project funding. Cost sharing is required and the proposal should list other anticipated sources of support. Grant applications should demonstrate financial and in-kind support.

Grnats awarded to eligible organizations with fewer than four years of experience in conducting international exchange programs will be limited to $60,000.

Allowable costs for the program include the following:

(1) Salaries and fringe benefits; travel, although the Agency reserves the right not to fund travel to Western Europe;

(2) Other direct costs, inclusive of rent, utilities, etc.;

(3) Indirect expenses, auditing costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Area Offices and the USIS posts overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity, specifically the ability to increase exchanges with non-traditional regions. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Proposal should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages with the maximum number of exchanges and number of countries.

5, *Support of Diversity:* Proposals should demonstrate the recipient's commitment of promoting the awareness and understanding of diversity and should target diverse locations for exchanges as well as creating access to international exchange for students from all backgrounds and ethnic groups.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements of past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures the USIA supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original projects objectives. USIA requires an evaluation survey return rate of at least 70 percent. Award-receiving organizations/institutions will be expected to submit biannual reports.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desks and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in the RFP are binding and may not be modified by the USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding.

Notification

All applicants will be notified of the results of the review process on or about July 1, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: February 28, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–5506 Filed 3–8–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 46

Thursday, March 9, 1995

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).

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Friday, March 17, 1995.

PLACE: Francis Perkins Hearing Room, Ninth Floor, 1120 Vermont Avenue, N.W., Washington, D.C., 20419.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Establishment of task force to recommend changes in the structure of the Board that will allow the Board to meet budgetary requirements of National Performance Review II through fiscal year 2000.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: March 7, 1995.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 95–5980 Filed 3–7–95; 3:17 pm]

BILLING CODE 7400–01–M

Corrections

Federal Register

Vol. 60, No. 46

Thursday, March 9, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 28072; Notice No. 95–2]

RIN 2120–AF29

Advanced Simulation Plan Revisions

Correction

In proposed rule document 95–3132 beginning on page 8490 in the issue of Tuesday, February 14, 1995, make the following correction:

On page 8492, in the third column, under **Costs**, in the first line, ''improve'' should read ''impose''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 543, 552, and 571

[No. 94-158]

RIN 1550-AA76

''De Novo'' Applications for a Federal Savings Association Charter

Correction

Proposed rule document 95–5315 was inadvertently published in the Rules and Regulations section of the issue of Monday, March 6, 1995 beginning on page 12103. It should have appeared in the Proposed Rules section.

BILLING CODE 1505–01–D

federal register

Thursday
March 9, 1995

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 135

Improved Flammability Standards for Materials Used in the Interiors of Airplane Cabins; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 26192, Amendment No. 135–56]

RIN 2120–AD28

Improved Flammability Standards for Materials Used in the Interiors of Airplane Cabins

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment removes an unintended requirement in recently-issued amendment 135–55 to part 135 of the Federal Aviation Regulations (FAR) which clarified standards adopted in 1986 concerning the flammability of components used in the cabins of certain transport category airplanes. This action is necessary to ensure that commuter category airplanes operated under part 135 are not grounded for failing to comply with certain unintended requirements that become effective on March 6, 1995.

DATES: Effective March 6, 1995.

Comments must be received on or before April 10, 1995.

ADDRESSES: Comments may be mailed in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 26192, 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC. Comments delivered must be marked Docket No. 26192. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m., and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), FAA, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments in the information docket may be inspected weekdays, except Federal holidays, between 7:30 a.m., and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Gary L. Killion, Manager, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue Southwest, Renton, Washington 98055–4056; telephone (206) 227–2194.

SUPPLEMENTARY INFORMATION:

Comments Invited

This action removes an unintended requirement in recently-issued Amendment 135–55 (60 FR 6616, February 2, 1995). By doing so, this rule ensures that commenter category airplanes operated under part 135 are not grounded for failing to comply with the unintended requirements that become effective on March 6, 1995. Although this action is in the form of a final rule that was not preceded by notice and an opportunity for public comment, comments are invited on this action. Interested persons are invited to submit such written data, views, or arguments as they may desire. Commenters should identify the regulatory docket number and submit comments in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator and this final rule may be amended in light of comments received. All comments will be available in the Rules Docket, before and after the closing date for comments for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 26192.'' The postcard will be date stamped and returned to the commenter.

Background

The FAA has become aware that recently promulgated Amendment 135–55 (60 FR 6616, February 2, 1995) contains a new requirement that was not intended. Specifically, new § 135.170(b) states that no person may operate a large airplane unless it meets the flammability requirements contained § 135.170(b) (1) and (2). Section 135.170(b)(2) states that seat cushions, except for flight crewmember seat cushions, must comply with the fire-blocking standards of § 25.853(c) that became effective on November 26, 1984.

Large airplanes are identified in part 1 of the Federal Aviation Regulations (FAR) as those of ''more than 12,500 pounds maximum certificated takeoff weight.'' Commuter category airplanes type certificated under part 23 of the FAR may have a maximum certificated takeoff weight as great as 19,000 pounds, and each model type certificated in the commuter category to date does in fact have a maximum certificated takeoff weight greater than 12,500 pounds. Under the definition in part 1, these commuter category airplanes are ''large'' airplanes. Under the Amendment 135–55 wording of § 135.170(b), operators of these commuter category airplanes would have to comply with the seat cushion fire-blocking standards. Prior to Amendment 135–55, these operators were not required to comply with the fire-blocking standards. Although the seats of these commuter category airplanes were not previously required to meet the seat cushion fire-blocking standards of part 135, they have been required to meet the applicable flammability standards of part 23 of the FAR.

The desired fire-blocking requirements in part 135 were previously contained in § 135.169(a), which referenced § 121.312, which in turn referenced § 25.853(c) and appendix F to part 25 for the specific requirements. Section 135.169(a), however, specifically excluded commuter category airplanes from having to comply with the requirements of § 121.312. This exclusion was inadvertently dropped from Notice of Proposed Rulemaking (NPRM) 90–12, which ultimately resulted in Amendment 135–55. The lack of intent on the part of the FAA to require part 135 operators of commuter category airplanes to meet these additional seat cushion flammability standards can be seen in the preamble to the NPRM. In that regard, the title of Amendment 135–55 refers specifically to transport category airplane cabins and does not refer to those of commuter category airplanes. Under NPRM's Regulatory Evaluation, the FAA stated ''the proposed amendment to part 135 is merely a non-substantive editorial change which would cause no additional burden to any person.'' Requiring operators to provide fire-blocked seat cushions would have been more than a non-substantive editorial change.

In response to the NPRM, several commenters submitted comments related to the omission of the exception for commuter category airplanes. One commenter expressed concern that the proposed § 135.170(b) would apply to all large airplanes and would appear to add substantial requirements to airplanes certificated under Special Federal Aviation Regulation (SFAR) 41. The FAA responded that an airplane type certificated under SFAR 41 would not be required by new § 135.170(b) to comply because it is defined within the SFAR as a ''small airplane for purposes

of parts 21, 23, 36, 121, 135 and 139.'' Nonetheless, for clarity purposes, the adopted language refers to SFAR 41 aircraft in the exclusion.

Another commenter proposed that the lead-in sentence for § 135.170(b) start with the phrase ''Except for commuter category airplanes.'' The commenter's proposed addition was considered unnecessary due to the erroneous belief that commuter category airplanes, like those type certificated under SFAR 41, were not ''large'' airplanes. Because the FAA did not change the proposed rule language in the final rule to clarify this result, the rule language must now be amended.

This further amendment to the final rule is being handled in the most expeditious manner available, and is being made effective immediately, since the final rule is effective March 6, 1995. In the absence of this further amendment, SFAR 41 and commuter category airplanes without fire-blocked seat cushions and operated under part 135 would not be considered to be in compliance with the regulation. Explicitly excluding commuter category from having to comply with the requirements of § 135.170(b)(1) is not necessary because that section impacts only airplanes with a passenger seating capacity of 20 or more which does not apply to the commuter category. Nonetheless, because of frequent confusion among operators on that point, the FAA has decided to insert the commuter airplane category exclusion in § 135.170(b) rather than in § 135.170(b)(2) to make the applicability of these requirements clear.

Because this action imposes no additional burden on any person and since it relieves industry of the unintended burden that would be imposed if the new wording of § 135.170(b) was unchanged, it has no adverse economic impact and imposes no additional burden on any person. Accordingly, good cause exists to make this action effective immediately, but public comments are invited.

It should be noted that this action does not preclude the FAA from proposing that commuter category airplanes should comply with the seat cushion flammability standards of § 135.170(b)(2) in future rulemaking if such compliance is deemed necessary in the interest of safety. The FAA anticipates issuing by the end of this month a proposal that would contain such a requirement applicable to current part 135 operators.

The FAA has determined that this regulation must be issued immediately to preclude grounding a large portion of the U.S. commuter air carrier fleet and placing an unintended economic burden on operators of commuter category airplanes. The FAA has also determined that this action is not a ''significant regulatory action'' under Executive Order 12866.

List of Subjects in 14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

Adoption of the Amendment

Accordingly, 14 CFR part 135 of the Federal Aviation Regulations (FAR) is amended as follows:

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421–1431 and 1502; 49 U.S.C. 106(g); 49 CFR 1.47(a).

2. By amending § 135.170 by revising the introductory text of paragraph (b) to read as follows:

§ 135.170 Materials for compartment interiors.

* * * * *

(b) Except for commuter category airplanes and airplanes certificated under Special Federal Aviation Regulation No. 41, no person may operate a large airplane unless it meets the following additional airworthiness requirements:

* * * * *

Issued in Washington, DC, on March 6, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–5834 Filed 3–6–95; 4:23 pm]

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federal register

Thursday
March 9, 1995

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310 and 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-The-Counter Human Use; Proposed Amendment of Monograph for OTC Bronchodilator Drug Products; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 341

[Docket No. 94N–0247]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-The-Counter Human Use; Proposed Amendment of Monograph for OTC Bronchodilator Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) bronchodilator drug products to remove pressurized metered-dose aerosol container dosage forms for the ingredients epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride. This action is being taken because the OTC marketing of such drug products will require an approved application containing certain information not required by the monograph. The agency is also proposing to amend the regulation that lists nonmonograph active ingredients to add any ingredient(s) in a pressurized metered-dose aerosol container for OTC bronchodilator drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments or objections by May 23, 1995; written comments on the agency's economic impact determination by May 23, 1995. FDA is proposing that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments or 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: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 2, 1986 (51 FR 35326), FDA issued a final monograph establishing conditions under which OTC bronchodilator drug products are generally recognized as safe and effective and not misbranded. Section 341.76(d)(2)(i) (21 CFR 341.76(d)(2)(i)) provides for products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride for use in a pressurized metered-dose aerosol container (hereinafter referred to as an inhaler or MDI).

In the final monograph (51 FR 35326 at 35333, comment 10), the agency responded to a comment that agreed that bronchodilators in a MDI dosage form should be available OTC, but objected to allowing them to enter the marketplace without preclearance by FDA through approval of applications (new drug (NDA) or abbreviated new drug (ANDA)). The comment contended that the complexities of pressurized MDI aerosol dosage forms for inhalation are such that agency preclearance is necessary to assure the safety and effectiveness of these drug products. The comment stated that the proposed rulemaking was deficient because it did not discuss the complexities of the design, control, manufacture, and market use of MDI drug delivery systems and the monograph did not set forth manufacturing standards for MDI delivery systems. The comment suggested that a full application would not be required, but that preclearance of ''manufacturing controls information and bioavailability data'' by the agency should be required.

Based on the data and other information available when the final monograph for OTC bronchodilator drug products was published, the agency disagreed with the comment, stating its belief that the state of the technology for MDI drug delivery systems was such that bronchodilator drug products in MDI dosage forms could be generally recognized as safe and effective. The agency indicated that it had reviewed data available at that time from its Drug Product Problem Reporting System computerized data base for all bronchodilator drug products in MDI dosage forms. The agency noted that no problems related to metered-dose mechanisms had been reported for these OTC drug products between 1980 and 1984. Therefore, the agency concluded that the technology available to produce reliable MDI mechanisms allowed the agency to generally recognize MDI dosage forms for OTC bronchodilator drug products containing epinephrine preparations as specified in the final monograph.

The agency also pointed out in the final rule (51 FR 35326 at 35334), however, that agency regulations in 21 CFR 2.125(d) state that the use of a chlorofluorocarbon (CFC) as a propellant in a self-pressurized container of a drug product will not result in the drug product being adulterated and/or misbranded provided the drug has an NDA. Therefore, all OTC bronchodilator drug products in MDI's that contain a CFC as a propellant (which include all marketed OTC MDI products containing epinephrine) were marketed only under an approved application. The agency anticipated that MDI products would continue to contain a CFC propellant and that marketing would continue under approved applications containing information on manufacturing controls for the MDI.

Since publication of the final monograph for OTC bronchodilator drug products, several developments have changed the agency's views about pressurized MDI dosage forms. These include: (1) Legislation that requires a phaseout of ozone-depleting substances, including CFC propellants in MDI drug products; (2) the need for safety data on the alternative propellants that will replace CFC's in MDI dosage forms, as well as evidence that the new MDI's deliver the drug effectively; (3) recent publications reporting chemistry, manufacturing, and controls problems resulting from changes to the container and closure system of redesigned MDI dosage forms; (4) the need for safety and effectiveness data for the new drug products as a result of these chemistry, manufacturing, and controls changes; and (5) international workshops and FDA advisory committee discussions focusing on regulatory requirements for modifications to an approved innovator MDI and bioequivalence of generic MDI aerosol products. These issues have caused the agency to reconsider the inclusion of MDI dosage forms in the final monograph for OTC bronchodilator drug products. The agency has determined that an assessment of the safety and effectiveness of each product must be made. The agency's discussion of these issues follows.

II. New Issues That Affect MDI Drug Products

A. Proposed Replacement of CFC Propellants

The Clean Air Act Amendments of 1990, Title VI (Pub. L. 101–549), signed into law on November 15, 1990, requires the phaseout of ozone-depleting substances. The Environmental Protection Agency (EPA) has promulgated regulations implementing the phaseout provisions contained in section 604 of the Clean Air Act

Amendments of 1990 (58 FR 65018, December 10, 1993). Ozone-depleting substances covered by the Clean Air Act Amendments of 1990 include CFC's and hydrochlorofluorocarbons. The international community has agreed to adjust the phaseout schedule for CFC's to reduced levels of production and consumption (production plus imports minus exports) of 25 percent of baseline level in 1994 and 1995, with a complete phaseout by 1996 (58 FR 65018 at 65020). Existing supplies of previously manufactured products will continue to be marketed until supplies are exhausted. All pressurized MDI antiasthma drugs (both the OTC products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride and numerous antiasthma drugs available by prescription only) contain CFC's as the propellant. A procedure has been established for obtaining essential-use exemptions of ozone-depleting substances used in medical products from this production phaseout. Because there are no currently approved inhalation products that can fully substitute for drugs in MDI's used to treat the symptoms of asthma and chronic obstructive pulmonary disease (COPD) (Ref. 1), FDA and EPA have supported essential use exemptions (Refs. 2 and 3).

In the **Federal Register** of October 18, 1994 (59 FR 52544 at 52546), EPA announced that the Montreal Protocol Technology and Economic Assessment Panel had recommended that essential use exemptions for 1996 and 1997 be granted for CFC's used in MDI's. At an October 1994 meeting, the Parties to the Montreal Protocol on Substitutes that Deplete the Ozone Layer reviewed these recommendations and granted essential use exemptions for 1996 and 1997 for MDI's for the treatment of asthama and COPD (Ref. 4).

Beginning in the late 1980's, the pharmaceutical and other industries began searching for appropriate CFC alternatives. Currently two compounds, HFC–134a and HFC–227ea, are being investigated as alternative propellants to replace CFC's in MDI's. Reformulation of currently approved MDI drug products with these new propellants will require toxicological and clinical studies to establish the safety and efficacy of the new drug products. The agency intends to require sponsors to submit NDA's for these new drug products. These NDA's must be approved before the new products can be marketed.

References

(1) Letter from M. R. Taylor, FDA, to M. H. Shapiro, EPA, December 21, 1993, in OTC Vol. 04BFMA3.

(2) Petition from Sterling Winthrop, Inc., to EPA, August 20, 1993, in OTC Vol. 04BFMA3.

(3) ''Metered Dose Inhalers: A Special Case,'' International Pharmaceutical Aerosol Consortium, July 19, 1993, page 31 and Appendix A, page 1, in OTC Vol. 04BFMA3.

(4) Report of the 6th Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, October 6–7, 1994, in OTC Vol. 04BFMA3.

B. Safety and Effectiveness Data for Alternative Propellants

MDI's offer a convenient way to administer aerosolized bronchodilator drugs for the treatment of asthma and COPD. Response to drugs administered by inhalation is prompt, often very specific with minimal side effects, and faster in onset than responses to drugs given orally (Ref. 1). With most drugs, MDI response approaches the rapidity of intravenous therapy. Drugs that normally are decomposed in the gastrointestinal tract can be administered safely by inhalation. The MDI dosage form makes inhalation therapy simple, convenient, and more acceptable than atomizers and nebulizers, which are bulky and require cleaning.

Bronchodilator drugs in pressurized MDI aerosols are widely available. Many formulations contain a drug either suspended or dissolved in CFC propellants at high pressure in a small canister. In addition to supplying the necessary force to expel the product, the propellant blend also acts as a vehicle and diluent. Thus, the propellant has much to do with determining the characteristics of the product as it leaves the container. Desirable vapor pressures, stability, and reactivity of CFC propellants are of prime importance in the formulation and manufacture of MDI aerosols. From a solubility standpoint, CFC's are miscible with most nonpolar solvents over a wide range of temperature and are capable of dissolving many substances (Ref. 1). The CFC propellants used in MDI's are not miscible with water. A cosolvent, typically ethanol, must be included in present formulations to increase the solubility of polar drug molecules.

As noted above, manufacturers may need to reformulate their MDI aerosols to replace the CFC propellants with suitable alternatives. The agency is concerned that the use of new excipients, including non-CFC-containing propellants, could change the distribution characteristics of the drug in the airways, produce a pharmacologic interaction, or enhance toxicity of the active drug substances. Reformulation of pressurized MDI aerosols containing non-CFC-containing propellants might also result in changes in drug deposition patterns within the lung. These changes might alter pulmonary absorption, potentially resulting in changes in safety and/or therapeutic effectiveness of the bronchodilator.

Propellants can affect the therapeutic effectiveness of bronchodilators. A 1983 study (Ref. 2) measured the effects of two different albuterol (salbutamol) MDI products containing the same amount of drug per inhalation. In this double-blind, crossover study, 46 subjects with stable asthma were challenged with methacholine to produce a moderate bronchial obstruction. Following the methacholine challenge, the subjects were randomized into two groups. Each group received two inhalations from one of two different brands of albuterol MDI aerosol preparations. The peak expiratory flow (PEF) was measured three times in 10 minutes after the inhalation of the drug product. The test was repeated after 3 days to 1 month by giving the subjects the test aerosol that they had not received in the first test. PEF values were determined in the same manner as described for the initial inhalation test product. The data indicated that one preparation relieved bronchial obstruction more effectively than the other preparation. The author suggested that, because both MDI aerosols contained the same drug, the significant difference of the relaxing effect on the bronchial obstruction with these aerosols in the same subject may be due to the properties of the vehicle (propellant).

Currently, MDI aerosols are self-pressurized with CFC propellants that provide a fixed volume of propellant and drug each time the canister valve is pressed. A fixed amount of drug is aerosolized by the pressure of the propellant into small droplets that evaporate to produce smaller respirable particles. These droplets should be between 2 to 5 microns (μm) for maximum delivery of drug to the respiratory tract and to minimize deposition in the oropharynx (Ref. 3).

Propellant vapor pressure, which affects both the droplet size and the velocity at which the particle leaves the MDI device, is important in determining drug deposition in the lung (Ref. 4). Newman et al. (Ref. 5) measured the effects of changes in metered volume and propellant vapor pressure on deposition in the lungs of a pressurized MDI aerosol in 10 subjects with obstructive airway disease. Radiolabeled

particles of Teflon (3.2 μm mass median aerodynamic diameter) were incorporated into canisters formulated with two different metered volume sizes (25 and 50 microliters) and with two different propellant vapor pressures. The study indicated that the majority of the dose from a pressurized MDI aerosol is deposited in the oropharynx and that only a small amount reaches the lungs. Increasing the metered volume had no effect on the quantity of aerosol deposited in the lungs, but produced a significantly more central pattern of deposition within the bronchial tree. An increase in vapor pressure, however, resulted in a significant increase in whole lung deposition and a significant reduction in extrathoracic deposition. The authors concluded that changes in formulation alter the deposition pattern of MDI aerosols and, consequently, might bring about changes in clinical effectiveness.

In addition to vapor pressure and velocity characteristics of the propellant, the surfactant and cosolvent in a solution product are other important formulation considerations. Surfactants lubricate the MDI canister valve and prevent aggregation of the individual drug particles. Surfactants also influence droplet evaporation, particle size, and overall hydrophobicity (degree of insolubility in water) of the particles reaching the respiratory passageways and pulmonary fluids (Ref. 1). Variations in the rate of evaporation of propellants and the cosolvent, if present, may lead to a particle size distribution containing a higher or lower proportion of fine particles (Ref. 6), which could have a significant impact on the safety and effectiveness of the new drug product.

A considerable and variable amount of drug is deposited in the oral cavity and thus is swallowed and subject to absorption from the gastrointestinal tract (Ref. 7). The agency is concerned with the possibility that new non-CFC propellants in an MDI product may interact with a cosolvent or other components (e.g., surfactants, valve components, or antioxidants) to produce an irritant or potentially hazardous formulation, or a less effective formulation, when applied to the respiratory system. The agency concludes that additional data will be necessary to demonstrate that inhalation and ingestion of new formulations will not result in local tissue irritation effects or other undesirable consequences, such as loss of effectiveness or local retention, resulting from inappropriate drug deposition characteristics. These additional data will include information on the absorption, distribution, and retention characteristics of new propellant systems in man following inhalation. This information needs to include an assessment of the likely systemic burden of the propellant. Therefore, the agency considers premarket approval to be essential for any MDI aerosol drug products that combine a known active ingredient with a new propellant system or new valve.

References

(1) Sciarra, J. J., and A. J. Cutie, ''Aerosols,'' in Remington's Pharmaceutical Sciences, 18th ed., edited by A. R. Gennaro, Mack Publishing Co., Easton, PA, pp. 1694–1721, 1990.

(2) Parkkali, L., ''Comparison of Two Different Salbutamol Inhalation Aerosols in Release of Bronchial Obstruction,'' *Current Therapeutic Research*, 33:539–542, 1983.

(3) Rees, P. J., and T. J. H. Clark, ''The Importance of Particle Size in Response to Inhaled Bronchodilators,'' *European Journal of Respiratory Diseases*, Suppl. 119, 63:73–78, 1982.

(4) Transcripts of the FDA Generic Drugs Advisory Committee Meeting with Pulmonary-Allergy Drugs Advisory Committee Representation, September 14–15, 1993, identified as TS, Docket No. 94N–0247, Dockets Management Branch.

(5) Newman, S. P. et al., ''The Effect of Changes in Metered Volume and Propellant Vapour Pressure on the Deposition of Pressurized Inhalation Aerosols,'' *International Journal of Pharmaceutics*, 11:337–344, 1982.

(6) Dalby, R. N., and P. R. Byron, ''Comparison of Output Particle Size Distribution from Pressurized Aerosols Formulated as Solutions or Suspensions,'' *Pharmaceutical Research*, 5(1):36–39, 1988.

(7) Wong, B. J. O., and F. E. Hargreave, ''Bioequivalence of Metered-dose Inhaled Medications,'' *Journal of Allergy and Clinical Immunology*, 92(3):373–379, 1993.

(8) The Report of the Commission of the European Communities' Committee for Proprietary Medicinal Products, ''Matters Relating to the Replacement of CFCs in Medicinal Products,'' December 15, 1993, in OTC Vol. 04BFMA3.

C. Chemistry, Manufacturing, and Controls Concerns

The agency believes that careful consideration must be given to the interactions that can occur between the drug substance, the container and closure system, and the excipients of a MDI aerosol product. Unlike dosage forms composed only of excipients and drug, a MDI consists of the container, the valve, the actuator (mouthpiece), and the formulation. These components collectively constitute the drug product that delivers the drug substance in the desired form to the biological target. Variability in the performance of a MDI may result from the physical characteristics of the drug substance, formulation differences, valve and actuator design, and the adequacy of control parameters, specifications, and test methods for each component and the drug product. Design modifications of the MDI may result in significant alterations of the dose delivered to the lung. Changes in the source or the composition of any component of the MDI drug product may introduce unknown contaminants (Ref. 1). Impurities (extractables) may occur when the propellant comes in contact with the plastic or rubber components of the MDI canister.

The agency is concerned about the possible association of impurities and extractables with paradoxical bronchospasm as well as with more general toxicity. In one study (Ref. 2), a 24-year-old asthmatic patient who had reported acute wheezing immediately after using an aerosol of beclomethasone dipropionate was challenged with several aerosols. The subject experienced immediate bronchoconstriction after two puffs of an aerosol containing beclomethasone dipropionate and also after inhalation of the vehicle (all the components of the aerosol less the beclomethasone). When the patient was challenged with a different brand of beclomethasone aerosol, however, no bronchospasm occurred. Because the contents of the two beclomethasone aerosols were similar, the authors concluded that rubber or plastic derivative(s) present in the metering valve may have been responsible for the bronchospasm. The authors noted that the manufacturers of the beclomethasone aerosols had confirmed that their internal metering valves were different. The authors also pointed out that the conclusion drawn in a similar study (Ref. 3) suggested that the substance(s) responsible for the reaction might be derived either from the metering valve or the aluminum can.

Most MDI aerosol canisters are made of aluminum. Aluminum is essentially inert, but will react with certain solvents and other chemicals (Ref. 4). Although aluminum can be used without an internal organic coating for certain aerosol formulations (especially those which contain only active ingredient and propellant), many MDI aluminum canisters are internally coated with epon- or epoxy-type resin for added resistance to formulation interaction. The agency is concerned about what interactions might occur between the aluminum canister and the epon- or epoxy-type resin coating and new non-CFC propellants that may eventually be used in these products.

The formulation, actuator, and valve determine the performance of a pressurized MDI aerosol (Ref. 4). The

metering valve must accurately deliver a measured amount of product and should be reproducible not only for each dose delivered from the same package but from package to package. An integral part of the MDI valve is the metering chamber that is responsible for the delivery of the desired amount of drug. MDI valves function by filling the metering chamber with product, sealing off this chamber from the remaining formulation in the canister when the valve stem is partially depressed, and then releasing the contents of the chamber through the valve stem upon further depression (actuation) (Ref. 5). The valves should retain their prime charge over fairly long periods of time (Ref. 4). However, it is possible for material in the chamber to return slowly to the main body of product. The degree to which this can occur varies with the construction of the valve and the length of time between uses (actuations). Puff-to-puff dosage variability due to inadequate valve priming may lead to therapeutic failure and a subsequent asthma attack requiring emergency room and hospital treatment.

One study (Ref. 6) compared the relative bronchodilator effectiveness of two puffs from two different albuterol MDI aerosols containing the same concentration of active ingredient. The study was a randomized, single-blind, crossover clinical trial involving 17 adults with intermittent or mild chronic asthma. Initially, each subject received two puffs of the generic albuterol MDI and two puffs of the brand name albuterol MDI drug product on two occasions at least 3 days apart. The test dose was the first two puffs out of each canister; neither inhaler was primed. Pulmonary function was measured before each test dose and at frequent intervals over an 8–hour period after drug inhalation. Results of this portion of the study indicated that the bronchodilator response was greater with the generic MDI than with the brand name MDI product.

The study was repeated with both MDI products primed prior to the test dose (i.e., two puffs were first discharged into a wastebasket) in 11 subjects willing to return for further testing. Retest data indicated that there was no significant difference in bronchodilation between the two primed inhalers. The results suggested that failure to prime the MDI canister could alter the therapeutic response. The authors explained that variations in valve and actuator design or factory quality control procedures could account for the difference in therapeutic effectiveness of the two products. They added that modifications in valve design or storage position may account for the loss of valve prime and, thus, be responsible for puff-to-puff dosage variability. On the basis of this study, the authors stated that MDI manufacturers must conduct in vitro studies to determine the frequency of valve priming required for their product, the effect storage position has on valve priming, and the uniformity of drug content of each of several puffs after priming.

Accurate assessment of drug deposition profiles, both the quantity of drug reaching the respiratory airways and its depth of penetration, is critically important in evaluating the bioavailability of MDI aerosol products (Ref. 4). The aim of the MDI drug product is to deliver the maximum amount of drug to the respiratory tract and minimize deposition in the oropharynx (Ref. 7). The portion of the drug product that is ultimately deposited at the desired biological target consists of a mixture of micronized or solubilized active drug substance in a residue matrix of oily excipient material and/or low volatile propellant and/or solvent (Ref. 1). A particle size range less than 5 µm is generally considered more effective than larger particles in producing bronchodilatation (Ref. 8). MDI formulations currently available consist of drugs suspended in CFC propellants or drugs dissolved in propellants containing a significant proportion of less volatile solvents. Particle size distribution from MDI's containing drugs dissolved or suspended in propellant/cosolvent mixtures is governed by the physical characteristics of the valve and the actuator, the concentration of nonvolatile components in the mixture, the initial droplet size (which depends on such factors as actuator design, spray characteristics, and physicochemical characteristics of the solution being sprayed), and the volatile propellant evaporation rate (Ref. 7). The agency is concerned how new non-CFC propellants will affect particle size and particle size distribution.

The effectiveness of two albuterol MDI aerosol products (brands A and B) was compared in a double-blind study involving 31 asthmatics (Ref. 9). Each subject received sequential treatment (0.2 mg albuterol/dose) on two successive days (day 1, inhalation sequence A then B; day 2, inhalation sequence B then A). Results of this study indicated that all subjects had a significantly greater bronchodilation response to the B MDI product than to the A MDI product. Further, in the sequence A-B, the B MDI always produced further bronchodilation while in the sequence B-A sequence, there was no further bronchodilation response to the A MDI. The study indicated that 0.2 mg of B was as effective as 0.4 mg of A. The study showed that two different albuterol inhalers containing the same active ingredients in the same dose can differ significantly in therapeutic effectiveness. The author suggested that the bioavailability of albuterol MDI's may differ from brand to brand because of differences in aerosol particle size or distribution, concentration, and/or the physicochemical characteristics of the propellant.

Factors influencing the ultimate deposition of stable small inhalation particles include the formulation of the products, design of components (specifically the valves or actuators), administrative skills and techniques of the product user, and the anatomical and physiological status of the respiratory system (Ref. 4). Besides the previously mentioned effects of propellant vapor pressure and the metered volume of propellants on drug deposition in the lungs, the selection of the appropriate surfactant (required in pressurized suspension MDI aerosols) and its concentration are important considerations in MDI aerosol drug formulations. As discussed above, surfactants influence droplet evaporation, particle size, and overall hydrophobicity of the particles reaching the respiratory passageways and pulmonary fluids (Ref. 4).

Particle size distribution is also influenced by the MDI component design. Changes in component design, including the actuator and adapter, have been shown to alter the particle size distribution and consequently the penetration and deposition of the active ingredient in the lung. The agency is aware that a variation of particle size distribution up to 40 percent could result from altering the actuation type, valve dimensions, distance from actuator, and other device component variables (Ref. 4). Because the valve and actuator of an approved MDI product may be proprietary to the innovator firm, and therefore unavailable to other drug manufacturers, use of a different valve or actuator for products containing active ingredients currently included in the monograph for OTC bronchodilator drug products may require data to support safety and effectiveness.

Given the complexity of the MDI formulations and the interdependence of each of the MDI components, the agency believes that pressurized MDI aerosol drug products must be carefully evaluated for safety and therapeutic effectiveness. Based on agency

preclearance under existing NDA's, currently marketed OTC MDI drug products are not in question. However, the agency would have great concerns about the safety and effectiveness of new OTC drug products entering the marketplace without agency preclearance, for the reasons discussed in this document. The agency would have still greater concerns if new non-CFC-containing propellants were to be used in new products without agency evaluation of the reformulated products.

The agency noted in the final monograph for OTC bronchodilator drug products (51 FR 35326 at 35334) that the use of a CFC-containing self-pressurized container of a drug product will not result in the drug product being adulterated and/or misbranded provided the drug has an approved NDA. OTC MDI bronchodilator drug products that contain a CFC-containing propellant may therefore be marketed only under an approved NDA. Similarly, based on the intended phaseout of CFC-containing propellants in MDI aerosol dosage forms, the agency now concludes that it is essential that any MDI aerosol reformulation (including use of a new propellant) or component design alterations require premarket approval under an approved NDA to ensure the safety and effectiveness of the bronchodilator drug product.

References

(1) Adams, W. P. et al., ''Regulatory Aspects of Modifications to Innovator Bronchodilator Metered Dose Inhalers and Development of Generic Substitutes,'' *Journal of Aerosol Medicine*, 7:119–134, 1994.

(2) Godin, J., and J. L. Malo, ''Acute Bronchoconstriction Caused by Beclovent and Not Vanceril,'' *Clinical Allergy*, 9:585–589, 1979.

(3) Bryant, D. H., and J. Pepys, ''Bronchial Reactions to Aerosol Inhalant Vehicle,'' *British Medical Journal*, 1:1319, 1976.

(4) Sciarra, J. J., and A. J. Cutie, ''Aerosols,'' in Remington's Pharmaceutical Sciences, 18th ed., edited by A. R. Gennaro, Mack Publishing Co., Easton, PA, pp. 1694–1721, 1990.

(5) Fiese, E. F. et al., ''Test Method for Evaluation of Loss of Prime in Metered-Dose Aerosols,'' *Journal of Pharmaceutical Sciences*, 77(1):90–93, 1988.

(6) Blake, K. V. et al., ''Evaluation of a Generic Albuterol Metered-Dose Inhaler: Importance of Priming the MDI,'' *Annals of Allergy*, 68:169–174, 1992.

(7) Dalby, R. N., and P. R. Byron, ''Comparison of Output Particle Size Distribution from Pressurized Aerosols Formulated as Solutions or Suspensions,'' *Pharmaceutical Research*, 5(1):36–39, 1988.

(8) Rees, P. J., and T. J. H. Clark, ''The Importance of Particle Size in Response to Inhaled Bronchodilators,'' *European Journal of Respiratory Diseases*, Suppl. 119, 63:73–78, 1982.

(9) Chhabra, S. K., ''Differing Bioavailability of Salbutamol Metered-Dose Inhalers,'' *Journal of Asthma*, 24:215–218, 1987.

D. International Workshops and FDA Advisory Committee Discussions

Both the agency and the international community recognize the need to significantly reduce the production and consumption of substances which deplete the ozone layer. One class of substances currently under discussion are CFC's, which are highly resistant to biotic and abiotic decomposition and, therefore, pass undecomposed from the atmosphere to the stratosphere. Because of the deleterious effect of CFC's on the ozone layer, international consensus is that products containing CFC propellants, including MDI's, must be phased out or reformulated with a suitable non-CFC-containing propellant.

Several international workshops and agency advisory committee discussions have taken place to identify the regulatory requirements necessary to determine the safety and effectiveness of reformulated MDI bronchodilator drug products. On December 15, 1993, the Commission of the European Communities (CEC) issued a guideline report (Ref. 1) that identifies quality, safety, and effectiveness considerations to be addressed by companies in submissions in support of replacements for CFC propellants in an already authorized medicinal product. The report specifies the following major clinical requirements: (1) Ensure safety and effectiveness of the reformulated product, and (2) demonstrate that the change in formulation due to a change in excipients has no adverse effect on the benefit/risk ratio to users in comparison with the existing CFC-containing product.

The report stated that clinically validated studies, including pharmacodynamic, pharmacokinetic, and in vivo and/or in vitro deposition studies, can be used to determine the effectiveness of the reformulated MDI product. Data on the absorption, distribution, and retention of the new propellant(s) in adults and children under 12 years of age following inhalation are needed to assess the likely systemic burden of the propellant(s) (e.g., heart rate, serum potassium, and assessment of paradoxical bronchospasm). The report cautioned that any change in excipients (including propellants) might result in changes in drug deposition patterns within the lung and might affect absorption and systemic safety. The guideline emphasizes that monitoring the introduction of new non-CFC-containing products is necessary in order to identify rare or unexpected adverse effects.

The Drug Information Association held a workshop on October 18 and 19, 1993 (Ref. 2) to discuss the regulatory and data requirements needed to reassure the clinical community and patients that reformulated MDI aerosol products are safe and effective. The workshop summarized the chemistry and manufacturing concerns of the CEC and other regulatory health organizations regarding the safety and effectiveness of reformulated MDI aerosol products. Participants discussed how small changes in MDI aerosol product formulation or component design can significantly affect the safety and effectiveness of a bronchodilator aerosol drug product. Careful consideration was given to bioequivalence issues involving puff-to-puff variability, unit spray content, storage conditions, new propellants, particle size, and extractables and impurities profiles. The workshop's conclusions agreed with the international approach to premarket approval of pressurized MDI bronchodilator drug products. These conclusions would apply to both prescription and OTC drug products.

On September 14 and 15, 1993, the agency's Generic Drugs Advisory Committee with representation from the Pulmonary-Allergy Drugs Advisory Committee (hereinafter referred to as the Committee) met to discuss the agency's current policy concerning the documentation of bioequivalence for suspension and solution MDI aerosol products (Ref. 3). The Committee stated that premarket approval is essential to ensure the identity, strength, quality, and purity of generic MDI aerosol products. In addition to the in vitro data required for a new or reformulated existing MDI aerosol under an approved NDA, the Committee recommended in vivo bioequivalence documentation for generic suspension MDI aerosol products for oral inhalation. The Committee also recommended the following bioequivalence testing guidelines for MDI oral inhalation solution products: (1) If excipients are essentially the same, in vitro studies only would be acceptable with the same device, and (2) whether the excipients are or are not essentially the same, in vivo and in vitro studies are required with different devices. Furthermore, the Committee concluded that products with excipients that are not essentially the same may need additional studies (e.g., for safety) (Ref. 3).

Adams et al. (Ref. 4) indicated that, unlike most dosage forms, inactive ingredients in MDI aerosol formulations and the container and closure system are important contributors to the safety and effectiveness and, thus, to the therapeutic equivalence of these products. The agency is aware that different pharmacodynamic effects in aerosolized drugs have been hypothesized to occur due to differential deposition of drugs in various segments of the respiratory tract, resulting in different absorption characteristics. Such differences between test and reference products could arise from differences in characteristics of the suspension formulation or in the performance characteristics of the delivery devices (valve and actuator) used in the products.

FDA's Division of Bioequivalence (the Division), in the Office of Generic Drugs, has developed interim guidance that recommends methods to generic applicants to document in vivo bioequivalence of albuterol MDI aerosols and recommends a safety evaluation study as part of the documentation of in vivo bioequivalence (Ref. 5). The Division advises that the methods presented therein are not rigid and are not considered by the Division to be the sole methods of documenting bioequivalence. However, because limited experience exists in the application of these methods to the determination of bioequivalence of different albuterol MDI aerosol drug products, the report encouraged sponsors to assess the general applicability and reliability of the methods recommended.

In response to this interim guidance, one comment (Ref. 6) requested that the agency withdraw the guidance because it would permit a generic version of albuterol MDI aerosol to be released for marketing without long-term safety studies. The comment referred to data presented by another MDI aerosol manufacturer during the September 14 and 15, 1993, Committee meeting (Ref. 3). The comment explained that clinical comparison of two nearly identical MDI aerosol products produced similar pharmacodynamic responses, but exhibited significant differences in safety profiles (changes in serum potassium and glucose, finger tremor, and heart rate). Because of safety concerns, the MDI aerosol manufacturer withdrew its request for agency approval of its product. The comment pointed out that the manufacturer's data presented at the meeting demonstrate that even minor changes in drug delivery may affect patient safety. The comment added that different valves and new suppliers of drug substances and excipients used in MDI aerosol products may lead to patients being exposed to new valve extractives and to new impurities. The comment emphasized that although some minor changes may be evident in single-dose studies, longer-term clinical trials are needed to assess the full side effect liability of changed products (i.e., new excipients or component design alterations) for regular or intermittent administration.

Wong and Hargreave (Ref. 7) discuss the need for premarket approval and subsequent bioequivalence requirements for reformulated and generic MDI aerosol products. The authors state that there is a need to demonstrate clinical bioequivalence and relative potency of MDI aerosols before marketing generic versions, new types of delivery devices, and new products of the same class of drug. The authors explain that certain characteristics of the inhaled aerosols are known to influence effectiveness, e.g., particle size, coalescence of droplets and evaporation of propellants, rate of delivery, concentration of the drug during nebulization, plume geometry, and the constituents (i.e., drug, propellants, and surfactants). Other factors, such as the valve assembly, rubber seals, and actuator mouthpiece in a pressurized MDI, can also influence drug availability and, therefore, need consideration and regulation to ensure adequate drug deposition in the lungs. The authors point out that although several in vitro tests and in vivo radioaerosol studies can be used to predict or measure the deposition of inhaled particles in the airway, none of these studies can yet be relied on to ensure clinical bioequivalence. The authors conclude that both in vitro and in vivo testing of clinical effect should be required to establish the bioequivalence of generic MDI aerosols.

As part of the required premarket approval process, the agency is continuing to review methodology for in vitro and in vivo bioequivalence testing for reformulated and generic MDI aerosol products. The agency has also sponsored pharmacodynamic studies to help develop that methodology. The agency agrees with the conclusion in the CEC's report that changes in propellants should be considered major changes in pressurized MDI aerosol products and that extensive premarket testing is required prior to market approval of MDI aerosols reformulated with non-CFC propellants. The agency also agrees with the Committee's recommendation that in vivo bioequivalence documentation should be provided for generic suspension MDI aerosol products for oral inhalation.

References

(1) Report of the Commission of the European Communities' Committee for Proprietary Medicinal Products, ''Matters Relating to the Replacement of CFCs in Medicinal Products,'' December 15, 1993, in OTC Vol. 04BFMA3.

(2) Drug Information Association, ''MDI's in the New Millennium: Workshop on Regulatory Issues of Efficacy, Safety, and Quality with Metered Dose Inhalers (MDI's) Drug Dosage Forms-October 18 and 19, 1993,'' in OTC Vol. 04BFMA3.

(3) Transcripts of the FDA Generic Drugs Advisory Committee Meeting with Pulmonary-Allergy Drugs Advisory Committee Representation, September 14–15, 1993, identified as TS, Docket No. 94N–0247, Dockets Management Branch.

(4) Adams, W. P. et al., ''Regulatory Aspects of Modifications to Innovator Bronchodilator Metered Dose Inhalers and Development of Generic Substitutes,'' *Journal of Aerosol Medicine*, 7:119–134, 1994.

(5) FDA Division of Bioequivalence, Office of Generic Drugs, ''Interim Guidance for Documentation of In Vivo Bioequivalence of Albuterol Inhalation Aerosols (Metered Dose Inhalers),'' January 27, 1994, in OTC Vol. 04BFMA3.

(6) Petition from Glaxo Inc., to FDA, April 6, 1994, in OTC Vol. 04BFMA3.

(7) Wong, B. J. O., and F. E. Hargreave, ''Bioequivalence of Metered-Dose Inhaled Medications,'' *Journal of Allergy and Clinical Immunology*, 92(3):373-379, 1993.

III. Summary of Agency's Proposed Changes

The agency is proposing that all MDI aerosol dosage forms must have premarket approval to ensure their safety and effectiveness. This proposal is based on a reconsideration of the nature of these products, potential future reformulations to include new propellants, and the recommendations of the agency's Committee (discussed above).

This proposed amendment removes the ingredients epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride in pressurized MDI aerosol dosage forms from the final monograph for OTC bronchodilator drug products. It does not affect the monograph status of these ingredients when used in a hand-held rubber bulb nebulizer. Such products will remain in the final monograph for OTC bronchodilator drug products.

All currently marketed OTC pressurized MDI aerosol drug products are the subject of approved applications. The agency has explained in this document why it concludes that agency approval remains essential for these

products. A statutory phaseout of CFC propellants used in these MDI aerosol products exists, although an exemption for MDI's for the treatment of asthma and COPD exists through 1997. Based on this phaseout, manufacturers may eventually decide or need to reformulate their existing MDI aerosol products with non-CFC-containing propellant systems. The agency considers it essential that any such reformulated products be evaluated and approved by the agency before they are marketed.

Consequently, the agency is proposing to amend § 341.76(d)(2) of the final monograph for OTC bronchodilator drug products to remove § 341.76(d)(2)(i)(*a*) and (d)(2)(i)(*b*). The agency proposes amending § 310.545(a)(6) for bronchodilator drug products by adding new paragraph (C) and listing thereunder ''any ingredient(s) in a pressurized metered-dose aerosol container.'' The proposal would also remove § 341.76(e) from the final monograph because that information now appears in § 330.1(i) (21 CFR 330.1(i)) as part of the general labeling policy for OTC drug products.

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. All currently marketed MDI aerosol drug products are currently the subject of an approved application. This proposed amendment of the monograph will not affect the status of any currently marketed product. As is currently the case for marketed MDI aerosol products, an approved application will be required for any product that is reformulated to contain a non-CFC propellant. Accordingly, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC bronchodilator MDI aerosol drug products that contain epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride. Comments regarding the impact of this rulemaking on these drug products should be accompanied by appropriate documentation. A period of 75 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

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

Interested persons may, on or before May 23, 1995, submit written comments or objections to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before May 23, 1995. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310 and 341 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraphs (a)(6)(iv) and (d)(26) and by revising paragraph (d) introductory text to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(iv) *Bronchodilator drug products.*

(A)—(B) [Reserved]

(C) Approved as of April 10, 1995. Any ingredient(s) in a pressurized metered-dose inhaler container.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(26) of this section.

* * * * *

(26) April 10, 1995, for products subject to paragraph (a)(6)(iv)(C) of this section.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 341.76 [Amended]

4. Section 341.76 is amended by removing paragraphs (d)(2)(i) and (e); by redesignating paragraph (d)(2)(ii) as (d)(2), and revising the paragraph heading to read as follows:

§ 341.76 Labeling of bronchodilator drug products.

* * * * *

(d)* * *

(2) *For products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride identified in § 341.16(d), (e), and (g) for use in a hand-held rubber bulb nebulizer.* * * *

* * * * *

Dated: February 6, 1995.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 95–5825 Filed 3–8–95; 8:45 am]

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S. 257/P.L. 104–3

To amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea. (Mar. 7, 1995; 109 Stat. 47; 1 page)

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