4–13–95
Vol. 60 No. 71
Pages 18727–18948

Federal Register

Thursday
April 13, 1995

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and Salt Lake City, UT, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to swais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial-in users should use communications software and modem to call (202) 512–1661 and login as swais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the Federal Register Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the Federal Register paper edition is $494, or $544 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806

Online:

Telnet swais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as swais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions	202–512–1530

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

SALT LAKE CITY, UT

WHEN: May 9 at 9:00 am

WHERE: State Office Building Auditorium
450 North Main Street
Salt Lake City, UT 84114

RESERVATIONS: 1–800–359–3997

Contents

Federal Register

Vol. 60, No. 71

Thursday, April 13, 1995

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 60, No. 71
Thursday, April 13, 1995

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 94–117–2]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Oriental fruit fly regulations by removing the quarantine on a portion of Los Angeles County, CA, and by removing the restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer needed to prevent the artificial spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Los Angeles County and that the quarantine and restrictions are no longer necessary.

DATES: Interim rule effective April 7, 1995. Consideration will be given only to comments received on or before June 12, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–117–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–117–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks that can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), impose restrictions on the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles. In an interim rule effective on November 7, 1994, and published in the Federal Register on November 14, 1994 (59 FR 56375–56376, Docket No. 94–117–1), we amended the regulations in § 301.93–3 by quarantining a portion of Los Angeles County, CA, and restricting the interstate movement of regulated articles from that area.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, we have determined that the Oriental fruit fly has been eradicated from the previously quarantined portion of Los Angeles County, CA. The last finding of Oriental fruit fly in this area was October 18, 1994.

Since then, no evidence of Oriental fruit fly infestations has been found in this area. Based on Departmental experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in Los Angeles County, CA. Further, Oriental fruit fly infestations are not known to exist anywhere else in the continental United States. Therefore, we are removing Los Angeles County, CA, from the list of quarantined areas in § 301.93–3(c), and revising § 301.93–3(c) to state that the Oriental fruit fly is not known to exist anywhere in the continental United States.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove an unnecessary regulatory burden on the public. A portion of Los Angeles County, CA, was quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, immediate action is necessary to remove the quarantine on Los Angeles County, CA, and to relieve the restrictions on the interstate movement of regulated articles from that area.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule relieves restrictions on the interstate movement of regulated articles from a portion of Los Angeles County, CA. There is very little commercial activity in the previously quarantined area that may be affected by this rule. There are approximately 516 entities that may be affected by this rule. All would be considered small entities. These include 486 fruit sellers, 13 nurseries, 10 swap meets, 6 wholesale distributors, and 1 farmers market. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of

California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that did move previously regulated articles interstate was minimized by the availability of various treatments, that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

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.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The Oriental fruit fly is not known to exist anywhere in the continental United States.

Done in Washington, DC, this 7th day of April 1995.

Terry I. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–9160 Filed 4–12–95; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 77

[Docket No. 95–020–1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of North Carolina from a modified accredited State to an accredited-free State. We have determined that North Carolina meets the criteria for designation as an accredited-free State.

DATES: Interim rule effective April 13, 1995. Consideration will be given only to comments received on or before June 12, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–020–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD, 20737–1231, (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis.* The tuberculosis regulations, contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication,'' which is part of the regulations via incorporation by reference in part 77. A State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years in order to be designated as an accredited-free State.

Before publication of this interim rule, North Carolina was designated in § 77.1 of the regulations as a modified accredited State. However, North Carolina now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing North Carolina from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted, as North Carolina currently meets the criteria for designation as an accredited-free State. This action provides prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the Federal Register. We will consider comments that are received within 60 days of publication of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any

amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

There are approximately 31,200 cattle herds in North Carolina. An estimated 95 percent of the herds are owned by small businesses. Changing the status of North Carolina may enhance the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

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 in conflict 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.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition for *Modified accredited state,* paragraph (2) is amended by removing ''North Carolina,''.

3. In § 77.1, in the definition for *Accredited-free state,* paragraph (2) is amended by adding ''North Carolina,'' immediately after ''New York,''.

Done in Washington, DC, this 7th day of April 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–9161 Filed 4–12–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–ANE–25; Amendment 39–9186; AD 91–10–03 R1]

Airworthiness Directives; General Electric Company (GE) CF6–45 and CF6–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines, that currently requires repetitive inspections of high pressure compressor (HPC) rear shafts, and also requires installation of a certain rear shaft flange bolt configuration . This amendment clarifies that engines with a Parts Manufacturer Approval (PMA) bolt part number (P/N) installed must accomplish the inspection requirements of the AD, and allow the installation of the PMA bolt in lieu of the GE bolt. This amendment is prompted by the omission of the PMA bolt P/N from the current AD requirements. The actions specified by this AD are intended to prevent an HPC rear shaft fracture, which could result in an inflight engine shutdown and an uncontained engine failure.

DATES: Effective April 28, 1995.

The incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register as of June 17, 1991.

Comments for inclusion in the Rules Docket must be received on or before June 12, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–ANE–25, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On March 18, 1991, the Federal Aviation Administration (FAA) issued AD 91–10–03, Amendment 39–6956 (56 FR 19920, May 1, 1991), applicable to General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines, to require repetitive inspections of high pressure compressor (HPC) rear shafts, and installation of a certain rear shaft flange bolt configuration. That action was prompted by reports of 35 HPC rear shafts found cracked in the bolt hole area. That condition, if not corrected, could result in an HPC rear shaft fracture, which could result in an inflight engine shutdown and an uncontained engine failure.

Since the issuance of that AD, the FAA has determined that Parts Manufacturer Approval (PMA) Production Approval Listing, Supplement No. 27, authorizes the use of Valley-Todeco (VT) bolt, Part Number (P/N) VCD0016, in lieu of GE bolt, P/N 1375M69P01. Since VT bolt, P/N VCD0016, and GE bolt, P/N 1375M69P01, are identical in design, paragraphs (a)(1)(v), (a)(2), and (a)(2)(v) of AD 91–10–03 should also apply to HPC rear shafts that are installed with VT bolt, P/N VCD0016.

The FAA has reviewed and approved the technical contents of GE Service Bulletin (SB) No. 72–958, Revision 1, dated October 18, 1990, that describes

procedures for inspection of HPC rear shafts.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD revises AD 91–10–03 to continue the inspection requirements of the current AD, but adds HPC rear shafts that are installed with VT bolt, P/N VCD0016, to paragraphs (a)(1)(v), (a)(2), and (a)(2)(v). The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 90–ANE–25.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6956 (56 FR 19920, May 1, 1991) and by adding a new airworthiness directive, Amendment 39–9186, to read as follows:

91–10–03 R1 General Electric Company: Amendment 39–9186. Docket 90–ANE–25. Revises AD 91–10–03, Amendment 39–6956.

Applicability: General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines installed on, but not limited to, McDonnell Douglas DC–10 series, Boeing 747 series, and Airbus A300 series aircraft.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent a high pressure compressor (HPC) rear shaft fracture, which could result in an inflight engine shutdown and an uncontained engine failure, accomplish the following:

(a) Fluorescent penetrant inspect HPC rear shafts, Part Numbers (P/N) 9127M58P03, 9079M63P12, 9079M63P15, 9079M63P16, 9079M63P17, 9079M63P18, and 9079M63P19, in accordance with the Accomplishment Instructions of GE Service Bulletin (SB) No. 72–958, Revision 1, dated October 18, 1990, as follows:

(1) For HPC rear shafts currently installed with hook bolts, P/N 9012M99G10, 9114M95G07, and 9114M95G10, inspect in accordance with the following schedule:

(i) For shafts which have not been previously inspected and have 10,000 cycles since new (CSN) or greater on the effective date of this airworthiness directive (AD), inspect within the next 1,500 cycles in service (CIS) after the effective date of this AD.

(ii) For shafts which have not been previously inspected and have less than 10,000 CSN on the effective date of this AD, inspect within the next 2,500 CIS from the effective date of this AD, or before accumulating 7,500 CSN, whichever occurs later. However, no shaft may exceed 11,500 CSN prior to inspection.

(iii) For shafts that have been previously inspected and have 3,000 cycles since last inspection (CSLI) or less on the effective date of this AD, reinspect within 4,500 CSLI, or before accumulating 7,500 CSN, whichever occurs later.

(iv) For shafts that have been previously inspected and have greater than 3,000 CSLI on the effective date of this AD, reinspect within the next 1,500 CIS from the effective date of this AD, or before accumulating 7,500 CSN, whichever occurs later.

(v) Remove from service, HPC rear shaft hook bolts identified in (a)(1) of this AD, after any inspection performed in accordance with paragraph (a)(1) of this AD, and replace with new tapered turn-around bolts, P/N 1375M69P01 or VCD0016.

(2) For HPC rear shafts installed with turn-around bolts, P/N 9249M54P01, or tapered turn-around bolts, P/N 1375M69P01 or

VCD0016, inspect in accordance with the following schedule:

(i) For shafts which have not been previously inspected and have 6,500 CSN or greater on the effective date of this AD, inspect within the next 2,500 CIS after the effective date of this AD.

(ii) For shafts which have not been previously inspected and have less than 6,500 CSN on the effective date of this AD, inspect prior to accumulating 9,000 CSN.

(iii) For shafts that have been previously inspected and have 3,500 CSLI or less on the effective date of this AD, reinspect within 6,000 CSLI, or before accumulating 9,000 CSN, whichever occurs later.

(iv) For shafts that have been previously inspected and have greater than 3,500 CSLI on the effective date of this AD, reinspect within the next 2,500 CIS from the effective date of this AD, or before accumulating 9,000 CSN, whichever occurs later.

(v) Remove from service, HPC rear shaft turn-around bolts identified in paragraph (a)(2) of this AD, after any inspection performed in accordance with paragraph (a)(2) of this AD, and replace with new tapered turn-around bolts, P/N 1375M69P01 or VCD0016.

Note: Information concerning the tapered turn-around bolt noted in paragraph (a) of this AD can be found in GE SB No. 72–877.

(b) Remove from service, prior to further flight, any shafts found cracked at inspection.

(c) Thereafter, for shafts which have been inspected in accordance with paragraph (a) of this AD, reinspect in accordance with the Accomplishment Instructions of GE SB No. 72–958, Revision 1, dated October 18, 1990, at intervals not to exceed 6,000 CSLI.

(d) Compliance with paragraph (a) of AD 91–10–03 satisfies the corresponding requirements of paragraph (a) of this AD.

(e) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office . The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Engine Certification Office.

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

(g) The actions required by this AD shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
GE SB No. 72–958	1–2 3–6	1 ..... Original ..	Oct. 18, 1990. Aug. 15, 1990.
Total pages: 6.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 17, 1991. Copies may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 28, 1995.

Issued in Burlington, Massachusetts, on April 4, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–9133 Filed 4–11–95; 11:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771 and 779

[Docket No. 950407090–5090–01]

RIN 0694–AB18

Establishment of New General License G–BETA for Exports of Certain Beta Test Software

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by establishing a new General License G–BETA for certain exports of beta test software under the jurisdiction of the Department of Commerce. Under the provisions of this new General License, beta test software programs may be exported to all destinations except Country Groups S and Z, Iran, Iraq, Sudan, and Syria. Exporters are advised that certain restrictions apply, and should consult the EAR before using General License G–BETA.

This new General License eligibility will greatly reduce the number of validated license applications for certain software intended for mass-market distribution.

DATES: This rule is effective April 13, 1995. Comments must be received by May 30, 1995.

ADDRESSES: Written comments (six copies) should be sent to Nancy Crowe, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: This rule amends Part 771 of the Export Administration Regulations (EAR) by establishing a new General License G–BETA for certain exports of beta test software. This change will allow exports, under certain conditions, of software controlled by the Department of Commerce on the Commerce Control List (Supplement No. 1 to Part 799.1 of the EAR), and under Commerce licensing jurisdiction, which would otherwise require a validated license to all destinations except Country Groups S and Z, Iran, Iraq, Sudan, and Syria.

This rule will allow shipment under General License G–BETA of beta test software programs that: (a) Are intended for export and reexport under the provisions of the General Software Note (Supplement No. 2 to Part 799.1 of the EAR) after completion of testing; (b) are provided free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and (c) are designed for user-installation. In addition, the exporter must obtain a statement from each testing consignee prior to shipment certifying that the beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. Further, the statement must certify that the testing consignee will not transfer or export any product, process, or service that is the direct product of the beta test software. Software shipped under General License G–BETA must be destroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the software producer or, if the software producer does not define a test period, within 30 days of completion of the consignee's role in the test.

The following is a brief description of the development of this rule. In the Fall

of 1994, BXA hosted a large seminar for exporters. At that meeting, BXA invited the exporting community to provide input on administrative changes that might be made to the EAR without the passage of new legislation. In response to that invitation, several of the major exporters of mass market software provided suggestions on a new general license to authorize the export of software for beta testing. BXA also gathered the views of industry on a new general license for beta test software through BXA's Telecommunications Technical Advisory Committee, Regulations & Procedures Technical Advisory Committee, and Computer Systems Technical Advisory Committee. The industry views served as a basis for BXA's development of a regulation on General License G–BETA.

BXA shared with industry its view of the possible changes in the draft regulation and sought information from certain software exporters to determine the industry's best practices for exporting software to Beta testers. For example, BXA collected samples of end-use clauses regularly used by software producers for commercial purposes. BXA then shaped General License G–BETA so that certifications required under the rule are consistent with the standard practices of many members of the industry. This has the benefit of achieving the objectives of the export control system with the least intrusive impact on the exporting community. The industry input provided by the advisory committees and by the companies was highly valuable to BXA in developing General License G–BETA.

This new General License eligibility will reduce the number of validated license applications for certain software intended for distribution to the general public.

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E. O. 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007, and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close May 30, 1995. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects

15 CFR Part 771

Exports, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, Parts 771 and 779 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

PART 771—[AMENDED]

1. The authority citation for 15 CFR Part 771 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994); and E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994)

PART 779—[AMENDED]

2. The authority citation for 15 CFR Part 779 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72,

93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); E.O. 12924 of August 19, 1994 (59 FR 43437, August 23, 1994); and E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994).

PART 771—[AMENDED]

3. Part 771 is amended by adding a new § 771.27 to read as follows:

§ 771.27 General license G–BETA; Exports of beta test software.

(a) *Scope.* A General License designated G–BETA is established subject to the provisions of this section authorizing exports and reexports to eligible countries of beta test software intended for distribution to the general public.

(b) *Eligible countries.* The countries that are eligible to receive exports and reexports under this General License are all countries except those listed in Country Groups S and Z, Iran, Iraq, Sudan, and Syria.

(c) *Eligible software.* All software that is controlled by the Commerce Control List (see Supplement No. 1 to Part 799.1 of this subchapter), and under Commerce licensing jurisdiction, is eligible for export and reexport under General License G–BETA, subject to the restrictions set forth in this section.

(d) *Conditions for use.* Any beta test software program may be exported or reexported to eligible countries if all of the conditions under this section are met:

(1) The software producer intends to market the software to the general public after completion of the beta testing, as described in the General Software Note found in Supplement No. 2 to Part 799.1 of this subchapter;

(2) The software producer provides the software to the testing consignee free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and

(3) The software is designed for installation by the end-user without further substantial support from the supplier.

(e) *Importer statement.* Prior to shipping any eligible software under General License G–BETA, the exporter or reexporter must obtain the following statement from the testing consignee, which may be included in a contract, non-disclosure agreement, or other document that identifies the importer, the software to be exported, the country of destination, and the testing consignee:

> We certify that this beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the beta test software.

(f) *Use limitations.* Only testing consignees that provide the importer statement required by paragraph (e) of this section may execute any software received under General License G–BETA.

(g) *Return or disposal of software.* All beta test software exported under General License G–BETA must be destroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the software producer or, if the software producer does not define a test period, within 30 days of completion of the consignee's role in the test. Among other methods, this requirement may be satisfied by a software module that will destroy the software and all its copies at or before the end of the beta test period.

PART 779—[AMENDED]

4. Part 779.2 is amended in the last sentence by revising the phrase ''exports to Canada [7,8]'' to read ''exports to Canada [7,8], and exports of beta test software eligible for General License G–BETA.''.

Dated: April 10, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 95–9157 Filed 4–12–95; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Parts 400, 403, 405 and 449

Form G–405

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Adoption of form amendments.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') is adopting amendments to Form G–405 (Report on Finances and Operations of Government Securities Brokers and Dealers, or the ''FOGS Report''), which is the form that registered government securities brokers and dealers are required to file pursuant to §§ 405.2 and 449.5 of the regulations issued under the Government Securities Act of 1986 (the ''Government Securities Act'' or ''GSA''). The amendments revise Schedule I of the FOGS Report filed with the Securities and Exchange Commission (''SEC'') to require registered government securities brokers and dealers to disclose their affiliations, if any, with U.S. banks. The Department is adopting the amendments unchanged from their proposed form.

EFFECTIVE DATE: June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Ken Papaj (Director) or Lee Grandy (Government Securities Specialist) at 202–219–3632. (TDD for hearing impaired: 202–219–3988.)

SUPPLEMENTARY INFORMATION:

Background and Analysis

The Department adopted Form G–405 in the implementing regulations for the GSA issued on July 24, 1987 (52 FR 27910). Sections 405.2 and 449.5 [1] of the GSA regulations require that registered government securities brokers and dealers use the form to make the required monthly, quarterly and annual financial reports to the SEC or to their self-regulatory organization in accordance with a plan approved by the SEC. Pursuant to the regulations, registered government securities brokers and dealers are required to file financial reports which include information on their assets, liabilities, liquid capital, total haircuts, and ratio of liquid capital to total haircuts as determined in accordance with § 402.2, among other items, on Form G–405.

To supplement either Part II or IIA of the FOGS Report, registered government securities brokers and dealers are also required to file Schedule I at the end of each calendar year. The purpose of this schedule is to obtain information about the economic and financial characteristics of the reporting government securities broker or dealer.

The Department published the amendments to Form G–405 in proposed form on January 30, 1995,[2] and the comment period closed on March 1, 1995. Treasury received no comments and these final changes to the form are identical to the proposed changes.

The amendments to Form G–405 add a new item 15 to request information about an affiliation with, or control by, a U.S. bank. Current items 15 through 18 become items 16 through 19, respectively. The new inquiry requires a yes or no response, and if the response

[1] 17 CFR 405.2 and 17 CFR 449.5, respectively.

[2] 60 FR 5602 (January 30, 1995).

is yes, the respondent must provide the name of the parent or affiliate and the type of institution. The ''General Instructions'' to Schedule I also are amended to refer to the definition of ''bank'' in § 3(a)(6) of the Securities Exchange Act of 1934 (''Exchange Act'').[3]

Form G–405 is required to be submitted by registered government securities brokers and dealers to the SEC or to a self-regulatory organization according to an SEC approved plan. Financial institutions that have filed notice as government securities brokers and dealers are not required to file Form G–405.

The disclosure of this additional information would correspond to similar changes made by the SEC to Form X–17A–5, also known as the ''FOCUS'' Report, in November 1992.[4] The Treasury shares the SEC's belief that having knowledge of the economic and financial characteristics of brokers and dealers, including organizational affiliations with U.S. banks, is useful for regulatory purposes. This form change will also achieve consistency with the SEC approach and will assure consistent treatment for all government securities brokers and dealers.

The amendments to Form G–405 become effective June 12, 1995. The Department has consulted with the National Association of Securities Dealers (''NASD'') regarding the implementation of the form changes. The Department understands that the NASD will distribute the amended Form G–405 to its members that are registered government securities brokers and dealers. Copies of the Form G–405 may also be obtained by contacting the NASD.

List of Subjects in 17 CFR Part 449

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, 17 CFR Chapter IV is amended as follows:

[3] 15 U.S.C. 78c(a)(6). Under this section, the term ''bank'' is defined as: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; (c) any other banking institution doing business under the laws of any state or the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by state or federal authority having supervision over banks; and (d) a receiver, conservator, or other liquidating agent of any institution or firm included in the above paragraphs.

[4] Securities Exchange Act Release No. 31398 (November 4, 1992), 57 FR 53261 (November 9, 1992).

PART 449—FORMS, SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 449 continues to read as follows:

Authority: 15 U.S.C. 78o–5(a), (b)(1)(B), (b)(4).

2. Schedule I of Form G–405 is amended to add new instruction 15(a), (b) and (c) to the General Instructions, to redesignate Questions 15–18 as Questions 16–19, and add new Question 15 to read as follows:

Note: The text of Form G–405 does not appear in the Code of Federal Regulations.

Form G–405, Report on Finances and Operations of Government Securities Brokers and Dealers, Schedule I:

* * * * *

General Instructions

* * * * *

15(a), (b) & (c)—Report whether respondent directly or indirectly controls, is controlled by, or is under common control with, a U.S. bank. If the answer is ''yes,'' provide the name of the affiliated bank and/or bank holding company, and describe the type of institution. The term ''bank'' is defined in § 3(a)(6) of the Securities Exchange Act of 1934.

* * * * *

15. (a) Respondent directly or indirectly controls, is controlled by, or is under common control with, a U.S. bank.

(Enter applicable code: 1=Yes 2=No)

_____

(b) Name of parent or affiliate

_____

(c) Type of institution _____

* * * * *

§§ 400.6 and 405.3 [Amended]

3. For each section indicated in the list above, remove the Office of Management and Budget control number from the parenthetical statement at the end of each section, and add in its place ''1535–0089''.

§ 403.4 [Amended]

4. Add at the end of § 403.4 the following parenthetical:

§ 403.4 Customer protection—reserves and custody of securities.

(Approved by the Office of Management and Budget under control number 1535–0089)

Dated: April 3, 1995.

Frank N. Newman,

Deputy Secretary.

[FR Doc. 95–9057 Filed 4–12–95; 8:45 am]

BILLING CODE 4810–39–W

17 CFR Part 449

Form G–FIN–4

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Adoption of form amendments.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') is adopting amendments to Form G–FIN–4, which is the form that associated persons of financial institutions that are government securities brokers and dealers are required to file with such financial institutions, pursuant to sections 15C(a), (b)(1)(B) and (b)(4) of the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78o–5(a), (b)(1)(B) and (b)(4)) and sections 400.4 and 449.3 of the regulations issued under the Government Securities Act of 1986 (''GSA''). The amendments update the disciplinary background provisions of the form to reflect amendments to the federal securities laws, and provide the financial institutions of the associated persons and the appropriate regulatory authorities for the financial institutions with more useful information. The Department is adopting the amendments unchanged from their proposed form.

EFFECTIVE DATE: June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Ken Papaj (Director), or Lee Grandy (Government Securities Specialist) at 202–219–3632. (TDD for hearing impaired: 202–219–3988.)

SUPPLEMENTARY INFORMATION:

I. Background and Analysis

The Department adopted Form G–FIN–4 (Disclosure Form for Person Associated with a Financial Institution Government Securities Broker or Dealer) in the implementing regulations for the GSA issued on July 24, 1987 (52 FR 27910). Sections 400.4 and 449.3[1] of the GSA regulations require the form to be used by associated persons of financial institutions that are government securities brokers and dealers to provide the financial institutions and the appropriate regulatory agencies with certain information concerning employment, residence and statutory disqualification. Under the GSA regulations, associated persons that have a current Form U–4 (Uniform Application for Securities Industry Registration or Transfer) or Form MSD–4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) on file with their financial institution are not required to file Form

[1] 17 CFR 400.4 and 17 CFR 449.3, respectively.

G–FIN–4. Associated persons are not required to file G–FIN–4 forms with their financial institutions if the institutions are exempt from filing notice as government securities brokers or dealers pursuant to Part 401 of the GSA regulations.

The Department published the amendments to Form G–FIN–4 in proposed form on December 27, 1994,[2] and the comment period closed on January 26, 1995. Treasury received no comments in response to the proposed changes.

The changes to the body of Form G–FIN–4 relate to Item 17, which requests information concerning the disciplinary history of the associated person. The changes reflect amendments to the Exchange Act by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (''Remedies Act'')[3] and the International Securities Enforcement Cooperation Act of 1990 (''ISECA'').[4]

Specifically, the amendments to Form G–FIN–4 amend question C of Item 17 to add paragraph (5), which asks the associated person whether the SEC or the Commodity Futures Trading Commission (''CFTC'') has ever imposed a civil money penalty on the associated person, or ordered the associated person to cease and desist from any activity. The disclosure of this additional information corresponds to the SEC's expanded administrative and civil enforcement authorities under the Remedies Act.

The amendments to Form G–FIN–4 also add a definition of ''foreign financial regulatory authority''[5] to Item 17, and add this term to question 17.D. Thus, question 17.D. now inquires whether the associated person has ever been the subject of a finding by any federal regulatory agency, any state regulatory agency or ''foreign financial regulatory authority''. The definition of ''foreign financial regulatory authority'' added to Form G–FIN–4 is essentially the definition the ISECA added to section 3(a)(52) of the Exchange Act. Questions 17.A. and 17.B. have been amended to clarify that the inquiries now apply to information related to foreign as well as domestic courts.

Any associated person that determines that additional disclosure is required under revised Item 17 will need to file an amendment to Form G–FIN–4 on or promptly after the effective date of the Form amendments. See part II below for discussion of new filing requirements.

The amendments also modify Item 5 to reflect the Office of Thrift Supervision as the successor to the Federal Home Loan Bank Board. Thus, the ''Director, Office of Thrift Supervision'' is now listed as one of the appropriate regulatory agencies with which the financial institutions may be required to file the form.

In light of the technical changes made by the Government Securities Act Amendments of 1993 to the definition of ''appropriate regulatory agency'',[6] the amendments also make corresponding changes to Item 3 of the general instructions for Form G–FIN–4.

These amendments ensure that Form G–FIN–4 will provide a more complete description of the associated person's disciplinary history. The amendments to Form G–FIN–4 also conform to similar changes made by the National Association of Securities Dealers (''NASD'') to Form U–4 in November 1991,[7] and by the SEC to Form BD (Uniform Application for Broker-Dealer Registration) in July 1992.[8]

II. Filing Instructions

The amendments to Form G–FIN–4 become effective June 12, 1995. Thus, all new associated persons of financial institutions that are government securities brokers and dealers filing on or after that date will be required to file the revised Form G–FIN–4 with their institutions, though those filing before the effective date are encouraged to use the revised form. In addition, associated persons that have previously filed a G–FIN–4 should review their G–FIN–4 filings to determine whether they contain all of the information required by amended Item 17. To the extent that revisions to Form G–FIN–4 result in an affirmative answer to a question in Item 17, associated persons will be required to file with their institution an amendment to their Form G–FIN–4 by June 12, 1995 (or as soon as possible after that date). Financial institution government securities brokers or dealers are required to file the new or revised G–FIN–4 forms with their appropriate regulatory agency in accordance with section 400.4(d)(1). Associated persons who answer ''no'' to all of the questions in amended Item 17 will not be required to file an updated Form G–FIN–4 at that time.

In consultations with the appropriate regulatory agencies on the implementation of the form changes, the Department understands that the agencies will distribute the revised Form G–FIN–4 to their financial institutions that are government securities brokers and dealers so that the institutions can provide the form to their associated persons. Copies of the G–FIN–4 may also be obtained by contacting the appropriate regulatory agencies for financial institutions.

III. Special Analysis

It has been determined that these amendments are not a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

In the preamble to the proposal, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Department certified that these amendments to Form G–FIN–4, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared. In reviewing the final form amendment herein and in light of the fact that no comments were received, the Department has concluded that there is no reason to alter the previous certification.

List of Subjects in 17 CFR Part 449

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, 17 CFR Part 449 is amended as follows:

Part 449—FORMS, SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 449 is revised to read as follows:

Authority: 15 U.S.C. 78o–5(a), (b)(1)(B), (b)(4).

---

[2] 59 FR 66496 (December 27, 1994).

[3] Pub. L. No. 101–429, 104 Stat. 931 (October 15, 1990). The Remedies Act gave the Securities and Exchange Commission (''SEC'') the authority to seek civil monetary penalties in court proceedings and to impose monetary penalties and order disgorgement in administrative proceedings. The Remedies Act also provided the SEC with both temporary and permanent cease and desist order authority to prevent violations of securities laws.

[4] Pub. L. No. 101–550, 104 Stat. 2713 (November 15, 1990). The ISECA gave the SEC the authority to bar, suspend or restrict the activities of broker-dealers and associated persons or those persons seeking to become associated with a broker-dealer, based upon the findings of a foreign court or foreign securities authority. By amending the GSA, the ISECA also gave similar authority to the appropriate regulatory agencies for financial institutions that are government securities brokers or dealers regarding associated persons or those persons seeking to become associated with such entities. The ISECA also provided that certain types of actions taken by foreign financial regulatory authorities will be deemed a statutory disqualification.

[5] 15 U.S.C. 78c(a)(52).

[6] Pub. L. No. 103–202, 107 Stat. 2344 (1993).

[7] National Association of Securities Dealers Notice to Members No. 91–73 (November, 1991).

[8] Securities Exchange Act Release No. 34–30958 (July 27, 1992), 57 FR 34028 (July 31, 1992).

2. Form G–FIN–4 is amended to revise Item 5, Item 17 and the general instructions to read as follows:

Note: The text of Form G–FIN–4 does not appear in the Code of Federal Regulations.

Form G–FIN–4—Disclosure Form for Person Associated with a Financial Institution Government Securities Broker or Dealer:

Item 5

Item 17

General Instructions

* * * * *

In Item 5, ''Federal Home Loan Bank Board'' is deleted and ''Director, Office of Thrift Supervision'' is added so that the modified question reads: ''To be filed with the following (indicate one): Board of Governors of the Federal Reserve System * * * Comptroller of the Currency * * * Federal Deposit Insurance Corporation * * * Director, Office of Thrift Supervision * * * Securities and Exchange Commission.''

In Item 17, Definitions, the term ''Foreign Financial Regulatory Authority'' is added with the following meaning: ''Foreign Financial Regulatory Authority—Includes any (A) foreign securities authority; (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of investment or investment-related activities; or (C) membership organization, a function of which is to regulate the participation of its members in the activities listed above.''

Item 17.A., ''in a domestic or foreign court'' is added so that the modified question reads: ''Have you, within the 10 years preceding the date of this filing, been convicted of or plead guilty or nolo contendere (''no contest'') in a domestic or foreign court to:''

Item 17.B., ''domestic or foreign'' is added so that the modified question reads: ''Has any domestic or foreign court ever:''

Item 17.C.(5) is added to read as follows: ''(5) imposed a civil money penalty on you, or ordered you to cease and desist from any activity?''

Item 17.D., ''foreign financial regulatory authority'' is added so that the modified question reads: ''Has any other federal regulatory agency, any state regulatory agency or foreign financial regulatory authority ever:''

Item 17.F., ''other than as reported in Items 17.A., B., or D.'' is added so that the modified question reads: ''Has any foreign government, court, regulatory agency, or exchange ever entered an order against you related to investments or fraud other than as reported in Items 17.A., B., or D.?''

In the general instructions to Form G-FIN–4, Items 3.b., 3.c., and 3.d. are revised to read as follows:

3.b. ''The Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, an uninsured State branch or State agency of a foreign bank, a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978), or a corporation organized or having an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 or section 25A of the Federal Reserve Act;''

3.c. ''The Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank) or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978);''

3.d. ''The Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation; and''

Dated: April 3, 1995.

Frank N. Newman,

Deputy Secretary.

[FR Doc. 95–9056 Filed 4–12–95; 8:45 am]

BILLING CODE 4810–39–W

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 87C–0316]

Listing of Color Additives Exempt From Certification; Astaxanthin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of astaxanthin as a color additive in the feed of salmonid fish to enhance the color of their flesh. This action is in response to a petition filed by Hoffmann-La Roche, Inc.

DATES: Effective May 16, 1995, except as to any provisions that may be stayed by the filing of proper objections; written objections and request for a hearing by May 15, 1995.

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

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3078.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the Federal Register of December 2, 1987 (52 FR 45867), FDA announced that a color additive petition (CAP 7C0211) had been filed by Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199. The petition requested that the color additive regulations in part 73 (21 CFR part 73) be amended to provide for the safe use of astaxanthin as a color additive in the feed of salmonid fish. The petition was filed under section 706(d) (now section 721(d)) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376(d) (now 379e(d)).

II. Safety of the Petitioned Use

Astaxanthin is 3, 3′-dihydroxy-β, β-carotene-4, 4′-dione. Pure crystalline astaxanthin must be stored in the absence of light, heat, and oxygen to minimize chemical changes and decomposition that would result in loss of color. Thus, it is necessary to produce a stabilized form of astaxanthin for it to be marketed for addition to salmonid feed for the purpose of coloring the fish flesh.

The petitioner manufactures crystalline astaxanthin in a stabilized beadlet form and has presented evidence in the petition to establish the length of the shelf-life of this beadlet. Under § 70.25(a)(4) (21 CFR 70.25(a)(4)), expiration dates for the product in sealed and open containers must be stated on the label of a color additive. FDA finds that, given the concerns about shelf life, the expiration dates are a material fact that must be disclosed on the label of the product under sections 201(n) and 403(a)(1) of the act (21 U.S.C. 321(n) and 343(a)(1).

Astaxanthin occurs in the flesh of wild salmon at levels ranging from about 4 to 34 parts per million and is responsible for its pink or red coloration (Ref. 1). Wild salmon consume astaxanthin as a component of their natural diet and deposit a portion of the astaxanthin unchanged in their flesh

(Ref. 2). The amount of astaxanthin that FDA is permitting for use in finished feed (80 milligrams per kilogram (mg/kg), 72 grams (g) per ton) (§ 73.35(c)(2)) will result in depositions of the color additive in the flesh that will produce a coloration comparable to that in the flesh of wild salmon. This conclusion is supported by the similar values reported for astaxanthin levels in the flesh of aquacultured salmon used in the pigmenting experiments in the petition and in the flesh of wild salmon (Ref. 2). FDA has estimated that this level of astaxanthin in fish flesh, whether caught in the wild or aquacultured, will result in a mean consumer exposure of 15 micrograms/person/day (µ/p/d) and a 90th percentile exposure of 29 µ/p/d.

FDA has evaluated the data in the petition and other relevant information on astaxanthin and concludes that the petitioned use of the color additive is safe. This conclusion is based on the following facts: (1) The very small amount of astaxanthin deposited in salmonid flesh that will result from the petitioned use; (2) synthetic astaxanthin differs only in its optical isomeric distribution from astaxanthin present in the flesh of wild salmon; and (3) human exposure to astaxanthin from consumption of aquacultured salmon fed synthetic astaxanthin is comparable to the exposure to astaxanthin from wild salmon. In addition, the petitioner has submitted results from short-term and long-term toxicity studies using synthetic astaxanthin. The results of these studies support the conclusion that there is a reasonable certainty of no harm from the petitioned use of astaxanthin (Ref. 3).

FDA is adopting an identity and specifications for the color additive in § 73.35(a) and (b) to characterize the additive that has been evaluated and to ensure its safe manufacture and use.

III. Comments on the Petition

Beginning in late 1992, FDA received a total of 21 letters that were submitted as comments on the petition. One comment from a State agency and one comment from a trade association endorsed the petitioned use of astaxanthin. A manufacturer of *Phaffia* yeast, a source of astaxanthin used in some foreign countries, submitted a series of five comments containing considerable information on *Phaffia* yeast and requested that the agency also grant approval for this source, and all other safe and suitable sources, of astaxanthin. The comment also requested that FDA grant authority for other parties to make independent determinations that other sources of astaxanthin may be considered safe and suitable sources of the color additive for use in aquaculture.

The remaining 14 comments from a trade association, a foreign national organization, 4 commercial companies, and 8 academic and research institutes, generally supported the view that the regulation for astaxanthin should be written to include all safe and suitable sources of the color additive. One of the comments requested that the regulation listing astaxanthin for use in salmonid feed be written to include the comment's strain of *Phaffia* yeast as a source of astaxanthin.

As justification for these requests, the comments asserted that there should be no safety concerns with the use of astaxanthin for coloring the flesh of fish because astaxanthin occurs in nature, coloring the flesh of wild salmonids, and also because it occurs in a variety of sources in nature that are consumed without harm as food by wild fish and other wild animals. The comments also suggested that it would be advantageous to the aquaculture# industry to be able to use as many sources of astaxanthin as possible, and that it would be an efficient use of the industry and FDA's resources if petitions for these products did not have to be submitted and reviewed individually by the agency. In the event that FDA was unable or unwilling to expand the final regulation as requested, one comment requested that the agency modify the specifications for astaxanthin requested by the petitioner to authorize the use of other sources of astaxanthin, including the source of astaxanthin used by the comment. The comment specifically requested that the proposed specifications for astaxanthin be modified to include a higher percentage of the *cis* isomer and a 10-fold increase in carotenoids other than astaxanthin.

FDA has reviewed these comments and finds that two of the comments fully support the petition, and that none of the comments has raised concerns about the safety of astaxanthin or about its technical effectiveness for the petitioned use. Thus, the agency concludes that all the comments fully support FDA's conclusions regarding the safety of astaxanthin for the petitioned use.

FDA has considered whether it should expand the scope of the listing regulation to include *Phaffia* yeast and other materials containing astaxanthin. The regulation set forth below does not specify the source of astaxanthin or the manufacturing process because the agency has made its safety determination based on the chemical similarity of synthetic astaxanthin to astaxanthin from natural sources. Therefore, any source could be used to produce the color additive as long as the astaxanthin meets the identity, specifications, and stability requirements defined in § 73.35, and it is manufactured in accordance with good manufacturing practice. However, the specifications are listed to convey the fact that FDA has evaluated only a particular form of the color additive.

Several of the comments have requested that they be allowed to use a product derived from an organism such as *Phaffia rhodozyma* as a color additive without isolating the astaxanthin. Thus, they wish to market a biomass product that contains only a small amount of astaxanthin with the rest of the material being residues from the organism. The agency is concerned that deleterious materials may be included in fish feed from these sources because they are not found in the habitat of salmonids. Thus, interested parties should submit information supporting the safety of these products, and that they perform their intended effect, in the form of a new color additive petition to demonstrate that provision for these materials should be made in § 73.35.

FDA also concludes that it cannot expand the scope of this petition because an expanded review would require additional time to evaluate the safety and suitability of other materials containing astaxanthin. Such a review would cause an avoidable delay in the issuance of a final rule for the petitioned use of the color additive. FDA believes that such a delay would be unfair to the petitioner. The petitioner has stated that it would be unwilling to acquiesce in such a delay. Any such delay could cause significant economic loss to the petitioner and could be responsible for a significant delay in the use of astaxanthin by the United States aquaculture industry. Thus, FDA concludes that it is appropriate to require that those parties who wish to use astaxanthin products that do not comply with the listing regulation submit their own color additive petitions for such use.

Regarding the requested modifications in the specifications for astaxanthin, the agency cannot include the 10-fold increase in carotenoids other than astaxanthin in the regulation because a color additive with such a broad specification could be substantially different from the astaxanthin that the agency evaluated for safety.

Regarding the comment on allowing a higher percentage of *cis* isomers, astaxanthin can exist as different geometric isomers, known as *cis*- or *trans*-isomers. In the *cis* configuration, the largest functional groups on either

end of a double bond are on the same side of the molecule. In the *trans* configuration, they are on the opposite sides of the molecule. In the case of astaxanthin, there are nine double bonds that can have *cis* or *trans* configurations to give a bent or nearly linear molecular geometry. These isomers can be easily interconverted to give an equilibrium mixture.

The requested specification for the *cis*-astaxanthin level is unnecessary because no safety concerns have been demonstrated with regard to the proportions of the *cis* and *trans* isomers of astaxanthin. Furthermore, the isomeric forms are readily interconverted (Ref. 1), occur in wild salmon, and color the flesh of salmonids. There is no evidence to suggest that the ratio of isomeric forms would affect the safety of astaxanthin. The proportion of *cis*/*trans* isomers of astaxanthin in the petitioned color additive lies within the range of the ratios found in astaxanthin extracted from the flesh of wild salmon (Ref. 4). Therefore, the regulation presented below does not contain a specification for the amount of *cis*-astaxanthin.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Schiedt, K., F. J. Leuenberger, and M. Vecchi, ''Natural Occurrence of Enantiomeric and meso-Astaxanthin,'' *Helvitica Chimica Acta*, 64:449–457, 1981.

2. Meyers, S. P., and H-M Chen, ''Astaxanthin and its Role in Fish Culture,'' From The Proceedings of Warmwater Fish Culture Workshop. Special Publication No. 3, pp. 153–165, 1992.

3. Welsh, J. J., Memorandum entitled ''Final Toxicology Memo on CAP 7C0211 (Astaxanthin in Fish Feed)'' from the Additives Evaluation Branch (HFS–227) to the Direct Additives Branch (HFS–217), Center for Food Safety and Applied Nutrition, FDA, May 26, 1993.

4. Turujman, S. A., ''Rapid Direct Resolution of the Stereoisomers of All-*trans* Astaxanthin on a Pirkle Covalent L-Leucine Column,'' *Journal of Chromatography*, 631:197 (abstract), 1993; Poster presented at the 106th Annual AOAC International Meeting, Cincinnati, OH, August 31 to September 3, 1992.

V. Conclusions

FDA has evaluated the data in the petition and other relevant material and concludes that astaxanthin that meets the specifications in § 73.35(b) is safe and suitable for use in salmonid feed to pigment their flesh, and that part 73 should be amended as set out below. In addition, based upon the factors listed in § 71.20(b) (21 CFR 71.20(b)), the agency concludes that certification of astaxanthin is not necessary for the protection of the public health. To ensure its safe use, FDA has limited the amount of astaxanthin that can be incorporated into the finished fish feed to 80 mg/kg (72 g/ton).

To prevent economic fraud in salmonid fish containing added astaxanthin, the regulation requires declaration of the presence of the color additive in accordance with §§ 101.22(k)(2), 101.100(a)(2), and 501.4 (21 CFR 101.22(k)(2), 101.100(a)(2), and 501.4) for labeling of bulk foods. Section 501.4 is referenced in § 73.35(d)(2) to ensure that the presence of astaxanthin in the fish feed will be declared on the ingredient label. Sections 101.22(k)(2) and 101.100(a)(2) are referenced in § 73.35(d)(3) to ensure that, at the retail level, the presence of astaxanthin in the fish will be declared, and that the labeling of the bulk fish container, including a list of ingredients on the container or a counter card with similar information, will be displayed, respectively. Several examples are given in § 101.22(k)(2) for an acceptable statement of declaration of the presence of astaxanthin, e.g., ''Artificial Color,'' ''Artificial Color Added,'' or ''Color Added.''

VI. Inspection of Documents

In accordance with § 71.15(a) (21 CFR 71.15(a)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15(b), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

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

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before May 15, 1995, file with Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR 21 part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. New § 73.35 is added to subpart A to read as follows:

§ 73.35 Astaxanthin.

(a) *Identity*. (1) The color additive astaxanthin is 3, 3′-dihydroxy-β, β-carotene-4, 4′-dione.

(2) Astaxanthin may be added to the fish feed only as a component of a

stabilized color additive mixture. Color additive mixtures for fish feed use made with astaxanthin may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* Astaxanthin shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Physical state, solid.
0.05 percent solution in chloroform, complete and clear.
Absorption maximum wavelength 484–493 nanometers (in chloroform).
Residue on ignition, not more than 0.1 percent.
Total carotenoids other than astaxanthin, not more than 4 percent.
Lead, not more than 5 parts per million.
Arsenic, not more than 2 parts per million.
Mercury, not more than 1 part per million.
Heavy metals, not more than 10 parts per million.
Assay, minimum 96 percent.

(c) *Uses and restrictions.* Astaxanthin may be safely used in the feed of salmonid fish in accordance with the following prescribed conditions:

(1) The color additive is used to enhance the pink to orange-red color of the flesh of salmonid fish.

(2) The quantity of color additive in feed is such that the color additive shall not exceed 80 milligrams per kilogram (72 grams per ton) of finished feed.

(d) *Labeling requirements.* (1) The labeling of the color additive and any premixes prepared therefrom shall bear expiration dates for the sealed and open container (established through generally accepted stability testing methods), other information required by § 70.25 of this chapter, and adequate directions to prepare a final product complying with the limitations prescribed in paragraph (c) of this section.

(2) The presence of the color additive in finished fish feed prepared according to paragraph (c) of this section shall be declared in accordance with § 501.4 of this chapter.

(3) The presence of the color additive in salmonid fish that have been fed feeds containing astaxanthin shall be declared in accordance with §§ 101.22(k)(2) and 101.100(a)(2) of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: April 10, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–9178 Filed 4–12–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 91F–0465]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of an aqueous solution of citric acid, disodium ethylenediaminetetraacetate (disodium EDTA), sodium lauryl sulfate (SLS), and monosodium phosphate as a sanitizing solution to be used on food-processing equipment and utensils, including dairy-processing equipment. This action responds to a petition filed by Gycor International, Ltd.

DATES: Effective April 13, 1995; written objections and requests for a hearing by May 15, 1995.

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

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of January 3, 1992 (57 FR 291), FDA announced that a food additive petition (FAP 2B4301) had been filed by Gycor International Ltd., c/o Hogan & Hartson, 555 13th St. NW., Washington, DC 20004. The petition proposed that the food additive regulations be amended in § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) to provide for the safe use of of citric acid, disodium EDTA, SLS, and monosodium phosphate as components of a sanitizing solution intended for general use on food-contact surfaces. The petitioner subsequently amended the petition to limit use of the sanitizer on only food-processing equipment and utensils, including dairy processing equipment.

I. Safety and Functional Effect of Petitioned Use of the Additives

Sanitizing solutions are regulated as mixtures of chemicals that function together to sanitize food-contact surfaces. Each listed component in a sanitizing solution has a functional effect, and the agency evaluates the data submitted in support of the efficacy of the entire sanitizing solution. In addition, FDA regulations permit the addition to a sanitizing solution of any substance that is generally recognized as safe (GRAS) for use in food (§ 178.1010(b)). The subject sanitizing solution is an aqueous solution of citric acid, disodium EDTA, SLS, and monosodium phosphate. The function of these components and the basis for FDA's determination of the safety of these components in the subject sanitizer are described below.

A. Citric Acid

Citric acid functions as an antimicrobial agent in the subject sanitizing solution. Citric acid is listed as GRAS for use in human food under 21 CFR 182.1033. FDA regulations permit the addition to a sanitizing solution of any substance that is GRAS for use in food. On the basis of the data submitted in support of the already-regulated uses of citric acid, and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of citric acid in the subject sanitizing solution is safe (Ref. 1).

B. Disodium Ethylenediaminetetraacetate

Disodium EDTA functions as a chelator in the subject sanitizing solution. Disodium EDTA is regulated as a direct food additive under 21 CFR 172.135. On the basis of the data submitted in support of the already-regulated uses of disodium EDTA and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of disodium EDTA in the subject sanitizing solution is safe (Ref. 1).

C. Sodium Lauryl Sulfate

SLS functions as a surfactant in the subject sanitizing solution. SLS is present in regulated sanitizing solutions under § 178.1010(b)(3), (b)(10), and (b)(37). On the basis of the data submitted in support of the already-regulated uses of SLS and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of SLS in the subject sanitizing solution is safe (Ref. 1).

D. Monosodium Phosphate

Monosodium phosphate functions as a buffer in the subject sanitizing solution. Monosodium phosphate is listed as GRAS for use in human food under 21 CFR 182.1778. FDA regulations permit the addition to a sanitizing solution of any substance that is GRAS for use in food. On the basis of the data submitted in support of the already-regulated uses of monosodium phosphate and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of monosodium phosphate in the subject sanitizing solution is safe (Ref. 1).

E. Conclusion on Safety

As discussed above, FDA has evaluated the data in the petition and other relevant materials. On the basis of this evaluation, the agency concludes that these data and materials establish the use of the additive as a sanitizing solution on food-processing equipment and utensils and on dairy-processing equipment is safe and that it will have its intended technical effect. Therefore, FDA is amending its regulations in § 178.1010 as set forth below.

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

II. Environmental Impact

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

III. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum entitled ''Toxicological Evaluation of Citric Acid, Disodium EDTA, Sodium Lauryl Sulfate, and Monosodium Phosphate as Sanitizer Components,'' dated March 24, 1994.

IV. Filing of Objections

Any person who will be adversely affected by this regulation may at any time on or before May 15, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

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

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

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

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

2. Section 178.1010 is amended by adding new paragraphs (b)(44) and (c)(38) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(44) An aqueous solution of citric acid, disodium ethylenediaminetetraacetate, sodium lauryl sulfate, and monosodium phosphate. In addition to use on food-processing equipment and utensils, this solution may be used on dairy-processing equipment.

* * * * *

(c) * * *

(38) The solution identified in paragraph (b)(44) of this section shall provide, when ready for use, at least 16,450 parts per million and not more than 32,900 parts per million of citric acid; at least 700 parts per million and not more than 1,400 parts per million of disodium ethylenediaminetetraacetate; at least 175 parts per million and not more than 350 parts per million of sodium lauryl sulfate; and at least 175 parts per million and not more than 350 parts per million of monosodium phosphate.

* * * * *

Dated: April 3, 1995.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–9089 Filed 4–12–95; 8:45 am]

BILLING CODE 4160–01–F

---

21 CFR Part 558

New Animal Drugs; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the correct drug labeler code for Rhone Poulenc, Inc. The agency codified an incorrect drug labeler code. This document corrects that error.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Judith M. O'Haro, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 28, 1994 (59 FR 33196), FDA published a document to correct the drug labeler code for Hess & Clark, Inc., from 011801 to 050749. Several regulations were amended including those for roxarsone used in combinations in 21 CFR 558.95, 558.311, 558.355, and 558.550. This amendment inadvertently created an error in the regulations. However, in the

Federal Register of February 13, 1981 (46 FR 10462), the agency amended the regulations to reflect a change of sponsor for several new animal drugs (NADA's) from Hess & Clerk, Inc., Division of Rhone-Poulenc, Inc., to Hess & Clark, Inc. The roxarsone combinations mentioned above were improperly assigned to Hess & Clark, Inc. This document corrects that error by replacing the drug labeler code ''050749'' with the correct drug labeler code, ''011526.'' Accordingly, 21 CFR 588.95, 558.311, 558.355, and 558.550 are amended to reflect the correct drug labeler code for Rhone-Poulenc, Inc.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.95 [Amended]

2. Section 558.95 *Bambermycins* is amended in paragraphs (b)(1)(x)(*b*) and (b)(1)(xi)(*b*) by removing ''050749'' and adding in its place ''011526''.

§ 558.311 [Amended]

3. Section 558.311 *Lasalocid* is amended in the table in paragraph (e)(1), in entry (ii), in the ''Limitations'' column for the combinations with ''Roxarsone 45.4'', ''Roxarsone 45.4 plus bambermycins 1'', ''Roxarsone 45.4 plus lincomycin 2.0'', ''Roxarsone 45.4 plus bacitracin 10 to 25'', and ''Roxarsone 45.4 plus bacitracin 10 or 30'', by removing ''050749'' and adding in its place ''011526''.

§ 558.355 [Amended]

4. Section 558.355 *Monensin* is amended in paragraphs (f)(1)(xii)(*b*) and (f)(1)(xx)(*b*) by removing ''050749'' and adding in its place ''011526''.

§ 558.550 [Amended]

5. Section 558.550 *Salinomycin* is amended in paragraph (b)(1)(ii)(*c*) by removing ''050749'' and adding in its place ''011526''.

Dated: March 13, 1995.

George A. Mitchell,

Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 95–9177 Filed 4–12–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8592]

RIN 1545–AT17

Subchapter K Anti-Abuse Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This final regulation amends the subchapter K anti-abuse rule to provide that the rule applies solely with respect to taxes under subtitle A of the Internal Revenue Code. This document provides guidance to partnerships and the partners of those partnerships.

DATES: This regulation is effective May 12, 1994, except the amendment to § 1.701–2(f) is effective December 29, 1994.

For a discussion of dates of applicability of this regulation, see Explanation of Provisions under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: D. Lindsay Russell on (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 17, 1994, a notice of proposed rulemaking was published in the Federal Register (59 FR 25581) containing a proposed anti-abuse rule under subchapter K. On January 3, 1995, § 1.701–2 (TD 8588) was published in the Federal Register (60 FR 23) containing the final anti-abuse rule under subchapter K.

Explanation of Provisions

Section 1.701–2 is amended to provide that it applies solely with respect to taxes under subtitle A of the Internal Revenue Code. No inference is intended as to the treatment under current law of transactions not covered by the regulation.

This amendment is effective as of the effective dates of § 1.701–2(g) (May 12, 1994, except that paragraphs (e) and (f) are effective December 29, 1994).

Special Analyses

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.701–2 is amended by:

1. Amending the fourth sentence of paragraph (a)(3) by:

a. Removing the language ''*Example 8*'' and adding ''*Example 6*'' in its place.

b. Removing the language ''*Example 11*'' and adding ''*Example 9*'' in its place.

c. Removing the language ''*Examples 12 and 13*'' and adding ''*Examples 10* and *11*'' in its place.

2. Removing *Examples 5* and *6* of paragraph (d) and redesignating *Examples 7* through *13* of paragraph (d) as *Examples 5* through *11*, respectively.

3. Removing the last sentence of paragraph (f) introductory text.

4. Redesignating paragraph (h) as paragraph (i).

5. Adding a new paragraph (h).

The addition reads as follows:

§ 1.701–2 Anti-abuse rule.

* * * * *

(h) *Scope and application.* This section applies solely with respect to taxes under subtitle A of the Internal Revenue Code, and for purposes of this section, any reference to a federal tax is limited to any tax imposed under subtitle A of the Internal Revenue Code.

* * * * *

Approved: March 28, 1995.
Leslie Samuels,
Assistant Secretary of the Treasury.
Margaret Milner Richardson,
Commissioner of Internal Revenue.
[FR Doc. 95–9049 Filed 4–12–95; 8:45 am]
BILLING CODE 4830–01–U

26 CFR Parts 1 and 602

[TD 8593]

RIN 1545–AT16

Effective Dates of the Economic Performance Requirement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the effective dates of the economic performance requirement. Changes to the applicable laws were made by the Tax Reform Act of 1984. The regulations affect all taxpayers that use an accrual method of accounting.

DATES: These regulations are effective April 7, 1995.

For applicability of these regulations, see **EFFECTIVE DATES** under the **SUPPLEMENTARY INFORMATION** portion of the preamble.

FOR FURTHER INFORMATION CONTACT: James L. Atkinson, (202) 622–4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0917. The estimated annual reporting burden per respondent varies from 1 hour to 5 hours, depending on individual circumstances, with an estimated average of 3 hours. The annual recordkeeping burden per respondent varies from .01 hours to .1 hours, with an estimated average of .02 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On May 20, 1985, § 1.461–3T (TD 8024), relating to the effective dates of the economic performance requirement in section 461(h) of the Internal Revenue Code (Code) was published in the Federal Register (50 FR 20748). On June 7, 1990, a notice of proposed rulemaking (IA–258–84) concerning the economic performance requirement was published in the Federal Register (55 FR 23235). In addition to proposing general economic performance rules, the notice proposed redesignating the temporary regulations as § 1.461–7T. A public hearing on the regulations was held on October 22, 1990. On April 10, 1992, final and temporary regulations (TD 8408) regarding the economic performance requirement were published in the Federal Register (57 FR 12411). TD 8408 also redesignated § 1.461–3T as § 1.461–7T (without further change).

Written comments responding to the temporary regulations were received. In lieu of finalizing the temporary regulations issued as TD 8024 and redesignated by TD 8408, this Treasury decision removes § 1.461–7T and incorporates relevant provisions of those regulations into §§ 1.461–4 and 1.461–5, as appropriate.

Explanation of Provisions

Section 91(a) of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 598) added section 461(h) to the Internal Revenue Code. This section generally provides that the amount of an item is not incurred under an accrual method of accounting until economic performance occurs.

Section 91(g)(1) of the Tax Reform Act of 1984 provides that except as otherwise provided, section 461(h) of the Code applies to amounts that would be allowable as a deduction after July 18, 1984, under the law in effect before the enactment of section 461(h) (cut-off method). Alternatively, a taxpayer may elect to treat the application of section 461(h) as a change in accounting method to which section 481(a) applies. A taxpayer that makes this election may elect to apply the new method of accounting as of either July 19, 1984 (part-year change in method), or the first day of the taxable year that includes July 19, 1984 (full-year change in method).

On May 20, 1985, the IRS issued temporary regulations (TD 8024) relating to the general section 461(h) effective date, the date of electing alternative effective dates, the manner of making the elections, the scope of the elections, and the section 481(a) adjustment required by the elections. A detailed description of the regulations is set forth in the preamble to TD 8024.

After having considered the public comments received in connection with the temporary regulations, the Service is removing § 1.461–7T and incorporating the relevant provisions of the temporary regulations into §§ 1.461–4 and 1.461–5. Specifically, §§ 1.461–4 and 1.461–5 have been revised to clarify that all references to § 1.461–7T refer to § 1.461–7T as it appears in 26 CFR part 1 as revised April 1, 1995. Although this clarification refers to taxable years ending before April 7, 1995, however, it is not intended to extend the applicability of provisions previously set forth in § 1.461–7T beyond the dates originally provided in those temporary regulations. The reference to April 7, 1995, is necessary only to satisfy requirements of the Office of the Federal Register. In addition, § 1.461–4(k)(1) is revised to include special effective date rules for interest. These rules previously appeared in Q&A–12 of § 1.461–7T. Finally, § 1.461–5(d) has been revised to include an explanation of the term type of item for purposes of the recurring item exception. This explanation previously appeared in Q&A–3(d) of § 1.461–7T.

Rev. Proc. 94–32, 1994–1 C.B. 627, provides guidance regarding requests to make or revoke an election to ratably accrue real property taxes under section 461(c) for the taxpayer's first taxable year beginning after December 31, 1992. This Treasury decision does not affect the application of Rev. Proc. 94–32.

Effective Dates

These regulations are applicable for amounts that would be allowable as a deduction after April 7, 1995.

Special Analyses

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

Drafting Information: The principal author of these regulations is James L. Atkinson, Office of Assistant Chief Counsel (Income Tax andAccounting), IRS. However, other

personnel from the IRS andTreasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

PARAGRAPH 1. The authority citation for part 1 is amended by removing the entry for § 1.461–7T to read in part as follows:

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

§ 1.461–0 [Amended]

PAR. 2. Section 1.461–0 is amended by removing the entry for § 1.461–7T.

PAR. 3. Section 1.461–4 is amended as follows:

1. Paragraph (k)(1) is revised;

2. Paragraphs (m)(1)(i), (ii), and (iii) are revised;

3. Paragraph (m)(2)(ii) is revised.

The revisions read as follows:

§ 1.461–4 Economic performance.

* * * * *

(k) *Special effective dates*—(1) *In general.* Except as otherwise provided in this paragraph (k), section 461(h) and this section apply to liabilities that would, under the law in effect before the enactment of section 461(h), be allowable as a deduction or otherwise incurred after July 18, 1984. For example, the economic performance requirement applies to all liabilities arising under a workers compensation act or out of any tort that would, under the law in effect before the enactment of section 461(h), be incurred after July 18, 1984. For taxable years ending before April 7, 1995, see Q&A–2 of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995), which provides an election to make this change in method of accounting applicable to either the portion of the first taxable year that occurs after July 18, 1984 (part-year change method), or the entire first taxable year ending after July 18, 1984 (full-year change method). With respect to the effective date rules for interest, section 461(h) applies to interest accruing under any obligation (whether or not evidenced by a debt instrument) if the obligation is incurred in any transaction occurring after June 8, 1984, and is not incurred under a written contract which was binding on March 1, 1984, and at all times thereafter until the obligation is incurred. Interest accruing under an obligation described in the preceding sentence is subject to section 461(h) even if the interest accrues before July 19, 1984. Similarly, interest accruing under any obligation incurred in a transaction occurring before June 9, 1984, (or under a written contract which was binding on March 1, 1984, and at all times thereafter until the obligation is incurred) is not subject to section 461(h) even to the extent the interest accrues after July 18, 1984.

* * * * *

(m) *Change in method of accounting required by this section*—(1) *In general.* * * *

(i) For taxable years ending before April 7, 1995, the part-year change in method election described in Q&A–2 through Q&A–6 and Q&A–8 through Q&A–10 of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995);

(ii) For taxable years ending before April 7, 1995, the full-year change in method election described in Q&A–2 through Q&A–6 and Q&A–8 through Q&A–10 of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995); or

(iii) For taxable years ending before April 7, 1995, if no election is made, the cut-off method described in Q&A–1 and Q&A–11 of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995).

(2) * * *

(ii) *Retroactive change in method of accounting for long-term contracts and payment liabilities.* For the first taxable year beginning after December 31, 1989, or the first taxable year beginning after December 31, 1990, a taxpayer is granted the consent of the Commissioner to change its method of accounting for long-term contract liabilities described in paragraph (d)(2)(ii) of this section and payment liabilities described in paragraph (g) of this section (other than liabilities arising under a workers compensation act or out of any tort described in paragraph (g)(2) of this section) to comply with the provisions of this section. The change must be made in accordance with paragraph (m)(1)(ii) or (m)(1)(iii) of this section, except the effective date is the first day of the first taxable year beginning after December 31, 1989, or the first day of the first taxable year beginning after December 31, 1990. For taxable years ending before April 7, 1995, the taxpayer may make the change in method of accounting, including a full-year change in method election under paragraph (m)(1)(ii) of this section and Q&A–5 of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995), by filing an amended return for such year, provided the amended return is filed on or before October 7, 1992.

Par. 4. Section 1.461–5 is amended as follows:

1. Paragraph (d)(1) is revised.

2. Paragraphs (d)(2) (i) and (ii) are revised.

The revised provisions read as follows:

§ 1.461–5 Recurring item exception.

* * * * *

(d) *Time and manner of adopting the recurring item exception*—(1) *In general.* The recurring item exception is a method of accounting that must be consistently applied with respect to a type of item, or for all items, from one taxable year to the next in order to clearly reflect income. A taxpayer is permitted to adopt the recurring item exception as part of its method of accounting for any type of item for the first taxable year in which that type of item is incurred. Except as otherwise provided, the rules of section 446(e) and § 1.446–1(e) apply to changes to or from the recurring item exception as a method of accounting. For taxable years ending before April 7, 1995, see Q&A–7 of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995) for rules concerning the time and manner of adopting the recurring item exception for taxable years that include July 19,1984. For purposes of this section, items are to be classified by type in a manner that results in classifications that are no less inclusive than the classifications of production costs provided in the full-absorption regulations of § 1.471–11(b) and(c), whether or not the taxpayer is required to maintain inventories.

(2) *Change to the recurring item exception method for the first taxable year beginning after December 31, 1991*—(i) *In general.* For the first taxable year beginning after December 31,1991, a taxpayer is granted the consent of the Commissioner to change to the recurring item exception method of accounting. A taxpayer is also granted the consent of the Commissioner to expand or modify its use of the recurring item exception method for the first taxable year beginning after December 31, 1991.For each trade or business for which a taxpayer elects to use the recurring item exception method, the taxpayer must use the same method of change (cut-off or full-year change) it is using for that trade or business under § 1.461–4(m). For taxable year sending before April 7, 1995, see Q&A–11 of § 1.461–7T (as it appears in 26 CFR part 1 revised April

1, 1995) for an explanation of how amounts are taken into account under the cut-off method (except that, for purposes of this paragraph (d)(2), the change applies to all amounts otherwise incurred on or after the first day of the first taxable year beginning after December 31, 1991). For taxable years ending before April 7, 1995, see Q&A–6 of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995) for an explanation of how amounts are taken into account under the full-year change method (except that the change in method occurs on the first day of the first taxable year beginning after December 31, 1991). For taxable years ending before April 7, 1995, the full-year change in method may result in a section 481(a) adjustment that must be taken into account in the manner described in Q&A–8 and Q&A–9 of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995) (except that the taxable year of change is the first taxable year beginning after December 31, 1991).

(ii) *Manner of changing to the recurring item exception method.* For the first taxable year beginning after December 31, 1991, a taxpayer may change to the recurring item exception method by accounting for the item on its timely filed original return for such taxable year (including extensions). For taxable years ending before April 7, 1995, the automatic consent of the Commissioner is limited to those items accounted for under the recurring item exception method on the timely filed return, unless the taxpayer indicates a wider scope of change by filing the statement provided in Q&A–7(b)(2) of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995).

* * * * *

§ 1.461–7T [Removed]

Par. 5. Section 1.461–7T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by removing the entry for 1.461–3T from the table and adding the following entries in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.461–4	1545–0917
1.461–5	1545–0917
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: April 5, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–9034 Filed 4–7–95; 4:56 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the North Dakota regulatory program (hereinafter referred to as the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revisions to and additions of rules pertaining to: areas unsuitable for mining; permit applications (environmental monitoring plans); permit application approval procedures; permit revisions, renewals, and transfer or sale; performance bond; resoiling performance standards; sediment pond performance standards; contemporaneous reclamation performance standards; and enforcement actions. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations, address required program amendments, clarify ambiguities, correct cross-references, and improve program efficiency.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, Federal Register (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated November 10, 1994, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (Amendment number XXI, Administrative Record No. ND–V–01, State Program Amendment Tracking System No. ND–031–FOR). North Dakota submitted the proposed amendment in response to the required program amendments at 30 CFR 934.16(u) and at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposes to revise or add are: NDAC 69–05.2–04–07(3)(a), lands unsuitable for mining; NDAC 69–05.2–05–09, permit applications (environmental monitoring plans); NDAC 69–05.2–06–01(2), permit applications (identification of interests); NDAC 69–05.2–06–02(6), permit applications (compliance information); NDAC 69–05.2–10–03(5), criteria for permit approval; NDAC 69–05.2–11–02(1)(d), permit revisions; NDAC 69–05.2–11–03(5)(c), permit renewals; NDAC 69–05.2–11–06(1)(c), transfer, sale, or assignment of permit rights; NDAC 69–05.2–12–09(2), performance bond (period of liability); NDAC 69–05.2–15–02(2)(a), performance standards (suitable plant growth materials); NDAC 69–05.2–16–09 (7) and (20), performance standards (sediment ponds); NDAC 69–05.2–21–01(2), performance standards (backfilling and grading, timing requirements); and NDAC 69–05.2–28–03(b), inspection and enforcement (cessation orders).

OSM announced receipt of the proposed amendment in the December 9, 1994, Federal Register (59 FR 63738), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. ND–V–06). Because no one

requested a public hearing or meeting, none was held. The public comment period ended on January 9, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with certain exceptions, that the proposed program amendment submitted by North Dakota on November 10, 1994, is no less effective than the corresponding Federal regulations in meeting SMCRA's requirements. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to North Dakota's Rules

North Dakota proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial changes or correction of cross-references (corresponding Federal regulation provisions are listed in parentheses):

NDAC 69–05.2–11–02(1)(d) (30 CFR 774.13(d)), when permit revisions are required;

NDAC 69–05.2–11–03(5)(c) (30 CFR 774.15(b)(2)(iv)), requirements for applications to renew permits;

NDAC 69–05.2–11–06(1)(c) (30 CFR 774.17(a), (d)), requirements for transfer, sale, or assignment of permit rights; and

NDAC 69–05.2–12–09(2) (30 CFR 800.13), period of performance bond liability.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that these proposed revisions do not substantively change the North Dakota program as already approved. The Director approves these proposed revisions.

2. Substantive Revisions to North Dakota's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

North Dakota proposed revisions to the following previously-approved rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses):

NDAC 69–05.2–04–07(3)(a) (30 CFR 764.21(c)(1)), database and inventory system for use in designating lands unsuitable for mining; and

NDAC 69–05.2–28–03(6) (30 CFR 843.11(a)(2)) (introductory text), significant imminent environmental harm.

Because these proposed revisions to the North Dakota rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations in meeting SMCRA's requirements. The Director approves these proposed revisions.

3. NDAC 69–05.2–05–09, Consolidated Monitoring Plans

North Dakota proposes to add a new rule to allow a permittee to develop one consolidated monitoring plan (hereinafter, ''CMP'') for certain required monitoring plans that would cover multiple permits for a particular surface coal mining and reclamation operation. Specifically, North Dakota proposes NDAC 69–05.2–05–09 as follows:

> The Commission will allow monitoring plans required by [NDAC] article 69.05 and North Dakota Century Code chapter 38–14.1 to be consolidated by the permittee into one single monitoring plan for each surface coal mining and reclamation operation subject to the following requirements:
>
> 1. Each [CMP] will be subject to the approval procedures established for permit revisions.
> 2. Each mining permit must be revised describing the specific monitoring plan or plans to be consolidated into a single monitoring plan covering the entire surface coal mining and reclamation operation under permit.
> 3. Each [CMP] will be subject to review by the commission at the time of the midterm review or renewal for each permit covered by the [CMP] in accordance with the requirements of section 69–05.2–11–01.
> 4. A permittee may propose modifications to a [CMP] by filing a permit revision application to the most recently issued permit covered by the [CMP].

North Dakota also appends to the submittal a written rationale for its proposal at NDAC 69–05.2–05–09 (Amendment XXI, Administrative Record No. ND–V–1, ''IV. Appendix''). In that written rationale, North Dakota clarifies that the proposal is directed toward instances where one mine (i.e., one surface coal mining and reclamation operation) is authorized by multiple permits. The proposal would allow, as one example, the ground water monitoring plans for each of the individual permits to be combined into one consolidated ground water monitoring plan. The same allowance would apply for surface water monitoring, alluvial valley floor monitoring, and fish and wildlife monitoring.

A separate CMP would have to be developed for each category of monitoring. North Dakota indicates that this procedure would allow easier review of monitoring plans by both the regulatory authority and the public where one mine is covered by multiple permits.

North Dakota also indicated that individual permits would have to contain appropriate references to the various CMP's and that the CMP's would be a part of each permit. ''Since the [CMP] will be considered part of each mining permit it covers, failure to comply with the [CMP] will subject the permittee to the same enforcement action as would the failure to comply with any other part of a mining permit.'' In this case a single violation would be issued that lists all permits covered by the CMP. North Dakota states that it uses this same practice for violations of performance standards or requirements that are the same in more than one permit.

North Dakota's written rationale further notes that since CMP's may be revised, the reference in each permit will have to be the most recent (i.e., current) CMP. North Dakota proposes to review each CMP as part of the midterm review and renewal review of each included permit, and will require at those times any necessary revisions. North Dakota adds that, as it interprets its rule at NDAC 69–05.2–11–01(2), the commission is not precluded from reviewing permits and requiring permit revisions more frequently than at midterm or every five years (OSM notes that this interpretation would apply to requiring more frequent revisions to CMP's if necessary). The permittee may request revision of a CMP by applying for a permit revision to the most recently issued permit covered by the CMP. When new areas are added to a mining operation by application for new permits, the CMP's for the operation will have to be updated, and the updated CMP will be subject to the approval procedures for permit applications. If a CMP indicates any adverse environmental impacts, the portion of the whole operation affected would be subject to preventative or remedial measures as required by NDAC 69–05.2–09–12(2). Depending on the impacts, that area affected could involve parts of or all of one, several, or all of the permits covering the operation. Following final bond release of any portion of the area covered by a CMP, the permittee would have to continue monitoring that area until the CMP is revised to delete that area from the CMP.

North Dakota also specifically listed the monitoring requirements that could be consolidated, as follows: (1) Ground water monitoring—the requirements of NDAC 69–05.2–09–12(1)(e) and 69–05.2–16–14; (2) surface water

monitoring—the requirements of NDAC 69–05.2–09–12(1)(e) and 69–05.2–16–05; (3) alluvial valley floor monitoring—the requirements of NDAC 69–05.2–08–14(1)(e), 69–05.2–09–16, and 69–05.2–25–03; and (4) fish and wildlife monitoring—the requirements of NDAC 69–05.2–09–17(1)(e) and 69–05.2–13–08(1).

OSM acknowledges that on surface coal mining and reclamation operation may be authorized by a succession of permits for individual areas. Both the State statute at North Dakota Century Code (NDCC) at 39–14.1–15(1) and SMCRA Section 508(a)(1) provide that all permit applications include the identification of ''land subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits will be sought.'' And, OSM agrees with North Dakota that it would be easier for the public, the permittee, and the regulatory authority to review and revise the monitoring plans for the operation, and evaluate the monitoring data submitted, if those materials were in one place rather than spread out through several permit files.

OSM also notes that North Dakota does not propose to eliminate or reduce any monitoring required under the individual permits. For example, in order to be approved, a consolidated ground water monitoring plan would have to contain sufficient monitoring sites, monitoring methodologies, monitoring parameters, monitoring frequency, etc., to meet the requirements of NDAC 69–05.2–09–12(1)(e) and 69–05.2–16–14 for each of the included permit areas. Similarly, all of North Dakota's rule requirements would remain in effect regarding required preventative or remedial changes to surface coal mining and reclamation operations if monitoring data indicates the operation is having unanticipated adverse environmental impacts. North Dakota's written rationale for the provision specifically addresses this requirement at NDAC 69–05.2–09–12(2) (protection of the hydrologic balance), but any other such regulatory requirement (for preventative or remedial changes to the operation) would also be unaffected by this proposal for CMP's. Finally, North Dakota's proposal would not eliminate or reduce any required enforcement actions, since CMP's would be made part of each included permit, meaning that failure to comply with the CMP would mean noncompliance with each of the permits. Since each included permit would be listed in any such enforcement action, the single enforcement action would be considered for potential patterns of violation for each of the included permits.

OSM closely considered two aspects of North Dakota's proposal. First, the proposal would allow a CMP to be revised by submitting a revision application for only one of the permits included in the CMP; since the revised CMP would be incorporated into the other permits by reference, this would in effect revise all of the permits in the particular surface mining operation. But as noted above, the proposal does not eliminate or reduce the regulatory monitoring requirements of the individual permits. Thus in order to be approved, the revision application would in essence have to be revised as a revision to each permit. Further, OSM notes that if a revision to a CMP were considered a significant alteration subject to public notice under NDAC 69–05.2–11–02(5)(a), the public notice required by NDCC 38–14.1–18(1) would have to list all of the permit areas as lying within the ''boundaries of the land proposed to be affected by the * * * permit revision.'' Hence, the public would have adequate notice that all included permits are being revised.

The second aspect that OSM considered is the adoption of revised CMP as part of a permit application to add new permit area to a life-of-mine operation. North Dakota's written rationale, as noted above, addressed this by noting that the proposed revised CMP would in that instance be subject to the approval procedures for permit applications. On its fact, this statement appears to contradict proposed NDAC 69–05.2–05–09(1) (which proposes that CMP's will be subject to the approval procedures established for permit revisions) and proposed NDAC 69–05.2–05–09(4) (which proposes that modifications to a CMP may be proposed by an operator by filing a permit revision application).

OSM does not consider this apparent contradiction to be a deficiency. OSM notes that for any proposal to revise a CMP that would be included in a permit application to be approved, the regulatory authority would have to find (under NDCC 38–14.1–21(3)(a) [written findings for permit approval]) that the proposed CMP complied with NDAC 69–05.2–05–09. Strictly interpreted, that would require that the applicant simultaneously file a permit revision application to the most recent existing permit, and that that revision application be reviewed simultaneously with the application for the new permit. However, OSM observes that nothing would be gained from such a simultaneous dual application and dual review. As noted earlier, a proposed CMP does not eliminate or reduce the regulatory monitoring requirements of the individual permits. Thus, a proposed modified CMP contained in an application for a new permit would, in the review of the new application, be reviewed to ensure that it would fulfill all the regulatory monitoring requirements of all of the included permits. That is precisely the same level of review and approval that would be accomplished under the dual application and review under the strict interpretation. Therefore OSM does not find any deficiency in North Dakota's written intention to have the permit application approval procedures supersede the permit revision procedures under these circumstances. OSM notes that this aspect of the proposal would be clearer if this supersession were incorporated in the North Dakota program at NDAC 69–05.2–05–09, and OSM encourages North Dakota to consider this in the future.

Based upon the above discussion, the Director finds that North Dakota's proposal at NDAC 69–05.2–05–09 is consistent with the Federal regulations, and will assist North Dakota in the efficient administration of its program. Therefore the Director is approving the proposal.

4. NDAC 69–05.2–06–01(2), 69–05.2–06–02(6), and 69–05.2–10–03(5), Permit Application Review and Criteria for Approval, Final Compliance Review

NDAC 69–05.2–06–01(2) currently requires that after a permit application has been approved but before the permit is issued, the applicant shall update or correct the ownership and control (identification of interests) information in the application, or indicate that no change has occurred. North Dakota proposes to revise this provision to require that the update, correction, or indication be made when the application is ''deemed ready for approval'' but before the permit is issued. Similarly, NDAC 69–05.2–06–02(6) currently requires that after a permit application is approved (but before the permit is issued), the applicant shall update or correct the compliance information (violations list) in the application, or indicate that no change has occurred. North Dakota proposes to revise this provision to require that the update, correction, or indication be made when the permit application is ''deemed ready for approval'' but before the permit is issued. Finally, NDAC 69–05.2.–10–03(5) currently requires North Dakota,

after a permit application is approved (but before the permit is issued) to reconsider its approval decision based on the updates or corrections resulting from the provisions mentioned above. North Dakota proposes to revise this provision to require that after an application is ''deemed ready for approval'' (but before the permit is issued), the regulatory authority make its decision to approve or disapprove the application, based on the updated or corrected information.

The Federal regulations at 30 CFR 778.13(i) require that after a permit application is approved (but before the permit is issued), the applicant shall update or correct the ownership and control (identification of interests) information in the permit, or indicate that no change has occurred. Similarly, 30 CFR 778.14(d) requires that after an application has been approved (but before the permit is issued), the applicant shall update or correct the violation information in the application, or indicate that no change has occurred. Finally, 30 CFR 773.15(e) requires the regulatory authority, after an application is approved (but before the permit is issued) to reconsider its approval decision, based on the corrected or updated application information submitted under the provisions mentioned above.

In all three cases, North Dakota's proposal would require the submission or review of the updated or corrected information when the application is ''deemed ready for approval,'' while the Federal regulations require that the corrected or updated information be submitted or reviewed after the application is approved but before the permit is issued. OSM interprets the proposed language ''deemed ready for approval'' to mean that all technical and legal review of the permit application has been completed, all written findings have been completed, and the regulatory authority has determined that all criteria for the approval of the application have been met.

The intent of the Federal regulations cited above was expressed in the preamble to those rules (54 FR 8962; March 2, 1989):

> Experience has shown that the time that elapses between the submission of an application and the issuance of the permit typically is several months at a minimum. Information submitted with the application may become dated by the time of permit issuance, thus making it impossible for the regulatory authority to make an accurate compliance review under [30 CFR] 773.15(b)(1).
>
> This rule adds * * * [a requirement] that before a permit is issued the regulatory authority reconsider its initial § 773.15(b)(1) compliance review in light of any new information submitted pursuant to §§ 778.13(i) and 778.14(d) * * * The final compliance review based on this updated information will [e]nsure that the regulatory authority makes an accurate permitting decision under § 773.15(b)(1).

OSM notes that under North Dakota's proposals, the corrected or updated information would also be required at the very end of the application review period, and would be reviewed by the regulatory authority at that time. The regulatory authority's decision on permit issuance would be based on the updated or corrected information. Thus the Director finds that North Dakota's proposals at NDAC 69–05.2–06–01(2), 69–05.2–06–02(6), and 69–05.2–10–03(5) are no less effective in meeting SMCRA's requirements than the Federal regulations at 30 CFR 773.15(e), 778.13(i), and 778.14(d), and is approving those proposals.

5. NDAC 69–05.2–15–02(2)(a), Performance Standards (Suitable Plant Growth Material)

North Dakota proposes to delete the existing requirement that the regulatory authority must approve the topsoil removal for an area before subsoil removal begins or before any other disturbances occur in that area.

The Federal regulations at 30 CFR 816.22 do not require that the regulatory authority approve the removal of topsoil prior to further operations. Because the Federal regulations do not require regulatory authority approval of topsoil removal prior to further disturbance, the Director finds that North Dakota's proposed deletion of this requirement is not inconsistent with the Federal regulations, and is approving the proposal.

6. NDAC 69–05.2–16–09(7), Performance Standards for Sedimentation Ponds

North Dakota proposes to delete the existing requirement, applicable to all sediment ponds, that there must be no outflow through the emergency spillway from the ten-year, twenty-four-hour precipitation event or lesser events. In its place, North Dakota proposes a new provision that would require (for sedimentation ponds designed to contain the runoff from a ten-year, twenty-four-hour design event) that there must be no spillway outflow as a result of runoff from the design event or lesser runoff events, unless multiple runoff events occur before the pond can be dewatered in accordance with approved plans in the permit. North Dakota adds in a note to the submittal (see Administrative Record No. ND–V–01, side-by-side) that the North Dakota Department of Health requires operators to dewater sedimentation ponds within 10 days after a precipitation event. OSM notes that an existing provision of the North Dakota program, NDAC 69–05.2–16–09(6), states that the design, construction, and maintenance of a sediment pond or other sediment control measures does not relieve the operator from compliance with applicable effluent limitations.

The Federal regulations governing sediment ponds at 30 CFR 816.46 do not prohibit outflow from the emergency spillway in connection with any specified design event. Therefore, North Dakota's proposed deletion of its existing requirement is not inconsistent with those Federal regulations.

Regarding North Dakota's proposed new provision, the Federal regulations at 30 CFR 816.46(c)(iii)(C) require that sediment ponds be designed, constructed, and maintained to, among other things, contain or treat the 10-year, 24-hour precipitation event (lesser events can be approved by the regulatory authority in some specified circumstances). However, there is an implicit exception to the ''containment'' requirement, for those ponds designed to contain rather than treat the design event, at § 816.46(c)(1)(iii)(D). This regulation requires the provision of a nonclogging dewatering device to maintain the required detention time. In the preamble to this requirement (48 FR 44032, 44044; September 26, 1983), OSM noted that:

> If water accumulates in the pond and is not allowed to exit, the water level will rise and may not recede sufficiently to assure adequate detention time in the event of increased inflow to the pond.

Hence, the Federal rules anticipate that while a pond may be designed to ''contain'' the design event, the pond may not be able to contain runoff from a subsequent design event that occurs soon after an initial design event, unless some of the stored water is removed. But under § 816.46(c)(1)(iii)(C), that runoff must still be treated.

North Dakota's proposal in essence defines the performance standard of ''containment'': if a sediment pond is designed to ''contain,'' then there must be no spillway discharge from that design event. But it also explicitly recognizes what the Federal regulations only implicitly recognize: the sedimentation pond may not be able to contain subsequent design event that occurs before sufficient time elapses for dewatering the sedimentation pond. However, by requiring that effluent

standards must be met regardless of pond design or maintenance (subsection (6)), North Dakota requires that any resulting discharges be treated.

Based on the above discussion, the Director finds North Dakota's proposed replacement of the existing provision with the new provisions to be no less effective than the Federal regulations at 30 CRR 816.46(c)(1)iii)(C) in meeting SMCRA's requirements, and is approving the proposal.

7. NDAC 69–05.2–16–09(20), Inspection Frequency for Sedimention ponds.

North Dakota proposes to revise this provision to require that impoundments not meeting the criteria of 30 CFR Part 77.216 be inspected quarterly. The provision, as revised, would be substantively the same as the Federal regulation requirement at 30 CFR 816.49(a)(11) as it existed prior to November 21, 1994.

Effective November 21, 1994, OSM's requirement was redesignated as 30 CFR 816.49(a)(12). It was also revised to require that impoundments that meet the Soil Conservation Service (SCS) Class B or C criteria for dams in TR–60 (hereinafter, ''SCS criteria''), as well as impoundments that meet the criteria of 30 CFR Part 77.216 (hereinafter, ''MSHA criteria''), must be examined in accordance with § 77.216–3 (see 59 FR 53022; October 20, 1994). Under the revised Federal regulation, only impoundments that meet neither the MSHA criteria nor the SCS criteria may be inspected quarterly.

North Dakota's proposed rule would allow sedimentation ponds that do not meet the MSHA criteria, but do meet the SCS criteria, to be inspected quarterly. This would be less effective in meeting SMCRA's requirements than the new Federal regulation at 30 CFR 816.49(a)(12), under which those same sedimentation ponds would have to be examined in accordance with 30 CFR 77.216–3 (in most cases, weekly). However, OSM's rulemaking noted, under the section entitled ''Effect on State Programs,'' that State programs will not be required to meet the requirements of the new regulations until the Director reviews the State programs and informs the States of any deficiencies in accordance with 30 CFR 732.17 (see 59 FR 53022, 53026). North Dakota has to yet been informed by the Director that it must revise its program to conform with the new Federal regulation at 30 CFR 816.49(a)(12); hence, OSM is not at this time requiring North Dakota to revise its proposed rule to require that the new category of impoundments (those that meet the SCS criteria) be inspected in accordance with § 77.216–3.

North Dakota's proposal would require sedimentation ponds that meet neither the MSHA criteria nor the SCS criteria to be inspected quarterly. The Federal regulation at 30 CFR 816.49(a)(12) also requires those same impoundments to be inspected quarterly. Therefore the Director finds that North Dakota's proposal, insofar as it addresses that category of sedimentation ponds, is no less effective than the Federal regulation, and is approving the proposal insofar as it addresses that category (sedimentation ponds that meet neither the MSHA criteria nor the SCS criteria). The Director is not approving the proposal insofar as it allows sedimentation ponds that meet the SCS criteria, to be inspected quarterly.

The Director notes that this partial approval satisfies a required program amendment codified at 30 CFR 934.16(u) that was imposed on the North Dakota program in a rulemaking action on January 9, 1992 (57 FR 807, 827). That action required North Dakota to amend its program to require quarterly inspections of certain impoundments, to be no less effective than then-existing 30 CFR 816.49(a)(11). As noted above, North Dakota's proposal, insofar as approved, fulfills that requirement, and the Director is herewith removing it. OSM notes that the forthcoming notification from the Director in accordance with 30 CFR 732.17 will require North Dakota to amend its program to address those sedimentation ponds that meet the SCS criteria.

8. NDAC 69–05.2–21–01(2), Performance Standards for Contemporaneous Reclamation, Time and Distance Requirements

North Dakota proposes to revise this provision to allow the regulatory authority to grant additional distance (in addition to four spoil ridges behind the pit being worked) for completion of rough backfilling and grading if the permittee can demonstrate that such additional distance is necessary. The existing provision only allows the regulatory authority, in the same circumstances, to grant additional time (in addition to 180 days following coal removal) for completion of rough backfilling and grading.

OSM notes that a statutory requirement of the North Dakota program, at NDCC 38–14.1–24(14), requires, among other things, that permittees ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations.

OSM's time and distance requirements at 30 CFR 816.101 were suspended on July 31, 1992 (57 FR 33874). Therefore OSM must evaluate State time and distance requirements against the general contemporaneous reclamation requirements of 30 CFR 816.100. This regulation requires that all reclamation efforts (including backfilling, grading, topsoil replacement, and revegetation) on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations (except when variances are granted for concurrent surface and underground mining activities).

As noted above, the North Dakota program contains a statutory general contemporaneous reclamation requirement substantively equivalent to 30 CFR 816.100. North Dakota's proposed additional distance allowance at NDAC 69–05.2–21–01(2) provides additional specificity to one aspect of the general statutory requirement at NDCC 38–14.1–24(14) and is not inconsistent with that statutory requirement.

Based on the above discussion, the Director finds North Dakota's proposal at NDAC 69–05.2–21–01(2) to be consistent with the Federal regulations at 30 CFR 816.100, and is approving the proposal.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment (Administrative Record No. ND–V–06), but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program.

The U.S. Bureau of Mines responded on November 30, 1994, that it had no comment (Administrative Record No. ND–V–04). The State Director of the U.S. Department of Agriculture (USDA) Rural Economic and Community Development (formerly the Farmers Home Administration) responded on December 2, 1994, that it had no comment and felt the proposed

amendment would not affect its programs (Administrative Record No. ND–V–05). The U.S. Army Corps of Engineers responded on December 8, 1994, that the proposed changes were satisfactory to it (Administrative Record No. ND–V–07). The Agricultural Research Service, USDA, responded on December 13, 1994, that it had no comments or additions to the amendment (Administrative Record No. ND–V–08). The Fish and Wildlife Service responded on December 16, 1994, that it found the proposed changes to be logical and reasonable, and that the proposed rules were not anticipated to have any significant impacts on fish and wildlife resources (Administrative Record No. ND–V–09).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that North Dakota proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. ND–V–03). EPA's Region VIII office responded on December 21, 1994, that it had no comments and that it did not believe there would be any impacts to water quality standards promulgated under the Clean Water Act (Administrative Record No. ND–V–10).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. ND–V–03). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with one exception, North Dakota's proposed amendment as submitted on November 10, 1994. The Director does not approve, as discussed in Finding No. 7, NDAC 69–05.2–16–09(20) (insofar as it would allow sedimentation ponds not meeting the MSHA criteria but meeting that SCS criteria to be inspected quarterly).

The Director approves the rules as proposed by North Dakota with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 934, codifying decisions concerning the North Dakota program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

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

VI. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 7, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

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

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

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

2. Section 934.15 is amended by revising the heading and by adding paragraph (t) to read as follows:

§ 934.15 Approval of amendments to the North Dakota regulatory program.

* * * * *

(t) With the exception of NDAC 69–05.2–16–09(20) (to the extent that it addresses sedimentation ponds that do not meet the criteria of 30 CFR 77.216 but do meet SCS Class B or C criteria), revisions to the following rules, as submitted to OSM on November 10, 1994, are approved effective April 13, 1995.

North Dakota Administrative Code (NDAC) 69–05.2–04–07(3)(a), lands unsuitable for mining; NDAC 69–05.2–05–09, permit applications (permit monitoring plans); NDAC 69–05.2–06–01(2), permit applications (identification of interests); NDAC 69–05.2–06–02(6), permit applications (compliance information); NDAC 69–05.1–10–03(5), criteria for permit approval; NDAC 69–05.2–11–01(1)(d), permit revisions; NDAC 69–05.2–11–03(5)(c), permit renewals; NDAC 69–05.2–11–06(1)(c), transfer, sale, or assignment of permit rights; NDAC 69–05.2–12–09(2), performance bond (period of liability); NDAC 69–05.2–15–02(2a), performance standards (suitable plant growth material); NDAC 69–05.2–16–09(7) and (20), performance standards (sediment ponds); NDAC 69–05.2–21–01(2) performance standards (backfilling and grading, timing requirements); and NDAC 69–05.2–28–03(6), inspection and enforcement (cessation orders).

§ 934.16 [Amended]

3. Section 934.16 is amended by removing and reserving paragraph (u).

[FR Doc. 95–9176 Filed 4–12–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA37–1–6370a; FRL–5188–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Final Rule Pertaining to the Promulgation of SO_2: Conewango Township, Warren County Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On February 15, 1995, EPA published a final rule approving a revision to the State implementation plan for the Commonwealth of Pennsylvania. The revision provides for, and demonstrates, the attainment of the national ambient air quality standards (NAAQS) for sulfur oxides in the Conewango Township, Warren County nonattainment area. This action was published without prior proposal because EPA anticipated no adverse comment. Because EPA received adverse comments on this action, EPA is withdrawing the February 15, 1995 final rulemaking action pertaining to the State implementation plan for Pennsylvania.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Air Programs (3AT22), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, phone: 215 597–9781.

SUPPLEMENTARY INFORMATION: On February 15, 1995, EPA published a final rule to approve a revision to the Commonwealth of Pennsylvania State implementation plan (SIP) (60 FR 8566). The revision provides for, and demonstrates, the attainment of the national ambient air quality standards (NAAQS) for sulfur oxides in the Conewango Township, Warren County nonattainment area. The implementation plan was submitted by Pennsylvania to satisfy the requirements of the Clean Air Act (CAA) pertaining to nonattainment areas. EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as noncontroversial and anticipated no adverse comments. The final rule was published in the Federal Register with a provision for a 30-day comment period. At the same time, EPA published a proposed rule which announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the Federal Register (60 FR 8612). By publishing a notice announcing withdrawal of the final rulemaking action, this action would be withdrawn. EPA received adverse comment within the prescribed comment period.

Therefore, EPA is withdrawing the February 15, 1995 final rulemaking action pertaining to the Pennsylvania SIP for sulfur oxides. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: March 30, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 95–9045 Filed 4–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OAQPS CA38–5–6959; FRL–5184–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the Federal Register on June 2, 1994. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from Pleasure Craft Coating Operations and set general recordkeeping requirements for VOC emissions. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on May 15, 1995.

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

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

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

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

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

FOR FURTHER INFORMATION CONTACT: Daniel A. Meer, Chief, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION

Background

On June 2, 1994 in 59 FR 28503 EPA proposed to approve the following rules into the California SIP: SCAQMD's Rule 1106.1, Pleasure Craft Coating Operations, and Rule 109, Recordkeeping for Volatile Organic Compound Emissions. Rule 1106.1 was adopted by SCAQMD on May 1, 1992, and Rule 109 was adopted on March 6, 1992. Both rules were submitted by the California Air Resources Board (CARB) to EPA on September 14, 1992. These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPR(s) cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPR(s) cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in [59 FR 28503 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated February 16, 1993, Pleasure Craft Coating Operations and February 24, 1993, Recordkeeping for Volatile Organic Compound Emissions).

Response to Public Comments

A 30-day public comment period was provided in 59 FR 28503. EPA received no comments.

EPA Action

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 28, 1995.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(189)(i)(A)(*6*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(189) * * *

(i) * * *

(A) * * *

(*6*) Rule 109 adopted on March 6, 1992, and Rule 1106.1 adopted on May 1, 1992.

* * * * *

[FR Doc. 95–9042 Filed 4–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 76

[AD–FRL–5186–5]

RIN 2060–AD45

Acid Rain Program: Nitrogen Oxides Emission Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; response to court remand.

SUMMARY: The EPA is today issuing this final rule in response to a remand by a U.S. Court of Appeals. The rule reinstates emission limitations for nitrogen oxides (NO_X) from coal-fired utility units under section 407 of the Clean Air Act (''the Act''). The emission limitations for NO_X, along with emission limitations for sulfur dioxide from utility plants, will reduce acidic deposition and its serious adverse effects on natural resources, ecosystems, materials, visibility, and public health.

On March 22, 1994, EPA promulgated a rule establishing NO_X emission limitations. The rule established emission limits generally achievable using ''low NO_X burner technology'' and established a procedure for obtaining an alternative emission limitation (AEL) if a unit could not achieve the prescribed limit using such technology. On November 29, 1994, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the definition of ''low NO_X burner technology'' in the March 22, 1994 rule exceeded EPA's statutory authority. The Court vacated the rule and remanded it to the Agency for further proceedings. On March 28, 1995, EPA and environmental and utility-industry parties signed an agreement addressing the March 22, 1994 regulations, including issues raised by the Court's remand.

Based on the Court's decision and a review of the record, the Agency is now revising the March 22, 1994 regulations. The low-NO_X-burner-technology definition is revised to comply with the Court's decision. Other provisions concerning the compliance date for Phase I NO_X emission limitations, AELs, and plans for averaging NO_X emissions of two or more units are also revised. In general, the revisions reduce compliance requirements, extend the compliance date, and increase compliance flexibility. The rule revisions are issued as a direct final rule because they are consistent with the Court's decision and no adverse comment is expected. The revisions are also consistent with the March 28, 1995 agreement.

EFFECTIVE DATE: This direct final rule will be effective on May 23, 1995 unless significant, adverse comments are received by May 15, 1995. If significant, adverse comments are timely received on any portion of the direct final rule, that portion of the direct final rule will be withdrawn through a notice in the Federal Register.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 23, 1995.

ADDRESSES: Docket No. A–92–15, containing information considered during development of the promulgated standards and requirements, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying. Additional data and information pertaining to the rule may be found in Docket No. A–90–39.

FOR FURTHER INFORMATION CONTACT: Peter Tsirigotis, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (for technical matters) at (202) 233–9620; or Dwight C. Alpern (same address) (for legal matters) at (202) 233–9151.

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

I. Background

A. Purpose of the Acid Rain NO_X Program

The purpose of the Acid Rain NO_X emission reduction program is to reduce the adverse effects of acidic deposition on natural resources, ecosystems, visibility, materials, and public health by substantially reducing annual emissions of NO_X from coal-fired electric utilities. 42 U.S.C. 7651(a)(1). NO_X, along with sulfur dioxide, is a principal precursor of acidic deposition.

Although sulfate deposition is considered to be the major contributor to long-term aquatic acidification, nitric acidic deposition plays a dominant role in the ''acid pulses'' associated with the fish kills observed during the springtime meltdown of the snowpack in sensitive watersheds. Furthermore, the atmospheric deposition of NO_X is a substantial source of nutrients that damage estuaries, such as the Chesapeake Bay, by causing algae blooms and anoxic conditions. Nitrogen dioxide and particulate nitrate also contribute to pollutant haze. Moreover, acidic deposition and ozone (formed by the photochemical reaction of NO_X and volatile organic compounds) contribute to the premature weathering and corrosion of building materials such as architectural paints and stones.

Electric utilities are a major contributor to NO_X emissions nationwide; in 1980, they accounted for 30 percent of total NO_X emissions and, by 1990, their contribution rose to 38 percent of total NO_X emissions. Approximately 80 percent of electric utility NO_X emissions come from coal-fired plants of the type addressed by section 407 of the Act.

B. Statutory Framework

Section 407(b)(1) of the Act requires the Administrator to establish NO_X emission limitations for two types of coal-fired utility boilers (''Group 1'' boilers): (1) Tangentially fired boilers; and (2) dry bottom wall-fired boilers other than units applying cell burner technology (''wall-fired boilers''). The Act specifies the maximum emission limits (often referred to as ''presumptive'' emission limits or limits) for these Group 1 boilers: 0.45 lb/mmBtu for tangentially fired boilers; and 0.50 lb/mmBtu for wall-fired boilers. If the Administrator finds that the presumptive limits cannot be achieved using ''low NO_X burner technology,'' the Administrator may set less stringent limitations. 42 U.S.C. 7651f(b)(1). A Phase I coal-fired utility unit with a Group 1 boiler must comply with the promulgated annual NO_X emission limitation on the later of January 1, 1995 or the date the unit is required to meet SO_2 emission reduction requirements under section 404(d) of the Act (*id.*).

Section 407(d) provides a mechanism by which a utility unit may receive an AEL less stringent than the applicable limitation established under section 407(b)(1) for Group 1 boilers. In order to receive an AEL, the owner or operator of the unit must demonstrate that it cannot meet the applicable limitation using properly installed ''low NO_X burner technology'' designed to meet the limitation. 42 U.S.C. 7651f(d). If the owner or operator makes the necessary showings, then an AEL will be established that does not require ''any additional control technology beyond low NO_X burners.'' 42 U.S.C. 7651f(d).

Section 407(d) also provides that EPA may grant the owner or operator of a Phase I coal-fired utility unit subject to section 407(b)(1) a 15-month extension from the January 1, 1995 compliance deadline. Such an extension may be granted if the technology necessary to meet the promulgated NO_X emission limitation is not in adequate supply to enable its installation and operation at the unit, consistent with system reliability, by January 1, 1995. Section 407(d) specifies the process the Administrator must use in authorizing the Phase I extension.

A more detailed discussion of the statutory framework is set forth at 59 FR 13538–13539 (March 22, 1994).

C. EPA's Rulemaking

As discussed above, the term ''low NO_X burner technology'' plays an important role in section 407 of the Act. There has been substantial controversy as to whether Congress intended ''low NO_X burner technology'' to be equivalent to ''low NO_X burners'' and whether ''low NO_X burner technology'' includes all forms of combustion air staging or only staging at the burner. On November 25, 1992, EPA published a proposed rule establishing NO_X emission limitations for coal-fired utility units under section 407(b)(1) of the Act and other requirements and procedures for all coal-fired units subject to Phase I and Phase II of the Acid Rain Program (57 FR 55632–55683). In recognition of the controversy surrounding the definition of low NO_X burner technology, the proposed rule contained two regulatory options and an alternative approach for defining that term. Option 1 defined low NO_X burner technology as low NO_X burners incorporating overfire air for wall-fired boilers and as low NO_X burners incorporating separated overfire air (e.g., LNCFS 2 and LNCFS 3) for tangentially fired boilers (57 FR 55642). Option 2 defined low NO_X burner technology as low NO_X burners incorporating separated overfire air for tangentially fired boilers, but excluded overfire air from the definition for wall-fired boilers (*id.*). In addition to the two options set forth, EPA solicited comment on a third

approach. This approach was endorsed by the Utility Air Regulatory Group (UARG) (a group made up of utilities that subsequently challenged the March 22, 1994 final rule) and the U.S. Department of Energy (DOE). Under the third approach, low NO_X burner technology was defined as excluding both overfire air for wall-fired boilers and separated overfire air for tangentially fired boilers (57 FR 55644–55645).

On March 22, 1994, EPA published the final NO_X rule (59 FR 13538–13580). In that rule, EPA adopted the Option 1 definition of low NO_X burner technology after considering the chemical process of low NO_X combustion, the history and application of low NO_X combustion technology, Congress' intent in section 407 of the Act, and the actual application of NO_X control technology.

II. The Court's Decision

Following issuance of the March 22, 1994 rule, numerous utilities and the National Coal Association petitioned for judicial review of the rule. The two main issues raised on appeal were: whether EPA's definition of low NO_X burner technology was lawful; and whether EPA was obligated to extend the January 1, 1995 compliance date prescribed in section 407 of the Act because EPA did not issue the rules by the May 15, 1992 issuance date required by section 407.

On November 29, 1994, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision on the petitioners' first issue. The Court held that ''[t]he statutory text, structure, and history of section 407 * * * support the 'unmistakable conclusion' that Congress unambiguously intended the term 'low NO_X burner technology' to encompass only low NO_X burners, not overfire air'' (*Alabama Power Co.* v. *U.S. EPA,* No. 94–1170 (D.C. Cir, 1994) slip op. at 12). The Court explained that under the AEL provision, ''Congress did not intend to require utilities to consider the 'full range of low NO_X combustion technologies' because it *expressly* provided that utilities not be required to install or use any equipment beyond low NO_X burners in their efforts to comply with NO_X emission limits'' (*id.* at 11). After concluding that EPA had exceeded its statutory authority, the Court vacated the March 22, 1994 rule and determined that the petitioners' second issue on the compliance deadline was moot.

III. EPA's Response to the Court's Decision

A. Changes to the March 22, 1994 Rule

1. Definitions

Low NO_X burners and low NO_X burner technology. Because the Court determined that, in defining low NO_X burner technology in the March 22, 1994 rule, the Agency exceeded its authority under section 407 of the Act, the revised rule changes the definition of the terms, ''low NO_X burners and low NO_X burner technology,'' in § 76.2. The Court determined that low NO_X burner technology encompasses ''only low NO_X burners'' (*Alabama Power,* slip op. at 12). The Agency is removing from the March 22, 1994 definition the language that is inconsistent with the Court's determination. In particular, the revised rule eliminates the language stating that low NO_X burner technology includes ''any combination of coal and air nozzles ports * * * not restricted to location within the boiler, including * * * NO_X ports, overfire air ports, or staged combustion ports'' (59 FR 13565). Other related language (e.g., ''at points downstream of the initial flame'' (*id.*)) in the March 22, 1994 definition is also removed.

The removed language is replaced by new language explaining that the new definition includes the staging of combustion air using air nozzles or registers located inside any boiler waterwall [1] hole that includes a burner. Additional new language explains that the definition excludes the staging of combustion air using air nozzles or ports located outside any boiler waterwall hole that includes a burner. The new language implements, for both wall- and tangentially-fired boilers, the Court's holding that low NO_X burner technology includes only low NO_X burners.

For wall-fired boilers, two types of NO_X combustion controls have been used: (1) Advanced burner retrofits for reducing NO_X formation (''burner retrofits''); [2] and (2) combustion air staging (i.e., ''overfire air'' for wall-fired boilers) (57 FR 55640). Burner retrofits must be custom-designed for each boiler and the ease of retrofitting varies from boiler to boiler:

> In some cases (of burner retrofits), burner openings must be enlarged via remolding the refractory material at the burner exit or by enlarging the hole (*not* cutting holes in the boiler tubes). If enlargement of the hole requires that tubes be cut and bent slightly to accommodate the burner, however, this procedure does not affect the boiler water circulation since the tubes have been previously bent. The circulation design takes bends into account during initial boiler design. By contrast, cutting holes as required for the addition of (overfire air) affects the boiler circulation. (Docket Item VIII–A–2, Reply Brief of Petitioners, August 29, 1994, Exhibit 1.)

Unlike burner retrofits, overfire air for wall-fired boilers involves diverting some combustion air from waterwall openings that include a burner and injecting the air above the top burner level. This generally requires the cutting of entirely new holes in the waterwall above the highest burners (*id.*; 57 FR 55640).

The new low-NO_X-burner-technology definition, as applied to wall-fired boilers, encompasses all burner retrofits that are essentially within an existing waterwall hole. Such retrofits may involve minor modifications (e.g., of pressure parts or refractory material) to the existing waterwall hole as necessary to accommodate the retrofit essentially within the hole. The new definition excludes all overfire air as applied to wall-fired boilers. This definition meets the Court's requirement that only burners be considered; nothing in the Court's decision excludes retrofit burners requiring minor waterwall modifications. *See, e.g.,* slip op. at 5 footnote 3 (discussing low NO_X burners).

For tangentially fired boilers, all commercially available systems for reducing NO_X formation involve a staged combination of coal and air (57 FR 55641). Three types of control systems for tangentially fired boilers were discussed in detail in the preamble to proposed part 76: (1) The replacement of the original coal and air nozzle array in each corner of the boiler with a new low NO_X configuration of coal and air nozzles and the installation of air nozzles at the upper end of each waterwall hole that contains the new coal and air nozzle array (''LNCFS 1''); [3]

---

[1] Waterwalls are panels of water tubes running along the length of a boiler. These tubes carry water or steam. Water in these tubes is converted into steam through the heat transfer between combustion gas and this water.

[2] Typical designs of burner retrofits include upgraded air registers that allow for better control of combustion air and a redesigned burner tip. Burner retrofits achieve controlled fuel and air mixing in the flame. This arrangement results in rapid devolatilization and combustion of nitrogen-containing volatile matter under conditions of limited availability of oxygen, with the result that the formation of fuel NO_X is suppressed. The arrangement also results in combustion of air and coal char with a cooler flame than the flame of conventional burners, which suppresses thermal NO_X formation (59 FR 13541).

[3] Several other low NO_X burner designs also use combustion air staging in the waterwall hole where

Continued

(2) the installation of air nozzles in a new air nozzle assembly above the waterwall hole that contains the original coal and air nozzle array in each corner (''LNCFS 2''); and (3) the replacement of the original coal and air nozzle array with a new low NO_X configuration in each corner and the installation of both air nozzles at the upper end of each waterwall hole containing the new array and a new air nozzle assembly above each waterwall hole (''LNCFS 3'') (*id.*).

As is the case with wall-fired retrofit burners, LNCFS 1 is custom-designed for each boiler and may require modifications to the existing waterwall hole (59 FR 13546–13547). Retrofit burners and LNCFS 1 respectively involve the injection of air through registers or nozzles located in a waterwall hole that includes the burner: In the case of wall-fired boilers, the air registers are in the burner retrofit itself while in the case of tangentially fired boilers, the air nozzles are in the hole with the coal and air nozzle array.

In contrast with LNCFS 1, LNCFS 2 and LNCFS 3 involve injecting combustion air above the coal and air nozzle array in each corner through a new air nozzle assembly requiring an entirely new waterwall hole above the array (57 FR 55641). The new low-NO_X-burner-technology definition, as applied to tangentially fired boilers, includes the applications of LNCFS 1 (and other low NO_X burner designs)[4] that are essentially within the existing waterwall hole. The included applications may involve minor modifications (e.g., of pressure parts or refractory material) to the existing waterwall hole as necessary to accommodate the NO_X emission controls essentially within the existing hole. The new definition excludes all applications of separated overfire air, e.g., LNCFS 2 and LNCFS 3. This is consistent with the Court's holding in that, as discussed above, LNCFS 1 for tangentially fired boilers is analogous to retrofit burners for wall-fired boilers and thus falls within the Court's prescription that ''low NO_X burner technology'' be limited to low NO_X burners only.

The Agency notes that its new definition is in essence the same as the definition set forth in the preamble of the November 25, 1992 proposed rule as an alternative to Options 1 and 2 (57 FR 55644–55645). The alternative approach, like the new definition adopted today, excluded overfire air for wall-fired boilers and excluded LNCFS 2 and LNCFS 3 for tangentially fired boilers. The utilities described the alternative approach as involving ''the direct replacement of the original equipment manufacturer's coal burners (with low NO_X burners) without major new waterwall penetrations or parts'' (Docket Item IV–D–111 at 74). The utilities also noted that their definition under the alternative approach—like the definition in the revised rule—includes ''burners[-]only technologies that have recently begun to be offered commercially'' for tangentially fired boilers, i.e., the low NO_X burner designs described in footnote 3 above (*id.* at 73). In comments on the November 25, 1992 proposal, the utilities and DOE supported the alternative approach as being consistent with section 407 of the Act (Docket Items IV–D–2 at 1–2 and IV–D–111 at 73–84).

Other defined terms. In light of the new low-NO_X-burner-technology definition adopted today, two other definitions in § 76.2 of the March 22, 1994 rule are now superfluous and are eliminated in the revised rule.[5] In particular, the new low-NO_X-burner-technology definition itself describes what forms of air staging are included or not included in the definition, and, as discussed below, references in other sections of part 76 to ''combustion air staging'' have been removed. Consequently, there is no need for the definition of ''combustion air staging''. See 59 FR 13564. Further, the definition of ''low NO_X coal and air nozzles'' is unnecessary because that term is no longer used in part 76. See 59 FR 13565.

2. Date for Compliance with NO_X Emission Limitations

The revised rule changes the date in § 76.5(a) on which a Phase I unit with a Group 1 boiler begins to be subject to the NO_X emission limitations. Under the March 22, 1994 rule, such a Phase I unit must begin compliance with NO_X emission limitations on the later of January 1, 1995 or the date the unit becomes subject to SO_2 emission reduction requirements under section 404(d) of the Act. Under the revised rule, the January 1, 1995 date is changed to January 1, 1996. Analogous changes in the compliance date are made in §§ 76.1(d) and 76.5(d).[6]

The change in the compliance date is necessary because of the delay in the repromulgation of the NO_X emission limitations. The Court vacated the March 22, 1994 rule on November 29, 1994, only 32 days prior to the compliance deadline. The Court added that the reissued NO_X emission limitations ''will undoubtedly take effect after the statutory deadline [for compliance] of January 1, 1995.'' *Alabama Power,* slip op. at 13. Moreover, the Court noted ''the agency's representation at oral argument that it would be inclined to exercise its enforcement discretion in favor of the utilities in order to account for delay in the rulemaking process'' (*id.*).

As correctly predicted by the Court, today's revised rule reinstating NO_X emission limitations takes effect after January 1, 1995, despite the Agency's efforts to expedite the rulemaking process. Maintaining the January 1, 1995 deadline for compliance with the NO_X emission limitations would mean that the limitations under the revised rule would have to be applied prior to their effective date.

Not only would this approach raise questions of retroactivity, but also the Agency is concerned about the lack of any lead time between promulgation of NO_X emission limitations and the beginning date for compliance. Under these circumstances, the Agency must determine what Congress would have intended had it addressed the problem of issuance of the NO_X emission limitations after January 1, 1995. Section 407 required the Agency to issue final NO_X regulations within 18 months of enactment of title IV (i.e., by May 15, 1992) and required compliance with such regulations to begin on January 1, 1995. Although these are independent requirements and, the Agency maintains, no specific lead time between rule promulgation and compliance was mandated, it is reasonable to conclude that Congress intended that there be some lead time. Retaining a January 1, 1995 compliance deadline would result in no lead time at all.

Further, the Agency recognizes that the promulgation of the March 22, 1994 low-NO_X-burner-technology definition and the Court's decision vacating the March 22, 1994 rule may have

---

the coal and air nozzle array is located. Some of these are : Foster Wheeler's T-fired/Split Flame (TF/SF) burner; and International Combustion Ltd.'s FAN burner (Docket Item IV–D–111, Comments of the Utility Air Regulatory Group on EPA's Proposed Rules on Nitrogen Oxides Reduction Program, February 8, 1993, at 28, 30 and 115). Both of these designs incorporate air nozzles at the upper end of the waterwall hole that contains the new coal and air nozzle array in each corner of the boiler. Neither, however, incorporates any staging that utilizes injection of air through separate holes (e.g., separated overfire air ports) in the waterwall and that therefore is external to the waterwall hole containing the burner (*id.* at 27).

[4] See footnote 3 above.

[5] As discussed below, the definition of ''alternative technology'' is also revised.

[6] The language in § 76.5(d) is also revised to make it consistent with § 76.5(a) and clarify that a unit under § 76.5(d) may seek to use a compliance option in §§ 76.10, 76.11, or 76.12.

engendered some uncertainty and confusion on the part of utilities concerning their regulatory obligations. This further supports a change in the January 1, 1995 compliance deadline. However, the Agency notes that Phase I units generally proceeded in good faith to take the necessary steps to comply with the March 22, 1994 rule. These steps included obtaining a permit to operate and, where necessary, installing NO_X control equipment, including low NO_X burners. Of the 175 Phase I units with Group 1 boilers on Table A of section 404, all submitted NO_X compliance plans by May 6, 1994 and only 31 requested a compliance date extension.[7] Since complying with the revised rule will, in general, require the same or less effort than the industry has already undertaken, the extension until January 1, 1996 is judged to be reasonable and appropriate.

The establishment of January 1, 1996 as the compliance deadline also reflects the fact that title IV of the Act created an annual program with regard to both SO_2 and NO_X emissions reductions. Units must comply with SO_2 emission limitations by emitting no more SO_2 in a year than is authorized by the number of allowances ''held for that unit for that year.'' 42 U.S.C. 7651b(g). Similarly, emission limitations for NO_X are annual: The generic limits established under section 407(b) are ''annual allowable emission limitations''; AELs under section 407(d) are emission rates that can be met ''on an annual basis''; and emissions averaging plans under section 407(e) limit NO_X emissions using both ''alternative contemporaneous annual emission limitations'' and a ''Btu-weighted average annual emission rate.'' Adopting January 1, 1996 as the compliance deadline preserves the annual nature of the Acid Rain Program.

The revised rule also changes language in the March 22, 1994 rule concerning the date for compliance with any revised emission limitations for Group 1 boilers that may be adopted under section 407(b)(2) of the Act. The March 22, 1994 rule states that Group 1, Phase II units must comply with any revised Group 1 emission limitations starting on January 1, 2000. Because EPA has not determined whether to revise the Group 1 emission limitations under section 407(b)(2), it is unnecessary to state, in the rule at this time, the compliance date for such revised limitations. If and when the limitations are revised, the rule will be amended to add both the limitations and the compliance date. Sections 76.5(g) and 76.10(f)(1)(iii) are revised to remove that compliance date.

3. Alternative Emission Limitations

In order to ensure that § 76.10 is consistent with the new definition of the term ''low NO_X burner technology,'' all phrases in the section that elaborated on that term are eliminated. In particular, in §§ 76.10(a)(1) and (2) of the March 22, 1994 rule, the term ''low NO_X burner technology'' is followed by phrases such as: ''including separated overfire air''; ''incorporating both close-coupled and separated overfire air''; or ''incorporating combustion air staging above the top burner level'' (59 FR 13567–13568). The revised rule excludes all of these phrases and is reworded as necessary to reflect their removal. As a result of these changes, units with Group 1 boilers may apply for AELs if they are unable to meet applicable emission limitations using low NO_X burner technology under the new definition in § 72.2.[8]

The revised rule also adds that units with tangentially fired boilers may seek AELs where they cannot meet the applicable emission limitations using separated overfire air. In order to comply with the March 22, 1994 low-NO_X-burner-technology definition, which was then in effect and included close-coupled and separated overfire air, some units installed only separated overfire air. The record information to date indicates that separated overfire air alone is at least as effective in reducing NO_X emissions as low NO_X burner technology as applied to tangentially fired boilers. See Docket Item IV–A–10, Background Document for RIA of NO_X Regulations, appendix A at 21. The Agency therefore maintains that such units should not be disqualified from seeking an AEL because of their efforts to comply with the March 22, 1994 rule. Sections 76.10(a)(1) and (2)(i)(A) are revised to allow such units to seek AELs.

For similar reasons, the definition of ''alternative technology'' set forth in § 76.2 is revised. Under the revised rule, ''alternative technology'' is NO_X emission control technology other than low NO_X burner technology but does not include overfire air for wall-fired boilers and separated overfire air for tangentially fired boilers. Under §§ 76.10(a) and (e)(11), a unit using alternative technology, in addition to or in lieu of low NO_X burner technology, to reduce NO_X emissions must show an annual average emissions reduction of greater than 65 percent in order to qualify for an AEL. The revision of the alternative-technology definition excludes units with tangentially fired boilers applying separated overfire air from the 65-percent reduction requirement.[9] This avoids putting at a disadvantage, for purposes of obtaining AELs, units that may have installed separated overfire air because of the March 22, 1994 low-NO_X-burner-technology definition.

Moreover, certain dates in § 76.10(c)(1), concerning the submission of petitions for an AEL demonstration period, and in § 76.10(f)(1), concerning approved AEL demonstration periods, are changed. See 59 FR 13568 and 13570. These revisions reflect the change in the compliance deadline from January 1, 1995 to January 1, 1996.

Finally, certain provisions, concerning information included in petitions for AEL demonstration periods and for final AELs, in §§ 76.14 and 76.15 of the March 22, 1994 rule refer to combustion air or air flow through ''overfire air ports'' or ''combustion air staging ports.'' Since low NO_X burner technology now excludes air nozzles or ports located outside a waterwall hole that includes a burner, these references are no longer appropriate. The provisions have been modified to apply

[7] Twenty-five units applied for a 2-year Phase I extension for SO_2 under § 72.42 (which automatically granted them a 2-year NO_X extension), and 6 units applied for a 15 month Phase I NO_X compliance extension under § 76.12.

[8] Since low NO_X burner technology does not include air nozzles or ports located outside of a waterwall hole that includes a burner, provisions in § 76.10 concerning the technical feasibility of installing such air nozzles or ports are irrelevant. Consequently, the March 22, 1994 provisions in §§ 76.10(a)(3) and (d)(4) are entirely eliminated. See 59 FR 13568–13569. The revised rule also reflects the removal of any reference to these eliminated provisions and the renumbering that results from their elimination. See 59 FR 13568–69 and 13574. In addition, the requirement in § 76.10(g)(1)(ii)(C) that the designated representative revise the AEL demonstration period plan is changed to apply only when the owner or operator identifies *operating* modifications (whether for the boiler or the NO_X emission control system) that improve NO_X reductions. Consistent with § 76.10(a)(2)(iii)(B), this does not require revision of the plan to include operating modifications that would prevent the boiler or NO_X control system from being operated in accordance with the bid and design specifications on which the design of the NO_X control system is based. Plan revision is no longer required for all possible equipment modifications or upgrades since they could be outside the new low-NO_X-burner technology definition. See 59 FR 13570–13571.

[9] In order to avoid repeating in other sections the NO_X control technology requirements set forth in § 76.10(a)(2) for qualifying for an AEL (e.g., that a Group 1 boiler install low NO_X burner technology, alternative technology, or, for a tangentially fired boiler, separated overfire air), the references in §§ 76.10(d)(8) and (e)(2)–(4) and 76.15(c) to specific technologies are replaced by a general reference to the ''installed NO_X emission control system'' or ''NO_X emission control system.'' Such a system must, of course, meet the requirements in § 76.10(a)(2). In addition, § 76.10(e)(2) is also revised to make it consistent with § 76.10(d)(8).

only to tangentially fired boilers (which may use close-coupled overfire air) and to refer to the ''distribution of combustion air'' within the ''NO_X emission control system.'' See 59 FR 13574 (§ 76.14(a)(2)(i)) and 13575 (§ 76.15(b)(3) and (d)(2)).[10]

As a result of these changes, the revised rule complies with the Court's decision. The rule provides that, in applying for an AEL, the designated representative for an affected Group 1 unit must demonstrate that the unit cannot meet the presumptive emission limit using properly installed and operated low NO_X burner technology as redefined (or alternative technology or, for tangentially fired boilers, separated overfire air) that is designed to meet the presumptive limit. The designated representative is not required to attempt to meet the presumptive limit using low NO_X burners plus overfire air for wall-fired boilers or separated overfire air for tangentially fired boilers. Rather, in keeping with the Court's decision, the designated representative may base the petition for an AEL on the use of only low NO_X burners. Nothing in the Court's decision mandates any further changes in the AEL provisions.

4. NO_X Averaging Plans

Section 76.11 is revised to change the provisions concerning compliance on an individual basis and on a group basis with the emission limitations in NO_X averaging plans and to clarify language in the formulas implementing the requirements of such plans.

Under § 76.11(d) of the March 22, 1994 rule, units governed by a NO_X averaging plan must comply with both individual-unit limits ''and'', where applicable, a group emission requirement. 59 FR 13572 (§ 76.11(d)(1)(i)(B)). An averaging plan must state individual-unit limits for all units in the plan, i.e., an alternative contemporaneous annual emission limitation and, in most cases, an annual heat input limit. The formula for setting the individual-unit limits is Equation 1 in § 76.11(a)(6). Each unit's actual annual average emission rate must not exceed that unit's alternative contemporaneous annual emission limitation. Further, if the alternative contemporaneous annual emission limitation is less stringent than the applicable emission limitation, the unit's actual annual heat input must not exceed the unit's annual heat input limit. If the alternative contemporaneous annual emission limitation is more stringent, the unit's heat input must not be less than the heat input limit.

The March 22, 1994 rule also provides that if one or more of the units under the plan fail to meet the individual-unit limits, there must be a showing that the entire group of units under the plan complies with a group emission requirement. The group emission requirement is met where the actual Btu-weighted annual average emission rate for the units in the plan does not exceed the Btu-weighted annual average emission rate for these units if they had operated in compliance with the applicable emission limitation in §§ 76.5, 76.6, or 76.7. The formula for determining group compliance is Equation 2 in § 76.11(d)(1)(ii)(A).

Section 76.11(d)(2) of the March 22, 1994 rule addresses liability where units under the NO_X averaging plan fail to meet any of the requirements of the plan, including the individual-unit limits and the group emission requirement. Under § 76.11(d)(2)(i), the owners and operators of each unit under the plan are liable for any violations of the plan (or of § 76.11) by any unit under the plan. Such liability expressly includes the excess emissions penalty under 40 CFR part 77 and section 411 of the Act and penalties under section 113 of the Act. The only exception to the liability provision in § 76.11(d)(2)(i) is that if the group showing of compliance under § 76.11(d)(1)(ii) is made, then no unit under the plan is subject to the excess emissions penalty. Regardless of whether the group showing of compliance (which is for purposes of excess emissions) is made, the March 22, 1994 rule does not exempt any unit under the plan from liability under section 113 for violation of the individual-unit limits.

In contrast with the March 22, 1994 rule, the revised rule provides that if one or more units fail to meet the individual-unit limits but there is a showing of group compliance for the year, then all units in the plan will be deemed to be in compliance for the year with the individual-unit limits. With regard to their NO_X emissions for the year, all units therefore will be in compliance with the averaging plan and have no potential liability for violation of the plan or part 76. Further, none of the units will have excess emissions for the year under part 77.

The Agency has received public comment to the effect that this revised approach, which was proposed in the original November 25, 1992 proposed NO_X rule, is more consistent with the purposes of section 407 than the approach adopted in the March 22, 1994 rule. Neither section 407(e) nor the legislative history specifically address this matter. However, section 407(e) states that individual units' alternative contemporaneous annual emission limitations must ''ensure that the units' actual annual NO_X emission rate'' averaged over the units in question does not exceed the ''Btu-weighted annual average emission rate for the same units'' if they had met the applicable emission limitations under section 407(b). 15 U.S.C 7651f(e). That goal is satisfied where units fail to meet the individual-unit limits in the NO_X averaging plan but can show group compliance with the plan.

Further, even though the March 22, 1994 rule relieves units in such circumstances from liability for excess emissions, the units are still potentially liable for civil penalties, which may be enforceable through Agency action or citizen suits under sections 113 and 304 of the Act. This potential liability is sufficiently significant that a utility with a NO_X averaging plan may, in effect, be forced to comply unit-by-unit with the individual-unit limits even if the group emission requirement could be met without meeting all the individual-unit limits. The individual-unit limits can restrict the utility's flexibility, for example, in dispatching the units in the plan. In order to minimize the likelihood of violating individual-unit limits, some designated representatives have submitted Phase I NO_X averaging plans that set alternative contemporaneous emission limitations equal to the presumptive limits in § 76.5 and that specify no heat input limits. However, under such plans, the individual-unit limits can still restrict the utility's flexibility to choose which units in the plan will be retrofitted with NO_X emission control systems and what types of NO_X emission control systems will be used. The Agency is concerned that the net result of such lack of flexibility is that designated representatives will be encouraged to seek AELs for more units, rather than attempting to average units with higher NO_X emissions with units with lower NO_X emissions. Not only is the case-by-case process of setting AELs administratively burdensome for utilities and the Agency, but also the Agency is concerned that total NO_X emissions are likely to be higher the greater the number of units with AELs.

The Agency concludes that removing the requirement to meet individual-unit limits when there is group compliance

[10] Sections 76.15(a), (b), and (d) are also revised to state, consistent with §§ 76.10(d)(13) and 76.14(a)(2)(v), that the owner or operator ''may'' use for tests and procedures set forth in § 76.15. Further, the language in § 76.15(b)(6) is clarified, and § 76.15(d)(3) is revised to refer more generally to optimization of the combustion process and to cite burner balancing as an example.

under a NO_X averaging plan is a reasonable interpretation of section 407(e) and better implements that provision. Consequently, § 76.11(d)(1)(ii) is revised to state that when the units in a NO_X averaging plan show compliance with the group emission requirement in § 76.11(d)(1)(ii)(A) for a given year, the units will be deemed to comply for that year with their individual emission limitations and heat input limits. Since units meeting group compliance are thereby in compliance with both the individual-unit and group emission requirements of the plan, there is no need to state separately that group compliance relieves the units of any penalties for excess emissions. Section 76.11(d)(2)(ii) is therefore eliminated.[11]

Sections 76.11(a) (6) and (7) and (d)(1)(ii) (A) and (B) are also revised to clarify the formulas (Equations 1 and 2) that govern the selection of individual-unit limits and the showing of group compliance. The language in these sections explaining what ''applicable emission limitation'' to use in Equations 1 and 2 is confusing. The revised rule clarifies that the limitation to be used in Equations 1 and 2 is the applicable emission limitation for each respective unit in §§ 76.5, 76.6, or 76.7. Consistent with that approach, a unit with an AEL must use the applicable emission limitation in §§ 76.5, 76.6, or 76.7 rather than the AEL. The only exception is that an early election unit, which elects to meet NO_X emission limitations in Phase I but is allowed to participate in a NO_X averaging plan only in Phase II, must use the most stringent applicable limitation in §§ 76.5 or 76.7 (i.e., 0.45 lb/mmBtu or 0.50 lb/mmBtu depending on whether the unit's boiler is wall-fired or tangentially fired) or, if the limitation is revised and made more stringent for Phase II under section 407(b)(2), the revised limitation applicable to the boiler type.

In order to simplify the language in §§ 76.11(a)(7) and (d)(1)(ii)(B) in the March 22, 1994 rule, the references to Phase II units are removed. To capture the concept in the March 22, 1994 provisions that Phase II units cannot participate in averaging plans before January 1, 2000, § 76.11(a)(1) is revised to state that a unit in an averaging plan in Phase I must be a Phase I unit with a Group 1 boiler.

EPA notes that it has received public comments concerning the use of a single NO_X averaging plan for units of two or more operating companies (also referred to as utility systems) that are subsidiaries of a single holding company. In such a case, the operating companies would designate the same designated representative (probably someone at the holding company level) for their units in order to meet the common designated representative requirement for a NO_X averaging plan. Each operating company could still designate its own alternate designated representative. Concern was raised that the designated representative at the holding company level may not be readily accessible and that operating companies may need the flexibility of having two persons at the operating company level with authority to act for the designated representative. The Agency is currently reviewing this matter and, in light of the public comments, will propose, in a future rulemaking, revisions to 40 CFR part 72 that would allow designation of a second alternate designated representative for units under certain limited circumstances. Such circumstances could be where: The unit's utility system is a subsidiary of a holding company with two or more utility-system subsidiaries in two or more states; and, in order to use a NO_X averaging plan involving units of two or more such subsidiaries, all the utility-system subsidiaries of that holding company have the same designated representative. EPA intends to consider this revision, and other revisions to streamline part 72, in a rulemaking to be completed in 1995.

5. Phase I NO_X Compliance Extensions

Section 76.12 is revised in order to reflect the new low-NO_X-burner-technology definition. The March 22, 1994 rule provides for a Phase I NO_X compliance extension where a tangentially fired boiler was designed and guaranteed, but failed, to meet the presumptive emission limit and there is a contract to install close-coupled or separated overfire air on or before January 1, 1996. The March 22, 1994 rule includes similar language, with regard to wall-fired boilers, providing a Phase I NO_X compliance extension where there is a contract to install additional equipment, including overfire air. 59 FR 13572 (§ 76.12(a)(1)(ii) and (iii)). The direct final rule eliminates these provisions and a related provision in § 76.12(b)(3). No extensions were requested under these provisions.

The March 22, 1994 rule also provides for a Phase I NO_X compliance extension for units where low NO_X burner technology designed to meet the presumptive emission limits is not in adequate supply for installation and operation by January 1, 1995, consistent with system reliability. Requests for the extensions were due by October 1, 1994. These provisions are not changed in the revised rule. Extension requests for 6 units under this provision were submitted, and the requests either have already been granted or will be acted on consistent with the revised rule after its effective date.

The Agency is aware that, in very limited circumstances, an additional extension of the compliance date for Phase I NO_X emission limitations may be warranted. These circumstances are as follows: A source has 3 or more units that have extensions under section 404(d) until January 1, 1997 to comply with Phase I NO_X emission limits and, due to claimed operational problems associated with the planned NO_X emission control systems, one unit may need an additional extension to redesign and install low NO_X burner technology. Because of its extension under section 404(d), the unit has not yet installed the NO_X control system that was designed to comply with the low-NO_X-burner technology definition in the March 22, 1994 rule. With the change adopted today in the definition, the unit has flexibility to redesign the NO_X control system to meet the new definition and avoid the claimed operational problems. However, unless an additional compliance extension is granted, there will be insufficient time to install redesigned low NO_X burner technology without causing system reliability problems.

Because the need for an additional extension appears to result from the change in the low-NO_X-burner-technology definition, the Agency maintains that an additional extension may be appropriate in these limited circumstances. In order to provide the designated representative of the unit an opportunity to demonstrate the need for such extension, the revised rule (in § 76.12(e)) requires the submission of a petition for the extension within 15 days of the publication of the revised rule and establishes procedures for acting on the petition. The procedures and the provisions in the revised rule concerning treatment of the unit upon approval of the petition are essentially the same as the procedures and provisions applicable to Phase I NO_X compliance extensions. See 59 FR 13572–13573 (§ 76.12(c) and (d)).

6. Miscellaneous

The revised rule excludes § 76.9(e) of the March 22, 1994 rule, which provides that each ton of excess emissions of

[11] Consistent with these changes, § 76.11(d)(1)(i)(B) is revised to state that units must meet either the individual-unit limits ''or'' the group emission requirement.

NO_X will be a separate violation. In response to the utilities' challenge of § 76.9(e), EPA moved before the Court for a voluntary remand of the provision. The Court granted the motion and therefore EPA is now deleting the provision.

The revised rule also changes provisions concerning the types of units for which reports of cost data on low NO_X burner technology installations must be prepared and the date by which the reports must be submitted under § 76.14(c). Consistent with the new low-NO_X-burner-technology definition, the cost reports are not required for: wall-fired boilers using only overfire air and not low NO_X burners; and tangentially fired boilers using only separated overfire air and not low NO_X burner technology. Because such boilers are not using low NO_X burner technology, cost data on their NO_X emissions controls are not relevant to setting of Group 2, Phase II NO_X emission limitations under section 407(b)(2) of the Act. An analogous change is made in section 1 of appendix B to part 76.

Also excluded from cost reporting are units that begin installing a new NO_X emission control system after 120 days from publication of the instant direct final rule in the Federal Register. In light of the statutory requirement that Group 2, Phase II emission limitations be established by January 1, 1997, the Agency maintains that cost information on those units would be received too late to be useful in the rulemaking on such emission limitations.

Finally, the date for submission of cost reports is revised in § 76.14(c)(3) to take account of the vacating of the March 22, 1994 rule by the Court. As in the March 22, 1994 rule, the cost reports must be submitted within 120 days after completion of the low NO_X burner technology retrofit project. However, in order to provide time for resumption and completion of cost data collection that may have been stopped when the rule was vacated, the revised rule ensures that all projects will have at least 40 days, from the publication of the revised rule in the Federal Register, to submit the cost reports. Cost reports on projects completed more than 80 days before publication of the direct final rule must be submitted by the 40th day after such publication.

B. Reissuance of the Emission Limits

Section 407(b)(1) requires the Administrator to adopt by regulation the presumptive emission limits unless she finds that they cannot be achieved using low NO_X burner technology. In the March 22, 1994 rule, the Administrator found that the record evidence showed that the presumptive limits were achievable using low NO_X burners plus overfire air for wall-fired boilers and separated overfire air for tangentially fired boilers (59 FR 13546). In light of the revised low-NO_X-burner-technology definition, the Administrator has reviewed the record concerning the performance of low NO_X burners and concludes that the presumptive limits are still achievable. The revised rule therefore reissues the presumptive limits of 0.50 lb/mmBtu for wall-fired boilers and 0.45 lb/mmBtu for tangentially fired boilers.

The record includes analyses conducted by DOE in which the presumptive limits were examined in light of the low-NO_X-burner-technology definition supported by DOE, i.e., the third approach in the November 25, 1992 proposal. The revised rule adopts in essence the same definition as DOE supported. As discussed below, DOE concluded, and the utilities agreed, that most units could achieve the presumptive limits using low NO_X burners without overfire air for wall-fired boilers and without separated overfire air for tangentially fired boilers. See, *e.g.*, Docket Item IV–D–162, Fourth Supplementary Comments of UARG, February 2, 1994 at 16–23.

After reviewing a number of sources of information on control technology efficiency, DOE estimated control technology performance based primarily on data from ongoing demonstration projects and other recent installations of NO_X control systems. The analysis of data from wall-fired and tangentially fired boilers, fitted with low NO_X burner technology as defined by DOE, indicated that NO_X reductions of 45 to 50 percent would be achieved at wall-fired boilers and of 35 to 37 percent would be achieved at tangentially fired boilers (57 FR 55646–55647). DOE's NO_X control technology performance estimates were consistent with average NO_X reductions projected by the utilities. The utilities projected average NO_X reductions of 47 percent with use of burner retrofits for wall-fired boilers and 35 to 37 percent with the use of LNCFS 1 for tangentially fired boilers (Docket Item IV–D–111 at 59–61).[12] Further, the utilities supported DOE's performance estimates in their brief to the Court in *Alabama Power* (Docket Item VIII–A–1, Brief of Petitioners, July 1, 1994, at 18–19).

DOE's analysis also showed that, assuming 45 percent control efficiency for wall-fired boilers and 35 percent for tangentially fired boilers, less than 10 percent of the Group 1 units would fail to meet the presumptive limits (57 FR 55648). Further, the utilities similarly concluded that ''review of the uncontrolled emissions at wall-fired and tangentially fired boilers, and of the capabilities of low NO_X burner technology, show that (the presumptive) limits are aggressive but generally achievable by most Group 1 units with the use of (low NO_X burners) alone'' (Docket Item IV–D–111 at 138). The utilities reiterated this conclusion before the Court in *Alabama Power.* The utilities stated that ''all of the tangentially fired boiler groupings analyzed by EPA's contractor would comply with the final presumptive emission limitation using low NO_X burners alone for tangentially fired boilers (i.e., LNCFS 1), without the use of separated overfire air'' (Docket Item VIII–A–1, Brief of Petitioners at 40).

In the March 22, 1994 preamble, EPA did not adopt DOE's analysis and instead presented its own analysis of control technology performance data available after promulgation of the November 25, 1992 proposal. The EPA found that the majority of wall-fired boilers would be expected to achieve NO_X reductions of 40 to 50 percent using low NO_X burners only and no overfire air (59 FR 13546). The EPA also found that tangentially fired boilers using LNCFS 1 would achieve reduction of 20 to 25 percent. While EPA's finding on wall-fired boilers is consistent with DOE's finding, the two analyses differ concerning tangentially fired boilers. However, upon reconsideration, the Agency finds that the 20 to 25 percent estimate of reductions achievable using LNCFS 1 erroneously excluded the reductions using a form of LNCFS 1 referred to in the March 22, 1994 preamble as ''LNCFS 1+.'' 59 FR 13546–13547. Because ''LNCFS 1+'' (i.e., Lansing Smith Unit 2)[13] employs the

[12] Since the completion of DOE's analysis, other types of low NO_X burner technology have been developed for tangentially fired boilers. See footnote 3 above. Although EPA currently lacks data on the long-term performance of these NO_X controls, the outlook for their performance is promising.

[13] DOE's analysis included Fiddler's Ferry Unit 1 as a unit with LNCFS 1. Since installation of LNCFS 1 in that unit involved major modifications of the existing waterwall holes (i.e., cutting out a waterwall section having a height of 3 feet above each existing waterwall hole and a width equal to the width of the hole), the unit's NO_X control system does not fall within the new low-NO_X-burner technology definition, which includes minor modifications of the existing hole. See Docket Item II–E–11, Record of Telephone Conversations, October 12, 1992. However, eliminating the emission reduction results of that unit does not change the conclusion that LNCFS 1 (e.g., at Lansing Smith Unit 2) can achieve 35 to 37 percent reductions.

same hardware (i.e., air nozzles in the hole with the burner) as LNCFS 1 applications, there is no basis of distinguishing ''LNCFS 1+''. The differences between EPA's and DOE's data are eliminated by treating ''LNCFS 1+'' as included in LNCFS 1 and considering the performance results of ''LNCFS 1+'' as included in results for LNCFS 1.

Upon reconsideration, EPA concurs with the aforementioned DOE and utilities' analyses. EPA, therefore, retains in the revised rule the presumptive limits for Group 1 boilers.

C. Permit Status

Pursuant to the March 22, 1994 rule, the designated representatives of Phase I units with wall-fired or tangentially-fired boilers submitted NO_X compliance plans. (See 59 FR 13567 (§ 76.9 (a) through (c))). For units lacking Acid Rain permits, the NO_X compliance plans were submitted along with applications for such permits. For units that already had Acid Rain permits covering SO_2 emission limitations, the NO_X compliance plans were submitted as permit revisions. Most of the plans required NO_X compliance commencing on January 1, 1995. Twenty-five units had previously been granted 2-year extensions for NO_X compliance under § 72.42, and designated representatives for 6 more units requested 15-month extensions under § 76.12 of the March 22, 1994 rule.

The Agency followed the applicable permit issuance and revision procedures under part 72 of the Acid Rain permits rule. These procedures required notice of a proposed permit or proposed permit revision and opportunity for public comment prior to issuance of a final permit or final revised permit. Most of the submitted NO_X compliance plans were already approved and included in final permits or final revised permits before the November 29, 1994 *Alabama Power* decision vacating the March 22, 1994 rule. Because of the vacating of the rule, the Agency has deferred action on those plans and extension requests that were not yet approved when the Court issued its decision.

Under the March 22, 1994 rule, NO_X compliance plans had to identify which one of several possible compliance options was proposed for each Phase I unit with a Group 1 boiler. *Id.* (§ 76.9(c)(4)). In the NO_X compliance plans already submitted to the Agency, units sought to comply either with the presumptive limits or through NO_X emissions averaging plans. The units that requested NO_X compliance extensions sought to comply either with the presumptive limits or through NO_X emissions averaging plans after the extensions expire.

If, as anticipated, the revised rule becomes final and thereby reinstates the NO_X emission reduction program, the Agency sees no need for utilities to resubmit and for EPA to reissue, through notice and comment procedures, the NO_X compliance plans that have already been approved and issued in final form in permits or permit revisions. The final permits and permit revisions set forth the applicable NO_X emission limitations and do not state any definition for low NO_X burner technology. The revised rule changes the low-NO_X-burner-technology definition but does not change the presumptive limits or the formulas for setting individual-unit limits or showing group compliance in averaging plans. The revised rule preserves without change the provisions governing the Phase I extensions that were requested and either were approved or that would have been approved under the March 22, 1994 rule. The revised rule also does not change the application requirements in § 76.9 or the permit issuance or permit revision procedures in parts 72 and 76 applicable to NO_X compliance plans.

The only changes that the revised rule makes in the submitted NO_X compliance plans are in the general compliance date and in the effect of group compliance on individual-unit limits in NO_X averaging plans. The general deadline for compliance by a Group 1, Phase I unit with NO_X emission limitations is now the later of January 1, 1996 (rather than 1995) or the date on which a unit is subject to SO_2 emission reduction requirements under section 404(d) of the Act. The revised rule also mandates, for all NO_X averaging plans, that where the units in an averaging plan show they meet the group compliance requirement, the units are deemed to meet their individual-unit limits. All NO_X compliance plans must conform to the revised rule.

As discussed above, the Agency has issued, elsewhere in this Federal Register, a notice of proposal requesting comments on the provisions of the revised rule. Any comments concerning the compliance deadline and the group compliance provisions should be made in response to that notice and would not be appropriate in the context of permit issuance. All other aspects of the submitted NO_X compliance plans have already been subject to notice and comment and are unchanged by the revised rule.

The Agency concludes that, once the revised rule becomes final as anticipated, conforming changes in the compliance date and group compliance provisions in otherwise unchanged NO_X compliance plans are properly considered administrative amendments under § 72.83 of the Acid Rain permits rule because there is no basis for requiring notice and comment on the changes. All existing permits that include NO_X compliance plans will be amended under § 72.83 to the extent necessary to make them consistent with the new compliance date and group compliance requirements. The administrative amendments will reinstate the NO_X compliance plans as amended and the approved Phase I NO_X compliance extensions under §§ 72.42 and 76.12 that are referenced in the plans.

With regard to NO_X compliance plans in permits or permit revisions issued in draft form for public comment but not yet issued in final form, the Agency will complete the issuance procedure in accordance with the revised rule once the rule becomes final. Since, except for the compliance date and group compliance provisions, neither the substance of such plans nor the issuance procedures were changed by the revised rule, there is no need to reopen the public comment period on the plans.

Any plans that have not yet been issued in draft form will also be processed by the Agency in accordance with the revised rule and part 72. Similarly, any Phase I NO_X compliance extensions requested under § 76.12 and not acted on before November 29, 1994 will be acted on consistent with the revised rule. It should be noted that, if significant, adverse comment is timely received on relevant portions of the instant direct final rule, the NO_X compliance plans could be subject to further change depending on the outcome of the rulemaking initiated by the notice of proposed rule issued elsewhere in this Federal Register.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the

environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it will have an annual effect on the economy of approximately $276 million starting in 2000. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA and any written EPA response to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

EPA does not believe a revised Regulatory Impact Analysis (RIA) is needed for the direct final rule, which, in large part, reinstates the March 22, 1994 rule and which imposes no new costs beyond what costs were estimated in the RIA to the March 22, 1994 rule. The EPA does not anticipate major increases in prices, costs, or other significant adverse effects on competition, investment, productivity, or innovation or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets due to the final rule.

In assessing the impacts of a regulation, it is important to examine: (1) The costs to the regulated community, (2) the costs that are passed on to customers of the regulated community, and (3) the impact of these cost increases on the financial health and competitiveness of both the regulated community and their customers. The costs of this rule to electric utilities are generally very small relative to their annual revenues. (However, the relative amount of the costs will definitely vary in individual cases.) Moreover, EPA expects that most or all utility expenses from meeting NO_X requirements will be passed along to ratepayers. When NO_X requirements are fully implemented in the year 2000, consumer electric utility rates are expected to rise by 0.12 percent on average due to this rulemaking. Consequently, the rule is not likely to have an impact on utility profits or competitiveness.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and any disproportionate budgetary effects of the mandate; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Agency's prior consultation with elected representatives of State, local, and tribal governments and a summary and evaluation of the comments and concerns presented. Section 203 provides that if any small governments may be significantly or uniquely impacted by the rule, the Agency must establish a plan for obtaining input from and informing, educating, and advising any such potentially affected small governments.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative, for State, local, and tribal governments and the private sector, that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because this direct final rule is estimated to result in the expenditure by State, local, and tribal governments, in aggregate, or the private sector of over $100 million per year starting in 2000, EPA has prepared a supplement to the Regulatory Impact Statement in compliance with the Unfunded Mandates Act. EPA summarizes that supplement as follows.

The direct final rule is promulgated under section 407 of the Clean Air Act. The rule is issued in response to a remand by the U.S. Court of Appeals for the District of Columbia Circuit and, in large part, reinstates the remanded March 22, 1994 rule. Thus, the analysis in the RIA developed in preparation of the March 22, 1994 rule was appropriately considered in response to the requirements of the Unfunded Mandates Act.

Total expenditures resulting from the direct final rule are estimated at: $69 million (of which less than $1 million is by State, local, and tribal governments) per year in 1995–1999; and $276 million (of which $21 million is by State, local, and tribal governments) per year starting in 2000. There are no federal funds available to assist State, local, and tribal governments in meeting these costs. There are important benefits from NO_X emission reductions because atmospheric emissions of NO_X have significant, adverse impacts on human health and welfare and on the environment.

The rule does not have any disproportionate budgetary effects on any particular region of the nation, any State, local, or tribal government, or urban or rural or other type of community. On the contrary, the rule will result in only a minimal increase in average electricity rates. Moreover, the rule will not have a material effect on the national economy.

Prior to issuing the March 22, 1994 rule, EPA provided numerous opportunities, e.g., through the Acid Rain Advisory Committee proceedings, the public comment period, and public hearings, for consultation with interested parties, including State, local, and tribal governments. In general, State and local environmental agencies advocated that EPA adopt more stringent environmental controls while municipally-owned utilities advocated less stringent controls and more compliance flexibility. EPA evaluated the comments and concerns expressed, and the direct final rule reflects, to the extent consistent with section 407 of the Clean Air Act, those comments and concerns. While small governments are not significantly or uniquely affected by the rule, these procedures, as well as additional public conferences and meetings, gave small governments an opportunity to give meaningful and timely input and obtain information, education, and advice on compliance.

The Agency considered several regulatory options in developing the rule. The option selected in the direct final rule is the least costly and least burdensome alternative currently available for achieving the objectives of

section 407. The Agency rejected another alternative that was the most cost-effective alternative because the U.S. Court of Appeals for the D.C. Circuit held that the latter alternative was beyond the Agency's statutory authority.

C. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0258.

Public reporting burden for this collection of information is estimated at 27,510 hours for all respondents through May 15, 1995. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Agency notes that this burden estimate was originally developed based on the March 22, 1994 rule. Today's direct final rule includes revisions to cost reporting requirements in the March 22, 1994 rule that result in a small reduction in overall burden. In order to account for this small reduction, the Agency will submit an adjustment to the current Information Collection Report.

Send comments regarding this change in the information collection requirements or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch (PM–223Y), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Paperwork Reduction Project, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires EPA to consider potential impacts of proposed regulations on small business ''entities.'' If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Current Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed onto consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a ''significant'' portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities.

Under the Regulatory Flexibility Act, a small business is any ''small business concern'' as identified by the Small Business Administration under section 3 of the Small Business Act. As of January 1, 1991, the Small Business Administration had established the size threshold for small electric services companies at 4 million megawatt hours per year. Because all of the utilities affected by Phase I of the Acid Rain regulations have generating capacities greater than 4 million megawatt hours, EPA believes that no small businesses are affected by today's revised rule. The EPA's initial estimates are that the burden on small utilities under Phase II is minimal.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant adverse impact on a substantial number of small entities.

E. Miscellaneous

In accordance with section 117 of the Act, publication of this rule was preceded by consultation with appropriate advisory committees, independent experts, and federal departments and agencies.

List of Subjects in 40 CFR Part 76

Acid rain program, Air pollution control, Nitrogen oxide, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: March 31, 1995.

Carol M. Browner,

Administrator.

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

1. Part 76 is revised to read as follows:

PART 76—ACID RAIN NITROGEN OXIDES EMISSION REDUCTION PROGRAM

Sec.

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

§ 76.1 Applicability.

(a) Except as provided in paragraphs (b) through (d) of this section, the provisions apply to each coal-fired utility unit that is subject to an Acid Rain emissions limitation or reduction requirement for SO_2 under Phase I or Phase II pursuant to sections 404, 405, or 409 of the Act.

(b) The emission limitations for NO_X under this part apply to each affected coal-fired utility unit subject to section 404(d) or 409(b) of the Act on the date the unit is required to meet the Acid Rain emissions reduction requirement for SO_2.

(c) The provisions of this part apply to each coal-fired substitution unit or compensating unit, designated and approved as a Phase I unit pursuant to §§ 72.41 or 72.43 of this chapter as follows:

(1) A coal-fired substitution unit that is designated in a substitution plan that is approved and active as of January 1, 1995 shall be treated as a Phase I coal-fired utility unit for purposes of this part. In the event the designation of such unit as a substitution unit is terminated after December 31, 1995, pursuant to § 72.41 of this chapter and the unit is no longer required to meet Phase I SO_2 emissions limitations, the provisions of this part (including those applicable in Phase I) will continue to apply.

(2) A coal-fired substitution unit that is designated in a substitution plan that is not approved or not active as of January 1, 1995, or a coal-fired compensating unit, shall be treated as a Phase II coal-fired utility unit for purposes of this part.

(d) The provisions of this part for Phase I units apply to each coal-fired transfer unit governed by a Phase I extension plan, approved pursuant to

§ 72.42 of this chapter, on January 1, 1997. Notwithstanding the preceding sentence, a coal-fired transfer unit shall be subject to the Acid Rain emissions limitations for nitrogen oxides beginning on January 1, 1996 if, for that year, a transfer unit is allocated fewer Phase I extension reserve allowances than the maximum amount that the designated representative could have requested in accordance with § 72.42(c)(5) of this chapter (as adjusted under § 72.42(d) of this chapter) unless the transfer unit is the last unit allocated Phase I extension reserve allowances under the plan.

§ 76.2 Definitions.

All terms used in this part shall have the meaning set forth in the Act, in § 72.2 of this chapter, and in this section as follows:

Alternative contemporaneous annual emission limitation means the maximum allowable NO_X emission rate (on a lb/mmBtu, annual average basis) assigned to an individual unit in a NO_X emissions averaging plan pursuant to § 76.10.

Alternative technology means a control technology for reducing NO_X emissions that is outside the scope of the definition of low NO_X burner technology. Alternative technology does not include overfire air as applied to wall-fired boilers or separated overfire air as applied to tangentially fired boilers.

Approved clean coal technology demonstration project means a project using funds appropriated under the Department of Energy's ''Clean Coal Technology Demonstration Program,'' up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

Cell burner boiler means a wall-fired boiler that utilizes two or three circular burners combined into a single vertically oriented assembly that results in a compact, intense flame. Any low NO_X retrofit of a cell burner boiler that reuses the existing cell burner, close-coupled wall opening configuration would not change the designation of the unit as a cell burner boiler.

Coal-fired utility unit means a utility unit in which the combustion of coal (or any coal-derived fuel) on a Btu basis exceeds 50.0 percent of its annual heat input, for Phase I units in calendar year 1990 and, for Phase II units in the calendar year 1995. For the purposes of this part, this definition shall apply notwithstanding the definition at § 72.2 of this chapter.

Cyclone boiler means a boiler with one or more water-cooled horizontal cylindrical chambers in which coal combustion takes place. The horizontal cylindrical chamber(s) is (are) attached to the bottom of the furnace. One or more cylindrical chambers are arranged either on one furnace wall or on two opposed furnace walls. Gaseous combustion products exiting from the chamber(s) turn 90 degrees to go up through the boiler while coal ash exits the bottom of the boiler as a molten slag.

Demonstration period means a period of time not less than 15 months, approved under § 76.10, for demonstrating that the affected unit cannot meet the applicable emission limitation under §§ 76.5, 76.6, or 76.7 and establishing the minimum NO_X emission rate that the unit can achieve during long-term load dispatch operation.

Dry bottom means the boiler has a furnace bottom temperature below the ash melting point and the bottom ash is removed as a solid.

Economizer means the lowest temperature heat exchange section of a utility boiler where boiler feed water is heated by the flue gas.

Flue gas means the combustion products arising from the combustion of fossil fuel in a utility boiler.

Group 1 boiler means a tangentially fired boiler or a dry bottom wall-fired boiler (other than a unit applying cell burner technology).

Group 2 boiler means a wet bottom wall-fired boiler, a cyclone boiler, a boiler applying cell burner technology, a vertically fired boiler, an arch-fired boiler, or any other type of utility boiler (such as a fluidized bed or stoker boiler) that is not a Group 1 boiler.

Low NO_X burners and *low NO_X burner technology* means commercially available combustion modification NO_X controls that minimize NO_X formation by introducing coal and its associated combustion air into a boiler such that initial combustion occurs in a manner that promotes rapid coal devolatilization in a fuel-rich (i.e., oxygen deficient) environment and introduces additional air to achieve a final fuel-lean (i.e., oxygen rich) environment to complete the combustion process. This definition shall include the staging of any portion of the combustion air using air nozzles or registers located inside any waterwall hole that includes a burner. This definition shall exclude the staging of any portion of the combustion air using air nozzles or ports located outside any waterwall hole that includes a burner (commonly referred to as NO_X ports or separated overfire air ports).

Operating period means a period of time of not less than three consecutive months and that occurs not more than one month prior to applying for an alternative emission limitation demonstration period under § 76.10, during which the owner or operator of an affected unit that cannot meet the applicable emission limitation:

(1) Operates the installed NO_X emission controls in accordance with primary vendor specifications and procedures, with the unit operating under normal conditions; and

(2) records and reports quality-assured continuous emission monitoring (CEM) and unit operating data according to the methods and procedures in part 75 of this chapter.

Primary vendor means the vendor of the NO_X emission control system who has primary responsibility for providing the equipment, service, and technical expertise necessary for detailed design, installation, and operation of the controls, including process data, mechanical drawings, operating manuals, or any combination thereof.

Reburning means reducing the coal and combustion air to the main burners and injecting a reburn fuel (such as gas or oil) to create a fuel-rich secondary combustion zone above the main burner zone and final combustion air to create a fuel-lean burnout zone. The formation of NO_X is inhibited in the main burner zone due to the reduced combustion intensity, and NO_X is destroyed in the fuel-rich secondary combustion zone by conversion to molecular nitrogen.

Selective catalytic reduction means a noncombustion control technology that destroys NO_X by injecting a reducing agent (e.g., ammonia) into the flue gas that, in the presence of a catalyst (e.g., vanadium, titanium, or zeolite), converts NO_X into molecular nitrogen and water.

Selective noncatalytic reduction means a noncombustion control technology that destroys NO_X by injecting a reducing agent (e.g., ammonia, urea, or cyanuric acid) into the flue gas, downstream of the combustion zone that converts NO_X to molecular nitrogen, water, and when urea or cyanuric acid are used, to carbon dioxide (CO_2).

Stoker boiler means a boiler that burns solid fuel in a bed, on a stationary or moving grate, that is located at the bottom of the furnace.

Tangentially fired boiler means a boiler that has coal and air nozzles mounted in each corner of the furnace where the vertical furnace walls meet. Both pulverized coal and air are

directed from the furnace corners along a line tangential to a circle lying in a horizontal plane of the furnace.

Turbo-fired boiler means a pulverized coal, wall-fired boiler with burners arranged on walls so that the individual flames extend down toward the furnace bottom and then turn back up through the center of the furnace.

Wall-fired boiler means a boiler that has pulverized coal burners arranged on the walls of the furnace. The burners have discrete, individual flames that extend perpendicularly into the furnace area.

Wet bottom means the boiler has a furnace bottom temperature above the ash melting point and the bottom ash is removed as a liquid.

§ 76.3 General Acid Rain Program provisions.

The following provisions of part 72 of this chapter shall apply to this part:

(a) § 72.2 (Definitions);
(b) § 72.3 (Measurements, abbreviations, and acronyms);
(c) § 72.4 (Federal authority);
(d) § 72.5 (State authority);
(e) § 72.6 (Applicability);
(f) § 72.7 (New unit exemption);
(g) § 72.8 (Retired units exemption);
(h) § 72.9 (Standard requirements);
(i) § 72.10 (Availability of information); and
(j) § 72.11 (Computation of time).

In addition, the procedures for appeals of decisions of the Administrator under this part are contained in part 78 of this chapter.

§ 76.4 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in the sections noted. These incorporations by reference (IBR's) were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below and are available for inspection at the Office of the Federal Register, 800 North Capitol St., NW., 7th Floor, Suite 700, Washington, DC, at the Public Information Reference Unit, U.S. EPA, 401 M Street, SW., Washington, DC, and at the Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(b) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or the University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D 3176–89, Standard Practice for Ultimate Analysis of Coal and Coke, IBR approved May 23, 1995 for § 76.15.

(2) ASTM D 3172–89, Standard Practice for Proximate Analysis of Coal and Coke, IBR approved May 23, 1995 for § 76.15.

(c) The following material is available for purchase from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Box 2350, Fairfield, NJ 07007–2350.

(1) ASME Performance Test Code 4.2 (1991), Test Code for Coal Pulverizers, IBR approved May 23, 1995 for § 76.15.

(2) [Reserved]

(d) The following material is available for purchase from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036 or from the International Organization for Standardization (ISO), Case Postale 56, CH–1211 Geneve 20, Switzerland.

(1) ISO 9931 (December, 1991) ''Coal—Sampling of Pulverized Coal Conveyed by Gases in Direct Fired Coal Systems,'' IBR approved May 23, 1995 for § 76.15.

(2) [Reserved]

§ 76.5 NO_X emission limitations for Group 1 boilers.

(a) Beginning January 1, 1996, or for a unit subject to section 404(d) of the Act, the date on which the unit is required to meet Acid Rain emission reduction requirements for SO_2, the owner or operator of a Phase I coal-fired utility unit with a tangentially fired boiler or a dry bottom wall-fired boiler (other than units applying cell burner technology) shall not discharge, or allow to be discharged, emissions of NO_X to the atmosphere in excess of the following limits, except as provided in paragraphs (c) or (e) of this section or in §§ 76.10, 76.11, or 76.12:

(1) 0.45 lb/mmBtu of heat input on an annual average basis for tangentially fired boilers.

(2) 0.50 lb/mmBtu of heat input on an annual average basis for dry bottom wall-fired boilers (other than units applying cell burner technology).

(b) The owner or operator shall determine the annual average NO_X emission rate, in lb/mmBtu, using the methods and procedures specified in part 75 of this chapter.

(c) Unless the unit meets the early election requirement of § 76.8, the owner or operator of a coal-fired substitution unit with a tangentially fired boiler or a dry bottom wall-fired boiler (other than units applying cell burner technology) that satisfies the requirements of § 76.1(c)(2), shall comply with the NO_X emission limitations that apply to Group 1, Phase II boilers.

(d) The owner or operator of a Phase I unit with a cell burner boiler that converts to a conventional wall-fired boiler on or before January 1, 1995 or, for a unit subject to section 404(d) of the Act, the date the unit is required to meet Acid Rain emissions reduction requirements for SO_2 shall comply, by such respective date or January 1, 1996, whichever is later, with the NO_X emissions limitation applicable to dry bottom wall-fired boilers under paragraph (a) of this section, except as provided in paragraphs (c) or (e) of this section or in §§ 76.10, 76.11, or 76.12.

(e) The owner or operator of a Phase I unit with a Group 1 boiler that converts to a fluidized bed or other type of utility boiler not included in Group 1 boilers on or before January 1, 1995 or, for a unit subject to section 404(d) of the Act, the date the unit is required to meet Acid Rain emissions reduction requirements for SO_2 is exempt from the NO_X emissions limitations specified in paragraph (a) of this section, but shall comply with the NO_X emission limitations for Group 2 boilers under § 76.6.

(f) Except as provided in § 76.8 and in paragraph (c) of this section, each unit subject to the requirements of this section is not subject to the requirements of § 76.7.

(g) Beginning January 1, 2000, the owner or operator of a Group 1, Phase II coal-fired utility unit with a tangentially fired boiler or a wall-fired boiler shall be subject to the emission limitations in paragraph (a) of this section.

§ 76.6 NO_X emission limitations for Group 2 boilers. [Reserved]

§ 76.7 Revised NO_X emission limitations for Group 1, Phase II boilers. [Reserved]

§ 76.8 Early election for Group 1, Phase II boilers.

(a) *General provisions.* (1) The owner or operator of a Phase II coal-fired utility unit with a Group 1 boiler may elect to have the unit become subject to the applicable emissions limitation for NO_X under § 76.5, starting no later than January 1, 1997.

(2) The owner or operator of a Phase II coal-fired utility unit with a Group 1 boiler that elects to become subject to the applicable emission limitation under § 76.5 shall not be subject to any revised NO_X emissions limitation for Group 1 boilers that the Administrator may issue pursuant to section 407(b)(2) of the Act until January 1, 2008,

provided the designated representative demonstrates that the unit is in compliance with the limitation under § 76.5, using the methods and procedures specified in part 75 of this chapter, for the period beginning January 1 of the year in which the early election takes effect (but not later than January 1, 1997) and ending December 31, 2007.

(3) The owner or operator of any Phase II unit with a cell burner boiler that converts to conventional burner technology may elect to become subject to the applicable emissions limitation under § 76.5 for dry bottom wall-fired boilers, provided the owner or operator complies with the provisions in paragraph (a)(2) of this section.

(4) The owner or operator of a Phase II unit approved for early election shall not submit an application for an alternative emissions limitation demonstration period under § 76.10 until the earlier of:

(i) January 1, 2008; or

(ii) Early election is terminated pursuant to paragraph (e)(3) of this section.

(5) The owner or operator of a Phase II unit approved for early election may not incorporate the unit into an averaging plan prior to January 1, 2000. On or after January 1, 2000, for purposes of the averaging plan, the early election unit will be treated as subject to the applicable emissions limitation for NO_X for Phase II units with Group 1 boilers under §§ 76.5(g) and if revised emission limitations are issued for Group 1 boilers pursuant to section 407(b)(2) of the Act, § 76.7.

(b) *Submission requirements.* In order to obtain early election status, the designated representative of a Phase II unit with a Group 1 boiler shall submit an early election plan to the Administrator by January 1 of the year the early election is to take effect, but not later than January 1, 1997. Notwithstanding § 72.40 of this chapter, and unless the unit is a substitution unit under § 72.41 of this chapter or a compensating unit under § 72.43 of this chapter, a complete compliance plan covering the unit shall not include the provisions for SO_2 emissions under § 72.40(a)(1) of this chapter.

(c) *Contents of an early election plan.* A complete early election plan shall include the following elements in a format prescribed by the Administrator:

(1) A request for early election;

(2) The first year for which early election is to take effect, but not later than 1997; and

(3) The special provisions under paragraph (e) of this section.

(d)(1) *Permitting authority's action.* To the extent the Administrator determines that an early election plan complies with the requirements of this section, the Administrator will approve the plan and:

(i) If a Phase I Acid Rain permit governing the source at which the unit is located has been issued, will revise the permit in accordance with the permit modification procedures in § 72.81 of this chapter to include the early election plan; or

(ii) If a Phase I Acid Rain permit governing the source at which the unit is located has not been issued, will issue a Phase I Acid Rain permit effective from January 1, 1995 through December 31, 1999, that will include the early election plan and a complete compliance plan under § 72.40(a) of this chapter and paragraph (b) of this section. If the early election plan is not effective until after January 1, 1995, the permit will not contain any NO_X emissions limitations until the effective date of the plan.

(2) Beginning January 1, 2000, the permitting authority will approve any early election plan previously approved by the Administrator during Phase I, unless the plan is terminated pursuant to paragraph (e)(3) of this section.

(e) *Special provisions*—(1) *Emissions limitations.*—(i) *Sulfur dioxide.* Notwithstanding § 72.9 of this chapter, a unit that is governed by an approved early election plan and that is not a substitution unit under § 72.41 of this chapter or a compensating unit under § 72.43 of this chapter shall not be subject to the following standard requirements under § 72.9 of this chapter for Phase I:

(A) The permit requirements under §§ 72.9(a)(1) (i) and (ii) of this chapter;

(B) The sulfur dioxide requirements under § 72.9(c) of this chapter; and

(C) The excess emissions requirements under § 72.9(e)(1) of this chapter.

(ii) *Nitrogen oxides.* A unit that is governed by an approved early election plan shall be subject to an emissions limitation for NO_X as provided under paragraph (a)(2) of this section except as provided under paragraph (e)(3)(iii) of this section.

(2) *Liability.* The owners and operators of any unit governed by an approved early election plan shall be liable for any violation of the plan or this section at that unit. The owners and operators shall be liable, beginning January 1, 2000, for fulfilling the obligations specified in part 77 of this chapter.

(3) *Termination.* An approved early election plan shall be in effect only until the earlier of January 1, 2008 or January 1 of the calendar year for which a termination of the plan takes effect.

(i) If the designated representative of the unit under an approved early election plan fails to demonstrate compliance with the applicable emissions limitation under § 76.5 for any year during the period beginning January 1 of the first year the early election takes effect and ending December 31, 2007, the permitting authority will terminate the plan. The termination will take effect beginning January 1 of the year after the year for which there is a failure to demonstrate compliance, and the designated representative may not submit a new early election plan.

(ii) The designated representative of the unit under an approved early election plan may terminate the plan any year prior to 2008 but may not submit a new early election plan. In order to terminate the plan, the designated representative must submit a notice under § 72.40(d) of this chapter by January 1 of the year for which the termination is to take effect.

(iii)(A) If an early election plan is terminated any year prior to 2000, the unit shall meet, beginning January 1, 2000, the applicable emissions limitation for NO_X for Phase II units with Group 1 boilers under § 76.5(g) and, if revised emission limitations are issued pursuant to section 407(b)(2) of the Act, § 76.7.

(B) If an early election plan is terminated in or after 2000, the unit shall meet, beginning on the effective date of the termination, the applicable emissions limitation for NO_X for Phase II units with Group 1 boilers under § 76.5(g) and, if revised emission limitations are issued pursuant to section 407(b)(2) of the Act, § 76.7.

§ 76.9 Permit application and compliance plans.

(a) *Duty to apply.* (1) The designated representative of any source with an affected unit subject to this part shall submit, by the applicable deadline under paragraph (b) of this section, a complete Acid Rain permit application (or, if the unit is covered by an Acid Rain permit, a complete permit revision) that includes a complete compliance plan for NO_X emissions covering the unit.

(2) The original and three copies of the permit application and compliance plan for NO_X emissions for Phase I shall be submitted to the EPA regional office for the region where the applicable source is located. The original and three copies of the permit application and compliance plan for NO_X emissions for

Phase II shall be submitted to the permitting authority.

(b) *Deadlines.* (1) For a Phase I unit with a Group 1 boiler, the designated representative shall submit a complete permit application and compliance plan for NO_X covering the unit during Phase I to the applicable permitting authority not later than May 6, 1994.

(2) For a Phase I or Phase II unit with a Group 2 boiler or a Phase II unit with a Group 1 boiler, the designated representative shall submit a complete permit application and compliance plan for NO_X emissions covering the unit in Phase II to the Administrator not later than January 1, 1998, except that early election units shall also submit an application not later than January 1, 1997.

(c) *Information requirements for NO_X* compliance plans. (1) In accordance with § 72.40(a)(2) of this chapter, a complete compliance plan for NO_X shall, for each affected unit included in the permit application and subject to this part, either certify that the unit will comply with the applicable emissions limitation under § 76.5, 76.6, or 76.7 or specify one or more other Acid Rain compliance options for NO_X in accordance with the requirements of this part. A complete compliance plan for NO_X for a source shall include the following elements in a format prescribed by the Administrator:

(i) Identification of the source;

(ii) Identification of each affected unit that is at the source and is subject to this part;

(iii) Identification of the boiler type of each unit;

(iv) Identification of the compliance option proposed for each unit (i.e., meeting the applicable emissions limitation under §§ 76.5, 76.6, 76.7, 76.8 (early election), 76.10 (alternative emission limitation), 76.11 (NO_X emissions averaging), or 76.12 (Phase I NO_X compliance extension)) and any additional information required for the appropriate option in accordance with this part;

(v) Reference to the standard requirements in § 72.9 of this chapter (consistent with § 76.8(e)(1)(i)); and

(vi) The requirements of §§ 72.21 (a) and (b) of this chapter.

(d) *Duty to reapply.* The designated representative of any source with an affected unit subject to this part shall submit a complete Acid Rain permit application, including a complete compliance plan for NO_X emissions covering the unit, in accordance with the deadlines in § 72.30(c) of this chapter.

§ 76.10 Alternative emission limitations.

(a) General provisions. (1) The designated representative of an affected unit that is not an early election unit pursuant to § 76.8 and cannot meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 using, for Group 1 boilers, either low NO_X burner technology or an alternative technology in accordance with paragraph (e)(11) of this section, or, for tangentially fired boilers, separated overfire air, or, for Group 2 boilers, the technology on which the applicable emission limitation is based may petition the permitting authority for an alternative emission limitation less stringent than the applicable emission limitation.

(2) In order for the unit to qualify for an alternative emission limitation, the designated representative shall demonstrate that the affected unit cannot meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 based on a showing, to the satisfaction of the Administrator, that:

(i) (A) For a tangentially fired boiler, the owner or operator has either properly installed low NO_X burner technology or properly installed separated overfire air; or

(B) For a dry bottom wall-fired boiler (other than a unit applying cell burner technology), the owner or operator has properly installed low NO_X burner technology; or

(C) For a Group 1 boiler, the owner or operator has properly installed an alternative technology (including but not limited to reburning, selective noncatalytic reduction, or selective catalytic reduction) that achieves NO_X emission reductions demonstrated in accordance with paragraph (e)(11) of this section; or

(D) For a Group 2 boiler, the owner or operator has properly installed the appropriate NO_X emission control technology on which the applicable emission limitation in § 76.6 is based; and

(ii) The installed NO_X emission control system has been designed to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7; and

(iii) For a demonstration period of at least 15 months or other period of time, as provided in paragraph (f)(1) of this section:

(A) The NO_X emission control system has been properly installed and properly operated according to specifications and procedures designed to minimize the emissions of NO_X to the atmosphere;

(B) Unit operating data as specified in this section show that the unit and NO_X emission control system were operated in accordance with the bid and design specifications on which the design of the NO_X emission control system was based; and

(C) Unit operating data as specified in this section, continuous emission monitoring data obtained pursuant to part 75 of this chapter, and the test data specific to the NO_X emission control system show that the unit could not meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7.

(b) *Petitioning process.* The petitioning process for an alternative emission limitation shall consist of the following steps:

(1) Operation during a period of at least 3 months, following the installation of the NO_X emission control system, that shows that the specific unit and the NO_X emission control system was unable to meet the applicable emissions limitation under §§ 76.5, 76.6, or 76.7 and was operated in accordance with the operating conditions upon which the design of the NO_X emission control system was based and with vendor specifications and procedures;

(2) Submission of a petition for an alternative emission limitation demonstration period as specified in paragraph (d) of this section;

(3) Operation during a demonstration period of at least 15 months, or other period of time as provided in paragraph (f)(1) of this section, that demonstrates the inability of the specific unit to meet the applicable emissions limitation under §§ 76.5, 76.6, or 76.7 and the minimum NO_X emissions rate that the specific unit can achieve during long-term load dispatch operation; and

(4) Submission of a petition for a final alternative emission limitation as specified in paragraph (e) of this section.

(c) *Deadlines.*—(1) *Petition for an alternative emission limitation demonstration period.* The designated representative of the unit shall submit a petition for an alternative emission limitation demonstration period to the permitting authority after the unit has been operated for at least 3 months after installation of the NO_X emission control system required under paragraph (a)(2) of this section and by the following deadline:

(i) For units that seek to have an alternative emission limitation demonstration period apply during all or part of calendar year 1996, or any previous calendar year by the later of:

(A) 120 days after startup of the NO_X emission control system, or

(B) May 1, 1996.

(ii) For units that seek an alternative emission limitation demonstration period beginning in a calendar year after 1996, not later than:

(A) 120 days after January 1 of that calendar year, or

(B) 120 days after startup of the NO_X emission control system if the unit is not operating at the beginning of that calendar year.

(2) *Petition for a final alternative emission limitation.* Not later than 90 days after the end of an approved alternative emission limitation demonstration period for the unit, the designated representative of the unit may submit a petition for an alternative emission limitation to the permitting authority.

(3) *Renewal of an alternative emission limitation.* In order to request continuation of an alternative emission limitation, the designated representative must submit a petition to renew the alternative emission limitation on the date that the application for renewal of the source's Acid Rain permit containing the alternative emission limitation is due.

(d) *Contents of petition for an alternative emission limitation demonstration period.* The designated representative of an affected unit that has met the minimum criteria under paragraph (a) of this section and that has been operated for a period of at least 3 months following the installation of the required NO_X emission control system may submit to the permitting authority a petition for an alternative emission limitation demonstration period. In the petition, the designated representative shall provide the following information in a format prescribed by the Administrator:

(1) Identification of the unit;

(2) The type of NO_X control technology installed (e.g., low NO_X burner technology, selective noncatalytic reduction, selective catalytic reduction, reburning);

(3) If an alternative technology is installed, the time period (not less than 6 consecutive months) prior to installation of the technology to be used for the demonstration required in paragraph (e)(11) of this section.

(4) Documentation as set forth in § 76.14(a)(1) showing that the installed NO_X emission control system has been designed to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 and that the system has been properly installed according to procedures and specifications designed to minimize the emissions of NO_X to the atmosphere;

(5) The date the unit commenced operation following the installation of the NO_X emission control system or the date the specific unit became subject to the emission limitations of §§ 76.5, 76.6, or 76.7, whichever is later;

(6) The dates of the operating period (which must be at least 3 months long);

(7) Certification by the designated representative that the owner(s) or operator operated the unit and the NO_X emission control system during the operating period in accordance with: Specifications and procedures designed to achieve the maximum NO_X reduction possible with the installed NO_X emission control system or the applicable emission limitation in §§ 76.5, 76.6, or 76.7; the operating conditions upon which the design of the NO_X emission control system was based; and vendor specifications and procedures;

(8) A brief statement describing the reason or reasons why the unit cannot achieve the applicable emission limitation in §§ 76.5, 76.6, or 76.7;

(9) A demonstration period plan, as set forth in § 76.14(a)(2);

(10) Unit operating data and quality-assured continuous emission monitoring data (including the specific data items listed in § 76.14(a)(3) collected in accordance with part 75 of this chapter during the operating period) and demonstrating the inability of the specific unit to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 on an annual average basis while operating as certified under paragraph (d)(7) of this section;

(11) An interim alternative emission limitation, in lb/mmBtu, that the unit can achieve during a demonstration period of at least 15 months. The interim alternative emission limitation shall be derived from the data specified in paragraph (d)(10) of this section using methods and procedures satisfactory to the Administrator;

(12) The proposed dates of the demonstration period (which must be at least 15 months long);

(13) A report which outlines the testing and procedures to be taken during the demonstration period in order to determine the maximum NO_X emission reduction obtainable with the installed system. The report shall include the reasons for the NO_X emission control system's failure to meet the applicable emission limitation, and the tests and procedures that will be followed to optimize the NO_X emission control system's performance. Such tests and procedures may include those identified in § 76.15 as appropriate.

(14) The special provisions at paragraph (g)(1) of this section.

(e) *Contents of petition for a final alternative emission limitation.* After the approved demonstration period, the designated representative of the unit may petition the permitting authority for an alternative emission limitation. The petition shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the unit;

(2) Certification that the owner(s) or operator operated the affected unit and the NO_X emission control system during the demonstration period in accordance with: specifications and procedures designed to achieve the maximum NO_X reduction possible with the installed NO_X emission control system or the applicable emissions limitation in §§ 76.5, 76.6, or 76.7; the operating conditions (including load dispatch conditions) upon which the design of the NO_X emission control system was based; and vendor specifications and procedures.

(3) Certification that the owner(s) or operator have installed in the affected unit all NO_X emission control systems, made any operational modifications, and completed any planned upgrades and/or maintenance to equipment specified in the approved demonstration period plan for optimizing NO_X emission reduction performance, consistent with the demonstration period plan and the proper operation of the installed NO_X emission control system. Such certification shall explain any differences between the installed NO_X emission control system and the equipment configuration described in the approved demonstration period plan.

(4) A clear description of each step or modification taken during the demonstration period to improve or optimize the performance of the installed NO_X emission control system.

(5) Engineering design calculations and drawings that show the technical specifications for installation of any additional operational or emission control modifications installed during the demonstration period.

(6) Unit operating and quality-assured continuous emission monitoring data (including the specific data listed in § 76.14(b)) collected in accordance with part 75 of this chapter during the demonstration period and demonstrating the inability of the specific unit to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 on an annual average basis while operating in accordance with the certification under paragraph (e)(2) of this section.

(7) A report (based on the parametric test requirements set forth in the approved demonstration period plan as identified in paragraph (d)(13) of this section), that demonstrates the unit was operated in accordance with the operating conditions upon which the

design of the NO_X emission control system was based and describes the reason or reasons for the failure of the installed NO_X emission control system to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 on an annual average basis.

(8) The minimum NO_X emission rate, in lb/mmBtu, that the affected unit can achieve on an annual average basis with the installed NO_X emission control system. This value, which shall be the requested alternative emission limitation, shall be derived from the data specified in this section using methods and procedures satisfactory to the Administrator and shall be the lowest annual emission rate the unit can achieve with the installed NO_X emission control system;

(9) All supporting data and calculations documenting the determination of the requested alternative emission limitation and its conformance with the methods and procedures satisfactory to the Administrator;

(10) The special provisions in paragraph (g)(2) of this section.

(11) In addition to the other requirements of this section, the owner or operator of an affected unit with a Group 1 boiler that has installed an alternative technology in addition to or in lieu of low NO_X burner technology and cannot meet the applicable emission limitation in § 76.5 shall demonstrate, to the satisfaction of the Administrator, that the actual percentage reduction in NO_X emissions (lbs/mmBtu), on an annual average basis is greater than 65 percent of the average annual NO_X emissions prior to the installation of the NO_X emission control system. The percentage reduction in NO_X emissions shall be determined using continuous emissions monitoring data for NO_X taken during the time period (under paragraph (d)(3) of this section) prior to the installation of the NO_X emission control system and during long-term load dispatch operation of the specific boiler.

(f) *Permitting authority's action.—(1) Alternative emission limitation demonstration period.* (i) The permitting authority may approve an alternative emission limitation demonstration period and demonstration period plan, provided that the requirements of this section are met to the satisfaction of the permitting authority. The permitting authority shall disapprove a demonstration period if the requirements of paragraph (a) of this section were not met during the operating period.

(ii) If the demonstration period is approved, the permitting authority will include, as part of the demonstration period, the 4 month period prior to submission of the application in the demonstration period.

(iii) The alternative emission limitation demonstration period will authorize the unit to emit at a rate not greater than the interim alternative emission limitation during the demonstration period on or after January 1, 1996 for Phase I units and the applicable date established in §§ 76.5(g) or 76.6 for Phase II units, and until the date that the Administrator approves or denies a final alternative emission limitation.

(iv) After an alternative emission limitation demonstration period is approved, if the designated representative requests an extension of the demonstration period in accordance with paragraph (g)(1)(i)(B) of this section, the permitting authority may extend the demonstration period by administrative amendment (under § 72.83 of this chapter) to the Acid Rain permit.

(v) The permitting authority shall deny the demonstration period if the designated representative cannot demonstrate that the unit met the requirements of paragraph (a)(2) of this section. In such cases, the permitting authority shall require that the owner or operator operate the unit in compliance with the applicable emission limitation in §§ 76.5, 76.6, or 76.7 for the period preceding the submission of the application for an alternative emission limitation demonstration period, including the operating period, if such periods are after the date on which the unit is subject to the standard limit under §§ 76.5, 76.6, or 76.7.

(2) *Alternative emission limitation.* (i) If the permitting authority determines that the requirements in this section are met, the permitting authority will approve an alternative emission limitation and issue or revise an Acid Rain permit to apply the approved limitation, in accordance with subparts F and G of part 72 of this chapter. The permit will authorize the unit to emit at a rate not greater than the approved alternative emission limitation, starting the date the permitting authority revises an Acid Rain permit to approve an alternative emission limitation.

(ii) If a permitting authority disapproves an alternative emission limitation under paragraph (a)(2) of this section, the owner or operator shall operate the affected unit in compliance with the applicable emission limitation in §§ 76.5, 76.6, or 76.7 (unless the unit is participating in an approved averaging plan under § 76.11) beginning on the date the permitting authority revises an Acid Rain permit to disapprove an alternative emission limitation.

(3) *Alternative emission limitation renewal.* (i) If, upon review of a petition to renew an approved alternative emission limitation, the permitting authority determines that no changes have been made to the control technology, its operation, the operating conditions on which the alternative emission limitation was based, or the actual NO_X emission rate, the alternative emission limitation will be renewed.

(ii) If the permitting authority determines that changes have been made to the control technology, its operation, the fuel quality, or the operating conditions on which the alternative emission limitation was based, the designated representative shall submit, in order to renew the alternative emission limitation or to obtain a new alternative emission limitation, a petition for an alternative emission limitation demonstration period that meets the requirements of paragraph (d) of this section using a new demonstration period.

(g) *Special provisions.*—(1) *Alternative emission limitation demonstration period.* (i) *Emission limitations.* (A) Each unit with an approved alternative emission limitation demonstration period shall comply with the interim emission limitation specified in the unit's permit beginning on the effective date of the demonstration period specified in the permit and, if a timely petition for a final alternative emission limitation is submitted, extending until the date on which the permitting authority issues or revises an Acid Rain permit to approve or disapprove an alternative emission limitation. If a timely petition is not submitted, then the unit shall comply with the standard emission limit under §§ 76.5, 76.6, or 76.7 beginning on the date the petition was required to be submitted under paragraph (c)(2) of this section.

(B) When the owner or operator identifies, during the demonstration period, boiler operating or NO_X emission control system modifications or upgrades that would produce further NO_X emission reductions, enabling the affected unit to comply with or bring its emission rate closer to the applicable emissions limitation under §§ 76.5, 76.6, or 76.7, the designated representative may submit a request and the permitting authority may grant, by administrative amendment under § 72.83 of this chapter, an extension of the demonstration period for such period of time (not to exceed 12 months) as may

be necessary to implement such modifications or upgrades.

(C) If the approved interim alternative emission limitation applies to a unit for part, but not all, of a calendar year, the unit shall determine compliance for the calendar year in accordance with the procedures in § 76.13(a).

(ii) *Operating requirements.* (A) A unit with an approved alternative emission limitation demonstration period shall be operated under load dispatch conditions consistent with the operating conditions upon which the design of the NO_X emission control system and performance guarantee were based, and in accordance with the demonstration period plan.

(B) A unit with an approved alternative emission limitation demonstration period shall install all NO_X emission control systems, make any operational modifications, and complete any upgrades and maintenance to equipment specified in the approved demonstration period plan for optimizing NO_X emission reduction performance.

(C) When the owner or operator identifies boiler or NO_X emission control system operating modifications that would produce higher NO_X emission reductions, enabling the affected unit to comply with, or bring its emission rate closer to, the applicable emission limitation under §§ 76.5, 76.6, or 76.7, the designated representative shall submit an administrative amendment under § 72.83 of this chapter to revise the unit's Acid Rain permit and demonstration period plan to include such modifications.

(iii) *Testing requirements.* A unit with an approved alternative emission limitation demonstration period shall monitor in accordance with part 75 of this chapter and shall conduct all tests required under the approved demonstration period plan.

(2) *Final alternative emission limitation.*—(i) *Emission limitations.* (A) Each unit with an approved alternative emission limitation shall comply with the alternative emission limitation specified in the unit's permit beginning on the date specified in the permit as issued or revised by the permitting authority to apply the final alternative emission limitation.

(B) If the approved interim or final alternative emission limitation applies to a unit for part, but not all, of a calendar year, the unit shall determine compliance for the calendar year in accordance with the procedures in § 76.13(a).

§ 76.11 Emissions averaging.

(a) *General provisions.* In lieu of complying with the applicable emission limitation in §§ 76.5, 76.6, or 76.7, any affected units subject to such emission limitation, under control of the same owner or operator, and having the same designated representative may average their NO_X emissions under an averaging plan approved under this section.

(1) Each affected unit included in an averaging plan for Phase I shall be a Phase I unit with a Group 1 boiler subject to an emission limitation in § 76.5 during all years for which the unit is included in the plan.

(i) If a unit with an approved NO_X compliance extension is included in an averaging plan for 1996, the unit shall be treated, for the purposes of applying Equation 1 in paragraph (a)(6) of this section and Equation 2 in paragraph (d)(1)(ii)(A) of this section, as subject to the applicable emissions limitation under § 76.5 for the entire year 1996.

(ii) A Phase II unit approved for early election under § 76.8 shall not be included in an averaging plan for Phase I.

(2) Each affected unit included in an averaging plan for Phase II shall be a boiler subject to an emission limitation in §§ 76.5, 76.6, or 76.7 for all years for which the unit is included in the plan.

(3) Each unit included in an averaging plan shall have an alternative contemporaneous annual emission limitation (lb/mmBtu) and can only be included in one averaging plan.

(4) Each unit included in an averaging plan shall have a minimum allowable annual heat input value (mmBtu), if it has an alternative contemporaneous annual emission limitation more stringent than that unit's applicable emission limitation under §§ 76.5, 76.6, or 76.7, and a maximum allowable annual heat input value, if it has an alternative contemporaneous annual emission limitation less stringent than that unit's applicable emission limitation under §§ 76.5, 76.6, or 76.7.

(5) The Btu-weighted annual average emission rate for the units in an averaging plan shall be less than or equal to the Btu-weighted annual average emission rate for the same units had they each been operated, during the same period of time, in compliance with the applicable emission limitations in §§ 76.5, 76.6, or 76.7.

(6) In order to demonstrate that the proposed plan is consistent with paragraph (a)(5) of this section, the alternative contemporaneous annual emission limitations and annual heat input values assigned to the units in the proposed averaging plan shall meet the following requirement:

$$\frac{\sum_{i=1}^{n}\left(R_{Li}\times HI_i\right)}{\sum_{i=1}^{n}HI_i} \le \frac{\sum_{i=1}^{n}\left(R_{li}\times HI_i\right)}{\sum_{i=1}^{n}HI_i} \qquad \text{(Equation 1)}$$

Where:

R_{Li} = Alternative contemporaneous annual emission limitation for unit i, lb/mmBtu, as specified in the averaging plan;

R_{li} = Applicable emission limitation for unit i, lb/mmBtu, as specified in §§ 76.5, 76.6, or 76.7 except that for early election units, which may be included in an averaging plan only on or after January 1, 2000, R_{li} shall equal the most stringent applicable emission limitation under §§ 76.5 or 76.7;

HI_i = Annual heat input for unit i, mmBtu, as specified in the averaging plan;

n = Number of units in the averaging plan.

(7) For units with an alternative emission limitation, R_{li} shall equal the applicable emissions limitation under §§ 76.5, 76.6, or 76.7, not the alternative emissions limitation.

(8) No unit may be included in more than one averaging plan.

(b)(1) *Submission requirements.* The designated representative of a unit meeting the requirements of paragraphs (a)(1), (a)(2), and (a)(8) of this section may submit an averaging plan (or a revision to an approved averaging plan) to the permitting authority(ies) at any time up to and including January 1 (or July 1, if the plan is restricted to units located within a single permitting authority's jurisdiction) of the calendar

year for which the averaging plan is to become effective.

(2) The designated representative shall submit a copy of the same averaging plan (or the same revision to an approved averaging plan) to each permitting authority with jurisdiction over a unit in the plan.

(3) When an averaging plan (or a revision to an approved averaging plan) is not approved, the owner or operator of each unit in the plan shall operate the unit in compliance with the emission limitation that would apply in the absence of the averaging plan (or revision to a plan).

(c) *Contents of NO_X averaging plan.* A complete NO_X averaging plan shall include the following elements in a format prescribed by the Administrator:

(1) Identification of each unit in the plan;

(2) Each unit's applicable emission limitation in §§ 76.5, 76.6, or 76.7;

(3) The alternative contemporaneous annual emission limitation for each unit (in lb/mmBtu). If any of the units identified in the NO_X averaging plan utilize a common stack pursuant to § 75.17(a)(2)(i)(B) of this chapter, the same alternative contemporaneous emission limitation shall be assigned to each such unit and different heat input limits may be assigned;

(4) The annual heat input limit for each unit (in mmBtu);

(5) The calculation for Equation 1 in paragraph (a)(6) of this section;

(6) The calendar years for which the plan will be in effect; and

(7) The special provisions in paragraph (d)(1) of this section.

(d) *Special provisions.—(1) Emission limitations.* Each affected unit in an approved averaging plan is in compliance with the Acid Rain emission limitation for NO_X under the plan only if the following requirements are met:

(i) For each unit, the unit's actual annual average emission rate for the calendar year, in lb/mmBtu, is less than or equal to its alternative contemporaneous annual emission limitation in the averaging plan; and

(A) For each unit with an alternative contemporaneous emission limitation less stringent than the applicable emission limitation in §§ 76.5, 76.6, or 76.7, the actual annual heat input for the calendar year does not exceed the annual heat input limit in the averaging plan;

(B) For each unit with an alternative contemporaneous annual emission limitation more stringent than the applicable emission limitation in §§ 76.5, 76.6, or 76.7, the actual annual heat input for the calendar year is not less than the annual heat input limit in the averaging plan; or

(ii) If one or more of the units does not meet the requirements under paragraph (d)(1)(i) of this section, the designated representative shall demonstrate, in accordance with paragraph (d)(1)(ii)(A) of this section (Equation 2) that the actual Btu-weighted annual average emission rate for the units in the plan is less than or equal to the Btu-weighted annual average rate for the same units had they each been operated, during the same period of time, in compliance with the applicable emission limitations in §§ 76.5, 76.6, or 76.7.

(A) A group showing of compliance shall be made based on the following equation:

$$\frac{\sum_{i=1}^{n}\left(R_{ai}\times HI_{ai}\right)}{\sum_{i=1}^{n}HI_{ai}} \le \frac{\sum_{i=1}^{n}\left(R_{li}\times HI_{ai}\right)}{\sum_{i=1}^{n}HI_{ai}} \qquad \text{(Equation 2)}$$

Where:

R_{ai} = Actual annual average emission rate for unit i, lb/mmBtu, as determined using the procedures in part 75 of this chapter. For units in an averaging plan utilizing a common stack pursuant to § 75.17(a)(2)(i)(B) of this chapter, use the same NO_X emission rate value for each unit utilizing the common stack, and calculate this value in accordance with appendix F to part 75 of this chapter;

R_{li} = Applicable annual emission limitation for unit i lb/mmBtu, as specified in §§ 76.5, 76.6, or 76.7, except that for early election units, which may be included in an averaging plan only on or after January 1, 2000, R_{li} shall equal the most stringent applicable emission limitation under §§ 76.5 or 76.7;

HI_{ai} = Actual annual heat input for unit i, mmBtu, as determined using the procedures in part 75 of this chapter;

n = Number of units in the averaging plan.

(B) For units with an alternative emission limitation, R_{li} shall equal the applicable emission limitation under §§ 76.5, 76.6, or 76.7, not the alternative emission limitation.

(C) If there is a successful group showing of compliance under paragraph (d)(1)(ii)(A) of this section for a calendar year, then all units in the averaging plan shall be deemed to be in compliance for that year with their alternative contemporaneous emission limitations and annual heat input limits under paragraph (d)(1)(i) of this section.

(2) *Liability.* The owners and operators of a unit governed by an approved averaging plan shall be liable for any violation of the plan or this section at that unit or any other unit in the plan, including liability for fulfilling the obligations specified in part 77 of this chapter and sections 113 and 411 of the Act.

(3) *Withdrawal or termination.* The designated representative may submit a notification to terminate an approved averaging plan in accordance with § 72.40(d) of this chapter, no later than October 1 of the calendar year for which the plan is to be withdrawn or terminated.

§ 76.12 Phase I NO_X compliance extension.

(a) *General provisions.* (1) The designated representative of a Phase I unit with a Group 1 boiler may apply for and receive a 15-month extension of the deadline for meeting the applicable emissions limitation under § 76.5 where it is demonstrated, to the satisfaction of the Administrator, that:

(i) The low NO_X burner technology designed to meet the applicable emission limitation is not in adequate supply to enable installation and operation at the unit, consistent with system reliability, by January 1, 1995 and the reliability problems are due substantially to NO_X emission control system installation and availability; or

(ii) The unit is participating in an approved clean coal technology demonstration project.

(2) In order to obtain a Phase I NO_X compliance extension, the designated representative shall submit a Phase I

NO_X compliance extension plan by October 1, 1994.

(b) *Contents of Phase I NO_X compliance extension plan.* A complete Phase I NO_X compliance extension plan shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the unit.

(2) For units applying pursuant to paragraph (a)(1)(i) of this section:

(i) A list of the company names, addresses, and telephone numbers of vendors who are qualified to provide the services and low NO_X burner technology designed to meet the applicable emission limitation under § 76.5 and have been contacted to obtain the required services and technology. The list shall include the dates of contact, and a copy of each request for bids shall be submitted, along with any other information necessary to show a good-faith effort to obtain the required services and technology necessary to meet the requirements of this part on or before January 1, 1995.

(ii) A copy of those portions of a legally binding contract with a qualified vendor that demonstrate that services and low NO_X burner technology designed to meet the applicable emission limitation under § 76.5, with a completion date not later than December 31, 1995 have been contracted for.

(iii) Scheduling information, including justification and test schedules.

(iv) To demonstrate, if applicable, that the supply of the low NO_X burner technology designed to meet the applicable emission limitation under § 76.5 is inadequate to enable its installation and operation at the unit, consistent with system reliability, in time for the unit to comply with the applicable emission limitation on or before January 1, 1995, either:

(A) Certification from the selected vendor(s) (by a certifying official) listed in paragraph (b)(2)(i) of this section stating that they cannot provide the necessary services and install the low NO_X burner technology on or before January 1, 1995 and explaining the reasons why the services cannot be provided and why the equipment cannot be installed in a timely manner; or

(B) The following information:

(i) Standard load forecasts, based on standard forecasting models available throughout the utility industry and applied to the period, January 1, 1993, through December 31, 1994.

(ii) Specific reasons why an outage cannot be scheduled to enable the unit to install and operate the low NO_X burner technology by January 1, 1995, including reasons why no other units can be used to replace this unit's generation during such outage.

(iii) Fuel and energy balance summaries and power and other consumption requirements (including those for air, steam, and cooling water).

(3) To demonstrate, if applicable, participation in an approved clean coal technology demonstration project, a description of the project, including all sources of federal, State, and other outside funding, amount and date for approval of federal funding, the duration of the project, and the anticipated completion date of the project.

(4) The special provisions in paragraph (d) of this section.

(c) (1) *Administrator's action.* To the extent the Administrator determines that a Phase I NO_X compliance extension plan complies with the requirements of this section, the Administrator will approve the plan and revise the Acid Rain permit governing the unit in the plan in order to incorporate the plan by administrative amendment under § 72.83 of this chapter, except that the Administrator shall have 90 days from receipt of the compliance extension plan to take final action.

(2) The Administrator will approve or disapprove a proposed NO_X compliance extension plan within 3 months of receipt.

(d) *Special provisions.*

(1) Emission limitations. The unit shall comply with the applicable emission limitation under § 76.5 beginning April 1, 1996. Compliance shall be determined as specified in part 75 of this chapter using measured values of NO_X emissions and heat input only for the portion of the year that the emission limit is in effect.

(2) If a unit with an approved NO_X compliance extension is included in an averaging plan under § 76.11 for year 1996, the unit shall be treated, for purposes of applying Equation 1 in § 76.11(a)(6) and Equation 2 in § 76.11(d)(1)(ii)(A), as subject to the applicable emission limitation under § 76.5 for the entire year 1996.

(e) *Extension until December 31, 1997.* (1) The designated representative of a Phase I unit that is subject to section 404(d) of the Act, has a tangentially fired boiler, and is unable to install low NO_X burner technology by January 1, 1997 may submit a petition for and receive an extension for meeting the applicable emission limitation under § 76.5 where it is demonstrated, to the satisfaction of the Administrator, that:

(i) The unit is located at a source with two or more other units, all of which are Phase I units that are subject to section 404(d) of the Act and have tangentially fired boilers;

(ii) The NO_X control system at the unit was scheduled to be installed by January 1, 1997 and, because of operational problems associated with the NO_X control system, will be redesigned; and

(iii) Installation of the redesigned low NO_X burner technology at the unit cannot be completed by January 1, 1997 without causing system reliability problems.

(2) A complete petition shall include the following elements and shall be submitted by April 28, 1995.

(i) Identification of the unit and the other units at the source;

(ii) A statement describing how the requirements of paragraphs (e)(1)(ii) and (e)(1)(iii) of this section are met;

(iii) The earliest date, not later than December 31, 1997, by which installation of the redesigned low NO_X burner technology can be completed consistent with system reliability; and

(iv) The provisions in paragraph (e)(4) of this section.

(3) To the extent the Administrator determines that a Phase I unit meets the requirements of paragraphs (e)(1) and (e)(2) of this section, the Administrator will approve the petition within 90 days from receipt of the complete petition. The Acid Rain permit governing the unit will be revised in order to incorporate the approved extension, which shall terminate no later than December 31, 1997, by administrative amendment under § 72.83 of this chapter except that the Administrator will have 90 days to take final action.

(4) The unit shall comply with the applicable emission limitation under § 76.5 beginning on the day immediately following the day on which the extension approved under paragraph (e)(3) of this section terminates. Compliance shall be determined as specified in part 75 of this chapter using measured values of NO_X emissions and heat input only for the portion of the year that the emission limit is in effect. If a unit with an approved extension is included in an averaging plan under § 76.11 for year 1997, the unit shall be treated, for the purpose of applying Equation 1 in § 76.11(a)(6) and Equation 2 in § 76.11(d)(1)(ii)(A), as subject to the applicable emission limitation under § 76.5 for the entire year 1997.

§ 76.13 Compliance and excess emissions.

Excess emissions of nitrogen oxides under § 77.6 of this chapter shall be calculated as follows:

(a) For a unit that is not in an approved averaging plan:

(1) Calculate EE_i for each portion of the calendar year that the unit is subject to a different NO_X emission limitation:

$$EE_i = \frac{(R_{ai} - R_{li}) \times HI_i}{2000} \qquad \text{(Equation 3)}$$

Where:

EE_i = Excess emissions for NO_X for the portion of the calendar year (in tons);

R_{ai} = Actual average emission rate for the unit (in lb/mmBtu), determined according to part 75 of this chapter for the portion of the calendar year for which the applicable emission limitation R_l is in effect;

R_{li} = Applicable emission limitation for the unit, (in lb/mmBtu), as specified in §§ 76.5, 76.6, or 76.7 or as determined under § 76.10;

$$EE = \sum_{i=1}^{n} EE_i \qquad \text{(Equation 4)}$$

HI^i = Actual heat input for the unit, (in mmBtu), determined according to part 75 of this chapter for the portion of the calendar year for which the applicable emission limitation, R_l, is in effect.

(2) If EE_i is a negative number for any portion of the calendar year, the EE value for that portion of the calendar year shall be equal to zero (e.g., if $EE_i = -100$, then $EE_i = 0$).

(3) Sum all EE_i values for the calendar year:

Where:

EE = Excess emissions for NO_X for the year (in tons);

n = The number of time periods during which a unit is subject to different emission limitations; and

(b) For units participating in an approved averaging plan, when all the requirements under § 76.11(d)(1) are not met,

$$EE = \frac{\sum_{i=1}^{n} (R_{ai} \times HI_i) - \sum_{i=1}^{n} (R_{li} \times HI_i)}{2000} \qquad \text{(Equation 5)}$$

Where:

EE = Excess emissions for NO_X for the year (in tons);

R_{ai} = Actual annual average emission rate for NO_X for unit i, (in lb/mmBtu), determined according to part 75 of this chapter;

R_{li} = Applicable emission limitation for unit i, (in lb/mmBtu), as specified in §§ 76.5, 76.6, or 76.7;

HI_i = Actual annual heat input for unit i, mmBtu, determined according to part 75 of this chapter;

n = Number of units in the averaging plan.

§ 76.14 Monitoring, recordkeeping, and reporting.

(a) A petition for an alternative emission limitation demonstration period under § 76.10(d) shall include the following information:

(1) In accordance with § 76.10(d)(4), the following information:

(i) Documentation that the owner or operator solicited bids for a NO_X emission control system designed for application to the specific boiler and designed to achieve the applicable emission limitation in §§ 76.5, 76.6, or 76.7 on an annual average basis. This documentation must include a copy of all bid specifications.

(ii) A copy of the performance guarantee submitted by the vendor of the installed NO_X emission control system to the owner or operator showing that such system was designed to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 on an annual average basis.

(iii) Documentation describing the operational and combustion conditions that are the basis of the performance guarantee.

(iv) Certification by the primary vendor of the NO_X emission control system that such equipment and associated auxiliary equipment was properly installed according to the modifications and procedures specified by the vendor.

(v) Certification by the designated representative that the owner(s) or operator installed technology that meets the requirements of § 76.10(a)(2).

(2) In accordance with § 76.10(d)(9), the following information:

(i) The operating conditions of the NO_X emission control system including load range, O_2 range, coal volatile matter range, and, for tangentially fired boilers, distribution of combustion air within the NO_X emission control system;

(ii) Certification by the designated representative that the owner(s) or operator have achieved and are following the operating conditions, boiler modifications, and upgrades that formed the basis for the system design and performance guarantee;

(iii) Any planned equipment modifications and upgrades for the purpose of achieving the maximum NO_X reduction performance of the NO_X emission control system that were not included in the design specifications and performance guarantee, but that were achieved prior to submission of this application and are being followed;

(iv) A list of any modifications or replacements of equipment that are to be done prior to the completion of the demonstration period for the purpose of reducing emissions of NO_X; and

(v) The parametric testing that will be conducted to determine the reason or reasons for the failure of the unit to achieve the applicable emission limitation and to verify the proper operation of the installed NO_X emission control system during the demonstration period. The tests shall include tests in § 76.15, which may be modified as follows:

(A) The owner or operator of the unit may add tests to those listed in § 76.15, if such additions provide data relevant to the failure of the installed NO_X emission control system to meet the applicable emissions limitation in §§ 76.5, 76.6, or 76.7; or

(B) The owner or operator of the unit may remove tests listed in § 76.15 that are shown, to the satisfaction of the permitting authority, not to be relevant to NO_X emissions from the affected unit; and

(C) In the event the performance guarantee or the NO_X emission control system specifications require additional tests not listed in § 76.15, or specify operating conditions not verified by tests listed in § 76.15, the owner or operator of the unit shall include such additional tests.

(3) In accordance with § 76.10(d)(10), the following information for the operating period:

(i) The average NO_X emission rate (in lb/mmBtu) of the specific unit;

(ii) The highest hourly NO_X emission rate (in lb/mmBtu) of the specific unit;

(iii) Hourly NO_X emission rate (in lb/mmBtu), calculated in accordance with part 75 of this chapter;

(iv) Total heat input (in mmBtu) for the unit for each hour of operation,

calculated in accordance with the requirements of part 75 of this chapter; and

(v) Total integrated hourly gross unit load (in MWge).

(b) A petition for an alternative emission limitation shall include the following information in accordance with § 76.10(e)(6).

(1) Total heat input (in mmBtu) for the unit for each hour of operation, calculated in accordance with the requirements of part 75 of this chapter;

(2) Hourly NO_X emission rate (in lb/mmBtu), calculated in accordance with the requirements of part 75 of this chapter; and

(3) Total integrated hourly gross unit load (MWge).

(c) *Reporting of the costs of low NO_X burner technology applied to Group 1, Phase I boilers.* (1) Except as provided in paragraph (c)(2) of this section, the designated representative of a Phase I unit with a Group 1 boiler that has installed or is installing any form of low NO_X burner technology shall submit to the Administrator a report containing the capital cost, operating cost, and baseline and post-retrofit emission data specified in appendix B to this part. If any of the required equipment, cost, and schedule information are not available (e.g., the retrofit project is still underway), the designated representative shall include in the report detailed cost estimates and other projected or estimated data in lieu of the information that is not available.

(2) The report under paragraph (c)(1) of this section is not required with regard to the following types of Group 1, Phase I units:

(i) Units employing no new NO_X emission control system after November 15, 1990;

(ii) Units employing modifications to boiler operating parameters (e.g., burners out of service or fuel switching) without low NO_X burners or other emission reduction equipment for reducing NO_X emissions;

(iii) Units with wall-fired boilers employing only overfire air and units with tangentially fired boilers employing only separated overfire air; or

(iv) Units beginning installation of a new NO_X emission control system after August 11, 1995.

(3) The report under paragraph (c)(1) of this section shall be submitted to the Administrator by:

(i) 120 days after completion of the low NO_X burner technology retrofit project; or

(ii) May 23, 1995, if the project was completed on or before January 23, 1995.

§ 76.15 Test methods and procedures.

(a) The owner or operator may use the following tests as a basis for the report required by § 76.10(e)(7):

(1) Conduct an ultimate analysis of coal using ASTM D 3176–89 (incorporated by reference as specified in § 76.4);

(2) Conduct a proximate analysis of coal using ASTM D 3172–89 (incorporated by reference as specified in § 76.4); and

(3) Measure the coal mass flow rate to each individual burner using ASME Power Test Code 4.2 (1991), ''Test Code for Coal Pulverizers'' or ISO 9931 (1991), ''Coal—Sampling of Pulverized Coal Conveyed by Gases in Direct Fired Coal Systems'' (incorporated by reference as specified in § 76.4).

(b) The owner or operator may measure and record the actual NO_X emission rate in accordance with the requirements of this part while varying the following parameters where possible to determine their effects on the emissions of NO_X from the affected boiler:

(1) Excess air levels;

(2) Settings of burners or coal and air nozzles, including tilt and yaw, or swirl;

(3) For tangentially fired boilers, distribution of combustion air within the NO_X emission control system;

(4) Coal mass flow rates to each individual burner;

(5) Coal-to-primary air ratio (based on pound per hour) for each burner, the average coal-to-primary air ratio for all burners, and the deviations of individual burners' coal-to-primary air ratios from the average value; and

(6) If the boiler uses varying types of coal, the type of coal. Provide the results of proximate and ultimate analyses of each type of as-fired coal.

(c) In performing the tests specified in paragraph (a) of this section, the owner or operator shall begin the tests using the equipment settings for which the NO_X emission control system was designed to meet the NO_X emission rate guaranteed by the primary NO_X emission control system vendor. These results constitute the ''baseline controlled'' condition.

(d) After establishing the baseline controlled condition under paragraph (c) of this section, the owner or operator may:

(1) Change excess air levels ± 5 percent from the baseline controlled condition to determine the effects on emissions of NO_X, by providing a minimum of three readings (e.g., with a baseline reading of 20 percent excess air, excess air levels will be changed to 19 percent and 21 percent);

(2) For tangentially fired boilers, change the distribution of combustion air within the NO_X emission control system to determine the effects on NO_X emissions by providing a minimum of three readings, one with the minimum, one with the baseline, and one with the maximum amounts of staged combustion air; and

(3) Show that the combustion process within the boiler is optimized (e.g., that the burners are balanced).

§ 76.16 [Reserved]

Appendix A to Part 76—Phase I Affected Coal-Fired Utility Units With Group 1 or Cell Burner Boilers

TABLE 1.—PHASE I TANGENTIALLY FIRED UNITS

State	Plant	Unit	Operator
ALABAMA	EC GASTON	5	ALABAMA POWER CO.
GEORGIA	BOWEN	1BLR	GEORGIA POWER CO.
GEORGIA	BOWEN	2BLR	GEORGIA POWER CO.
GEORGIA	BOWEN	3BLR	GEORGIA POWER CO.
GEORGIA	BOWEN	4BLR	GEORGIA POWER CO.
GEORGIA	JACK MCDONOUGH	MB1	GEORGIA POWER CO.
GEORGIA	JACK MCDONOUGH	MB2	GEORGIA POWER CO.
GEORGIA	WANSLEY	1	GEORGIA POWER CO.
GEORGIA	WANSLEY	2	GEORGIA POWER CO.
GEORGIA	YATES	Y1BR	GEORGIA POWER CO.
GEORGIA	YATES	Y2BR	GEORGIA POWER CO.
GEORGIA	YATES	Y3BR	GEORGIA POWER CO.
GEORGIA	YATES	Y4BR	GEORGIA POWER CO.
GEORGIA	YATES	Y5BR	GEORGIA POWER CO.

TABLE 1.—PHASE I TANGENTIALLY FIRED UNITS—Continued

State	Plant	Unit	Operator
GEORGIA	YATES	Y6BR	GEORGIA POWER CO.
GEORGIA	YATES	Y7BR	GEORGIA POWER CO.
ILLINOIS	BALDWIN	3	ILLINOIS POWER CO.
ILLINOIS	HENNEPIN	2	ILLINOIS POWER CO.
ILLINOIS	JOPPA	1	ELECTRIC ENERGY INC.
ILLINOIS	JOPPA	2	ELECTRIC ENERGY INC.
ILLINOIS	JOPPA	3	ELECTRIC ENERGY INC.
ILLINOIS	JOPPA	4	ELECTRIC ENERGY INC.
ILLINOIS	JOPPA	5	ELECTRIC ENERGY INC.
ILLINOIS	JOPPA	6	ELECTRIC ENERGY INC.
ILLINOIS	MEREDOSIA	5	CEN ILLINOIS PUB SER.
ILLINOIS	VERMILION	2	ILLINOIS POWER CO.
INDIANA	CAYUGA	1	PSI ENERGY INC.
INDIANA	CAYUGA	2	PSI ENERGY INC.
INDIANA	EW STOUT	50	INDIANAPOLIS PWR & LT.
INDIANA	EW STOUT	60	INDIANAPOLIS PWR & LT.
INDIANA	EW STOUT	70	INDIANAPOLIS PRW & LT.
INDIANA	HT PRITCHARD	6	INDIANAPOLIS PWR & LT.
INDIANA	PETERSBURG	1	INDIANAPOLIS PWR & LT.
INDIANA	PETERSBURG	2	INDIANAPOLIS PWR & LT.
INDIANA	WABASH RIVER	6	PSI ENERGY INC.
IOWA	BURLINGTON	1	IOWA SOUTHERN UTL.
IOWA	ML KAPP	2	INTERSTATE POWER CO.
IOWA	RIVERSIDE	9	IOWA-ILL GAS & ELEC.
KENTUCKY	ELMER SMITH	2	OWENSBORO MUN UTIL.
KENTUCKY	EW BROWN	2	KENTUCKY UTL CO.
KENTUCKY	EW BROWN	3	KENTUCKY UTL CO.
KENTUCKY	GHENT	1	KENTUCKY UTL CO.
MARYLAND	MORGANTOWN	1	POTOMAC ELEC PWR CO.
MARYLAND	MORGANTOWN	2	POTOMAC ELEC PWR CO.
MICHIGAN	JH CAMPBELL	1	CONSUMERS POWER CO.
MISSOURI	LABADIE	1	UNION ELECTRIC CO.
MISSOURI	LABADIE	2	UNION ELECTRIC CO.
MISSOURI	LABADIE	3	UNION ELECTRIC CO.
MISSOURI	LABADIE	4	UNION ELECTRIC CO.
MISSOURI	MONTROSE	1	KANSAS CITY PWR & LT.
MISSOURI	MONTROSE	2	KANSAS CITY PWR & LT.
MISSOURI	MONTROSE	3	KANSAS CITY PWR & LT.
NEW YORK	DUNKIRK	3	NIAGARA MOHAWK PWR.
NEW YORK	DUNKIRK	4	NIAGARA MOHAWK PWR.
NEW YORK	GREENIDGE	6	NY STATE ELEC & GAS.
NEW YORK	MILLIKEN	1	NY STATE ELEC & GAS.
NEW YORK	MILLIKEN	2	NY STATE ELEC & GAS.
OHIO	ASHTABULA	7	CLEVELAND ELEC ILLUM.
OHIO	AVON LAKE	11	CLEVELAND ELEC ILLUM.
OHIO	CONESVILLE	4	COLUMBUS STHERN PWR.
OHIO	EASTLAKE	1	CLEVELAND ELEC ILLUM.
OHIO	EASTLAKE	2	CLEVELAND ELEC ILLUM.
OHIO	EASTLAKE	3	CLEVELAND ELEC ILLUM.
OHIO	EASTLAKE	4	CLEVELAND ELEC ILLUM.
OHIO	MIAMI FORT	6	CINCINNATI GAS & ELEC.
OHIO	WC BECKJORD	5	CINCINNATI GAS & ELEC.
OHIO	WC BECKJORD	6	CINCINNATI GAS & ELEC.
PENNSYLVANIA	BRUNNER ISLAND	1	PENNSYLVANIA PWR & LT.
PENNSYLVANIA	BRUNNER ISLAND	2	PENNSYLVANIA PWR & LT.
PENNSYLVANIA	BRUNNER ISLAND	3	PENNSYLVANIA PWR & LT.
PENNSYLVANIA	CHESWICK	1	DUQUESNE LIGHT CO.
PENNSYLVANIA	CONEMAUGH	1	PENNSYLVANIA ELEC CO.
PENNSYLVANIA	CONEMAUGH	2	PENNSYLVANIA ELEC CO.
PENNSYLVANIA	PORTLAND	1	METROPOLITAN EDISON.
PENNSYLVANIA	PORTLAND	2	METROPOLITAN EDISON.
PENNSYLVANIA	SHAWVILLE	3	PENNSYLVANIA ELEC CO.
PENNSYLVANIA	SHAWVILLE	4	PENNSYLVANIA ELEC CO.
TENNESSEE	GALLATIN	1	TENNESSEE VAL AUTH.
TENNESSEE	GALLATIN	2	TENNESSEE VAL AUTH.
TENNESSEE	GALLATIN	3	TENNESSEE VAL AUTH.
TENNESSEE	GALLATIN	4	TENNESSEE VAL AUTH.
TENNESSEE	JOHNSONVILLE	1	TENNESSEE VAL AUTH.
TENNESSEE	JOHNSONVILLE	2	TENNESSEE VAL AUTH.
TENNESSEE	JOHNSONVILLE	3	TENNESSEE VAL AUTH.
TENNESSEE	JOHNSONVILLE	4	TENNESSEE VAL AUTH.
TENNESSEE	JOHNSONVILLE	5	TENNESSEE VAL AUTH.

TABLE 1.—PHASE I TANGENTIALLY FIRED UNITS—Continued

State	Plant	Unit	Operator
TENNESSEE	JOHNSONVILLE	6	TENNESSEE VAL AUTH.
WEST VIRGINIA	ALBRIGHT	3	MONONGAHELA POWER CO.
WEST VIRGINIA	FORT MARTIN	1	MONONGAHELA POWER CO.
WEST VIRGINIA	MOUNT STORM	1	VIRGINIA ELEC & PWR.
WEST VIRGINIA	MOUNT STORM	2	VIRGINIA ELEC & PWR.
WEST VIRGINIA	MOUNT STORM	3	VIRGINIA ELEC & PWR.
WISCONSIN	GENOA	1	DAIRYLAND POWER COOP.
WISCONSIN	SOUTH OAK CREEK	7	WISCONSIN ELEC POWER.
WISCONSIN	SOUTH OAK CREEK	8	WISCONSIN ELEC POWER.

TABLE 2.—PHASE I DRY BOTTOM-FIRED UNITS

State	Plant	Unit	Operator
ALABAMA	COLBERT	1	TENNESSEE VAL AUTH.
ALABAMA	COLBERT	2	TENNESSEE VAL AUTH.
ALABAMA	COLBERT	3	TENNESSEE VAL AUTH.
ALABAMA	COLBERT	4	TENNESSEE VAL AUTH.
ALABAMA	COLBERT	5	TENNESSEE VAL AUTH.
ALABAMA	EC GASTON	1	ALABAMA POWER CO.
ALABAMA	EC GASTON	2	ALABAMA POWER CO.
ALABAMA	EC GASTON	3	ALABAMA POWER CO.
ALABAMA	EC GASTON	4	ALABAMA POWER CO.
FLORIDA	CRIST	6	GULF POWER CO.
FLORIDA	CRIST	7	GULF POWER CO.
GEORGIA	HAMMOND	1	GEORGIA POWER CO.
GEORGIA	HAMMOND	2	GEORGIA POWER CO.
GEORGIA	HAMMOND	3	GEORGIA POWER CO.
GEORGIA	HAMMOND	4	GEORGIA POWER CO.
ILLINOIS	GRAND TOWER	9	CEN ILLINOIS PUB SER.
INDIANA	CULLEY	2	STHERN IND GAS & EL.
INDIANA	CULLEY	3	STHERN IND GAS & EL.
INDIANA	GIBSON	1	PSI ENERGY INC.
INDIANA	GIBSON	2	PSI ENERGY INC.
INDIANA	GIBSON	3	PSI ENERGY INC.
INDIANA	GIBSON	4	PSI ENERGY INC.
INDIANA	RA GALLAGHER	1	PSI ENERGY INC.
INDIANA	RA GALLAGHER	2	PSI ENERGY INC.
INDIANA	RA GALLAGHER	3	PSI ENERGY INC.
INDIANA	RA GALLAGHER	4	PSI ENERGY INC.
INDIANA	FRANK E RATTS	1SG1	HOOSIER ENERGY REC.
INDIANA	FRANK E RATTS	2SG1	HOOSIER ENERGY REC.
INDIANA	WABASH RIVER	1	PSI ENERGY INC.
INDIANA	WABASH RIVER	2	PSI ENERGY INC.
INDIANA	WABASH RIVER	3	PSI ENERGY INC.
INDIANA	WABASH RIVER	5	PSI ENERGY INC.
IOWA	DES MOINES	11	IOWA PWR & LT CO.
IOWA	PRAIRIE CREEK	4	IOWA ELEC LT & PWR.
KANSAS	QUINDARO	2	KS CITY BD PUB UTIL.
KENTUCKY	COLEMAN	C1	BIG RIVERS ELEC CORP.
KENTUCKY	COLEMAN	C2	BIG RIVERS ELEC CORP.
KENTUCKY	COLEMAN	C3	BIG RIVERS ELEC CORP.
KENTUCKY	EW BROWN	1	KENTUCKY UTL CO.
KENTUCKY	GREEN RIVER	5	KENTUCKY UTL CO.
KENTUCKY	HMP&L STATION 2	H1	BIG RIVERS ELEC CORP.
KENTUCKY	HMP&L STATION 2	H2	BIG RIVERS ELEC CORP.
KENTUCKY	HL SPURLOCK	1	EAST KY PWR COOP.
KENTUCKY	JS COOPER	1	EAST KY PWR COOP.
KENTUCKY	JS COOPER	2	EAST KY PWR COOP.
MARYLAND	CHALK POINT	1	POTOMAC ELEC PWR CO.

TABLE 2.—PHASE I DRY BOTTOM-FIRED UNITS—Continued

State	Plant	Unit	Operator
MARYLAND	CHALK POINT	2	POTOMAC ELEC PWR CO.
MINNESOTA	HIGH BRIDGE	6	NORTHERN STATES PWR.
MISSISSIPPI	JACK WATSON	4	MISSISSIPPI PWR CO.
MISSISSIPPI	JACK WATSON	5	MISSISSIPPI PWR CO.
MISSOURI	JAMES RIVER	5	SPRINGFIELD UTL.
OHIO	CONESVILLE	3	COLUMBUS STHERN PWR.
OHIO	EDGEWATER	13	OHIO EDISON CO.
OHIO	MIAMI FORT [1]	5–1	CINCINNATI GAS&ELEC.
OHIO	MIAMI FORT [1]	5–2	CINCINNATI GAS&ELEC.
OHIO	PICWAY	9	COLUMBUS STHERN PWR.
OHIO	RE BURGER	7	OHIO EDISON CO.
OHIO	RE BURGER	8	OHIO EDISON CO.
OHIO	WH SAMMIS	5	OHIO EDISON CO.
OHIO	WH SAMMIS	6	OHIO EDISON CO.
PENNSYLVANIA	ARMSTRONG	1	WEST PENN POWER CO.
PENNSYLVANIA	ARMSTRONG	2	WEST PENN POWER CO.
PENNSYLVANIA	MARTINS CREEK	1	PENNSYLVANIA PWR & LT.
PENNSYLVANIA	MARTINS CREEK	2	PENNSYLVANIA PWR & LT.
PENNSYLVANIA	SHAWVILLE	1	PENNSYLVANIA ELEC CO.
PENNSYLVANIA	SHAWVILLE	2	PENNSYLVANIA ELEC CO.
PENNSYLVANIA	SUNBURY	3	PENNSYLVANIA PWR & LT.
PENNSYLVANIA	SUNBURY	4	PENNSYLVANIA PWR & LT.
TENNESSEE	JOHNSONVILLE	7	TENNESSEE VAL AUTH.
TENNESSEE	JOHNSONVILLE	8	TENNESSEE VAL AUTH.
TENNESSEE	JOHNSONVILLE	9	TENNESSEE VAL AUTH.
TENNESSEE	JOHNSONVILLE	10	TENNESSEE VAL AUTH.
WEST VIRGINIA	HARRISON	1	MONONGAHELA POWER CO.
WEST VIRGINIA	HARRISON	2	MONONGAHELA POWER CO.
WEST VIRGINIA	HARRISON	3	MONONGAHELA POWER CO.
WEST VIRGINIA	MITCHELL	1	OHIO POWER CO.
WEST VIRGINIA	MITCHELL	2	OHIO POWER CO.
WISCONSIN	JP PULLIAM	8	WISCONSIN PUB SER CO.
WISCONSIN	NORTH OAK CREEK [2]	1	WISCONSIN ELEC PWR.
WISCONSIN	NORTH OAK CREEK [2]	2	WISCONSIN ELEC PWR.
WISCONSIN	NORTH OAK CREEK [2]	3	WISCONSIN ELEC PWR.
WISCONSIN	NORTH OAK CREEK [2]	4	WISCONSIN ELEC PWR.
WISCONSIN	SOUTH OAK CREEK [2]	5	WISCONSIN ELEC PWR.
WISCONSIN	SOUTH OAK CREEK [2]	6	WISCONSIN ELEC PWR.

[1] Vertically fired boiler.
[2] Arch-fired boiler.

TABLE 3.—PHASE I CELL BURNER TECHNOLOGY UNITS

State	Plant	Unit	Operator
INDIANA	WARRICK	4	STHERN IND GAS & EL.
MICHIGAN	JH CAMPBELL	2	CONSUMERS POWER CO.
OHIO	AVON LAKE	12	CLEVELAND ELEC ILLUM.
OHIO	CARDINAL	1	CARDINAL OPERATING.
OHIO	CARDINAL	2	CARDINAL OPERATING.
OHIO	EASTLAKE	5	CLEVELAND ELEC ILLUM.
OHIO	GENRL JM GAVIN	1	OHIO POWER CO.
OHIO	GENRL JM GAVIN	2	OHIO POWER CO.
OHIO	MIAMI FORT	7	CINCINNATI GAS & EL.
OHIO	MUSKINGUM RIVER	5	OHIO POWER CO.
OHIO	WH SAMMIS	7	OHIO EDISON CO.
PENNSYLVANIA	HATFIELDS FERRY	1	WEST PENN POWER CO.
PENNSYLVANIA	HATFIELDS FERRY	2	WEST PENN POWER CO.
PENNSYLVANIA	HATFIELDS FERRY	3	WEST PENN POWER CO.
TENNESSEE	CUMBERLAND	1	TENNESSEE VAL AUTH.
TENNESSEE	CUMBERLAND	2	TENNESSEE VAL AUTH.
WEST VIRGINIA	FORT MARTIN	2	MONONGAHELA POWER CO.

Appendix B to Part 76—Procedures and Methods for Estimating Costs of Nitrogen Oxides Controls Applied to Group 1, Phase I Boilers

1. Purpose and Applicability

This technical appendix specifies the procedures, methods, and data that the Administrator will use in establishing ''***the degree of reduction achievable through this retrofit application of the best system of continuous emission reduction, taking into account available technology, costs, and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1) (of section 407 of the Act).'' In developing the allowable NO_X emissions limitations for Group 2 boilers pursuant to subsection (b)(2) of section 407 of the Act, the Administrator will consider only those systems of continuous emission reduction that, when applied on a retrofit basis, are comparable in cost to the average cost in constant dollars of low NO_X burner technology applied to Group 1, Phase I boilers, as determined in section 3 below.

The Administrator will evaluate the capital cost (in dollars per kilowatt electrical ($/kW)), the operating and maintenance costs (in $/year), and the cost-effectiveness (in annualized $/ton NO_X removed) of installed low NO_X burner technology controls over a range of boiler sizes (as measured by the gross electrical capacity of the associated generator in megawatt electrical (MW)) and utilization rates (in percent gross nameplate capacity on an annual basis) to develop estimates of the average capital cost and cost-effectiveness for Group 1, Phase I boilers. The following units will be excluded from these determinations of the average capital cost and cost-effectiveness of NO_X controls set pursuant to subsection (b)(1) of section 407 of the Act: (1) Units employing an alternative technology, or only overfire air as applied to wall-fired boilers or only separated overfire air as applied to tangentially fired boilers, in lieu of low NO_X burner technology for reducing NO_X emissions; (2) units employing no controls, only controls installed before November 15, 1990, or only modifications to boiler operating parameters (e.g., burners out of service or fuel switching) for reducing NO_X emissions; and (3) units that have not achieved the applicable emission limitation.

2. Average Capital Cost for Low NO_X Burner Technology Applied to Group 1, Phase I Boilers

The Administrator will use the procedures, methods, and data specified in this section to estimate the average capital cost (in $/kW) of installed low NO_X burner technology applied to Group 1, Phase I boilers.

2.1 Using cost data submitted pursuant to the reporting requirements in section 4 below, boiler-specific actual or estimated actual capital costs will be determined for each unit in the population specified in section 1 above for assessing the costs of installed low NO_X burner technology. The scope of installed low NO_X burner technology costs will include the following capital costs for retrofit application: (1) For the burner portion—burners or air and coal nozzles, burner throat and waterwall modifications, and windbox modifications; and, where applicable, (2) for the combustion air staging portion—waterwall modifications or panels, windbox modifications, and ductwork, and (3) scope adders or supplemental equipment such as replacement or additional fans, dampers, or ignitors necessary for the proper operation of the low NO_X burner technology. Capital costs associated with boiler restoration or refurbishment such as replacement of air heaters, asbestos abatement, and recasing will not be included in the cost basis for installed low NO_X burner technology. The scope of installed low NO_X burner technology retrofit capital costs will include materials, construction and installation labor, engineering, and overhead costs.

2.2 Using gross nameplate capacity (in MW) for each unit as reported in the National Allowance Data Base (NADB), boiler-specific capital costs will be converted to a $/kW basis.

2.3 Capital cost curves ($/kW versus boiler size in MW) or equations for installed low NO_X burner technology retrofit costs will be developed for: (1) Dry bottom wall fired boilers (excluding units applying cell burner technology) and (2) tangentially fired boilers.

2.4 The capital cost curves or equations defined above will be used to develop weighted average cost estimates of installed low NO_X burner technology applied to Group 1, Phase I boilers. The weighting factor will be the unit gross nameplate generating capacity (in MW) as reported in the NADB.

3. Average Cost-Effectiveness for Low NO_X Burner Technology Applied to Group 1, Phase I Boilers

The Administrator will use the procedures, methods, and data specified in this section to estimate the average cost-effectiveness (in annualized $/ton NO_X removed) of installed low NO_X burner technology applied to Group 1, Phase I boilers.

3.1 Boiler-specific estimates of annual tons NO_X removed by the installed low NO_X burner technology will be determined for each unit in the population specified in section 1 above.

3.1.1 The baseline NO_X emission rate (in lb/mmBtu, annual average basis) will be estimated prior to retrofitting any low NO_X burner technology controls. For units that have installed and certified continuous emission monitoring systems for measuring the NO_X emission rate pursuant to part 75 of this chapter at least 120 days prior to the low NO_X burner technology retrofit, an estimate of the average annual uncontrolled NO_X emission rate will be developed using continuous emission monitoring data for the 120 days immediately before the low NO_X burner technology retrofit or another continuous 120-day or longer period as approved by the Administrator. (In cases where 120 days of certified and quality-assured continuous emission monitoring data are not available prior to the low NO_X burner technology retrofit, the Administrator may use continuous emission monitoring data over a shorter period or short-term test data to estimate the uncontrolled NO_X emission rate.) Continuous emission monitoring data or other emission rate measurements will be extrapolated to one year of unit operation.

3.1.2 The controlled NO_X emission rate (in lb/mmBtu, annual average basis) will be

estimated after installation, shakedown, and/or optimization of all low NO_X burner technology controls have been completed and while the unit is complying with the applicable emission limitation (or alternative emission limitation). Continuous emission monitoring data submitted pursuant to part 75 of this chapter will be used for the 120 days immediately following installation and testing of the final low NO_X burner technology, provided the unit is complying with the applicable emission limitation (or alternative emission limitation), or another continuous 120-day or shorter period as approved by the Administrator. Continuous emission monitoring data will be extrapolated to one year of unit operation.

3.1.3 The NO_X emission reduction (in lb/mmBtu, annual average basis) achieved by the installed low NO_X burner technology will be estimated by subtracting the controlled NO_X emission rate defined in section 3.1.2 from the uncontrolled NO_X emission rate defined in section 3.1.1.

3.1.4 Annual estimates of the NO_X emission reduction achieved by the installed low NO_X burner technology will be converted to annual tons of NO_X removed by multiplying it by the annual heat input (in mmBtu). Unit heat input data submitted pursuant to part 75 of this chapter for calendar year 1994 or for the year immediately following installation and testing of the final low NO_X burner technology, will be used when such data are available prior to October 30, 1995. Such data will be adjusted to an annual basis whenever a nonrecurrent extended outage at the affected unit during the period has taken place.

3.2 The boiler-specific capital costs of installed low NO_X burner technology developed in section 2.1 will be annualized by multiplying them by a constant dollar capital recovery factor based on a 20-year economic life (e.g., 0.115).

3.3 Using cost data submitted pursuant to the reporting requirements in section 4, boiler-specific annual operating and maintenance cost increases (or decreases) will be determined for each unit in the population specified in section 1 above. The scope of the operating and maintenance costs (or savings) attributable to the installed low NO_X burner technology may, but not necessarily will, include incremental increases (or decreases) in: maintenance labor and materials costs, operating labor costs, operating fuel costs, and secondary air fan electricity costs.

3.4 The average annual cost-effectiveness of installed low NO_X burner technology applied to Group 1, Phase I boilers will be estimated as follows: (1) The annualized capital costs defined in section 3.2 and the annual operating and maintenance cost increases (or decreases) defined in section 3.3 will be summed for all units in the population specified in section 1; and (2) these annualized costs will be divided by the sum of the NO_X emission reductions (in tons/year) achieved by the units in the population specified in section 1.

4. Reporting Requirements

4.1 The following information is to be submitted by each designated representative of a Phase I affected unit subject to the reporting requirements of § 76.14(c):

4.1.1 Schedule and dates for baseline testing, installation, and performance testing of low NO_X burner technology.

4.1.2 Estimates of the annual average baseline NO_X emission rate, as specified in section 3.1.1, and the annual average controlled NO_X emission rate, as specified in section 3.1.2, including the supporting continuous emission monitoring or other test data.

4.1.3 Copies of pre-retrofit and post-retrofit performance test reports.

4.1.4 Detailed estimates of the capital costs based on actual contract bids for each component of the installed low NO_X burner technology including the items listed in section 2.1. Indicate number of bids solicited. Provide a copy of the actual agreement for the installed technology.

4.1.5 Detailed estimates of the capital costs of system replacements or upgrades such as coal pipe changes, fan replacements/upgrades, or mill replacements/upgrades undertaken as part of the low NO_X burner technology retrofit project.

4.1.6 Detailed breakdown of the actual costs of the completed low NO_X burner technology retrofit project where low NO_X burner technology costs (section 4.1.4) are disaggregated, if feasible, from system replacement or upgrade costs (section 4.1.5).

4.1.7 Description of the probable causes for significant differences between actual and estimated low NO_X burner technology retrofit project costs.

4.1.8 Detailed breakdown of the burner and, if applicable, combustion air staging system annual operating and maintenance costs for the items listed in section 3.3 before and after the installation, shakedown, and/or optimization of the installed low NO_X burner technology. Include estimates and a description of the probable causes of the incremental annual operating and maintenance costs (or savings) attributable to the installed low NO_X burner technology.

4.2 All capital cost estimates are to be broken down into materials costs, construction and installation labor costs, and engineering and overhead costs. All operating and maintenance costs are to be broken down into maintenance materials costs, maintenance labor costs, operating labor costs, and fan electricity costs. All capital and operating costs are to be reported in dollars with the year of expenditure or estimate specified for each component.

[FR Doc. 95–8742 Filed 4–12–95; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7132

[AZ–930–1430–01; AR 06449]

Revocation of Public Land Order No. 1076; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order which withdrew 240 acres of public land for use by the National Park Service in connection with the administration and maintenance of the Wupatki National Monument. The land was added to the Wupatki National Monument by Public Law 87–136, and the revocation is needed to clarify the records and give the National Park Service total jurisdiction. The land has been and will remain closed to surface entry and mining. This is a record clearing action only.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

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. Public Land Order No. 1076, which withdrew the following described public land, is hereby revoked in its entirety:

Gila and Salt River Meridian

T. 25 N., R. 8 E.,
Sec. 3, W½, that part lying west of the west right-of-way line of U.S. Highway 89 (consisting of lot 4, SW¼NW¼, NW¼SW¼, part of the westerly portions of lot 3, SE¼NW¼, and E½SW¼)

The area described contains 240 acres in Coconino County.

2. The land is located within the Wupatki National Monument and will remain closed to surface entry and mining.

Dated: April 4, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–9098 Filed 4–12–95; 8:45 am]
BILLING CODE 4310–32–P

43 CFR Public Land Order 7133

[OR–943–1430–01; GP5–038; OR–50706(WA)]

Withdrawal of National Forest System Lands for Five Seed Orchards; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 496.22 acres of National Forest System lands in the Colville and Kaniksu National Forests from mining for a period of 20 years for the Department of Agriculture, Forest Service, to protect the Brown

Mountain Seed Orchard, Pal Moore Meadows Seed Orchard, Teepee Seed Orchard, Cedar Creek Seed Orchard, and Flowery Trail Seed Orchard. The lands have been and will remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7171.

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. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the investment in five Forest Service seed orchards:

Willamette Meridian

Colville National Forest

Brown Mountain Seed Orchard

T. 35 N., R. 33 E.,
Sec. 16, NW¼NW¼ and N½SW¼NW¼;
Sec. 17, E½E½NE¼NE¼ and E½NE¼SE¼NE¼.

Pal Moore Meadows Seed Orchard

T. 33 N., R. 41 E.,
Sec. 1, W½E½ and W½ of lot 4 and W½SW¼NW¼;
Sec. 2, S½S½ of lot 1, S½SE¼ of lot 2, and S½NE¼.

Teepee Seed Orchard

T. 37 N., R. 42 E.,
Sec. 34, S½SE¼NW¼NE¼, E½SW¼NE¼, W½SE¼NE¼, N½NW¼NE¼SE¼, and N½NE¼NW¼SE¼.

Cedar Creek Seed Orchard

T. 40 N., R. 42 E.,
Sec. 10, SE¼NE¼SW¼, W½E½SW¼, W½SW¼, and NE¼SE¼SW¼.

Kaniksu National Forest

Flowery Trail Seed Orchard

T. 32 N., R. 43 E.,
Sec. 5, S½NE¼SW¼, E½SW¼SW¼, and SE¼SW¼.

The areas described aggregate 496.22 acres in Ferry, Stevens, and Pend Oreille Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: April 4, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–9099 Filed 4–12–95; 8:45 am]

BILLING CODE 4310–33–P

43 CFR Public Land Order 7137

[CO–930–1920–00–4357; COC–52206]

Transfer of Public Land for the Maybell Disposal Site; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order permanently transfers 140.49 acres of public land to the Department of Energy in accordance with the terms of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7916 (1988)), as amended.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7916 (1988)), as amended, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby permanently transferred to the Department of Energy, and as a result of this transfer, the land is no longer subject to the operation of the general land laws, including the mining and the mineral leasing laws, for the Maybell Disposal Site:

Sixth Principal Meridian

T. 7 N., R. 94 W.,
Sec. 19, lots 10, 12, 14, and 16, W½E½SW¼NE¼, W½E½NE¼SW¼NE¼, W½SW¼NE¼, SE¼NW¼, W½W½NE¼NW¼SE¼, and W½NW¼SE¼.

The area described contains 140.49 acres of public land in Moffat County.

2. The transfer of the above-described land to the Department of Energy vests in that Department full management, jurisdiction, responsibility, and liability for such land and all activities conducted therein, except as provided in paragraph 3.

3. The Secretary of the Interior shall retain the authority to administer any existing claims, rights, and interests in this land established before the effective date of the transfer.

Dated: April 7, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–9048 Filed 4–12–95; 8:45 am]

BILLING CODE 4310–JB–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 92–28; FCC 95–71]

Mobile-Satellite Service at 1610–1626.5 and 2483.5–2500 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Second Report and Order denies five pioneer's preference requests submitted by Constellation Communications, Inc. (Constellation), Ellipsat Corporation (Ellipsat), Loral Qualcomm Satellite Services, Inc. (LQSS), Motorola Satellite Communications, Inc. (Motorola), and TRW Inc. (TRW). These parties requested a pioneer's preference for their proposals with regard to non-geostationary (low-Earth orbit, or LEO) mobile-satellite service (MSS) systems. In denying the requests, the Commission has determined that none of these LEO MSS proponents pioneered an innovative new service or technology.

EFFECTIVE DATE: May 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ray LaForge, Office of Engineering and Technology, telephone (202) 739–0598.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in ET Docket No. 92–28, adopted February 24, 1995 and released March 30, 1995. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Public Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this Memorandum Opinion and Order also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20036, (202) 857–3800.

Summary of Second Report and Order

1. In the Notice of Proposed Rule Making and Tentative Decision, ET Docket No. 92–28, 7 FCC Rcd 6414, 57 FR 43434 (September 21, 1992), in this proceeding, we decided not to award a pioneer's preference to any of the five applicants proposing to establish LEO MSS systems. We were unable to discern a significant innovation in any of the five proposals that would warrant a preference grant. In each case, the technology relied upon to show innovation appeared to have already been used on existing satellite systems. Further, we found that none of the five applicants demonstrated, at the time of filing of their applications for a pioneer's preference, the technical feasibility of their respective systems. As noted, the Second Report and Order affirmed the Tentative Decision with respect to each of the five applicants. The Commission reason for not awarding preferences to these applicants were as follows.

2. First, Constellation requests a pioneer's preference for its proposed LEO MSS system, stating that its proposal is innovative because it would use: (1) Micro-satellites that are designed as an outgrowth of other satellites that Constellation had pioneered for the U.S. military; (2) dynamic receivers; and (3) a new launch vehicle that enables satellites to be launched into orbit in a more cost-efficient and reliable manner. Constellation proposes a nationwide satellite service that would, *inter alia*, serve areas and people who do not currently have access to any telecommunications service.

3. In the Tentative Decision, we concluded that Constellation's proposal merely combined existing technologies and did not constitute innovative achievements. We also noted that Constellation had neither demonstrated that its micro-satellite and dynamic receiver are unique, nor provided a technical showing to demonstrate that its design surpassed the state-of-art in satellite communications technology. Thus, we concluded that Constellation did not warrant a preference. No commenting party addressed the tentative denial of Constellation's request. Accordingly, in the Second R&O, we find no basis in the record to indicate that an award of a pioneer's preference is warranted and therefore, deny Constellation's pioneer's preference request.

4. Second, Ellipsat asserts that it was the first applicant for a LEO system in these bands. Specifically, Ellipsat proposes to operate a nationwide mobile voice and position determination service via small low-Earth orbit satellites. Ellipsat requests a pioneer's preference for its alleged pioneering proposal for a voice and position determination LEO MSS system that: (1) Would be the first commercial use of elliptical orbits that optimize coverage over the U.S.; (2) would provide efficient spectrum use and facilitate sharing and multiple entry by other licensees by using code division multiple access (CDMA) spread spectrum technology; and (3) would utilize ''transparent interconnections'' between ground and satellite stations resulting in a seamless communications network which will provide low-cost, high-quality voice service. In addition, Ellipsat asserts that it was the first to apply for a LEO MSS system in the 1.6 and 2.4 GHz bands.

5. In the Tentative Decision, we concluded that Ellipsat failed to meet its burden of demonstrating that its proposal is new and innovative. We found that the techniques Ellipsat proposed to use already exist in the satellite community and thus do not demonstrate an innovative contribution. We stated that the elliptical orbits relied upon by Ellipsat to demonstrate innovation have been used by U.S. military satellites and the Russian Molnyia satellite system. Further, we found that Ellipsat had not demonstrated that it had pioneered the use of ''transparent interconnections'' between ground and satellite components or CDMA technology. Also, we found that Ellipsat did not have a significant lead over the other preference applicants in concept design nor had it performed relevant verifiable experiments. Thus, we stated that it would be inappropriate to single out Ellipsat for a preference based on the timing of its submissions.

6. In comments to the Tentative Decision, Ellipsat supports our decision not to award any pioneer's preferences in this proceeding. Ellipsat states that if any preferences are awarded, it warrants a grant since it was the first to propose a LEO satellite system above 1 GHz. Ellipsat did not submit additional information related to its own proposed system, and no other party commented on the tentative denial of Ellipsat's request. Accordingly, in the Second R&O, we find no basis in the record to indicate that an award of a pioneer's preference is warranted and, therefore, deny Ellipsat's pioneer's preference request.

7. Third, LQSS requests a pioneer's preference for its proposed enhanced satellite system that it states can provide data and voice transmission to hand-held portable transceivers and also provide position determination services. LQSS argues that its proposed system reflects substantial development of new system architecture and provides for multiple users and interoperability with the existing public telephone switched network. Further, it claims that its satellite system design using eight satellites per circular orbital plane, spot beams, smooth call hand-off, and a pilot channel for synchronization with gateway stations is innovative. Further, LQSS claims that is high system capacity accommodates thousands of voice and data users simultaneously. LQSS proposes to use CDMA spread spectrum technology that its Qualcomm subsidiary developed and patented. LQSS submits that all of these developments constitute innovations that satisfy the criteria for a pioneer's preference.

8. In the Tentative Decision, we found that LQSS's proposal offers no contribution to communications technology that is significantly innovative. No party commented on the tentative denial of LQSS's request. Accordingly, in the Second R&O, we find no basis in the record to indicate that an award of a pioneer's preference is warranted and, therefore, deny LQSS's pioneer's preference request.

9. Fourth, Motorola requests a pioneer's preference for its proposed LEO MSS system that it contends uses an innovative cellular design and spot beam technology. Motorola states that in the case of conventional cellular telephones, a static set of cells serves a large number of mobile units, whereas in its proposed system, cells would, in effect, move rapidly over the Earth while mobile units remain relatively stationary. Motorola claims that the unique elements of its system are its spectral efficiency and innovative design that includes the use of intersatellite links, a combination of frequency division multiple access and time division multiple access techniques, and bi-directional capabilities.

10. In the Tentative Decision, we concluded that Motorola's approach does not offer any significant improvements or innovations in service or technology. We found that Motorola's use of inter-satellite links and its concept of moving cells and spot beams have been utilized in earlier satellite systems and are thus not innovative. As we stated in the Tentative Decision, the U.S. military established inter-satellite link (crosslink) feasibility in 1976. Further, the technique of moving cells and spot beams has been utilized by the Department of Defense on its satellites

to improve coverage and provide frequency reuse. We also disagree that Motorola was the first to conceive and design a LEO satellite system above 1 GHz. From the record, it appears that all of the pioneer's preference applicants were performing research and developing their proposals in approximately the same time frame. Motorola's comments do not persuade us that the above findings were incorrect.

11. Further, we find that even if Motorola's system were innovative, it still would not meet our pioneer's preference criteria because Motorola did not demonstrate the technical feasibility of its proposed system prior to the Notice of Proposed Rule Making and Tentative Decision in this proceeding. Rather, the information submitted by Motorola at that time related to major spacecraft and ground segment systems and did not relate to the subsystem details necessary to establish technical feasibility.

12. Motorola also argues that we erred when we permitted a group of experts from other federal agencies to advise us on the merits of the requests without opening the results of this review to public comment. Motorola contends that this constituted peer review as contemplated by us when we established the pioneer's preference rules in Docket 90–217 (see Report and Order GEN Docket 90–217, 6 FCC Rcd 3488, 56 FR 24011 (May 28, 1991)) and that we should have released the results of the experts' evaluations to the public for comment. However, we disagree that the review performed by representatives of other government agencies constituted peer review. These representatives are employees from other federal government agencies who have expertise in satellite engineering matters. They were detailed by their agencies to the Commission and performed duties as Commission staff. The Commission brought these employees onboard using normal FCC personnel practices. Further, we follow this course of action routinely when we need additional resources or expertise in various matters. Here, the purpose of the work detail was to provide additional analysis by government experts of the pioneer's preference requests, but not to perform independent peer review as discussed in the Report and Order in Docket 90–217, (see Report and Order GEN Docket 90–217, 6 FCC Rcd 3488, 56 FR 24011 (May 28, 1991)). Therein, we contemplated soliciting assistance from either government or non-government experts who would not be functioning as Commission staff. Thus, there was nothing unfair in the Commission's use of employees on detail from other Government agencies to assist in the review of the various proposals. For all of these reasons, the Second R&O concludes that Motorola is not entitled to a pioneer's preference and that the procedure used to reach that decision was appropriate.

13. Finally, TRW requests a pioneer's preference for developing a LEO MSS system that would use higher orbits to provide position determination, voice communications, and data services to mobile users. It claims that its proposed service is a significant and innovative new use because the provision of co-primary mobile voice and data services is not currently authorized in the 1.6 and 2.4 GHz bands. TRW states that its system combines the advantages of LEO and geostationary orbit (GSO) systems by providing low communications time delay compared to the delay associated with GSO systems, while using higher elevation angles than other LEO proponents to minimize obstruction by trees, buildings, and terrain. Finally, TRW states that its proposed system will provide inexpensive service to underserved segments of society, including emergency service providers, farmers, ranchers, truckers, and automobile, sea, and air travelers.

14. In the Tentative Decision, we concluded that although TRW's LEO system would take advantage of higher orbits, its proposal was not sufficiently innovative to warrant a preference. We found that TRW merely had balanced the relative advantages and disadvantages of LEO versus GSO systems.

15. In comments to the Tentative Decision, TRW states that we pursued the most prudent and reasonable course in declining to award any of the applicants a preference. No other party commented on the proposed denial of TRW's request. Accordingly, in the Second R&O, we find no basis in the record to indicate that an award of a pioneer's preference is warranted and, therefore, deny TRW's pioneer's preference request.

16. Accordingly, it is ordered, That the pioneer's preference requests filed by Constellation Communications, Inc., Ellipsat Corporation, Loral Qualcomm Satellite Services, Inc., Motorola Satellite Communications, Inc., and TRW Inc. are denied. This action is taken pursuant to sections 4(i), 303 (c), (f), (g), and (r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303 (c), (f), (g), and (r).

List of Subjects in 47 CFR Part 2

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–9092 Filed 4–12–95; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 60, No. 71
Thursday, April 13, 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

Food and Consumer Service

7 CFR Part 250

RIN 0584–AB99

Waiver Authority Under the State Processing Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Food Distribution Program regulations by giving the Food and Consumer Service authority to waive provisions contained in the Food Distribution Program regulations at 7 CFR part 250. This authority would be used to conduct, in one or more areas of the United States, demonstration projects designed to test program changes to determine whether the changes would improve the State processing of donated foods.

DATES: To be assured of consideration, comments must be postmarked on or before May 15, 1995.

ADDRESSES: Comments should be sent to Phil Cohen, Chief, Policy and Program Development Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 502, Alexandria, Virginia 22302. Comments in response to this rule may be inspected at 3101 Park Center Drive, room 506, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5 p.m.), Mondays through Fridays.

FOR FURTHER INFORMATION CONTACT: David Seger, Policy and Program Development Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 502, Alexandria, Virginia 22302; or telephone (703) 305–2660.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act

This proposed rule reflects no new information collection requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). The OMB control number assigned to the existing recordkeeping and reporting requirements was approved by OMB for Part 250 under control number 0584–0007. The current burden hours will not change as a result of this proposed rule.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 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 and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments. For disputes involving procurement by distributing and recipient agencies, this includes any administrative appeal procedures to the extent required by 7 CFR Parts 3015 or 3016.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service (FCS) has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The cost of compliance to State processors of donated foods is expected to be reduced by the changes proposed in this rule.

Background

Section 250.30 of the current Food Distribution Program regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts.

Discussion of Proposed Rule

The State processing regulations contain provisions specifically intended to ensure that processors account for all donated foods in the manufacture of end products and pass on the full value of the donated food as savings to eligible recipient agencies. In the late 1970's and the early 1980's, audits conducted by the Department of Agriculture's Office of Inspector General disclosed significant abuses in the processing program. As a result of these audits, certain requirements were incorporated to ensure that processors properly account for the donated food, such as the certified public accountant audit report requirement at §§ 250.18(b) and 250.30(c)(4)(xi), the requirement for Agricultural Marketing Service (AMS) acceptance service grading of meat and poultry products at § 250.30(g) and (h), and the performance supply and surety bond requirement at § 250.30(c)(4)(viii)(B).

In recent years, it has been pointed out that some of the provisions contained in the State processing regulations are overly restrictive. As a result of the restrictions, some commercial processors have opted to no longer participate in the program. The Food and Consumer Service (FCS) is aware that new companies are not willing to enter into agreements with the distributing agencies, thus eroding competition. Processors have also commented that compliance with some of the provisions in the regulations has increased their cost of producing end products. These increased costs are in

turn being passed on to the recipient agencies.

In addition, FCS' review of the certified public accountant audit reports submitted by multi-State processors participating in the processing program has disclosed that the majority of processors participating in the program are operating in compliance with the regulations and their processing agreements. Also, representatives from AMS have indicated that processors are properly accounting for meat and poultry.

FCS is interested in attracting more companies to participate in the processing program in order to increase competition. Increased competition should lower costs, improve quality, and provide a greater variety of end products for recipient agencies. Reducing unnecessarily burdensome requirements should further reduce the cost to recipient agencies. FCS has identified certain provisions in the regulations that could be modified or eliminated. The Department is interested in conducting demonstration projects in these areas to determine if changing the rules will result in increased competition and lower costs in the program. In order to conduct such projects, it will be necessary for FCS to waive certain requirements contained in the regulations.

This rule proposes to permit FCS to waive any of the requirements of the Food Distribution Program regulations at Part 250 for the purposes of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

List of Subjects in 7 CFR Part 250

Agricultural commodities, Food assistance programs, Food processing.

For reasons set forth in the preamble, 7 CFR Part 250 is proposed to be amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

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

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. In § 250.30, a new paragraph (t) is added to read as follows:

§ 250.30 State processing of donated foods.

* * * * *

(t) *Waiver authority.* The Food and Consumer Service may waive any of the requirements contained in this part for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

Dated: April 6, 1995.

William E. Ludwig,

Administrator.

[FR Doc. 95–9085 Filed 4–12–95; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–403]

RIN 1904–AA67

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Three Cleaning Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Advance notice of proposed rulemaking; extending comment period for dishwashers.

SUMMARY: Today's notice is to extend the comment period for dishwashers for persons to comment on the Department's Advance Notice of Proposed Rulemaking concerning energy conservation standards for three cleaning products.

DATES: Written comments in response to this document must be received by September 30, 1995.

ADDRESSES: Written comments are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, ''Energy Efficiency Standards for Consumer Products,'' (Docket No. EE–RM–94–403), Room 1J–018, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7574.

Copies of the public comments received may be read at the Department's Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Anthony T. Balducci, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8459

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Department published an Advance Notice of Proposed Rulemaking for Energy Conservation Standards for Three Cleaning Products. (59 FR 56423, November 14, 1994). The Department published a notice extending the comment period for dishwashers until April 17, 1995. (60 FR 5880, January 31, 1995).

In its letter of March 24, 1995, to the Department, the Association of Home Appliance Manufacturers (AHAM), on behalf of its members, and the American Council for Energy Efficient Economy, the Natural Resources Defense Council, California Energy Commission, Pacific Gas and Electric, Seattle Water Department and American Water Works Association, and Southern California Edison, requested an extension of the deadline for written comments for dishwashers from April 17, 1995, to September 30, 1995. AHAM stated it and other interested persons need additional time for further data collection and analysis to respond adequately to the issues raised in the advance notice.

In addition, the above parties are engaged in discussions to develop a joint recommendation to the Department regarding standard levels for dishwashers. AHAM and the other organizations need the additional time to collect engineering, energy, and cost data. These data will be used in developing dishwasher standard levels to be recommended to the Department for adoption as part of this rulemaking. The substance and possible results of these discussions may significantly affect the nature of the comments on the advance notice. The extension of time for the comment period should not impair or slow the Department's ability to promulgate standards.

The Department encourages these discussions between AHAM, its members and non-industry persons. Based on these representations, the Department is extending the written comment period to September 30, 1995.

Issued in Washington, DC, April 7, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–9170 Filed 4–12–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Chapter I

Review of Customs Regulations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Review of regulations.

SUMMARY: Pursuant to the President directing each agency to conduct a page-by-page review of all of each agency's regulations now in force to eliminate or revise those that are outdated or otherwise in need of reform, this document requests that the public assist Customs to identify regulations that could be modified or eliminated.

DATES: Responses should be submitted on or before April 25, 1995.

ADDRESSES: Responses (preferably in triplicate) shall be addressed to the Chief, Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Regulations Branch, 202–482–6930.

SUPPLEMENTARY INFORMATION:

Background

In a memorandum for Heads of Departments and Agencies signed by the President on March 4, 1995, on the subject of the Regulatory Reinvention Initiative, President Clinton directed each agency, as one of four steps which are an integral part of our ongoing Regulatory Reform Initiative, to conduct a page-by-page review of its regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform. The President requests a report of regulations planned to be eliminated or modified by June 1, 1995. The review should include careful consideration of at least the following issues:

(1) Is this regulation obsolete?

(2) Could its intended goal be achieved in more efficient, less intrusive ways?

(3) Are there better private sector alternatives, such as market mechanisms that can better achieve the public good envisioned by the regulation?

(4) Could private business, setting its own standards and being subject to public accountability, do the job as well?

(5) Could the States or local governments do the job, making Federal regulation unnecessary?

Customs Request for Public Input

As most of Customs customers and stakeholders are aware, Customs is in the midst of its own reorganization and business process improvement. Since the passage of the Customs Modernization Act (the popular name for Title VI of the North American Free Trade Agreement Implementation Act), which allows Customs to streamline and modernize its operations, Customs has been holding public meetings to determine how its business processes should be revised and what revision of its regulations are necessary to best accomplish its mission and serve the international trade community efficiently and effectively. Obsolete regulations are soon to be eliminated as Customs is targeting close to 90 per cent of its regulations for modification. As an extension of the process of getting public input regarding Customs business process improvement and implementation of the Customs Modernization Act, and consistent with the President's Regulatory Reinvention Initiative, Customs is asking the public to assist the agency in identifying any sections of the Customs Regulations that are outdated or in need of reform.

Please bear in mind in responding to this request for input that Customs is not seeking comments in this document regarding specific draft proposals for regulatory changes to implement the Customs Modernization Act or concept papers concerning Customs processes that are being changed pursuant to the Customs Modernization Act that have been publicly discussed and/or released. Persons who have commented on specific Customs Modernization draft proposals or concept papers need not further respond to this request for suggested regulatory changes. Public meetings will continue to be held and draft proposals will continue to be posted on the Customs Electronic Bulletin Board soliciting public input on specific Customs Modernization draft proposals and concept papers. What Customs is looking for in this exercise are particular sections of the Customs Regulations that are believed to be outdated or too burdensome, and that should be eliminated or modified, regardless of how Customs ultimately revises its regulatory procedures pursuant to the Customs Modernization Act.

Customs has prepared the attached outline for use by members of the public who wish to offer suggestions on those Customs regulations which they believe can be eliminated or modified. Recommendations for modification or repeal should be as specific as possible. The information you submit is crucial to any decision to amend or repeal regulations and is necessary to be provided due to the time constraints involved in the program. The more detailed the information Customs receives, the easier it will be for Customs to evaluate the suggestion.

Responses should be submitted no later than April 25, 1995. Comments should be sent directly to: Chief, Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Outline for Public Input

(1) What is the subject of the regulations you are recommending be modified or repealed?

(2) Which sections in particular are you recommending be modified or repealed?

(3) What is the exact nature of your suggestion as how the regulations can be amended or repealed? If you are recommending an amendment, please specify the precise nature of the change.

(4) As far as you are aware, is Customs already in the process of developing an amendment to these regulations based on authority granted to the agency by the Customs Modernization Act?

(5) What is the expected benefit in your suggested modification or repeal? Specify savings in time and/or money and whether to Customs, the public, or both. Quantify, if possible.

Dated: April 11, 1995.

George J. Weise,

Commissioner of Customs.

[FR Doc. 95–9214 Filed 4–12–95; 8:45 am]

BILLING CODE 4820–02–P

Bureau of Alcohol, Tobacco and Firearms

27 CFR Chapter I

[Notice No. 809; 95R–007T]

Review of Existing Regulations

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of request for public comment.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is soliciting public comment as to which,

if any, of the regulations and programs which ATF administers may be improved or eliminated. This request is being made to assist ATF in implementing the President's February 21, 1995, regulatory reform initiative.

DATES: Comments for inclusion in the first report to the President must be received on or before April 28, 1995. However, this review is an ongoing process and comments received after the due date will be considered.

ADDRESSES: Send written comments to: Deputy Associate Director, Regulatory Enforcement Programs; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221, Washington, DC 20091–0221; Attn: Notice No. 809.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, President Clinton announced a regulatory reform initiative. This initiative included instructions to each agency to:

(a) Conduct a page-by-page review of all regulations to identify those which are obsolete or burdensome and those whose goals could be better achieved through the private sector, self-regulation or state and local governments. This review will include cleanup of old rules, rules that focus on describing organizations and procedures and rules that simply repeat statutory language. Second, the review will resolve any conflicts or overlaps which are found with rules of other agencies. Finally, the review will focus on ways of clarifying or streamlining remaining regulations.

(b) Review the statutes underlying agency regulations and programs and make recommendations for any necessary changes.

(c) Review agency policy and administrative decisions from this new perspective.

In cases where the agency's review discloses statutes, regulations or programs which should be revised or eliminated, the agency will, as soon as possible, suggest changes to the statutes or propose administrative changes to its regulations and programs.

The President also called on agencies to form partnerships with people affected by regulations to insure that reform is guided by reality. ATF plans to send representatives to scheduled industry events in the next few months to advance these ideas.

To further involve the public and regulated industries in this effort, ATF is also soliciting comments through this notice. The Bureau requests that comments be as specific as possible. If the person submitting a comment can cite a specific section of law or regulations, that information will help ATF to organize and analyze the responses. If the cite is not available, at least name the commodity (for instance, wine, cigarettes, ammunition, fireworks) and the activity (producing, labeling, importing) which the comment addresses. We encourage persons who wish to comment to start the process with outline suggestions within the 15-day comment period, with the understanding that more detailed proposals may be submitted later. Most changes which come about as a result of this initiative will be issued as proposed rules, so further opportunity to comment on specific changes will be afforded to interested persons.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the person commenting considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission (FAX) to (202) 927–8602, provided the comments: (1) are legible, (2) are 81/2″ x 11″ in size, (3) contain a written signature, and (4) are five pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of five pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Drafting Information. The author of this document is Marjorie D. Ruhf, Wine, Beer & Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority: This notice is issued under the authority in 5 U.S.C. 301, 18 U.S.C. 847 and 926, 22 U.S.C. 2778, 26 U.S.C. 7805, and 27 U.S.C. 205 and 215.

Approved: April 10, 1995.

Richard J. Watkins,

Acting Director.

[FR Doc. 95–9184 Filed 4–12–95; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 99–95]

Exemption of System of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS) proposes to amend its Privacy Act regulations. The USMS proposes to exempt a new Privacy Act system of records entitled, ''Joint Automated Bookings Stations (JABS), USM–014'' from subsections (c) (3) and (4), (d), (e) (1), (2), and (3), (e)(5), (e)(8) and (g) of the Privacy Act (5 U.S.C. 552a). Information in this system of records relates to matters of law enforcement, and the exemptions are necessary to avoid interference with law enforcement responsibilities and to protect the privacy of third parties. The reasons for the exemptions are set forth in the text below.

DATES: Submit any comments by May 15, 1995.

ADDRESSES: Address all comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC (Room 850, WCTR Bldg.).

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, (202) 616–0718.

SUPPLEMENTARY INFORMATION: In the notice section of today's Federal Register, the USMS provides a description of this system of records.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have ''a significant economic impact on a substantial number of small entities.''

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16, as set forth below.

Dated: March 30, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203 (a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.101 by redesignating paragraph (s) as paragraph (u), and adding new paragraphs (s) and (t) as set forth below.

§ 16.101 Exemption of U.S. Marshals Service (USMS) Systems—Limited Access, as indicated.

* * * * *

(s) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (3), (e)(5) and (e)(8) and (g):

Joint Automated Booking Stations, Justice/USM–014

(t) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Where compliance would not interfere with or adversely affect the law enforcement process, the USMS may waive the exemptions, either partially or totally. Exemption from the particular subsections are justified for the following reasons:

(1) From subsections (c)(3) and (d) to the extent that access to records in this system of records may impede or interfere with law enforcement efforts, result in the disclosure of information that would constitute an unwarranted invasion of the personal privacy of collateral record subjects or other third parties, and/or jeopardize the health and/or safety of third parties.

(2) Where access to certain records may be appropriate, exemption from the amendment provisions of subsection (d)(2) is necessary to the extent that the necessary and appropriate justification, together with proof of record inaccuracy, is not provided, and/or to the extent that numerous, frivolous requests to amend could impose an impossible administrative burden by requiring agencies to continuously review booking and arrest data, much of which is collected from the arrestee during the arrest.

(3) From subsection (e)(1) to the extent that is necessary to retain all information in order not to impede, compromise, or interfere with law enforcement efforts, e.g., where the significance of the information may not be readily determined and/or where such information may provide leads or assistance to Federal and other law enforcement agencies in discharging their law enforcement responsibilities.

(4) From subsection (e)(2) because, in some instances,the application of this provision would present a serious impediment to law enforcement since it may be necessary to obtain and verify information from a variety of sources other than the record subject to ensure safekeeping, security, and effective law enforcement. For example, it may be necessary that medical and psychiatric personnel provide information regarding the subject's behavior, physical health, or mental stability, etc. to ensure proper care while in custody, or it may be necessary to obtain information from a case agent or the court to ensure proper disposition of the subject individual.

(5) From subsection (e)(3) because the requirement that agencies inform each individual whom it asks to supply information of such information as is required by subsection (e)(3) may, in some cases, impede the information gathering process or otherwise interfere with or compromise law enforcement efforts, e.g., the subject may deliberately withhold information, or give erroneous information.

(6) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability to collect information for law enforcement purposes and may prevent the eventual development of the necessary criminal intelligence or otherwise impede effective law enforcement.

(7) From subsection (e)(8) to the extent that such notice may impede, interfere with, or otherwise compromise law enforcement and security efforts.

(8) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

* * * * *

[FR Doc. 95–9104 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–95–007]

Special Local Regulation: Newport Offshore Grand Prix, Narragansett Bay, Newport, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a temporary Special Local Regulation for the Newport Offshore Grand Prix regatta. The regatta will be held on Sunday, May 21, 1995, in the waters of Narragansett Bay, Newport, RI. This regulation is needed to protect the boating public from the hazards associated with high speed powerboat racing in confined waters.

DATES: Comments must be received on or before May 4, 1995.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 428 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (j.g.) B.M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (OGD01–95–007), the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″ x 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard

plans no public hearing. Persons may request a public hearing by writing to Commander (b), First Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

The shortened comment period for this regulation was caused by a delay in receiving necessary information from the event sponsor. The Coast Guard considers this shortened comment period to be adequate because considerable promotional efforts undertaken by the sponsor have effectively publicized the event throughout the local area. The shortened comment period will allow sufficient time for the public to make substantive comments on the proposed rule.

Drafting Information. The drafters of this notice are Lieutenant (j.g.) B.M. Algeo, project Manager, First Coast Guard District, and Lieutenant Commander S.R. Watkins, Project Counsel, First Coast Guard District Legal Office.

Background and Purpose

On September 20, 1994, the sponsor, Boston International Sports Promotions, Inc., submitted a request to hold a powerboat race in Narragansett Bay, Newport, RI. The Coast Guard is considering establishing a temporary regulation in Narragansett Bay for this event known as the ''Newport Offshore Grand Prix.'' The proposed regulation would establish two regulated areas in Narragansett Bay and would provide specific guidance to control vessel movement during the race.

This event will include up to 70 powerboats competing on a rectangular course at speeds approaching 125 m.p.h. Due to the inherent dangers of a race of this type, vessel traffic will be temporarily restricted to provide for the safety of the spectators and participants.

The sponsor will provide a minimum of 25 picket boats and a minimum of 4 medical boats manned by emergency medical technicians. All sponsor resources will be identified with regatta signs or flags, in accordance with American Power Boat Association, to augment the Coast Guard patrol that will be assigned to the event. The race course will be well marked and patrolled, but due to the speed and proximity of the participating vessels, it is necessary to establish a Special Local Regulation to control spectator and commercial vessel movement within this confined area.

Discussion of Proposed Amendments

The Coast Guard proposes to establish a Special Local Regulation on specified waters of Narragansett Bay, Newport, Rhode Island. The Regulated Race Course Area will be closed to all traffic from 10:30 a.m. to 4:30 p.m. on May 21, 1995. The Regulated Milling Area will be closed to all traffic from 12:00 p.m. to 3:30 p.m. on May 21, 1995. However, in emergency situations, provisions will be made to establish safe escort by Coast Guard designated vessels for mariners requiring transit through any regulated area. This regulation is needed to protect spectators and participants from the hazards that accompany a high speed powerboat race in a confined area.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of the DOT, is unnecessary. This conclusion is based on the limited duration of the race, the extensive advisories that have been and will be made to the affected maritime community, and the fact that the event is taking place in an area where the only commercial interests affected are a few marinas and a small fishing fleet.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard is considering the environmental impacts of both the proposed Special Regulations and the Newport Offshore Grand Prix. It is anticipated that an Environmental Assessment (EA) will be written concerning the potential environmental-impacts resulting from this high speed power boat race for which the Coast Guard has received an ''Application for Marine Event Permit.'' Comments in this regard should be forwarded to the address listed under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, § 100.35–T01007, is added to read as follows:

§ 100.35–T01007 Newport Offshore Grand Prix, Newport, RI.

(a) *Regulated Race Course Area.* This regulated area provides a 200 yard safety zone around the race course coordinates and includes all waters within the following points:

Latitude	*Longitude*
41°28.15″ N	071° 24.18″ W
41°26.27″ N	071°24.18″ W
41°23.18″ N	071°26.48″ W
41°22.42″ N	071°22.48″ W
41°27.42″ N	071°21.54″ W

(b) *Regulated Milling Area.* This regulated area provides adequate milling spaces for powerboat participants prior to and at the

conclusion of the race. It will include all waters within the following points: from Fort Adams, to Mitchell Rock GB 3 (LLNR 17865), to Rose Island LBB 12 (LLNR 17855), to Dumplings LBB 11 (LLNR 17810).

(c) *Special Local Regulations.*

(1) Commander, U.S. Coast Guard Group Woods Hole reserves the right to delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels desiring to transit through the West Passage may do so without Coast Guard approval as long as the vessel remains outside the regulated areas at specified times. No vessel will be allowed to transit through any portions of the regulated Race Course Area during the actual race. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated areas with a Coast Guard designated escort. Vessels encountering emergencies which require transit through the regulated areas should contact the Coast Guard patrol commander on VHF Channel 16.

(4) Spectator craft are authorized to watch the race from any area as long as it remains outside of the designated regulated areas. Spectator craft are required to be at their desired location no later than 12:30 p.m.

(5) All persons and vessels shall comply with the instructions of the Commander, U.S. Coast Guard Group Woods Hole or the designated on-scene patrol commander. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately, then proceed as directed. Members of the Coast Guard Auxiliary will also be present to inform vessel operators of this regulation and other applicable laws.

(d) *Effective period*. This section will be effective from 10:30 a.m. to 4:30 p.m. on Sunday, May 21, 1995, unless otherwise specified in the Coast Guard Local Notice to Mariners and a notice in the Federal Register.

Dated: April 3, 1995.

R. R. Clark,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 95–9038 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–5179–5]

Notice of Proposed Rule; Outer Continental Shelf Consistency Update for Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act (''the Act''), the Clean Air Act Amendments of 1990, the applicable requirements for certain areas for Air Pollution from OCS Activities. The portion of the OCS air regulation that is being updated pertains to the requirements for OCS sources for which the State of Florida will be the designated COA. This action proposes to incorporate the requirements contained in ''State of Florida Requirements Applicable to OCS Sources'' (January 11, 1995). Proposed changes to the existing requirements are discussed below.

DATES: Comments on the proposed update must be received on or before May 15, 1995.

ADDRESSES: Comments must be mailed (in duplicate if possible) to EPA Air Docket, Attn: Docket No. A–93–31, U.S. Environmental Protection Agency, Region IV, Air, Pesticides, and Toxics Management Division, 345 Courtland Street, NE., Atlanta, GA 30365. (Attn: R. Scott Davis).

Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–31. This docket is available for public inspection and copying Monday through Friday during regular business hours at the following locations:

EPA Air Docket, Attn: Docket No. A–93–31, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, room M–1500.

EPA Air Docket, Attn: Docket No. A–93–31, Environmental Protection Agency, Region IV Library, 345 Courtland Street, NE., Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: R. Scott Davis, Air, Pesticides, and Toxics Management Division, U.S. EPA Region IV, 345 Courtland Street, NE., Atlanta, GA 30365. Telephone (404) 347–3555 ext. 4144.

SUPPLEMENTARY INFORMATION: On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to comply with federal and state ambient air quality standards and the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the states, except those located in the Gulf of Mexico west of 87.5 degrees longitude, approximately west of the Florida/Alabama state border. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur: (1) At least annually; (2) upon receipt of a Notice of Intent (NOI) under § 55.4 of the OCS rule; and (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This Notice of Proposed Rulemaking is being proposed in response to the receipt of a NOI, submitted by Chevron U.S.A., Inc., Conoco Inc., and Murphy Exploration & Production Company on February 10, 1995, and represents the second update of part 55 for the State of Florida. The NOI includes general company information, a description of the proposed facility, estimated potential air emissions, emissions points, fuels, air pollution controls, and any proposed operating limitations. Public comments received in writing within 30 days of publication of this notice will be considered by EPA before promulgation of the final updated rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the state rules for inclusion in part 55 to ensure that they comply with the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources (40 CFR 55.1). EPA has also evaluated the rules to ensure they are not arbitrary or capricious (40 CFR 55.12 (e)). In addition, EPA has excluded administrative or procedural rules.[2]

In today's notice EPA proposes to incorporate the rules applicable to sources for which the State of Florida will be the COA. These rules include revisions to existing rules that already apply to OCS sources and are a result of the recodification and renumbering of Florida air regulations (Adopted 11/30/94) and the adoption of amendments to other existing air regulations:

Florida Administrative Code—Department of Environmental Protection. The following sections of Chapter 62:

4.001 Scope of Part I (Adopted 8/31/88)
4.020 Definitions (Adopted 7/11/93)
4.021 Transferability of Definitions (Adopted 8/31/88)
4.030 General Prohibitions (Adopted 8/31/88)
4.040 Exemptions (Adopted 8/31/88)
4.050 Procedure to Obtain Permit; Application, except (4)(b) through (4)(l) and 4(r) (Adopted 11/23/94)
4.070 Standards for Issuing or Denying Permits; Issuance; Denial (Adopted 3/28/91)
4.080 Modification of Permit Conditions (Adopted 3/19/90)
4.090 Renewals (Adopted 7/11/93)
4.100 Suspension and Revocation (Adopted 8/31/88)
4.110 Financial Responsibility (Adopted 8/31/88)
4.120 Transfer of Permits (Adopted 3/19/90)
4.130 Plant Operation—Problems (Adopted 8/31/88)
4.160 Permit Conditions, except (16) and (17) (Adopted 7/11/93)
4.200 Scope of Part II (Adopted 8/31/88)
4.210 Construction Permits (Adopted 8/31/88)
4.220 Operation Permits for New Sources (Adopted 8/31/88)
4.510 Scope of Part III (Adopted 8/31/88)
4.520 Definitions (Adopted 7/11/90)
4.530 Procedures (Adopted 3/19/90)
4.540 General Conditions for all General Permits (Adopted 8/31/88)
210.100 Purpose and Scope (Adopted 11/23/94)
210.200 Definitions (Adopted 11/23/94)
210.300 Permits Required (Adopted 11/23/94)
210.360 Administrative Permit Corrections (Adopted 11/23/94)
210.370 Reports (Adopted 11/23/94)
210.400 Emission Estimates (Adopted 11/23/94)
210.500 Air Quality Models (Adopted 11/23/94)
210.550 Stack Height Policy (Adopted 11/23/94)
210.600 Enhanced Monitoring (Adopted 11/23/94)
210.650 Circumvention (Adopted 9/25/92)
210.700 Excess Emissions (Adopted 11/23/94)
210.900 Forms (Adopted 11/23/94)
210.980 Severability (Adopted 9/25/92)
212.100 Purpose and Scope (Adopted 2/2/93)
212.200 Definitions (Adopted 2/2/93)
212.300 Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements (Adopted 9/25/92)
212.400 Prevention of Significant Deterioration (Adopted 2/2/93)
212.410 Best Available Control Technology (BACT) (Adopted 9/25/92)
212.500 New Source Review for Nonattainment Areas (Adopted 2/2/93)
212.510 Lowest Achievable Emission Rate (LAER) (Adopted 9/25/92)
212.600 Source Specific New Source Review Requirements (Adopted 9/25/92)
212.700 Source Reclassification (Adopted 9/25/92)
256.100 Declaration and Intent (Adopted 11/30/94)
256.200 Definitions (Adopted 11/30/94)
256.300 Prohibitions (Adopted 11/30/94)
256.450 Open Burning Allowed (Adopted 6/27/91)
256.600 Industrial, Commercial, Municipal and Research Open Burning (Adopted 8/26/87)
256.700 Open Burning Allowed (Adopted 11/30/94)
272.100 Purpose and Scope (Adopted 11/23/94)
272.200 Definitions (Adopted 11/23/94)
272.300 Ambient Air Quality Standards (Adopted 11/23/94)
272.500 Maximum Allowable Increases (Prevention of Significant Deterioration) (Adopted 11/23/94)
272.750 DER Ambient Test Methods (Adopted 9/25/92)
273.200 Definitions (Adopted 9/25/92)
273.300 Air Pollution Episodes (Adopted 9/25/92)
273.400 Air Alert (Adopted 9/25/92)
273.500 Air Warning (Adopted 9/25/92)
273.600 Air Emergency (Adopted 9/25/92)
296.100 Purpose and Scope (Adopted 11/23/94)
296.200 Definitions (Adopted 11/23/94)
296.310 General Particulate Emission Limiting Standards (Adopted 11/23/94)
296.320 General Pollutant Emission Limiting Standards, except (2) (Adopted 2/2/93)
296.330 Best Available Control Technology (BACT) (Adopted 11/23/94)
296.400 Specific Emission Limiting and Performance Standards (Adopted 11/23/94)
296.500 Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Emitting Facilities (Adopted 11/23/94)
296.570 Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities (Adopted 11/23/94)
296.600 Reasonably Available Control Technology (RACT)—Lead (Adopted 8/8/94)
296.601 Lead Processing Operations in General (Adopted 8/8/94)
296.700 Reasonably Available Control Technology (RACT)—Particulate Matter, except (2)(f) (Adopted 11/23/94)
296.800 Standards of Performance for New Stationary Sources (NSPS) (Adopted 11/23/94)
296.810 National Emission Standards for Hazardous Air Pollutants (NESHAP)—Part 61 (Adopted 11/23/94)
296.820 National Emission Standards for Hazardous Air Pollutants (NESHAP)—Part 63 (Adopted 11/23/94)
297.100 Purpose and Scope (Adopted 11/23/94)
297.200 Definitions (Adopted 11/23/94)
297.310 General Test Requirements (Adopted 11/23/94)
297.330 Applicable Test Procedures (Adopted 11/23/94)
297.340 Frequency of Compliance Tests (Adopted 11/23/94)
297.345 Stack Sampling Facilities Provided by the Owner of an Air Pollution Point Source (Adopted 11/23/94)
297.350 Determination of Process Variables (Adopted 11/23/94)
297.400 EPA Methods Adopted by Reference (Adopted 11/23/94)
297.401 EPA Test Procedures (Adopted 11/23/94)
297.411 DER Method 1 (Adopted 11/23/94)

[2] Upon delegation the onshore area will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

297.412 DER Method 2 (Adopted 12/2/92)
297.413 DER Method 3 (Adopted 12/2/92)
297.414 DER Method 4 (Adopted 12/2/92)
297.415 DER Method 5 (Adopted 11/23/94)
297.416 DER Method 5A (Adopted 12/2/92)
297.417 DER Method 6 (Adopted 11/23/94)
297.418 DER Method 7 (Adopted 12/2/92)
297.419 DER Method 8 (Adopted 12/2/92)
297.420 DER Method 9 (Adopted 11/23/94)
297.421 DER Method 10 (Adopted 12/2/92)
297.422 DER Method 11 (Adopted 12/2/92)
297.423 DER Method 12—Determination of Inorganic Lead Emissions from Stationary Sources (Adopted 11/23/94)
297.424 DER Method 13 (Adopted 12/2/92)
297.440 Supplementary Test Procedures (Adopted 11/23/94)
297.450 EPA VOC Capture Efficiency Test Procedures (Adopted 11/23/94)
297.520 EPA Performance Specifications (Adopted 11/23/94)
297.570 Test Report (Adopted 11/23/94)
297.620 Exceptions and Approval of Alternate Procedures and Requirements (Adopted 11/23/94)

The following rule is proposed to be deleted from the State of Florida requirements applicable to OCS sources. It will be superseded by the provisions of another rule.

297.500 Continuous Emission Monitoring Requirements (Repealed 11/23/94)

Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. This exemption continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a ''significant impact on a substantial number of small entities.'' Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final OCS rulemaking dated September 4, 1992, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 35012 *et seq.*, and has assigned OMB control number 2060–0249. This consistency update does not add any further requirements.

List of Subjects in 40 CFR Part 55

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

Dated: March 16, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

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

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

2. Section 55.14 is proposed to be amended by revising paragraph (e)(6)(i)(A) to read as follows:

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

* * * * *

(e) * * *

(6) * * *

(i) * * *

(A) State of Florida Requirements Applicable to OCS Sources, January 11, 1995.

* * * * *

3. Appendix A to part 55 is proposed to be amended by revising paragraph (a)(1) under the heading Florida to read as follows:

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

* * * * *

Florida

(a) * * *

(1) The following requirements are contained in State of Florida Requirements Applicable to OCS Sources, January 11, 1995:

Florida Administrative Code—Department of Environmental Protection. The following sections of Chapter 62:

4.001 Scope of Part I (Adopted 8/31/88)
4.020 Definitions (Adopted 7/11/93)
4.021 Transferability of Definitions (Adopted 8/31/88)
4.030 General Prohibitions (Adopted 8/31/88)
4.040 Exemptions (Adopted 8/31/88)
4.050 Procedure to Obtain Permit; Application, except (4)(b) through (4)(l) and 4(r) (Adopted 11/23/94)
4.070 Standards for Issuing or Denying Permits; Issuance; Denial (Adopted 3/28/91)
4.080 Modification of Permit Conditions (Adopted 3/19/90)
4.090 Renewals (Adopted 7/11/93)
4.100 Suspension and Revocation (Adopted 8/31/88)
4.110 Financial Responsibility (Adopted 8/31/88)
4.120 Transfer of Permits (Adopted 3/19/90)
4.130 Plant Operation—Problems (Adopted 8/31/88)
4.160 Permit Conditions, except (16) and (17) (Adopted 7/11/93)
4.200 Scope of Part II (Adopted 8/31/88)
4.210 Construction Permits (Adopted 8/31/88)
4.220 Operation Permits for New Sources (Adopted 8/31/88)
4.510 Scope of Part III (Adopted 8/31/88)
4.520 Definitions (Adopted 7/11/90)
4.530 Procedures (Adopted 3/19/90)
4.540 General Conditions for all General Permits (Adopted 8/31/88)
210.100 Purpose and Scope (Adopted 11/23/94)
210.200 Definitions (Adopted 11/23/94)
210.300 Permits Required (Adopted 11/23/94)
210.360 Administrative Permit Corrections (Adopted 11/23/94)
210.370 Reports (Adopted 11/23/94)
210.400 Emission Estimates (Adopted 11/23/94)
210.500 Air Quality Models (Adopted 11/23/94)
210.550 Stack Height Policy (Adopted 11/23/94)
210.600 Enhanced Monitoring (Adopted 11/23/94)
210.650 Circumvention (Adopted 9/25/92)
210.700 Excess Emissions (Adopted 11/23/94)
210.900 Forms (Adopted 11/23/94)
210.980 Severability (Adopted 9/25/92)
212.100 Purpose and Scope (Adopted 2/2/93)
212.200 Definitions (Adopted 2/2/93)
212.300 Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements (Adopted 9/25/92)
212.400 Prevention of Significant Deterioration (Adopted 2/2/93)
212.410 Best Available Control Technology (BACT) (Adopted 9/25/92)
212.500 New Source Review for Nonattainment Areas (Adopted 2/2/93)

212.510 Lowest Achievable Emission Rate (LAER) (Adopted 9/25/92)
212.600 Source Specific New Source Review Requirements (Adopted 9/25/92)
212.700 Source Reclassification (Adopted 9/25/92)
256.100 Declaration and Intent (Adopted 11/30/94)
256.200 Definitions (Adopted 11/30/94)
256.300 Prohibitions (Adopted 11/30/94)
256.450 Open Burning Allowed (Adopted 6/27/91)
256.600 Industrial, Commercial, Municipal and Research Open Burning (Adopted 8/26/87)
256.700 Open Burning Allowed (Adopted 11/30/94)
272.100 Purpose and Scope (Adopted 11/23/94)
272.200 Definitions (Adopted 11/23/94)
272.300 Ambient Air Quality Standards (Adopted 11/23/94)
272.500 Maximum Allowable Increases (Prevention of Significant Deterioration) (Adopted 11/23/94)
272.750 DER Ambient Test Methods (Adopted 9/25/92)
273.200 Definitions (Adopted 9/25/92)
273.300 Air Pollution Episodes (Adopted 9/25/92)
273.400 Air Alert (Adopted 9/25/92)
273.500 Air Warning (Adopted 9/25/92)
273.600 Air Emergency (Adopted 9/25/92)
296.100 Purpose and Scope (Adopted 11/23/94)
296.200 Definitions (Adopted 11/23/94)
296.310 General Particulate Emission Limiting Standards (Adopted 11/23/94)
296.320 General Pollutant Emission Limiting Standards, except (2) (Adopted 2/2/93)
296.330 Best Available Control Technology (BACT) (Adopted 11/23/94)
296.400 Specific Emission Limiting and Performance Standards (Adopted 11/23/94)
296.500 Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Emitting Facilities (Adopted 11/23/94)
296.570 Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities (Adopted 11/23/94)
296.600 Reasonably Available Control Technology (RACT)—Lead (Adopted 8/8/94)
296.601 Lead Processing Operations in General (Adopted 8/8/94)
296.700 Reasonably Available Control Technology (RACT)—Particulate Matter, except (2)(f) (Adopted 11/23/94)
296.800 Standards of Performance for New Stationary Sources (NSPS) (Adopted 11/23/94)
296.810 National Emission Standards for Hazardous Air Pollutants (NESHAP)—Part 61 (Adopted 11/23/94)
296.820 National Emission Standards for Hazardous Air Pollutants (NESHAP)—Part 63 (Adopted 11/23/94)
297.100 Purpose and Scope (Adopted 11/23/94)
297.200 Definitions (Adopted 11/23/94)
297.310 General Test Requirements (Adopted 11/23/94)
297.330 Applicable Test Procedures (Adopted 11/23/94)
297.340 Frequency of Compliance Tests (Adopted 11/23/94)
297.345 Stack Sampling Facilities Provided by the Owner of an Air Pollution Point Source (Adopted 11/23/94)
297.350 Determination of Process Variables (Adopted 11/23/94)
297.400 EPA Methods Adopted by Reference (Adopted 11/23/94)
297.401 EPA Test Procedures (Adopted 11/23/94)
297.411 DER Method 1 (Adopted 11/23/94)
297.412 DER Method 2 (Adopted 12/2/92)
297.413 DER Method 3 (Adopted 12/2/92)
297.414 DER Method 4 (Adopted 12/2/92)
297.415 DER Method 5 (Adopted 11/23/94)
297.416 DER Method 5A (Adopted 12/2/92)
297.417 DER Method 6 (Adopted 11/23/94)
297.418 DER Method 7 (Adopted 12/2/92)
297.419 DER Method 8 (Adopted 12/2/92)
297.420 DER Method 9 (Adopted 11/23/94)
297.421 DER Method 10 (Adopted 12/2/92)
297.422 DER Method 11 (Adopted 12/2/92)
297.423 DER Method 12—Determination of Inorganic Lead Emissions from Stationary Sources (Adopted 11/23/94)
297.424 DER Method 13 (Adopted 12/2/92)
297.440 Supplementary Test Procedures (Adopted 11/23/94)
297.450 EPA VOC Capture Efficiency Test Procedures (Adopted 11/23/94)
297.520 EPA Performance Specifications (Adopted 11/23/94)
297.570 Test Report (Adopted 11/23/94)
297.620 Exceptions and Approval of Alternate Procedures and Requirements (Adopted 11/23/94)

* * * * *

[FR Doc. 95–9060 Filed 4–12–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 70

[OH001; FRL–5189–8]

Clean Air Act Proposed Approval of Operating Permit Program; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes full approval of the operating permit program submitted by the State of Ohio for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by May 15, 1995.

ADDRESSES: Comments should be addressed to Steven Pak at the Region 5 address. Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following location: EPA Region 5, Air and Radiation Division (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven Pak, EPA Region 5, Air and Radiation Division (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1497.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act (''the Act'') as amended by the 1990 Clean Air Act Amendments, EPA promulgated rules on July 21, 1992 (57 FR 32250), which define the minimum elements of an approvable State operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permit programs. These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the State's submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials. Because Ohio provided EPA with additional materials that materially changed the State's Title V program submittal on September 12, 1994, November 21, 1994, December 9, 1994, and January 5, 1995, EPA has extended the review period and will work expeditiously to promulgate a final decision on the State's program.

EPA reviews State operating permit programs pursuant to section 502 of the Act and 40 CFR part 70, which together outline criteria for approval or disapproval. When a program substantially, but not fully, meets the requirements of 40 CFR part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permit program for that State.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA has concluded that the operating permit program submitted by Ohio meets the requirements of title V and part 70 and is proposing to grant full approval to the program. For more detailed information on the analysis of the State's submission, please refer to the technical support document (TSD) included in the docket at the address noted above.

1. Support Materials

Donald Schregardus, Director of the Ohio Environmental Protection Agency and the Governor of Ohio's designee, submitted Ohio's title V operating permit program to EPA on July 22, 1994. The State supplemented the submittal on September 12, 1994, November 21, 1994, December 9, 1994, and January 5, 1995. The submittal contains all required elements of 40 CFR 70.4, including a description of Ohio's operating permit program, relevant permitting program documentation, and the Attorney General's legal opinion that the laws of the State provide adequate authority to carry out all aspects of the program.

2. Regulations and Program Implementation

EPA has determined that the Ohio operating permit program, including State statutes (Ohio Revised Code (ORC) 3704.035, 3704.036, 3704.05, 3704.06, 3704.99, 3745.11, and 3745.112) and regulations (Ohio Administrative Code (OAC) 3745–77 and 3745–78), meets the requirements of 40 CFR 70.2 and 70.3 for applicability; 40 CFR 70.5 for criteria which define insignificant activities [1] and for complete application forms; 40 CFR 70.4, 70.5, and 70.6 for permit content (including operational flexibility); 40 CFR 70.7 and 70.8 for permit processing requirements (including public participation and minor permit modifications); and 40 CFR 70.11 for requirements for enforcement authority. The TSD contains a detailed analysis of Ohio's program and describes the manner in which the State's program meets all the operating permit program requirements of 40 CFR Part 70.

3. Permit Fee Demonstration

EPA has determined that the Ohio operating permit program meets the fee requirements of 40 CFR 70.9. Ohio is adopting the presumptive minimum approach to fees outlined in 40 CFR 70.9(b)(2).

4. Provisions Implementing the Requirements of Other Titles of the Act

a. *Authority for Section 112 Implementation.* In its program submittal, Ohio demonstrates adequate legal authority to implement and enforce all section 112 requirements through the Title V permit. This legal authority is contained in Ohio's enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that permits must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow the State to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Ohio is able to carry out all section 112 activities with respect to part 70 sources. For further rationale on this interpretation, please refer to the TSD.

b. *Implementation of 112(g).* EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability. The notice postpones the effective date of 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Ohio must have a federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Federal regulations.

EPA is aware that Ohio lacks a program designed specifically to implement section 112(g). However, Ohio does have a preconstruction review program (OAC 3745–31) that can serve as an adequate implementation vehicle during the transition period because it would allow Ohio to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit.

EPA is approving Ohio's preconstruction permitting program (OAC 3745–31) under the authority of Title V and Part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a State rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of State air programs to implement section 112(g), Title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and Title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the 112(g) rule to provide adequate time for the State to adopt regulations consistent with the Federal requirements.

c. *Program for delegation of Section 112 Standards as Promulgated.* The requirements for program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a State program for delegation of section 112 standards, as promulgated by EPA, as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under 40 CFR part 70. Therefore, EPA is also proposing to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Ohio's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated.

[1] Ohio includes research and development (R&D) units, as defined at Ohio Revised Code (ORC) 3704.01(P), as an insignificant activity. However, this definition of all R&D units as insignificant activities is limited in effect because an R&D unit is not exempt from the State's permit application requirements if the unit's emissions exceed one ton per year of total hazardous air pollutants or has a potential to emit more than five tons per year or twenty percent of an applicable major source threshold under the Act for any regulated air pollutant other than a HAP (OAC 3745–77–02(G)). In addition, Ohio's general provisions governing insignificant activities and emissions levels apply to R&D units. Ohio regulations provide that insignificant activities and emissions levels that are exempted because of size or production rate must be listed in the permit application and do not affect the determination of whether a stationary source is a major source (OAC 3745–77–02(G)). In addition, an applicant may not omit information, including the emissions levels for insignificant activities, that is necessary to determine the applicability of any applicable requirement, to impose any applicable requirement, or to evaluate any fee amount (OAC 3745–77–03(A)).

Because Ohio has historically accepted delegation of section 112 standards through automatic delegation, EPA proposes to approve the delegation of section 112 standards and requirements through automatic delegation. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Ohio and EPA. This approval applies to both existing and future standards but is limited to sources covered by the part 70 operating permit program.

d. *Limiting HAP Emissions Through a FESOP Program*. On October 25, 1994, EPA conditionally approved OAC 3745–35–07 for establishing a mechanism for creating federally enforceable limits on a sources potential to emit (59 FR 53586). This rulemaking, which became effective on December 27, 1994, authorizes the State to issue federally enforceable State operating permits addressing both criteria pollutants and HAPs.

e. *Title IV*. Ohio's program contains adequate authority to issue permits which reflect the requirements of Title IV and its implementing regulations. Further, Ohio provided a commitment on January 5, 1995, to incorporate by reference the Federal Acid Rain Program regulations (40 CFR part 72) by October 1, 1995.

B. Potential Interim Approval Issue

Ohio's definition of ''title I modification'' does not include changes reviewed under a minor source preconstruction review program. On August 29, 1994, EPA solicited public comment on whether the phrase ''modification under any provision of title I of the Act'' in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act (59 FR 44573). EPA is currently reviewing the public comments on this issue and is in the process of determining the proper definition of that phrase. EPA does not believe that it is appropriate to determine whether this is a program deficiency for Ohio until EPA completes its rulemaking on this issue. For a more complete discussion of this issue see the November 9, 1994, approval of the operating permit program for the State of Washington (59 FR 55813).

C. Proposed Action

EPA is proposing to grant full approval of the operating permit program submitted by Ohio on July 22, 1994, and amended on September 12, 1994, November 21, 1994, December 9, 1994, and January 5, 1995. Among other things, Ohio has demonstrated that the program meets the minimum elements of an approvable State operating permit program as specified in 40 CFR part 70.

The scope of the Ohio program that EPA proposes to approve in this notice would apply to all part 70 sources (as defined in the approved program) within the State of Ohio.

As outlined in II.A.4.c., EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

EPA is requesting comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed full approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) To serve as the record in case of judicial review. EPA will consider any comments received by May 15, 1995.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 29, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–9059 Filed 4–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 76

[AD-FRL–5186–9]

RIN 2060–AD45

Acid Rain Program; Nitrogen Oxides Emission Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Response to Court remand.

SUMMARY: The EPA is today issuing a proposed rule in response to a remand by a U.S. Court of Appeals. The rule reinstates emission limitations for nitrogen oxides (NO_X) from coal-fired utility units under section 407 of the Clean Air Act (''the Act''). The emission limitations for NO_X, along with emission limitations for sulfur dioxide from utility plants, will reduce acidic deposition and prevent serious adverse effects on natural resources, ecosystems, materials, visibility, and public health.

On March 22, 1994, EPA promulgated a rule establishing NO_X emission limitations. The rule established emission limits generally achievable using ''low NO_X burner technology'' and established a procedure for obtaining an alternative emission limitation if a unit could not achieve the prescribed limit using such technology. On November 29, 1994, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the definition of ''low NO_X burner technology'' in the March 22, 1994 rule exceeded EPA's statutory authority. The Court vacated the rule and remanded it to the Agency for further proceedings. On March 28, 1995, EPA and environmental and utility-industry parties signed an agreement addressing the March 22, 1994 regulations, including issues raised by the Court's remand.

Based on the Court's decision and a review of the record, the Agency is now revising the March 22, 1994 regulations. The low-NO_X-burner-technology definition is revised to comply with the Court's decision. Other provisions concerning the compliance date for Phase I NO_X emission limitations, AELs, and plans for averaging NO_X emissions of two or more units are also revised. Because the rule revisions are consistent with the Court's decision and the Agency does not expect to receive adverse comments, the revisions are

also being issued as a direct final rule in the Final Rules section of this Federal Register. The revisions are also consistent with the March 28, 1995 agreement.

DATES: Comments on the regulations proposed by this action must be received on or before May 15, 1995.

ADDRESSES: *Comments.* All written comments must be identified with the appropriate docket number (Docket No. A–92–15) and must be submitted in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington DC 20460.

Docket. Docket No. A–92–15, containing information considered during development of the promulgated standards and requirements in this proposal, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section at the above address. A reasonable fee may be charged for copying. Additional data and information pertaining to the rule may be found in Docket No. A–90–39.

FOR FURTHER INFORMATION CONTACT: Peter Tsirigotis, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (for technical matters) at (202) 233–9620; or Dwight C. Alpern (same address) (for legal matters) at (202) 233–9151.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the Final Rules section of this Federal Register will automatically go into effect on the date specified in that rule. If significant, adverse comments are timely received on any portion of the direct final rule, that portion will be withdrawn and all public comment received on that portion will be addressed in a subsequent final rule based on the relevant portions of this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule revisions, see the information provided in the direct final rule in the Final Rules section of this Federal Register.

List of Subjects in 40 CFR Part 76

Environmental protection, Acid rain program, Air pollution control, Nitrogen oxides, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: March 31, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–8735 Filed 4–12–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 90, 97 and 148

[CGD 87–069]

RIN 2115–AD02

Carriage of Bulk Solid Materials Requiring Special Handling

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; termination.

SUMMARY: The Coast Guard is terminating rulemaking intended to amend the Coast Guard's regulations for the carriage of certain bulk solid materials. The proposed rules would have added to the list of materials permitted under the regulations materials carried under Coast Guard Special Permits issued pursuant to this regulation (Special Permits) and other materials contained in the International Maritime Organization (IMO) Code of Safe Practice for Solid Bulk Cargoes (IMO Bulk Solids Code, or ''BC Code''), including coal. The Coast Guard wishes to focus its available resources to actions of the highest priority; therefore, the Coast Guard is terminating further rulemaking under docket number 87–069.

DATES: This proposed rulemaking is terminated April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Frank K. Thompson, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267–1217.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 28, 1989, an Advance Notice of Proposed Rulemaking (ANPRM) was published in the Federal Register (54 FR 18308). The Coast Guard received 16 letters commenting on the ANPRM. No public hearing was requested, and none was held. The comments received in response to the ANPRM were considered in the development of the Notice of Proposed Rulemaking (NPRM).

On April 12, 1994, a Notice of Proposed Rulemaking was published in the Federal Register (59 FR 17418). The public comment period on this NPRM had been scheduled to close on July 11, 1994; however, because of several requests from interested members of the public, the Coast Guard published a supplemental NPRM on August 5, 1994 (59 FR 40004) reopening the public comment period for an additional 30 days ending September 6, 1994.

In response to the NPRM, the Coast Guard received 55 letters containing more than 200 comments. Commenters included shippers, carriers, terminal operators, marine surveyors, trade associations, private individuals, and the Canadian Coast Guard. No public hearing was requested, and none was held.

After a comprehensive review of its active regulatory program, the Coast Guard has determined that this rulemaking is of relatively low priority at this time. The Coast Guard wishes to focus its available resources on actions of the highest priority and has determined that the best course of action is to terminate further rulemaking under docket number 87–069. In keeping with the President's direction to Federal agencies to review their regulations, the Coast Guard will reexamine this issue at some point in the future to determine if further rulemaking is necessary. Based on these considerations, the Coast Guard is terminating further rulemaking under docket number 87–069.

Dated: April 5, 1995.

Joseph J. Angelo,

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

[FR Doc. 95–9037 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–123, DA 95–694]

Radio Broadcast Services; Television Program Practices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: The Commission granted a joint request by the Network Affiliated Stations Alliance for an extension of time for filing reply comments in this proceeding. The Commission determined that the extension of time was warranted in light of the time necessary to compile information critical to resolution of the numerous and complex issues raised in this

proceeding. This action will facilitate the development of a full and complete record on these issues.

DATES: Reply comments are now due on May 12, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION:

Adopted: March 31, 1995.
Released: March 31, 1995.

By the Chief, Mass Media Bureau:

1. On October 25, 1994, the Commission released a Notice of Proposed Rule Making in MM Docket No. 94–123, 59 FR 55402 (November 7, 1994) (NPRM), in this proceeding, soliciting comment on the legal and policy justifications, in light of current economic and technological conditions, for the Prime Time Access Rule, § 73.658(k) of the Commission's Rules, and to consider the continued need for the rule in its current form. By an Order adopted on December 7, 1994, the deadline for filing comments was extended to March 7, 1995, and the deadline for filing reply comments was extended to April 6, 1995. See Order Granting Extension of Time for Filing Comments and Reply Comments in MM Docket No. 94–123, 59 FR 64382 (December 14, 1994).

2. On March 24, 1995, a motion for extension of time for filing reply comments in this proceeding was filed by the Network Affiliated Stations Alliance, which states that it is authorized to represent the Association of Independent Television Stations, Inc., Viacom, Inc. King World Productions, Inc., Capital Cities/ABC, Inc., CBS Inc., the National Broadcasting Company, Inc., the Motion Picture Association of America, Inc., and the Media Access Project (''Joint Petitioners'') in this request. The motion requests that the deadline for filing reply comments be extended from April 6, 1995, to May 12, 1995.

3. The Joint Petitioners contend that the comments filed in this proceeding include detailed economic studies on all sides of the issues. These parties, who take differing views on the continued need for the Prime Time Access Rule, assert that certain data underlying those studies is now becoming available and is expected to be accessible for public review at the Commission shortly. In order to respond to the comprehensive economic analysis called for in the NPRM and to properly evaluate the comments and economic studies submitted thus far, the Joint Petitioners suggest that absent an extension of time, any meaningful review of this data prior to the deadline for filing reply comments would be virtually impossible. These parties maintain that the grant of this request for a modest extension will serve the public interest by permitting a more thorough public and industry review of the economic data, which would, in turn, facilitate the submission of reply comments that will prove more useful in generating the comprehensive record that the Commission seeks in this proceeding.

4. As set forth in § 1.46 of the Commission's rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. However, under the circumstances described above, we believe that the requested extension of time to file reply comments is warranted. This extension of time should facilitate the development of a full and complete record on the issues raised in the NPRM and, thus, it appears reasonable to provide the commenting parties additional time to analyze and address these issues.

5. Accordingly, *it is ordered* That the above-mentioned motion for an extension of time is granted, and that the time for filing reply comments in this proceeding is extended to May 12, 1995.

6. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, and 1.45 of the Commission's rules.

List of Subjects in 47 CFR part 73:

Television broadcasting.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95–9093 Filed 4–12–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAR Case 94–764]

RIN 9000–AG36

Federal Acquisition Regulation; Contract Financing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule—notice of follow-up public meeting.

SUMMARY: This notice of a follow-up public meeting is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is considering amending Federal Acquisition Regulation (FAR) parts 32 and 52 as a result of changes to 10 U.S.C. 2307 and 41 U.S.C. 255 by Sections 2001 and 2051 of the Act. A public meeting was held concerning this proposed rule on April 3, 1995. Due to the short time frame between publication of the proposed rule in the Federal Register (60 FR 14156, March 15, 1995) and the initial public meeting, we are giving the public another opportunity to submit prepared statements for presentation and consideration.

DATES: *Comment Due Date:* Comments on the proposed rule should still be submitted not later than May 15, 1995, to be considered in the formulation of a final rule.

Public Meeting: A follow-up public meeting will be held on April 28, 1995, at 1 p.m.

Oral/Written Statements: Views to be presented at the public meeting should be sent, in writing, to the FAR Secretariat, at the address given below, not later than April 26, 1995.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405, Telephone: (202) 501–4755.

The public meeting will be held at: Office of Personnel Management, 1900 E Street, NW, Room 1350, Washington, DC 20415–0001.

Please cite FAR case 94–764 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT:

Mr. John Galbraith, Contract Financing/Payment Team Leader, at (703) 697–6710 in reference to this FAR case. For general information, contact the FAR Secreatariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–764.

Dated: April 7, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy, General Services Administration.

[FR Doc. 95–9083 Filed 4–12–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[I.D. 032295A]

Summer Flounder Fishery; Public Hearings; Supplemental Environmental Impact Statement (SEIS)

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

ACTION: Notice of intent to prepare an SEIS; scoping meetings; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) intends to prepare an SEIS for proposed Amendment 7 to the Summer Flounder Fishery Management Plan (FMP). NMFS informs the public herewith of the opportunity to participate in the further development of Amendment 7 to the FMP. All persons affected by, or otherwise interested in, the proposed amendment are invited to participate in determining the scope of significant issues to be considered in the SEIS by submitting written comments. The scoping process also will identify issues that are not significant and will eliminate them from detailed study.

DATES: Written comments must be received by April 14, 1995.

The hearings are scheduled as follows:

1. April 10, 1995, 7 p.m., Manteo, NC;
2. April 10, 1995, 7 p.m., Galilee, RI;
3. April 10, 1995, 7:30 p.m., Ronkonkoma, NY; and
4. April 12, 1995, 7 p.m., Cape May Courthouse, NJ.

ADDRESSES: Send written comments on the scoping process and scope of the SEIS to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904–6790; telephone: 302–674–2331; FAX: 302–674–5399.

The hearings will be held at the following locations:

1. Manteo—North Carolina State Aquarium, Airport Road, Roanoke Island, Manteo, NC 27954;
2. Galilee—Dutch Inn, 307 Great Island Rd., Galilee, RI 02882;
3. Ronkonkoma—Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779; and
4. Cape May Courthouse—Cape May County Extension Office, Dennisville Rd., Route 657, Cape May Courthouse, NJ 08210.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, 302–674–2331; FAX: 302–674–5399.

SUPPLEMENTARY INFORMATION:

Problems to be Discussed for This Amendment

1. A Moratorium on Entry of Additional Vessels Into the Commercial Fishery

A moratorium on entry of additional vessels Into the summer flounder commercial fishery was implemented with Amendment 2. The moratorium automatically expires in 1997. Given the large number of unemployed and underemployed fishing vessels in the Northwest Atlantic and the overfished nature of the summer flounder resource, serious consideration should be given to continuing the moratorium.

Extension of the moratorium will provide an opportunity for participants in the fishery to benefit as the resource continues to rebuild as a result of the fishing mortality reduction program. If the moratorium is allowed to lapse, the fishery will revert to open access and new vessels will enter the fishery. This would tend to dissipate any chances of profitability. More likely, the problems experienced by the existing participants in the fishery would be increased in magnitude; more fishermen would be attempting to catch the same quantity of fish, thereby increasing costs and decreasing income.

2. Moratorium Permits

Vessels with documented landings of summer flounder for sale between January 26, 1985, and January 26, 1990, qualify for a moratorium permit to land and sell summer flounder under this moratorium program. The FMP provides that, if a commercial vessel fails to land any summer flounder within any 52-week period, its moratorium permit expires. The theory behind this provision is that the FMP had very liberal qualification rules for a moratorium permit, so a retirement provision was needed to reduce harvesting capacity over time. Another view of this issue is that the retirement rule could force fishermen to participate in the summer flounder fishery only to keep their eligibility, thereby increasing effort to the fishery each year.

3. Vessel Replacement Criteria

The New England Council has requested that the Mid-Atlantic Council adopt the replacement language of the Multispecies FMP in the Summer Flounder FMP.

The Summer Flounder FMP prohibits vessel replacement unless the vessel sinks, burns, or is declared unseaworthy by the Coast Guard. The rule was implemented to prevent increases in fishing power. The New England Council's Northeast Multispecies FMP also contains a vessel moratorium. The Multispecies FMP allows vessel replacement, as long as the horsepower does not increase by more than 20 percent and the length, gross registered tonnage, and net tonnage do not increase by more than 10 percent.

The Multispecies FMP also provides that the moratorium permits issued for a given vessel may not be divided between two vessels. Therefore, under the Multispecies FMP rules, if the owner of a vessel with multispecies and summer flounder permits wants to build a replacement vessel, the owner would not be able to transfer the summer flounder permit to the replacement vessel.

Many vessels are permitted under both FMPs. Of the 4,516 vessels that have commercial multispecies permits, and of the 1,206 vessels that have commercial summer flounder permits, 1,032 vessels have permits under both FMPs.

4. Recreational Catch Limitation Adjustment System

The Summer Flounder FMP provides that, if a state exceeds its commercial quota, the excess is deducted from the next year's quota. There is no parallel system if the coastwide harvest limit for the recreational fishery is exceeded. If the recreational fishery were to exceed its target, it is possible that the overall quota (commercial quota and recreational harvest limit) would need to be reduced for the next year. In other words, the commercial fishery quota may be reduced because the recreational target was exceeded. Some people in the industry believe that this situation presents an equity problem that should be addressed.

If the coastwide recreational management system continues, one management alternative would be to deduct any recreational overage from the harvest target for the following year.

5. Commercial Quota System

When Amendment 2 was being developed, many quota management systems were considered, including a coastwide quota, regional, and state-by-state quotas. A simple coastwide system was not feasible, due to the migratory patterns of summer flounder. Fishermen at the southern end of the range could possibly catch all the quota before fishermen at the northern end of the range had access to the summer flounder.

To mitigate this inequity, the Council adopted a state-by-state quota system. The states are responsible for managing their quotas, and NMFS retains an oversight role to assure that the state quotas are not exceeded. Since then, the FMP has been amended to allow the states to combine or trade quotas.

Some industry representatives would like the Council to consider alternative quota allocation systems. Many of the states have divided their annual quotas into quotas for shorter time periods, e.g., quarterly, and have instituted trip limit systems to reduce the chances of closure. The trip limits may be adequate for resident fishermen, but may be too small to support transient vessels that traditionally have landed in a number of states from Massachusetts to North Carolina.

Another problem with state-by-state quotas is differing trip limits in adjacent states. Vessels will land in the state with the highest trip limit. This problem occurred in Connecticut, where trip limits were considered unnecessary and thus were not imposed. However, in response to a reduction in the Massachusetts trip limit, many vessels landed in Connecticut and filled Connecticut's quota in a few days—before preventative action could be implemented.

In general, any alternative to a state-by-state quota system would have to allow for an equitable allocation of the commercial quota between northern and southern participants, as well as between the smaller day boats and larger offshore vessels. Due to the seasonal nature of the summer flounder fishery, the quota also would have to be divided into smaller temporal units to allow for a fair distribution. One possible approach is a bimonthly quota allocation system. To minimize effects on traditional landings patterns, the allocation to each period would be based on past landings instead of a system that divided the quota equally over the six periods. For example, based on 1992 data, 23 percent would be allocated to period 1 (January–February) and only 6 percent to period 3 (May–June)(Table 1.).

TABLE 1.—THE PERCENT OF THE TOTAL SUMMER FLOUNDER LANDED COMMERCIALLY IN 1992 FOR EACH 2–MONTH PERIOD

Period	Percent
Jan–Feb	22.68
Mar–Apr	13.78
May–Jun	5.97
Jul–Aug	8.29
Sep–Oct	28.13
Nov–Dec	21.14

Source: NMFS Weighout Data.

A coastwide bimonthly quota allocation system would allow fishermen to land in any port along the coast. All commercial landings during a bimonthly period would count toward the quota for that period. When the quota had been landed for a bimonthly period, fishing for and/or landing summer flounder would be prohibited for the remainder of the period. Landings in excess of the allocation for the period would be subtracted from the following year's quota for the same period.

However, bimonthly allocations without trip limits would encourage derby-style fishing practices that would allow the quota to be landed by larger, more mobile vessels at the beginning of each period. Supplies of summer flounder would be discontinuous and smaller boats would be disadvantaged. Therefore, trip limits would be necessary to ensure a safer and more equitable fishery.

The trip limits could be established and modified throughout the 2-month period to allow for a continuous supply of product and equitable distribution of flounder to fishermen using both small and large vessels. For example, a 3,000-lb (1,360.78 kg) trip limit could be established for the beginning of period 1. The limit would decrease to 1,000 lb (453.59 kg) when 50 percent of the allocation was reached, to 500 lb (226.8 kg) when 75 percent of the quota was taken, and to 100 lb (45.36 kg) when 90 percent of the landings were reached. Different trip limit systems could be designed for each period to ensure equitable distribution over each 2-month period.

Unlike the current management program that allows states to design their own systems, NMFS would be responsible for implementing trip limits for each period. Therefore, NMFS will need significant resources to design and implement such a system.

6. Management of the Recreational Fishery

During the development of Amendment 2, much debate arose over whether the recreational fishery should be managed on a state-by-state basis (the same as the commercial fishery), on a regional basis, or coastwide. The final decision was to manage on a coastwide basis.

The recreational fishery is now managed with a combination of minimum fish size limits, possession limits, and seasons that apply coastwide. However, recreational landings are not equally distributed along the coast. For example, summer flounder landings are considerably higher in New York and New Jersey than they are in North Carolina. Coastwide management results in the fishing mortality reduction measures effectively being averaged across all of the states. To ensure greater equity between northern and southern states, the Council has been asked to consider regional or state-by-state management of the recreational fishery.

Regional management could require that different measures be implemented in the three regions along the coast. As an example, the fishing mortality reduction strategy in Amendment 2 called for a reduction of 47 percent in the first 3 years of implementation. The resulting coastwide management measures included a 14-inch (35.6-cm) minimum fish size, a 3-fish possession limit and no closed season on a coastwide basis. Had the fishing mortality reduction strategy been implemented in subregions with the same size limit and season, the possession limit would have been two from Maine to Connecticut, two in the states from New York to Delaware, and six from Maryland to North Carolina.

A state-by-state system would allocate recreational quota to each state. Each state would then be required to develop management measures to ensure that the harvest limit would not be exceeded for that state.

7. Summer Flounder Bycatch in the Sea Scallop Fishery

Although scallop dredges account for approximately 1 percent of the summer flounder landings, they are the second most important gear in the commercial summer flounder fishery (after otter trawls). The scallop fishery is currently managed under the Atlantic Sea Scallop FMP, which placed a moratorium on the entry of additional vessels into the sea scallop fishery and imposed an effort limitation system.

Under the Summer Flounder FMP, sea scallop fishermen, if they qualify for a permit, may land all the summer flounder they catch, as long as they meet the minimum fish size limit and comply with the applicable state trip limits or closures. However, the summer flounder FMP and implementing regulations provide that when a state's commercial quota has been taken, no

commercial vessels may land summer flounder. The issue arises then, of whether sea scallop fishermen should be allowed to land their bycatch without regard to state summer flounder trip limits or closures, so long as the flounder meet the minimum fish size limit.

8. Bycatch Allowance

The summer flounder FMP provides that only vessels with moratorium permits may land summer flounder for sale. All other vessels must comply with the recreational seasons, size limits, and possession limits. The issue for scoping is whether commercial vessels that did not qualify for moratorium permits should be allowed to land for sale a specified amount of summer flounder caught as bycatch in fisheries directed at other species.

9. De Minimis Status for States

The Summer Flounder FMP is a joint plan prepared under both the Magnuson Fishery Conservation and Management Act of 1976, as amended, and the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). Under ACFCMA, if a state does not implement measures required by an FMP, the Federal Government may impose a moratorium on landing the species covered by the FMP in that state.

In the case of summer flounder, several states, e.g., Maine, New Hampshire, and Delaware, had historically very small, or de minimis, commercial fisheries and, therefore, received very small quota allocations. A question for resolution under Amendment 7 is whether these states should be required to impose a full array of management measures for what could be a bycatch fishery.

This issue is essentially an Atlantic States Marine Fisheries Commission (ASMFC) concern, because the Director, Northeast Region, NMFS, must ensure no landing of summer flounder by federally permitted vessels once a state's quota has been landed. The Federal minimum fish size limit would apply to summer flounder in commerce. Federally permitted vessels would be required to use the appropriate minimum cod end on otter trawl nets, which is the management measure established by the FMP.

Several states also have de minimis landings in the recreational sector. It must be determined whether adequate conservation reasons exist to incur the governmental costs associated with preparing and implementing regulations. The state-by-state distribution of the 1989 summer flounder recreational catch is shown in Table 2 below.

TABLE 2.—ESTIMATED TOTAL RECREATIONAL CATCH OF ALL SPECIES AND SUMMER FLOUNDER (SF), MAINE TO NORTH CAROLINA, 1989

State	Total catch (lb)	SF catch (lb)	State SF catch as percent of coast SF catch %	State SF catch as percent of state total catch %
ME	2,206,420	.....	.....	.....
NH	1,765,093	6,360	0.2	0.4
MA	14,137,658	26,122	0.9	0.2
RI	4,984,989	120,842	4.3	2.4
CT	5,908,942	33,875	1.2	0.6
NY	20,114,161	449,865	16.0	2.2
NJ	17,176,916	651,288	23.2	3.8
DE	4,371,203	143,750	5.1	3.3
MD	12,791,667	471,839	16.8	3.7
VA	20,127,089	527,566	18.8	2.6
NC	16,852,753	372,652	13.3	2.2

Source: Unpublished NMFS Data.
(Table originally appeared as Table 42 in Amendment 2 to the Summer Flounder Fishery Management Plan)

10. Summer Flounder Landings by Vessels Without Federal Summer Flounder Permits

A better reporting system must be developed for summer flounder caught in state waters. Currently, vessels that land summer flounder caught in state waters are not required to have Federal permits, and therefore, are not required to file Federal logbook reports. In addition, some dealers handle only summer flounder caught in state waters and are thus also not subject to the Federal permitting and reporting requirements.

The commercial quota, however, applies to all summer flounder caught for sale, regardless of where caught. The states must, therefore, implement a reporting system to account for the summer flounder caught in state waters.

11. In-Season Quota Adjustments

The summer flounder FMP allows quotas to be set once a year and to take effect January 1. It may be desirable to change quotas during the year as new information becomes available. This may create uncertainty in the industry, however, and further complicate the quota setting process.

12. Quota Setting Process

The annual quota setting process would be more clearly defined under the alternative proposed in Amendment 7. The summer flounder FMP contains fishing mortality rate targets, factors to be considered in setting the quotas, and a process for the Council to follow in setting the quotas. The FMP does not discuss the limits that may be placed on the Council's discretion in setting the quotas, specifically the probability of achieving the target fishing mortality rates. This alternative would establish guidelines to be used by the Council when it sets annual quotas.

13. Fishing Mortality Rate Reduction Strategy

The current fishing mortality rate reduction strategy, incorporated in Amendment 2, called for a reduction in fishing mortality (F) to 0.53 during the first year that Amendment 2 was in

effect (1993). That rate was to remain constant for a total of three years (1993–95). In 1996, the fishing mortality rate will be reduced to F_{max} (F = 0.23) and remain constant at that level.

Although the fishing mortality reduction program has had some success, the poor 1993 year class will significantly reduce the allowable catch in 1996 in order to meet the fishing mortality rate target. This reduction may have significant negative impact on the fisheries. Therefore, it might be appropriate to readjust the fishing mortality rate reduction strategy in order to reduce the severity of the 1996 reduction.

For example, an alternative strategy could set the fishing mortality rate for 1996 at 0.38, which is halfway between the 1995 target F (0.53) and 0.23. Based on the information provided by the latest stock assessment, this intermediate reduction could allow for a 1996 quota that was approximately 50 percent larger than the one associated with the current strategy (i.e., an F of 0.23). However, this increase in quota would have a slight affect on the spawning stock; stock numbers would only be reduced by 10 percent in 1997 relative to the stock size associated with the current reduction strategy.

Current Management Objectives. (Part of scoping is the possible reevaluation of the existing objectives). The objectives of the FMP are to:

1. Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur.
2. Reduce fishing mortality on immature summer flounder to increase spawning stock biomass.
3. Improve the yield from the fishery.
4. Promote compatible management regulations between state and Federal jurisdictions.
5. Promote uniform and effective enforcement of regulations.
6. Minimize regulations to achieve the management objectives stated above.

Commercial Fishery Management Measures. Possible management measures for the commercial fishery include: Minimum and/or maximum fish size, minimum mesh size, closed seasons, quotas (including adjustment among states), moratorium on vessels, ITQs, trip limits, permit limits, and gear restrictions and limits.

Recreational Fishery Management Measures. Possible management measures for the summer flounder recreational fishery include: Minimum and/or maximum fish size, maximum possession limit, closed seasons, closed areas, gear restrictions and limits, quotas (including adjustments among states), and restrictions on the ability to sell recreationally caught fish.

Possible management measures for the summer flounder fishery that carries recreational fishermen for hire include: Minimum and/or maximum fish size, maximum possession limit, closed seasons, closed areas, gear restrictions and limits, quotas (including adjustment among states), and restrictions on the ability to sell recreationally caught fish.

Any measures that are implemented under Amendment 7 would most likely be included in the summer flounder framework. The framework allows the Monitoring Committee, made up of representatives of the three Councils, ASMFC, and NMFS, to review annually the condition of the resource and fishery and recommend adjustments to the measures (e.g., possession limit, quota, etc.) to achieve the desired goals.

Permitting and Reporting. It is not anticipated that the permitting and reporting provisions of the current FMP will be changed as a result of this Amendment.

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

Dated: April 7, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–9082 Filed 4–10–95; 9:16 am]

BILLING CODE 3510–22–W

Notices

Federal Register
Vol. 60, No. 71
Thursday, April 13, 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

Commodity Supplemental Food Program: Elderly Poverty Income Guidelines

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of elderly persons applying to participate in the Commodity Supplemental Food Program (CSFP). These poverty income guidelines are to be used in conjunction with the CSFP Regulations.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Section Head, Household Programs Section, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2661.

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 that 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. 10.565 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

On December 23, 1985 the President signed the Food Security Act of 1985 (Pub. L. 99–198). This legislation amended section 5(f) and (g) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to require that the Secretary permit agencies administering the CSFP to serve elderly persons if such service can be provided without reducing service levels for women, infants, and children. The law also mandates establishment of income eligibility requirements for elderly participation. Prior to enactment of Public Law 99–198, elderly participation was restricted by law to three designated pilot projects which served the elderly in accordance with agreements with the Department.

In order to implement the CSFP mandates of Public Law 99–198, the Department published interim rules on September 17, 1986 at 51 FR 32895 and a final rule on February 18, 1988 at 58 FR 8287. These regulations defined ''elderly persons'' as those who are 60 years of age or older. The final rule further stipulated that elderly persons certified on or after September 17, 1986 must have ''household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services'' (7 CFR 247.7(a)(3)).

These poverty income guidelines are revised annually to reflect changes in the Consumer Price Index. The revision for 1995 was published by the Department of Health and Human Services (DHHS) in the Federal Register for February 9, 1995 at 60 FR 7772. At this time the Department is publishing the income limit of 130 percent of the poverty income guidelines by household size to be used for elderly certification in the CSFP for the period July 1, 1995–June 30, 1996.

The poverty income guidelines were multiplied by 1.30 and the results rounded up to the next whole dollar. The table in this notice contains the income limits by household size for the 48 contiguous States and the District of Columbia. The poverty income guidelines for areas outside of the 48 contiguous States have not been included in this notice because the CSFP does not operate in these areas. The revised income guidelines reflect an increase of 2.36 percent over the income guidelines for the previous period.

EFFECTIVE JULY 1, 1995–JUNE 30, 1996—FCS POVERTY INCOME GUIDELINES FOR ELDERLY IN CSFP

[130 Percent of Poverty Income Guidelines]
48 States and the District of Columbia

Family size	Annual	Month	Week
1	9,711	810	187
2	13,039	1,087	251
3	16,367	1,364	315
4	19,695	1,642	379
5	23,023	1,919	443
6	26,351	2,196	507
7	29,679	2,474	571
8	33,007	2,751	635
For each additional family member add	+ 3,328	+ 278	+64

Dated: March 24, 1995.

William E. Ludwig,

Administrator.

[FR Doc. 95–9065 Filed 4–12–95; 8:45 am]

BILLING CODE 3410–30–P

Forest Service

Inland Native Fish Strategy

ACTION: Correction to the proposal to prepare interim direction for native inland fish habitat management.

SUMMARY: In the March 14, 1995, Federal Register (Vol. 60, No. 49, pp. 13697–13698), notice was given that the Forest Service, in cooperation with the Bureau of Land Management and US Fish and Wildlife Service, is gathering information in order to prepare an Environmental Assessment (EA) for a proposal to protect habitat and populations of native inland fish.

This EA will address National Forest System lands on the Bitterroot, Boise, Caribou, Challis, Clearwater, Colville, Deerlodge, Deschutes, Flathead, Fremont, Helena, Humboldt, Idaho Panhandle, Kootenai, Lolo, Malheur, Ochoco, Payette, Sawtooth, Wallowa-Whitman, and Winema National Forests in the Northern, Intermountain, and Pacific Northwest Regions. The Salmon National Forest has been removed from this list.

The Forest Service also served notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. It was requested that written comments should be sent to the agency within 30 days from the date of publication in the Federal Register. The comment period has been extended until April 26, 1995.

ADDRESSES: Send written comments to USDA Forest Service, Idaho Panhandle National Forests, 3815 Schreiber Way, Couer d'Alene, Idaho, 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental assessment should be directed to David Wright, Team Leader, Idaho Panhandle National Forests, 3815 Schreiber Way, Couer d'Alene, Idaho, 83814. Phone: (208) 765–7223.

Jack Blackwell, Deputy Regional Forester in Region 4 of the Forest Service, is the responsible official for this EA, and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the EA, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Decision Notice. The Environmental Assessment and Decision Notice are expected to be available in June, 1995.

Dated: April 4, 1995.

David Cross,

Acting Inland Native Fish Team Leader, Idaho Panhandle National Forests.

[FR Doc. 95–9097 Filed 4–12–95; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Saluda River Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to its action related to the purchase, installation, and operation of a 6,000 kilowatt diesel generation facility by Saluda River Electric Cooperative (Saluda River). The FONSI is based on a Borrower's Environmental Report (BER) submitted to RUS by Saluda River. RUS conducted an independent evaluation of the BER and concurs with its scope and content. In accordance with Environmental Policies and Procedures published by the Rural Electrification Administration, the predecessor of RUS, at 7 CFR § 1794.61, RUS has adopted Saluda River's BER as its environmental assessment of the proposed project.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, RUS, South Agriculture Building, Ag Box 1569, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The proposed generation facility is to be located adjacent to Saluda River's existing Webb Substation. This substation is located approximately 2.5 miles southwest of Carlisle, South Carolina, on the south side of Highway 72 & 121. The substation and the site of the proposed generation facilities are on property owned by Webb Forging Company.

The generation facility will consist of two 3,000 kilowatt diesel generators with provisions for additional units in the future. The generators will be housed in a pre-engineered metal building covering approximately 3,600 square feet. The fuel for the engines that will turn the generators will be number 2 diesel fuel. A 12,000 gallon fuel storage tank will be located outside the metal building housing the generators. The total area to be graded for the building and fuel tank will not exceed 1 acre. A containment system will be designed and constructed in such a manner to ensure the surrounding environment is protected from pollution in the event of spills from the tank and/or associated piping. The outside piping will be double walled fiberglass. Inside piping will be black iron steel.

The generators will be equipped with supervisory control and data acquisition so that they can be monitored and controlled remotely. Total hours that the generators are run will be metered electronically and logged for maintenance and regulatory purposes.

The alternatives of no action, conservation, purchasing power from other sources, and alternative generation technologies were considered.

Copies of the environmental assessment and FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Mr. Joseph M. Galbreath, Project Manager, Saluda River Electric Cooperative, P.O. Box 929, Laurnes, South Carolina 29360, telephone (803) 682–3169.

Dated: April 6, 1995.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 95–9163 Filed 4–12–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040495F]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings from April 25–27, 1995.

ADDRESSES: The meetings will be held at the Pontchartrain Hotel, 2031 St. Charles Avenue, New Orleans, LA 70140; telephone: (504) 524–0581.

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary (for Mackerel and Shrimp related issues), or Steven M. Atran (for Reef Fish related issues), Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The meeting agenda is as follows:

On April 25 from 10:30 a.m. to 5:00 p.m. Mackerel Advisory Panel (AP); on April 26, from 8:00 a.m. to 12:00 noon Special Mackerel and Standing Scientific and Statistical Committees (SSC); on April 26, from 1:00 p.m. to 5:00 p.m. and April 27 from 8:00 a.m. to 10:00 a.m. Special Reef Fish and Standing SSC; and April 27, 10:00 a.m. to 1:00 p.m. Standing SSC.

The Mackerel AP and SSC will review stock assessment information related to setting total allowable catch (TAC) and trip and bag limits for king and Spanish mackerel and cobia in the Gulf of Mexico. The Reef Fish SSC will review a variety of reef fish management measures in Draft Amendment 11 to the Reef Fish Fishery Management Plan. The Standing SSC will review measures to remove royal red shrimp from the fishery management plan as proposed in Draft Amendment 8 to the Shrimp Fishery Management Plan (FMP).

Issues that will be addressed in Draft Amendment 11 to the Reef Fish Fishery Management Plan (FMP) include: Proposed modifications of the FMP

regulatory framework procedure for the annual specification of total allowable catch including changes in procedures, the definition of optimum yield, and the criteria for specifying the length of a stock recovery program for overfished reef fish species; permitting issues including dealer and vessel permit conditions, transferability provisions, implementation of a new vessel permit moratorium for the fishery, and permits for charter vessels and head boats; allowing hook-and-line harvest of reef fish by shrimp vessels; issues related to enforceability of reef fish regulations; changes to amberjack size and bag limits and a commercial seasonal closure; changes to gag/black grouper and red snapper size limits; and an aggregate bag limit for reef fish.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by April 18, 1995.

Dated: April 7, 1995.

Richard W. Surdi,

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

[FR Doc. 95–9080 Filed 4–12–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030995A]

North Pacific Fishery Management Council; Agenda Change

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

ACTION: Notice of agenda change.

SUMMARY: An agenda for public meetings of the North Pacific Fishery Management Council (Council) and its advisory bodies, which are scheduled during the week of April 17, 1995, was published on March 17, 1995. Modifications to the agenda were published on March 31, 1995, and the following additional change is made to the meeting agenda. All other information previously published remains unchanged.

FOR FURTHER INFORMATION CONTACT: Dave Witherell, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The initial agenda published on March 17, 1995 (60 FR 14425) was changed to remove two agenda times, add an additional item, and change the schedule on March 31 (60 FR 16621). This additional change adds another agenda item.

Discussion and final approval of a fishery management plan (FMP) for the scallop fisheries in the exclusive economic zone off Alaska has been added to the agenda. This FMP may go forward either as a Council FMP or Secretarial FMP, and may extend regulations implemented by emergency rule published on March 1, 1995, (60 FR 11054). The Council also will discuss how to proceed with further amendments to the plan. Discussion of these topics may occur as early as April 19 (rather than April 21 as shown in the current schedule).

Dated: April 7, 1995.

Richard W. Surdi,

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

[FR Doc. 95–9081 Filed 4–12–95; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 95–C0009]

Neptune Fireworks Company, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission of publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 C.F.R. 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Neptune Fireworks Company, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 28, 1995.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 95–C0009, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 7, 1995.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Neptune Fireworks Company, Inc. (hereinafter, ''Neptune''), a corporation, enters into this Settlement Agreement and Order (hereinafter, ''Settlement Agreement'') with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Settlement Agreement is to settle the staff's allegations that Neptune Knowingly violated sections 4(a) and (c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1263(a) and (c).

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission, an independent regulatory Commission of the United States established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

3. Neptune is a corporation organized and existing under the laws of the State of Florida, since 1984. The firm's principal place of business is located at 768 East Dania Beach Boulevard, Dania, FL 3304. Neptune is an importer and distributor of fireworks.

II. Allegations of the Staff

4. On ten occasions between April 14, 1991, and May 12, 1994, Neptune introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, 23 different kinds of non-complying fireworks (8,116,614 retail units) which are identified and described below:

Sample No.	Product	Collect. date* entry date	Expt/mfg
M–807–1367	Festival Balls	04/14/91	Kwongyen Hangkee.
M–807–1370	News Transmitter	04/14/91	Kwongyen Hangkee.

Sample No.	Product	Collect. date* entry date	Expt/mfg
M–807–3107	Small Festival Balls	04/14/91	Kwongyen Hangkee.
M–807–3109	Blue Palm	04/14/91	Kwongyen Hangkee.
M–807–3110	Killer Bees	04/14/91	Kwongyen Hangkee.
M–807–1374	Air Travel With Report	04/14/91	Kwongyen Hangkee.
M–807–1691	Twitter Glitter	04/27/91	Kwongyen Hangkee.
P–807–2093	Tiger Cluster Cicada	12/28/91	Hop Kee.
P–807–2095	Red Lantern Festival Balls	12/28/91	Hop Kee.
P–807–2533	Moon Traveler	03/25/92	Hop Kee.
P–807–2536	Blue Palm	03/25/92	Hop Kee.
P–807–2545	Artillery Shells	04/22/92	Hop Kee.
P–807–2547	Twitter Glitter	04/22/92	Hop Kee.
P–807–2549	Jumping Jack	04/25/92	Hop Kee.
P–807–2555	Small Festival Balls	05/16/92	Glorious Company.
S–800–2094	Moon Travel	01/17/94	Glorious Company.
S–800–2095	Jumping Jacks	01/17/94	Glorious Company.
S–800–2096	Artillery Shell	01/17/94	Glorious Company.
S–800–2097	Artillery Shell	01/17/94	Glorious Company.
S–800–2616	Jumping Jack	04/18/94	Glorious Company.
S–800–2617	Artillery Shells	04/18/94	Glorious Company.
S–800–2618	Festival Balls	04/18/94	Glorious Company.
S–800–2625	Kaleidoscope	05/12/94	United Fireworks.

5. The firework device identified as Small Festival Balls, No. 0008, Sample No. M–807–1367 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time requirement in 16 C.F.R. 1507.3(a)(2).

6. The firework device identified as News Transmitter, No. T2508, Sample No. M–807–1370 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507 and 16 C.F.R. 1500.14, in that when tested, it failed to comply with the side ignition and labeling requirements in 16 C.F.R. 1507.3(a)(1), and 16 C.F.R. 1500.14(a)(7)(ix).

7. The firework device identified as Small Festival Balls, No. 0008, Sample No. M–807–3107 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the side ignition and fuse burn time requirements in 16 C.F.R. 1507.3(a)(1) and (a)(2).

8. The firework device identified as Blue Palm, No. W442, Sample No. M–807–3109 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. Part 1507, in that when tested, it failed to comply with the fuse burn time and pyrotechnic leakage requirements in 16 C.F.R. 1507.3(a)(2) and 1507.5.

9. The firework device identified as Killer Bees, No. W499A, Sample No. M–807–3110 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse attachment and pyrotechnic leakage requirements in 16 C.F.R. 1507.3(b) and 1507.5.

10. The firework device identified as Air Travel With Report, No. T0001, Sample No. M–807–1374 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time requirement in 16 C.F.R. 1507.3(a)(2).

11. The firework device identified as Twitter Glitter, No. 0530, Sample No. M–807–1691 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the pyrotechnic leakage requirement in 16 C.F.R. 1507.5.

12. The firework device identified as Tiger Cluster Cicada, No. 2011, Sample No. P–807–2093 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the burnout/blowout requirement in 16 C.F.R. 1507.6.

13. The firework device identified as Red Lantern Festival Balls, No. 0008, Sample No. P–807–2095 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time requirement in 16 C.F.R. 1507.3(a)(2).

14. The firework device identified as Moon Traveler, No. 0495, Sample No. P–807–2533 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time requirement in 16 C.F.R. 1507.3(a)(2).

15. The firework device identified as Blue Palm, No. W441, Sample No. P–807–2536 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the pyrotechnic leakage requirement in 16 C.F.R. 1507.5.

16. The firework device identified as Artillery Shells, No. N515, Sample No. P–807–2545 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the pyrotechnic leakage requirement in 16 C.F.R. part 1507, in that when tested, it failed to comply with the pyrotechnic leakage requirement in 16 C.F.R. part 1507.5.

17. The firework device identified as Twitter Glitter, No. 0530L, Sample No. P–807–2547 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the pyrotechnic leakage requirement in 16 C.F.R. 1507.5.

18. The firwork device identified as Jumping Jack, No. T3500, Sample No. P–807–2459 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time requirement in 16 C.F.R. part 1507.3(a)(2).

19. The firework device identified as Small Festival Balls, No. 0008, Sample No. P–807–2555 in paragraph 4 above is subject to, but failed to comply with, the

Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time requirement in 16 C.F.R. 1507.3(a)(2).

20. The firework device identified as Moon Travel, No. 0445, Sample No. S–800–2094 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time, fuse attachment, and stick rigidity requirements in 16 C.F.R. 1507.3(a)(2), 1507.3(b) and 1507.10.

21. The firework device identified as Jumping Jacks, No. T3500, Sample No. S–800–2095 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time and burnout/blowout requirements in 16 C.F.R. 1507.3(a)(2) and 1507.6.

22. The firework device identified as Artillery Shell, No. W515B, Sample No. S–800–2096 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time requirement in 16 C.F.R. 1507.3(a)(2).

23. The firework device identified as Artillery Shell, No. 515A, Sample No. S–800–2097 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time requirement in 16 C.F.R. 1507.3(a)(2).

24. The firework device identified as Jumping Jack, No. T3500, Sample No. S–800–2616 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507 in that when tested, it failed to comply with the fuse burn time requirement in 16 C.F.R. 1507.3(a)(2).

25. The firework device identified as Artillery Shells, No. W515A, Sample No. S–800–2617 in paragraph 4 above is subject to, but failed to comply with, the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time requirement in 16 C.F.R. 1507.3(a)(2).

26. The firwork device identified as Festival Balls, No. 0008, Sample No. S–800–2618 identified in paragraph 4 above is subject to, but failed to comply with the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time requirement in 16 C.F.R. 1507.3(a)(2).

27. The firework device identified as Kaleidoscope, No. 2512, Sample No. S–800–2625 identified in paragraph 4 above is subject to, but failed to comply with the Commission's Fireworks Regulations, 16 C.F.R. part 1507, in that when tested, it failed to comply with the fuse burn time and burnout/blowout requirements in 16 C.F.R. 1507.3(a)(2) and 1507.6.

28. Each of the fireworks identified in paragraph 4 above is a ''banned hazardous substance'' pursuant to section 2(q)(1)(B) of the FHSA, 15 U.S.C. 1261(q)(1)(B); and 16 C.F.R. part 1507 *et seq.*

29. The fireworks device identified as News Transmitter, No. T2508, Sample No. M–807–1370 in paragraph 4 above is a ''misbranded hazardous substance'' pursuant to section 3(b) of the FHSA, 15 U.S.C. 1262(b) and 16 CFR 1500.14 *et seq.*

30. Neptune knowingly introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned hazardous fireworks and misbranded hazardous fireworks identified in paragraph 4 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

III. Response of Neptune

31. Neptune denies the allegations of the staff set forth in paragraphs 4 through 30 above. Neptune denies it knowingly, or otherwise, introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proferred delivery thereof for pay or otherwise, the banned hazardous fireworks and misbranded hazardous fireworks identified in paragraph 4 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c) and/or 16 CFR part 1507 *et seq.* and 15 CFR 1500.14 *et seq.*

32. Neptune enters into this Settlement Agreement with the sole purpose of avoiding the costs of litigation.

IV. Agreement of the Parties

33. The Consumer Product Safety Commission has jurisdiction over Neptune and the subject matter of this Settlement Agreement under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

34. The Commission and Neptune agree, notwithstanding any other statements to the contrary in this Settlement Agreement and Order, that this Settlement Agreement and Order is entered into for the purposes of settlement only and does not constitute a determination by the Commission or an admission by Neptune that Neptune violated the CPSA, FHSA and/or the Commission's regulations.

35. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final order, Neptune knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Neptune failed to comply with the FHSA as foresaid, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

36. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

37. Upon provisional acceptance of this Settlement Agreement by the Commission, the Commission will place the Settlement Agreement and the Provisional Order on the public record, and publish it in the Federal Register in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written requests not to accept the Settlement Agreement within 15 days, the Settlement Agreement shall be deemed finally accepted and the Final Order shall be deemed issued on the 16th day.

38. This Settlement Agreement may be used in interpreting the Provisional and Final Orders. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement may not be used to vary or to contradict its terms.

39. The provisions of the Settlement Agreement and Final order shall apply to Neptune and each of its successors and assigns.

40. Upon final acceptance of this Agreement, the Commission shall issue the Final Order.

Dated: March 20, 1995.

Respondent Neptune Fireworks Co., Inc.

Itzhak Dickstein,

President, Neptune Fireworks Company, Inc.

Commission Staff.

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: March 24, 1995.

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement entered into between respondent Neptune Fireworks Company, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Neptune Fireworks Company Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, That the Settlement Agreement be and hereby is accepted; and it is

Further ordered, That upon final acceptance of the Settlement Agreement and Order, Neptune Fireworks Company, Inc. shall pay to the Commission a civil penalty in the amount of Forty-Five Thousand and 00/100 Dollars ($45,000.00) in three (3) payments each. The first payment of Fifteen Thousand and 00/100 dollars ($15,000.00) shall be paid by August 15, 1995 or within twenty (20) days after service of the Final Order of the Commission accepting the Settlement Agreement (hereinafter, the ''anniversary date''), whichever is later. The second payment of fifteen thousand and 00/100 dollars ($15,000.00) shall be paid on August 15, 1996 or within one (1) year of the anniversary date. The third payment of fifteen thousand and 00/100 dollars ($15,000.00) shall be paid on August 15, 1997 or within (2) years of the anniversary date. Upon the failure by Neptune Fireworks Company, Inc. to make a payment or upon the making of a late payment by Neptune Fireworks Company, Inc. (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provision of 28 U.S.C. 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 75 day of April, 1995.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–9047 Filed 4–12–95; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0077]

Clearance Request for Quality Assurance Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0077).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Quality Assurance Requirements.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Supplies and services acquired under Government contracts must conform to the contract's quality and quantity requirements. FAR Part 46 prescribes inspection, acceptance, warranty, and other measures associated with quality requirements. Standard clauses related to inspection (a) require the contractor to provide and maintain an inspection system that is acceptable to the Government; (b) give the Government the right to make inspections and test while work is in process; and (c) require the contractor to keep complete, and make available to the Government, records of its inspection work.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.25* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *960*; responses per respondent, *1*; total annual responses, *950*; preparation hours per response, *.25*; and total response burden hours, *237.5* (238).

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *58,060*; hours per recordkeeper, *.68*; and total recordkeeping burden hours, *39,481*. The total annual burden is *238+39,481=39,719*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0077, Quality Assurance Requirements, in all correspondence.

Dated: April 6, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–9084 Filed 4–12–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of committee: Army Science Board (ASB).

Date of meeting: 2 & 3 May 1995.

Time of meeting: 0930–1700, 2 May 1995; 0800–1700, 3 May 1995.

Place: 2 May 1995—Norfolk, VA—Atlantic Command (ACOM); Ft. Monroe, VA–TRADOC. 3 May 1995—Ft. Lee, VA—Combined Arms Support Command (CASCOM)

Agenda: The Army Science Board's Logistics and Sustainability Subgroup will meet on current doctrine, missions, functions, force structures and modules, and technologies reference ''Army Logistical Support to Military Operations Other Than War.'' Discussions will cover the ACOM, TRADOC and CASCOM logistics

perspectives on Military Operations Other Than War. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matter to be discussed is so inextricably intertwined so as to preclude opening any portions of these meetings. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–9052 Filed 4–12–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Office of Administrative Law Judges; Intent to Compromise a Claim, Resource, Inc.

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against Resource, Inc. now pending before the Office of Administrative Law Judges (OALJ), Docket No. 94–103–R (20 U.S.C. 1234a(j)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before May 30, 1995.

ADDRESSES: All comments concerning this notice should be addressed to Jeffrey B. Rosen, Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue SW., Room 5411, FB–10B, Washington, D.C. 20202–2242.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Rosen. Telephone: (202) 401–6009. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In September 1991 the Rehabilitation Services Administration (RSA), U.S. Department of Education (ED), conducted a compliance review of the grantee, Resource, Inc., in accordance with the Rehabilitation Act of 1973, as amended (the Act), and ''RSA Procedures for the Recovery of Disallowed Costs Identified Through Program Monitoring Activities'' (Information Memorandum RSA-IM–92–04). The review covered the grantee's performance during fiscal year 1991 under a Projects With Industry (PWI) program grant authorized under Title VI of the Act, 29 U.S.C 795g. RSA issued a Final Monitoring Report on March 24, 1992.

Based upon this monitoring report, the Regional Commissioner, Region V, RSA, and the Director, Grants Division, Grants and Contracts Service, issued a Notice of Disallowance Decision (NDD) on May 31, 1994, in which Resource, Inc. was requested to repay $218,517 of funds misspent under Title VI of the Act. A total of $204,416 was disallowed because the grantee did not meet the requisite cost sharing or matching requirement under the PWI program. In addition, ED disallowed $115,585 for the failure of the grantee to keep time distribution records for its employees who worked on the PWI program. However, because $101,484 of these funds were included in the prior disallowance, the total cost disallowance ($218,517) was less than the total of the costs disallowed for each of the two findings. On June 30, 1994 Resource, Inc. filed an appeal of the NDD with the OALJ.

On November 17, 1994 ED filed a Notice of Reduction of Claim notifying the OALJ that, based upon new information submitted by the grantee, the first issue concerning the matching requirement was resolved. Thus, the total amount outstanding in the appeal was reduced to $115,585, which is covered by the Settlement Agreement.

Under the terms of the proposed agreement, Resource, Inc. owes ED a total of $31,682. The grantee has agreed to make payment in 2 installments over a 1-year period, the first payment to be made within 30 days of execution of the agreement by ED. Resource, Inc. would be assessed interest at a rate of three percent per year if both installment payments are not made in a timely fashion. Failure to make timely payments within 40 days of the due dates would result in a late payment fee of 10 percent of the principal. Finally, under the agreement, the parties would jointly move for dismissal of the appeal. For the following reasons, ED recommends approval of the proposed Settlement Agreement.

There is clearly a litigation risk in attempting to uphold the original finding. The evidence presented by Resource, Inc. demonstrates that the employees in question worked a substantial portion of the time on the PWI grant. While Resource, Inc. clearly had an obligation to keep time distribution records, its evidence, which often was less reliable and circumstantial, could persuade an administrative law judge or a Federal court to rule in substantial part or in full for its position.

Resource, Inc. has agreed to repay $31,682. Based upon the foregoing, ED believes that it is prudent to accept the settlement offer, which represents a recovery of over 27 percent of the original costs disallowed in the PDD for this finding. If this issue is not settled, ED will incur further litigation costs, and there will be some litigation risk during the administrative process. Moreover, Resource, Inc. also would have the right to appeal any decision to the U.S. Court of Appeals. See 20 U.S.C. 1234g. In addition, the grantee has certified in the Settlement Agreement that it is presently in compliance with the time distribution requirements that gave rise to the disallowance at issue in this agreement.

After weighing the risks in litigating the issue that is the subject of the settlement, it is ED's assessment that the proposed Settlement Agreement is the most advantageous resolution.

The public is invited to comment on the ED's intent to compromise this claim. Additional information may be obtained by writing to Jeffrey B. Rosen at the address given at the beginning of this notice.

Program Authority: 20 U.S.C. 1234a(j) (1990).

Dated: April 7, 1995.

Donald R. Wurtz,

Chief Financial Officer.

[FR Doc. 95–9050 Filed 4–12–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Floodplain Involvement For Operable Unit 2 Removal Action No. 30 At the Fernald Environmental Management Project

AGENCY: U.S. Department of Energy (DOE), Fernald Area Office.

ACTION: Notice of floodplain involvement.

SUMMARY: This is to give notice of DOE's actions planned for the Fernald Environmental Management Project (FEMP), located approximately 18 miles (29 kilometers) northwest of downtown Cincinnati, Ohio. The subject of this Notice of Involvement is Operable Unit 2 which is defined by five subunits or areas: the Solid Waste Landfill, Lime Sludge Ponds, Inactive Flyash Pile, South Field, and Active Flyash Pile. The proposed Removal Action No. 30 for Operable Unit 2 involves excavation and construction activities that could

impact floodplain areas in Hamilton County, Ohio. In accordance with 10 CFR part 1022, DOE will prepare a floodplain assessment and will perform this proposed removal action in such a manner to avoid or minimize potential harm to or within floodplain areas.

DATES: Written comments must be received by the DOE at the following address no later than April 28, 1995.

ADDRESSES: For further information on this proposed action, contact: Mr. Wally Quaider, Acting Associate Director, Office of Safety & Assessment, U.S. Department of Energy, Fernald Area Office, P.O. Box 538705, Cincinnati, Ohio 45253–8705, Phone: (513) 648–3137, Facsimile: (513) 648–3077.

FOR FURTHER INFORMATION CONTACT: For further information on general DOE Floodplain/Wetlands environmental review requirements, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, 3E–080, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Removal Action No. 30, which consists of removing contaminated sediments in the low area in the southeast corner of the South Field and constructing a seepage collection system to prevent leaching and infiltration of contaminants to the Great Miami Aquifer, could affect the 100- and 500-year floodplain of Paddys Run. Potential indirect impacts to the 100- and 500-year floodplain as a result of the removal activities include surface water runoff and sedimentation loading into the floodplain. Direct physical impact to the floodplain could result in the short-term from the operation of heavy equipment during excavation of contaminated sediments and construction of a sump/pump station and portion of a discharge line within the floodplain. However, engineering controls would be implemented during excavation and construction activities to minimize any impacts. Minimal or no permanent change in flood elevations would occur in the long-term.

In accordance with DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain assessment for this proposed DOE action. The assessment will be included in the Work Plan being prepared for Removal Action No. 30. A Notice of Floodplain Statement of Findings will be issued separately and published in the Federal Register.

Issued in Miamisburg, Ohio on March 29, 1995.

George R. Gartrell,

Acting Deputy Manager, Ohio Field Office.

[FR Doc. 95–9168 Filed 4–12–95; 8:45 am]

BILLING CODE 6450–01–P

Nevada Operations Office; Public Reading Room Relocation

AGENCY: U.S. Department of Energy Nevada Operations Office (DOE/NV).

ACTION: Notice of Relocation of the DOE/NV Public Reading Room to Building B–3, 2621 Losee Road, North Las Vegas, Nevada 89030.

SUMMARY: The DOE/NV announces that, pursuant to Title 10, Code of Federal Regulations, Section 1004.3(b), as of May 1, 1995, the public reading room for DOE/NV is relocating to: 2621 Losee Road, North Las Vegas, Nevada 89030 (Building B–3). Attention: Cynthia Ashley, Telephone (702) 295–1623. Regular operating hours of the facility will be Monday through Friday, 7:30 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, Attn: Janet L. Fogg, Freedom of Information and Privacy Act Officer, P.O. Box 98518, Las Vegas, Nevada 89193–8518, Telephone (702) 295–1821.

Issued in Las Vegas, Nevada, on March 27, 1995.

Jerry A. Vaeth,

Acting Manager, DOE Nevada Operations Office.

[FR Doc. 95–9169 Filed 4–12–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2275–001]

Public Service Company of Colorado; Notice of Availability of Draft Environmental Assessment

April 7, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Salida Hydroelectric Project, located on the South Arkansas River and on Fooses Creek in Chaffee County, Colorado, near Poncha Springs. The Federal Energy Regulatory Commission and the U.S. Forest Service have prepared a Draft Environmental Assessment (DEA) for the relicense proposal.

In the DEA, the staff has analyzed the environmental impacts of the project and has concluded that relicensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment. Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 275–001 to all comments. For further information, please contact Vince Yearick, Environmental Coordinator, at (202) 219–3073.

Lois D. Cashell,

Secretary.

[FR Doc. 95–9069 Filed 4–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–221–000]

ANR Pipeline Co.; Notice of Informal Settlement Conference

April 7, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, April 13, 1995, at 9:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214) (1994).

For additional information, please contact William J. Collins (202) 208–0248 or Warren C. Wood (202) 208–2091.

Lois D. Cashell,

Secretary.

[FR Doc. 95–9072 Filed 4–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–237–017]

Alabama-Tennessee Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

April 7, 1995.

Take notice that on April 4, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

First Sub. Fifth Revised Sheet No. 4
Sub. Seventh Revised Sheet No. 4
Sub. Eighth Revised Sheet No. 4

Alabama-Tennessee proposes that these tariff sheets be made effective September 1, 1994, October 1, 1994 and March 1, 1995, respectively.

According to Alabama-Tennessee, this filing is being made to comply with the Commission's March 20, 1995 order in the above-captioned proceeding.

Alabama-Tennssee states that copies of its filing were served upon the Company's jurisdictional customers and interested public bodies as well as all the parties shown on the Commission's official service list established in 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 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before April 14, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–9071 Filed 4–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–32–000]

Carnegie Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

April 7, 1995.

Take notice that on March 24, 1995, Carnegie Natural Gas Company (Carnegie), pursuant to Sections 31.3(b)(5) of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, tendered for filing a refund report on its flowthrough of refunds received from Texas Eastern Transmission Corporation (TETCO) as part of TETCO's Global Settlement in Docket No. RP85–177–119, *et al.* Article III of the Global Settlement required TETCO to refund to its customers, including Carnegie, certain amounts collected as Contract Assignment Program (CAP) costs, Account N0. 191 transition costs, and Gas Supply Realignment (GSR) costs.

Carnegie states it received the TETCO refunds on December 30, 1994, and, on February 28, 1995, pursuant to Sections 31.3(b)(4) and 32.1 of its tariff, flowed through the jurisdictional portion thereof, $669,417.42, to its former bundled sales customers under Rate Schedules CDS and LVWS. This amount includes applicable interest, an offset for unpaid installments on PGA passthrough amounts which its customers owed Carnegie, as well as a billing adjustment related to the Global Settlement's cap on TETCO's recoverable Account No. 191 transition costs.

Any person desiring to be heard or protest this application 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 April 14, 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. 95–9068 Filed 4–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–343–007]

NorAm Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

April 7, 1995.

Take notice that on April 3, 1995, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to be effective February 1, 1995:

Alternate Original Sheet No. 165
Alternate Original Sheet No. 212
Alternate Original Sheet No. 213
Alternate Original Sheet No. 217
Alternate First Revised Original Sheet No. 231
Alternate First Revised Original Sheet No. 309

Pursuant to the Commission's March 3, 1995 Order Accepting Tariff Sheets, Subject to Conditions, and Denying Motion, NGT is reinstituting its average index price method of cashing out monthly imbalances.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before April 14, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–9073 Filed 4–12–95; 8:45 am]

BILLING CODE 6717–01–M

Southern Natural Gas Co.; Notice of Application

[Docket No. CP95–289–000]

April 7, 1995.

Take notice that on March 30, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–289–000 an application pursuant to Sections 7(b) and (c) of the Natural Gas Act for permission and approval to abandon facilities to be replaced and for a certificate to construct and operate certain facilities, including replacement facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern states that its proposal is an integral part of the compromises established in its Stipulation and Agreement (Settlement) filed on March 15, 1995, in Docket Nos. RP89–224, *et al.*, to resolve all of its outstanding rate and gas supply realignment cost proceedings pending before the Commission. Southern thus proposes the following projects and requests Commission approval of the application by no later than October 31, 1995, contingent upon and in conjunction

with approval of the provisions of the Settlement.[1]

(1) Project 1: Construct, install, replace and operate the following facilities: approximately 11.8 miles of 30-inch pipeline in Henry and Clayton Counties, Georgia, to replace 6.1 miles of existing 14-inch Ocmulgee-Atlanta loop pipeline and 5.7 miles of existing 12-inch Macon branch pipeline, and various modifications at the Marietta, South Atlanta No. 1, and Dallas No. 2 meter stations serving Atlanta Gas Light Company (AGL), all of which are to enhance operational flexibility and to increase peak hour flow through various meter stations in the Atlanta, Georgia, area.[2] Southern explains that (a) there would be miscellaneous modifications of piping at the South Atlanta regulator station and South Atlanta No. 1 meter station, (b) the Marietta meter station would be rebuilt with three 8-inch orifice meter runs, and (c) the existing metering facilities at the Dallas No. 2 meter station would be replaced with a 6-inch turbine meter run and appurtenant facilities.

(2) Project 2: Construct and operate approximately 7.8 miles of 20-inch South Main 2nd loop pipeline immediately upstream of the Wrens Compressor Station in Glascock and Jefferson Counties, Georgia, and approximately 3.1 miles of 20-inch loop line immediately upstream of the Hall Gate Compressor Station in Baldwin County, Georgia, to enhance the overall service available and to provide increased service on shoulder days (days before and after peak days) to South Carolina Pipeline Corporation (SCPL).[3]

(3) Project 3: Construct and operate approximately 7.1 miles of 30-inch South Main 3rd loop pipeline immediately upstream of the Auburn Compressor Station in Lee and Macon Counties, Alabama, to provide 8,000 Mcf/day of additional firm transportation service for SCANA Hydrocarbons, Inc., an affiliate of SCPL.[4]

Southern estimates that the total cost of these facilities will be $26,850,250. Southern advises that financing would be accomplished initially through the use of short term financing, available cash from operations, or use of both alternatives and, ultimately, from permanent financing.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 28, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–9066 Filed 4–12–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Southern indicates that a related filing is being made concurrently in Docket No. CP95–292–000 to abandon approximately 122 miles of its Brunswick Line by sale to AGL, and to construct a meter station at the new interconnect with the portion of the line being sold.

[2] Southern states that, although AGL has contracted for an additional 100,000 Mcf/day of firm transportation service as part of the overall economics necessary to achieve the Settlement, including the installation of these facilities, the facilities involved here do not provide additional firm capacity to meter stations serving the Atlanta area.

[3] Southern advises that although SCPL has contracted for an additional 28,000 Mcf/day of firm transportation service as part of the overall economics necessary to achieve the Settlement, including the installation of these facilities, these facilities do not provide additional firm capacity.

[4] Southern included a copy of a SCANA service agreement dated March 28, 1995, for transportation service under Southern's Rate Schedule FT, as Exhibit I of its application.

[Docket No. CP95–292–000]

Southern Natural Gas Co.; Notice of Application

April 7, 1995.

Take notice that on March 30, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–292–000 an application pursuant to Sections 7(b) and (c) of the Natural Gas Act for permission and approval to abandon a portion of its Brunswick Line and for a certificate to construct and operate a new meter station, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authorization to:

(1) Abandon by sale to Atlanta Gas Light Company (AGL) approximately 122 miles of Southern's 12-inch Brunswick Line, commencing at approximately mile post 53.8 in Laurens County, Georgia, and extending to and including Southern's existing AGL–Brunswick Meter Station at mile post 175.3 in Glynn County, Georgia, as well as apurtenant facilities, including six meter stations and one regulator station. Southern identifies the meter stations as Eastman, Alamo, Hazelhurst, Baxley, Jesup and Brunswick, and the regulator station as Belle Vista.[1]

(2) Construct, install, and operate one measurement station, consisting of tap, metering, and appurtenant facilities within Southern's existing property at the Eastman Meter Station on Southern's 12-inch Brunswick Line in Laurens County, Georgia, at the proposed point of division of ownership of the Burnswick Line.

Southern states that the proposed abandonment would not terminate any interruptible or firm service of any customer. Southern explains that AGL is the only customer receiving firm service from the facilities proposed to be abandoned, and all shippers that currently have interruptible transportation contracts for the delivery of gas to AGL at any of the six meter stations proposed to be abandoned would continue to receive service at the new consolidated meter station.

Southern proposes to sell the 122-mile segment of the Brunswick Line and appurtenant facilities at their depreciated book value as of the first day of the month in which the sale closing occurs.[2] Southern estimates that

[1] Southern states that these facilities were constructed in 1964 (31 FPC 789, 1387 (1964)).

[2] Southern advises that as of December 31, 1994, the depreciated book value of the facilities was $1,347,404.

the cost of the new facilities would be $801,500 which would be reimbursed by AGL.

Southern states that its proposal is an integral part of the compromises established in its Stipulation and Agreement (Settlement) filed on March 15, 1995, in Docket Nos. RP89–224, *et al.* to resolve all of its outstanding rate and gas supply realignment cost proceedings pending before the Commission. Southern requests Commission approval of the application by no later than October 31, 1995, contingent upon and in conjunction with approval of the provisions of the Settlement.[3]

Any person desiring to be heard or to make any protest with reference to said application should on or before April 28, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–9067 Filed 4–12–95; 8:45 am]

BILLING CODE 6717–01–M

[3] Southern indicates that a related filing is being made concurrently in Docket No. CP95–289–000 to provide enhanced service to the Atlanta, Georgia, and South Carolina areas and new firm transportation services for an existing customer.

[Docket No. RP91–203–000, et al. (Phase II)]

Tennessee Gas Pipeline Co.; Notice of Informal Settlement Conference

April 7, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, April 24, 1995, at 11:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Dennis H. Melvin (202) 208–0042 or Donald Williams (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 95–9070 Filed 4–12–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $866,352.24, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to Consent Orders issued to Bell Fuels, Inc., et al., Case Nos. LEF–0061, et al. In the absence of sufficient information to implement direct restitution to injured customers of the consenting firms, the OHA has tentatively determined that if no such customers come forward, the funds obtained from these firms, plus accrued interest, will be made available to state governments for use in four energy conservation programs.

DATES AND ADDRESSES: Comments must be filed in duplicate on or before May 15, 1995, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585. All comments should display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute $866,352.24, plus accrued interest, obtained by the DOE pursuant to Consent Orders issued to eighteen resellers and retailers of refined petroleum products. The Consent Orders settled DOE allegations that, during periods between 1973 and 1981, the firms had sold certain refined petroleum products at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations. The names of the firms, their case numbers, the dates of the settlement periods, the products covered by each Consent Order, and the amounts received from each firm are set forth in the Appendix to the Proposed Decision.

Since it lacks sufficient information to implement a standard first-stage refund process, the OHA has tentatively determined to make all of the funds obtained from the firms available for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. The funds will be distributed to state governments for use in four energy conservation programs. Before making the funds available to the states, however, the OHA will accept refund claims from any injured customers of the consenting firms who come forward and will devise refund procedures based on the information these applicants provide.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30

days of publication of this notice in the Federal Register and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW, Washington, DC 20585.

Dated: April 3, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Bell Fuels, Inc., *et al.*
Dates of Filing: July 20, 1993, November 16, 1993
Case Numbers: LEF–0061, *et al.*

Date: April 3, 1995.

On July 20 and November 16, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds received pursuant to Consent Orders entered into by the DOE and the eighteen petroleum resellers and retailers listed in the Appendix to this Decision and Order (hereinafter collectively referred to as the consenting firms). In accordance with the provisions of the procedural regulations at 10 C.F.R. Part 205, Subpart V (Subpart V), the ERA requests in its Petitions that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Consent Orders.

I. Background

Each of the consenting firms was a reseller or retailer of refined petroleum products during the periods relevant to this proceeding. ERA audits of the consenting firms revealed possible violations of the Mandatory Petroleum Price Regulations. Subsequently, each of these firms entered into a separate Consent Order with the DOE in order to settle its disputes with the DOE concerning certain sales of refined petroleum products. Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability with respect to sales to their customers during the settlement periods. The firms' payments are currently being held in separate interest-bearing accounts pending distribution by the DOE. The names of the firms, their addresses, the dates of the settlement periods and of the Consent Orders, the amount received from each firm, and the products covered by each Consent Order are set forth in the Appendix to this Proposed Decision.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Petroleum Overcharge Distribution and Restitution Act of 1986,* 15 U.S.C. §§ 4501 et seq., *Office of Enforcement,* 9 DOE ¶ 82,508 (1981), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981) *(Vickers).*

II. Proposed Refund Procedures

In cases where the ERA is unable to identify parties injured by the alleged overcharges or the specific amounts to which they may be entitled, we normally implement a two-stage refund procedure. In the first stage of such a proceeding, those who bought refined petroleum products from the consenting firms may apply for refunds, which are calculated on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the firm during the period covered by the consent order. In the second stage, any funds remaining after all first-stage claims are decided are distributed in accordance with *PODRA.*

In the cases covered by this Proposed Decision, however, we lack much of the information that we normally use to provide direct restitution to injured customers of the consenting firms. In particular, we have been unable to obtain any information on the volumes of the relevant petroleum products sold by the consenting firms during the settlement period. Nor do we have any information concerning the customers of these firms. Based on the present state of the record in these cases, it would be difficult to implement a volumetric refund process. Nevertheless, we will accept any refund claims submitted by persons who purchased the products specified in the Appendix from the consenting firms during the periods shown in the Appendix. We will work with those claimants to develop additional information that would enable us to determine who should receive refunds and in what amounts.

If no claims are received, we propose to distribute all of the funds received from the consenting firms in accordance with the provisions of *PODRA. See Green Oil Company,* 20 DOE ¶ 85,450 (1990). *PODRA* requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs.

Before taking this action, we intend to publicize our proposal and solicit comments from interested parties. We invite anyone who has information concerning the consenting firms sales during the settlement period to submit that information. Comments concerning the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the Federal Register.

It Is Therefore Ordered That:

The payments remitted to the Department of Energy by the firms listed in the Appendix to this Decision and Order pursuant to the Consent Orders whose dates are set forth in the Appendix will be distributed in accordance with the foregoing Decision.

Appendix

Case No., firm	Address	Settlement period	Date of consent order	Amount received	Product
LEF–0061, Bell Fuels, Inc ..	4116 W. Peterson Ave., Chicago, IL 60646.	1/1/79–11/30/79	8/31/82	$33,973.12	Gasoline.
LEF–0062, Este Oil Company.	5556 Vine St., Cincinnati, OH 45217.	11/1/73–1/28/81	5/13/83	63,033.90	Refined petroleum products.

Appendix—Continued

Case No., firm	Address	Settlement period	Date of consent order	Amount received	Product
LEF–0063, G&G Oil Co. of Indiana, Inc.	220 E. Centennial Ave., Muncie, IN 47305.	4/1/79–12/31/79	2/1/83	49,097.11	Refined petroleum products.
LEF–0064, General Petroleum Products, Inc.	P.O. Box 209, Gary, IN 46402.	11/1/73–4/30/74	7/13/83	23,060.52	Refined petroleum products.
LEF–0065, Reco Petroleum, Inc.	100 N. 4th St., Reading, PA 19601.	3/1/79–1/30/81	2/8/83	26,472.40	Gasoline.
LEF–0066, SOS Monarch Oil Corp.	East Village Rd., Tuxedo, NY 10987.	4/1/79–9/30/79	10/25/82	5,901.03	Gasoline.
LEF–0067, Capitol 66 oil Company.	P.O. Box 2839, Jackson, MS 39207.	11/1/73–3/31/74	9/15/82	15,766.43	Refined petroleum products.
LEF–0068, Cumberland Farms Dairy, Inc.	777 Dedham St., Canton, MA 02021.	1/1/73–1/28/81	4/17/83	183,193.74	Gasoline.
LEF–0069, Kickapoo Oil Co	215 E. Madison, Hillsboro, WI 54634.	3/1/79–8/31/79	9/24/82	40,812.58	Gasoline.
LEF–0070, Lampton-Love, Inc.	P.O. Drawer 1607, Jackson, MS 39205.	11/73–4/74	9/30/82	12,983.93	Gasoline.
LEF–0071, Skinny's Inc	5189 Texas Ave., Abilene, TX 79608.	3/1/79–3/31/80	9/2/82	16,000.00	Gasoline.
LEF–0072, Vermont Morgan Corp.	114 Broadway, Saratoga, NY 12866.	4/1/79–6/30/79	4/5/83	20,275.00	Gasoline.
LEF–0075, Bob's Broadway Shell.	220 W. 17th St., Santa Ana, CA 92708.	8/1/79–5/7/80	10/8/81	2,100.00	Gasoline.
LEF–0076, Clearview Gulf ..	3120 Clearview Parkway, Metairie, LA 70002.	4/1/79–7/15/79	8/14/81	594.84	Gasoline.
LEF–0077, E–Z Serve, Inc .	P.O. Box 3579, Abilene, TX 79604.	8/19/73–1/27/81	12/27/82	368,550.56	Gasoline.
LEF–0079. Millbrae Shell	825 Spruance Ln., Foster City, CA 94404.	8/1/79–11/30/79	3/5/82	2,500.00	Gasoline.
LEF–0080, Bob Hutchinson, Inc.	1334 Breckenridge St., San Leandro, CA 94579.	8/1/79–11/30/79	3/5/82	1,762.00	Gasoline.
LEF–0016, Maxwell Oil Co., Inc.	P.O. Box 1936, Olympia, WA 98507.	5/1/79–12/1/79	9/1/81	275.01	Gasoline.

[FR Doc. 95–9172 Filed 4–12–95; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of a total of $7,280,202, plus accrued interest, in crude oil overcharges obtained by the DOE from MAPCO, Inc. and MAPCO International, Inc., Case No. VEF–0004 (MAPCO). The OHA has determined that the funds obtained from MAPCO, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986).

DATES AND ADDRESSES: Comments must be filed on or before May 15, 1995, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585. All comments should display a reference to Case No. VEF–0004.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 C.F.R. 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of $7,280,202, plus accrued interest, remitted to the DOE by MAPCO, Inc. and MAPCO International, Inc. to the DOE. The DOE is currently holding these funds in an interest bearing account pending distribution.

The OHA proposes to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

The tentative deadline for filing Applications for Refund is June 3, 1996. As we state in the Proposed Decision, any party who has previously submitted a refund application in the crude oil proceedings should not file another Application for Refund. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the proceedings are finalized.

Dated: April 4, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: MAPCO International, Inc.
Date of Filing: February 23, 1995
Case Number: VEF–0004

Dated: April 4, 1995.

On February 23, 1995, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute crude oil overcharge funds received from MAPCO, Inc. (MAPCO) pursuant to a June 23, 1994 Settlement Agreement. The Settlement Agreement resolved claims and litigation arising from an April 21, 1986 Remedial Order originally issued to MAPCO Inc.'s subsidiary MAPCO International, Inc. (MAPCO International) (Case No. HRO–0193). In accordance with the provisions of the procedural regulations at 10 C.F.R. Part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations set forth in the Remedial Order. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

During the period relevant to this proceeding, MAPCO International, Inc. was a reseller of crude oil. On June 30, 1983, the ERA issued a Proposed Remedial Order (PRO) to the firm. The PRO alleged that during the period from August 1978 through November 1980 (the audit period), MAPCO International sold crude oil at prices in excess of those permitted by 10 C.F.R. Part 212, Subpart L. After considering and dismissing MAPCO International's objections to the PRO, the DOE issued a final Remedial Order. 14 DOE ¶ 83,019 (1986). MAPCO International appealed the Remedial Order to the Federal Energy Regulatory Commission, which affirmed the Remedial Order. 43 FERC ¶ 63,041 (1988); 56 FERC ¶ 61,063 (1991). Three years of litigation ensued. MAPCO, MAPCO International and the DOE finally resolved all their disputes arising from the Remedial Order with the June 23, 1994 Settlement Agreement. Pursuant to the Settlement Agreement, MAPCO remitted to the DOE the sum of $7,280,202, to which interest has since accrued. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Petroleum Overcharge Distribution and Restitution Act of 1986,* 15 U.S.C. 4501 et seq., *Office of Enforcement,* 9 DOE ¶ 82,508 (1981), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement Subpart V proceedings with respect to the MAPCO funds and have determined that such proceedings are appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Before taking the actions proposed in this Decision, we intend to publicize our proposal and solicit comments from interested parties. Comments regarding the tentative distribution processes set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the Federal Register.

III. Proposed Refund Procedures

A. Crude Oil Refund Policy

We propose to distribute the monies remitted by MAPCO in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP). See 51 FR 27899 (August 4, 1986). This policy has been applied in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specifies that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts. See *In re: The Department of Energy Stripper Well Exemption Litigation,* 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement) for a more detailed discussion of the MSRP.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 Fed. Reg. 11737 (April 10, 1987) (the April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. End-users of petroleum products whose businesses were unrelated to the petroleum industry would be presumed to have been injured by the alleged crude oil overcharges and would not be required to submit proof of injury. See City of Columbus, Georgia, 16 DOE ¶ 85,550 (1987).

B. Refund Claims

The amount of money covered by this Proposed Decision is $7,280,202, plus accrued interest. In accordance with the MSRP, we propose initially to reserve 20 percent of those funds ($1,456,040 in principal, plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges.

We propose to evaluate claims in the MAPCO crude oil refund proceeding in exactly the same manner as in other crude oil proceedings. As we stated in the April 10 Notice, claimants will generally be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations. We propose to base the refunds on a volumetric amount which has been calculated in accordance with the description in the April 10 Notice. We will also presume that the alleged crude oil overcharges were absorbed, rather than passed on, by applicants who were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973, 15 U.S.C. 751–760h. In order to receive a refund, such claimants need not submit any evidence of injury beyond documentation of their purchase volumes.

As has been stated in earlier Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. *See, e.g., A.Tarricone Inc.,* 15 DOE ¶ 85,475 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The tentative deadline for filing an Application for Refund is June 3, 1996. Any claimant that has executed a valid waiver pursuant to one of the escrow accounts established by the Stripper Well Agreement, however, has waived its right to file an application for a Subpart V crude oil refund. *See Mid-American Dairymen* v. *Herrington,* 878 F. 2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation,* 707 F. Supp. 11267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

C. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the amount remitted by MAPCO, or $5,824,162 in principal, plus accrued interest, be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the crude oil price control period. The share of the funds allocated to each state is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements that apply to any other crude oil overcharge funds received by the states in accordance with the Stripper Well Agreement.

It Is Therefore Ordered That:

The payment remitted to the Department of Energy by MAPCO, Inc. pursuant to the Settlement Agreement dated June 23, 1994 will be distributed in accordance with the foregoing Decision.

[FR Doc. 95–9171 Filed 4–12–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140231; FRL–4940–7]

ICF International, Incorporated Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ICF International, Incorporated (ICF), of Fairfax, Virginia, and Washington, DC, for access to information which has been submitted to EPA under 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than April 27, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Willis, Acting Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D3–0021 contractor ICF, of 9300 Lee Highway, Fairfax, VA, and 1850 K St., NW., Suite 1000, Washington, DC, will assist the Office of Pollution Prevention and Toxics (OPPT) in completing risk characterizations of existing and new chemicals that will be introduced as replacements for ozone-depleting substances that are being phased out under the Clean Air Act Amendments of 1990.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D3–0021, ICF will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. ICF personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the Federal Register of November 1, 1991 (56 FR 56216), ICF was authorized for access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA. EPA is issuing this notice to extend ICF's access to TSCA CBI under a contract extension.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ICF access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, and ICF's Fairfax, VA and Washington, DC facilities. Before access to TSCA CBI is authorized at ICF's sites, EPA will approve ICF's security certification statements, perform the required inspection of its facilities, and ensure that the facilities are in compliance with the manual.

ICF will be authorized access to TSCA CBI at its facilities under the EPA *TSCA Confidential Business Information Security Manual*. Upon completing review of the CBI materials, ICF will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1995.

ICF personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: march 8, 1995.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–9062 Filed 4–12–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–00167; FRL–4946–4]

Training Grants for Lead-Based Paint Abatement Workers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for prepoposals.

SUMMARY: The safety issues surrounding the activities of lead-based paint abatement workers are a major concern of EPA. Appropriate worker safety training is essential if lead-based paint abatement activities are to be done in a manner that assures the safety of building occupants, the public, the environment, and abatement workers. To ensure that the number of well-trained lead-based paint abatement workers increases at an acceptable rate, EPA has received 1995 congressional add-on funds to provide training grants to nonprofit organizations engaged in lead-based paint abatement worker training and education activities. This year, the Agency is particularly interested in funding nonprofit environmental equity-based organizations that offer worker lead abatement training opportunities for minorities and low income community residents. This grass roots initiative will provide opportunities for communities to develop local-based lead abatement businesses that will employ area residents. Only nonprofit organizations with demonstrated experience in the implementation and operation of health and safety training for lead-based paint abatement workers will be considered for funding. This notice describes the eligibility requirements and the selection criteria for the grants.

DATES: All preproposals must be submitted to EPA no later than May 15, 1995.

ADDRESSES: Preproposals should be sent to the following address: Tim Torma, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Tim Torma at (202) 260–4595 or write to the EPA Lead Abatement Program at the address listed under the ADDRESSES unit.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce the availability of funds to form cooperative agreements for the purpose of providing support to organizations demonstrating experience in lead-based paint training activities with particular interest in funding nonprofit environmental equity-based organizations. Any nonprofit organization with such experience is eligible to apply. For the purposes of this notice, lead-based paint abatement activities mean activities engaged in by workers that include the removal, disposal, handling, and transportation of lead-based paint and materials containing lead-based paint from public and private dwellings, public and commercial buildings, and bridges and other structures or superstructures where lead-based paint presents or may present an unreasonable risk to health or the environment.

I. Administrative Requirements

This program is subject to matching share requirements. Awards shall be given only to applicants who can fund at least 5 percent of their programs from non-Federal sources, excluding in-kind contributions. (In-kind contributions are defined as the value of a non-cash contribution to meet a recipient's cost-sharing requirements. An in-kind contribution may consist of charges for real property and equipment, or the value of goods and services directly

benefiting the EPA-funded project.) The recipient's matching share may exceed 5 percent.

II. Evaluation Criteria

Preproposals submitted in response to this notice will be evaluated on a competitive basis by an EPA review panel. The following factors, which are weighted by percentage as to their relative importance, will be considered in evaluating the preproposals:

1. *Program Experience (25 percent)*

a. Experience in the development of adult education courses, with emphasis on training individuals with limited education.

b. Experience in the delivery of health and safety course materials to individuals with limited or no English language skills.

c. Demonstrated ability to target the worker population.

2. *Lead-Based Paint Abatement Worker Course Experience (30 percent)*

a. Experience in the delivery of courses, including hands-on training, to lead-based paint abatement workers.

b. Experience in providing community-based training to lead-based paint abatement workers.

c. Demonstrated experience in the implementation and operation of health and safety training for lead-based paint abatement workers.

d. Qualifications of key personnel.

e. The number of students expected to be trained during the project period.

3. *Project Management (25 percent)*

a. Applicant's ability to provide appropriate program staff to the project.

b. Applicant's ability to provide space, equipment, staff time, and other resources required to carry out project responsibilities.

c. Extent to which the applicant has considered a management plan for the project, including the designation of a qualified program administrator.

4. *Budget (20 percent)*

Preproposals should include a detailed budget that specifies the amount of money to be used in all aspects of the proposed worker training, as well as the amount that is to be the non-Federal share (at least 5 percent of the total budget, excluding in-kind contributions). All budgets must include funding for a trip to EPA in Washington, DC to attend an information-sharing meeting for all award recipients. The ability of the applicant to derive a budget estimate that is appropriate to the scope of the project will be considered in the evaluation process. The proposed budget should be clearly justified and consistent with the intended use of the funds set forth in this notice.

III. Application Procedures

The following materials must be provided by all applicants:

1. Documentation that proves the nonprofit status of the applicant.

2. Copies of any lead-related course material already being used by the applicant to teach the course. In addition, any applicants who have received EPA funds for lead worker training in any previous year's program must include in their preproposal a description of how those funds were used.

IV. Acceptable Expenditures

Funds awarded must be spent on activities that directly result in increased numbers of well-trained lead-based paint abatement workers. Since EPA has funded the development of a model course curriculum for workers, the Agency does not wish to fund the development of new courses through this program.

The following lists provide examples of activities that will and will not be considered for funding. The list of acceptable activities is for guidance only; projects may be funded for acceptable activities other than those on the list.

Award recipients may use the monies for the following:

a. Delivery of lead-based paint abatement worker courses.

b. Delivery of train-the-trainer courses.

c. Enhancement of hands-on training programs.

d. Monitoring and evaluating courses.

e. Limited purchasing of supplies.

f. Speakers' fees (expenses and travel).

g. Slide duplication.

h. Rental of facilities.

i. Limited purchase of audio/visual equipment.

j. Workers' tuition.

k. Limited printing and reproduction of materials and manuals.

l. Transporting workers to training sites.

m. Innovative training systems (i.e., community-based training).

Monies may *not* be used for the following:

a. Development of new training course curricula for workers.

b. Stipends to students for room, board, and salaries.

V. Notification of Selection

Preproposals are due no later than May 15, 1995. Preproposals shall be no more than five pages in length. Each applicant is requested to provide seven copies of the preproposal to EPA. EPA plans to award a total of $1.55 million through cooperative agreements to eligible nonprofit organizations. EPA will not allot all of the available award money to any one group or necessarily fund all of the groups.

Dated: April 6, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–9164 Filed 4–12–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5190–3]

Proposed De Minimis Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of MacGillis & Gibbs/Bell Lumber & Pole Site, New Brighton, Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: Notice of *De Minimis* Settlement: in accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given of a *de minimis* settlement concerning relocation of a petroleum liquids transmission pipeline at the MacGillis & Gibbs/Bell Lumber & Pole Site in New Brighton, Minnesota. U.S. EPA Region 5 has submitted the proposed agreement to the U.S. Department of Justice, and the Assistant Attorney General has rendered her written approval. The work to be performed under this settlement agreement will commence after the public comment process set forth in Section 122(i)(1) of CERCLA has been completed.

DATES: Comments must be provided on or before May 15, 1995.

ADDRESSES: Comments should be addressed to Darryl Owens (Mail Code HSRM–6J), Remedial Project Manager, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and should refer to: In the Matter of MacGillis & Gibbs/Bell Lumber & Pole Site, Docket No. *V–W–95–C–261*.

FOR FURTHER INFORMATION CONTACT: Thomas M. Williams, (Mail Code CS–29A), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The United States and the State of Minnesota have entered into a *de minimis* settlement agreement with the Williams Pipe Line Company that

addresses the relocation of a petroleum liquids pipeline at the MacGillis & Gibbs/Bell Lumber & Pole Site (''the Site'') in New Brighton, Minnesota. Among the areas to be addressed in response activities at the Site is a disposal pond area, where wood treating process wastes, including sludges and wood scraps containing creosote, pentachlorophenol and chromated copper arsenate, have been placed. The Williams Pipe Line Company operates a petroleum pipeline pursuant to license agreements with the various property owners at and adjacent to the site. The pipeline passes through the disposal pond area, and excavation and treatment of contaminated soils and sediments cannot proceed with the pipeline in place. Neither U.S. EPA nor the State of Minnesota presently has any evidence that Williams Pipe Line Company's operations resulted in the presence of the hazardous substances to be addressed in the disposal pond area. To the contrary, all available information indicates that the presence of these hazardous substances is attributable to adjacent wood treating operations.

U.S. EPA may enter into this settlement under the authority of Section 122(g) of CERCLA. The settlement agreement provides that Williams Pipe Line will obtain the necessary authority from other property owners to relocate its pipeline to a remote location, and proceed to re-route its pipeline accordingly pursuant to an approved work plan and schedule. Actual line relocation is not expected to take more than twenty days. U.S. EPA and the State of Minnesota have agreed to provide funding of up to $198,415 for the project. Payment is to be made upon completion of the work and review of the relocation costs incurred.

A copy of the proposed Administrative Order on Consent and additional background information relating to the settlement are available for review and may be obtained in person or by mail from Thomas M. Williams (Mail Code CS–29A), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The U.S. Environmental Protection Agency will receive written comments relating to this settlement for thirty days from the date of publication of this notice.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*

Joseph M. Boyle,

Acting Director, Waste Management Division.

[FR Doc. 95–9058 Filed 4–12–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability Council Meeting

April 7, 1995.

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the eleventh meeting of the Network Reliability Council (''Council''), which will be held at the Federal Communications Commission in Washington, D.C.

DATES: Friday, April 28, 1995 at 1:30 p.m.

ADDRESSES: Federal Communications Commission, Room 856, 1919 M Street, N.W. Washington, D.C. 20554.

FOR ADDITIONAL INFORMATION CONTACT: Robert Kimball at (202) 634–7150.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommended measures that would enhance network reliability.

The agenda for the eleventh meeting is as follows: the Council will receive an overview of Steering Committee activities and an update on network reliability performance. Progress reports will be made by three NRC focus group leaders and discussion will follow. The Council will also discuss data collection activities including funding problems.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the Council's designated Federal Officer before the meeting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–9041 Filed 4–12–95; 8:45 am]

BILLING CODE 6712–01–M

[Gen. Docket No. 88–476; DA 95–590]

Private Wireless Division, New York Metropolitan Area Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Acting Chief, Private Radio Division and the Acting Chief, Spectrum Engineering Division released this Order affirming the November 28, 1994, amendment to the Public Safety Radio Plan for the New York Metropolitan Area (Region 8). As a result of affirming the amendment to the Plan for Region 8, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Rubin, Wireless Telecommunications Bureau, Private Wireless Division (202) 418–0680.

SUPPLEMENTARY INFORMATION:

Order

Adopted: March 22, 1995
Released: March 30, 1995

By the Acting Chief, Private Wireless Division, Wireless Telecommunications Bureau and the Acting Chief, Spectrum Engineering Division, Office of Engineering and Technology:

1. On November 28, 1994, the Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, approved an amendment to the New York Metropolitan Area (Region 8) Public Safety Plan (Plan). *Order*, Gen. Docket No. 88–476, adopted November 28, 1994, DA 94–1329. In the *Order*, we inadvertently failed to note that Mr. Charles L. Larsen filed a timely comment on August 2, 1994.

2. We have reviewed Mr. Larsen's comment. Mr. Larsen opposed the amendment to the Region 8 Plan noting the scarcity of frequencies in the New York metropolitan area. We note that his objection is not directed against the proposed amendment, but rather the public safety National Planning process. We find that our approval of the amendment was consistent with Commission authority pursuant to *Report and Order*, in Gen. Docket No. 87–112, 53 FR 1022, January 15, 1988.

3. Accordingly, we reaffirm our decision of November 28, 1994, that the Public Safety Radio Plan for the New York Metropolitan Area (Region 8) IS AMENDED, as set forth in the Region's letter of July 11, 1994.

4. For further information, contact Mark Rubin at (202) 418–0680.

Federal Communications Commission.
Robert H. McNamara,
Acting Chief, Private Wireless Division.
[FR Doc. 95–9094 Filed 4–12–95; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Signet Banking Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each 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 on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 27, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Signet Banking Corporation, Richmond, Virginia to acquire through its subsidiaries, Virtus Capital Management, Inc.,and Signet Financial Services, Inc., both of Richmond, Virginia, Sheffield Management Company, New York, New York, and thereby indirectly acquire Sheffield Investments, Inc., New York, New York, and thereby engage in acting as investment advisor to the Blanchard Group of Funds, pursuant to § 225.25(b)(4) of the Board's Regulation Y, and providing brokerage, marketing, and related services to the Blanchard Group of Funds, pursuant to § 225.25(b)(15) of the Board's Regulation Y, but will not serve as distributor for the Blanchard Group of Funds or any other mutual fund.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Ramsey Financial Corporation, Devils Lake, North Dakota; to acquire through its subsidiary, the Rugby, Cavalier, and Bottineau branches of Heritage Federal Savings Bank, fsb, Cando, North Dakota, First Bank, fsb, Fargo, North Dakota, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 7, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–9091 Filed 4–12–95; 8:45 am]
BILLING CODE 6210–01–F

Anita Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have 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)).

Each 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 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 8, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Anita Bancorporation, Inc., Newton, Iowa; to acquire 100 percent of the voting shares of Griswold Bancshares, Inc., Griswold, Iowa, and thereby indirectly acquire Griswold State Bancshares, Inc., Griswold, Iowa, and Griswold State Bank, Griswold, Iowa.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Metrocorp, Inc., Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Metrocorp of Delaware, Inc., Wilmington, Texas, and thereby indirectly acquire MetroBank, N.A., Houston, Texas.

In connection with this application, Metrocorp of Delaware, Inc., Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of MetroBank, N.A., Houston, Texas.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Northeast Portland Community Development Trust and Albina Community Bancorp, both of Portland, Oregon; to become bank holding companies by acquiring 100 percent of the voting shares of Albina Community Bank, Portland, Oregon (in organization).

2. Cache Valley Banking Company, Logan, Utah; to become a bank holding company by acquiring 92.66 percent of the voting shares of Cache Valley Bank, Logan, Utah.

Board of Governors of the Federal Reserve System, April 7, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–9090 Filed 4–12–95; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AOA–95–1]

Fiscal Year 1995 Program Announcement; Availability of Funds and Request for Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications under the Administration on Aging's Discretionary Funds Program for research, demonstration, training, development, and related capacity-building activities.

SUMMARY: The Administration on Aging (AoA) announces its Fiscal Year (FY) 1995 Discretionary Funds Program (DFP) of knowledge building, program innovation and development, information dissemination, training, technical assistance, and related capacity-building efforts. The FY 1995 DFP is responsive to the major strategic initiatives of the Assistant Secretary for Aging and to specific mandates of the Older Americans Act. Funding for AoA discretionary grants is authorized by Title IV of the Older Americans Act, Public Law 89–73, as amended.

This program announcement consists of three parts. Part I provides background information, discusses the purpose of the AoA Discretionary Funds Program, and documents its statutory funding authority. Part II describes the programmatic priorities under which AoA is inviting applications to be considered for funding. Part III describes, in detail, the application process and provides guidance on how to prepare and submit an application.

All of the forms necessary to submit an application are published as part of this announcement following Part III. No separate application kit is necessary for submitting an application. If you have a copy of this entire announcement, you have all the information and forms required to prepare and submit an application.

Grants will be made under this announcement subject to the availability of funds for the support of the priority area project activities described herein.

DATES: The deadline date for the submission of applications under this announcement is June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, Administration on Aging, Office of Program Development and Elder Rights, 330 Independence Avenue, S.W., Room 4278, Washington, DC 20201, telephone (202) 619–0441.

SUPPLEMENTARY INFORMATION:

Part I Background

A. The Challenges of an Aging Society

According to the National Center for Health Statistics, life expectancy at birth for Americans in 1991 rose to a record 75.5 years. The Census Bureau predicts that by the year 2020 the average life expectancy will be 82 years for women and 74.2 years for men. At the turn of the century, only 4 percent of the American population was 65 and over. By 1990, it was 12 percent. Beginning in approximately 2010, the percentage is projected to increase rapidly to 20 percent by 2030 and then to increase slowly to about 21% by 2050 and 22% by 2060. By the year 2030, there will be more people age 65 and older than young people under age 15 in the population.

The baby boom generation, which will begin to reach retirement age in little more than a decade, now represents the largest age segment of the U.S. population, numbering approximately 75 million. The current older population, already noted for its heterogeneity, will be significantly more diverse with the aging of the baby boomers in the early decades of the 21st century. Minority populations are projected to represent 25% of the elderly in 2030, up from 13% in 1990. The great increase in the numbers and the diversity of the elderly, combined with dramatic changes in lifestyle (such as four-generation households and more women serving in both caregiving roles and the work force) are important factors to consider in planning for an aging society.

If the Nation is to be well prepared for, rather than daunted by, the burgeoning numbers of older persons in the 21st century, and to be equally well equipped to take advantage of the opportunities arising from concomitant social and economic changes, then today we must grasp the basic implications of an aging society, and act on the basis of those realizations. Our Nation has many different policies and agencies that impact on what people may or may not do when they retire. Although the Department of Health and Human Services and the Social Security Administration provide the bulk of public financing for programs and benefits that directly or indirectly affect older persons, almost every Federal agency is involved in providing services to older persons including the Departments of Housing and Urban Development, Transportation, Justice, Agriculture, Labor, Defense, Energy, and Treasury. By creating the position of Assistant Secretary for Aging, the President and the Secretary of Health and Human Services have provided a focal point for aging policy, whereby the disparate program responsibilities of Federal government agencies can be linked into a more coherent vision of what is needed for an aging society.

B. Older Americans Act Responsibilities of the Assistant Secretary for Aging and the Administration on Aging

The Older Americans Act of 1965, as amended, is designed to provide assistance in the development of new or improved programs to help older persons, through grants to the States and tribal organizations for community planning and services and for research, demonstration and training projects. Through the Act, the Congress has declared that it is the responsibility of the Federal government, the States, and Native American tribal organizations to assist older people as they endeavor to secure an adequate retirement income, the best possible physical or mental health services, suitable housing, long term care services, employment opportunities, and participation in a wide range of civic, cultural, educational and recreational activities.

Title II of the Act declares, further, that it is the responsibility of the Assistant Secretary for Aging to serve as the effective and visible advocate for older individuals within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government. Under Title II, the Assistant Secretary is charged with directly assisting the Secretary of Health and Human Services in all matters pertaining to problems of the aged and aging and with the responsibility to administer the formula and discretionary grant programs authorized by Congress under Titles III, IV, VI and VII of the Act.

1. The AoA Discretionary Funds Program

The Discretionary Funds Program authorized by Title IV of the Older Americans Act constitutes the major research, demonstration, training, and development effort of the Administration on Aging. The Title IV mandate is aimed, generally, at building knowledge, developing innovative model programs, and training personnel for service in the field of aging, and matching these resources to the changing needs of older persons and their families in the coming decades. AoA's research, demonstrations, training and other discretionary projects are focused on:

• Advancing our knowledge and understanding of current program and policy issues, such as community and in-home long term care service systems and programs, significant to the well-being of the older population;
• Improving the effectiveness of Older Americans Act programs by testing new models, systems, and approaches for better providing and delivering services to older persons; and
• Providing training, technical assistance, and information that will increase our ability to serve older Americans with skill, care, and compassion.

2. Coordination With Other Federal Agencies

In accordance with Title II of the Older Americans Act, the Assistant Secretary for Aging and the Administration on Aging (AoA) function as focal points within the Federal government for aging-related concerns. In that capacity, the Assistant Secretary advises the Secretary of Health and Human Services on matters affecting older Americans and provides consultation and information to units across the Federal government on the characteristics, circumstances, and needs of older persons. AoA has a strong commitment to working with other Federal agencies on policy and program development in issue areas of importance to older Americans. To carry out its national level program and advocacy responsibilities, AoA places major emphasis on developing collaborative relationships with other Federal agencies aimed at coordinating diverse and wide-ranging Federal program resources and linking those resources to the similarly diverse needs of older persons.

Dating back two decades, AoA has worked hard to develop and implement a network of Federal Interagency Agreements to better serve older Americans, combining our resources with those of the Departments of Housing and Urban Development, Labor, and Education, the Farmers Home Administration, the Social Security Administration, and the Corporation for National and Community Service (formerly ACTION), as well as with other agencies within the Department of Health and Human Services, such as the Health Care Financing Administration, the Administration for Children and Families, and the Public Health Service, including the National Institute on Aging.

Federal Interagency Agreements cover a spectrum of program efforts—in housing, long term care, elder abuse, etc. They represent a strategic coupling of AoA's resources to serve the nation's elderly, especially those at risk of losing their independence.

3. Dissemination of Title IV Project Results and Products

In keeping with the provisions of the Older Americans Act, all projects funded under Title IV are required to undertake vigorous steps to disseminate the results and products of their projects to appropriate audiences involved in promoting the well-being of older persons. This should include energetic marketing of products and results. Projects are strongly encouraged to utilize appropriate promotional media campaigns and other dissemination strategies in order to ensure that their outcomes receive the widest possible attention. Such campaigns should seek to educate consumers, providers (including the Aging Network), the private sector, and policy sector about their results and to promote use of their products.

As described below in Part III, Section I.2, the most effective dissemination begins at the moment a project is conceptualized and includes the involvement of potential user audiences throughout the project, particularly in the design of products. As part of their dissemination plan, applicants are also encouraged to consider the development, as appropriate, of brief products suitable for widespread dissemination to older persons, their families and other caregivers, and practitioners who serve older persons. Advice on ways to maximize the utilization of a proposed project may be obtained by contacting Saadia Greenberg at the AoA Office of Dissemination and Utilization at (202) 619–0441. Applicants may also be interested in obtaining a publication entitled, Dissemination by Design, which may be requested by calling the above number.

C. Focus of the FY 1995 Discretionary Funds Program Announcement

Through this Title IV Program Announcement, the Assistant Secretary for Aging intends to focus Title IV Discretionary Funds support on AoA's strategic initiatives for (1) building and strengthening systems of home and community based long term care and (2) better understanding of minority aging issues as well as the challenges of a much more diverse aging society in the 21st century. The second major area of emphasis in this Title IV Discretionary Funds Program Announcement derives from several congressional mandates keyed to provisions of the Older Americans Act. These mandates concentrate discretionary funding resources on making a number of aging programs more effective, specifically a national legal assistance support system and legal hotlines to serve older Americans, pension rights information and counseling, and the utilization of older volunteers in multigenerational family program settings.

D. Technical Assistance for Prospective Applicants

Either the central or the regional offices of the Administration on Aging are available to provide guidance and technical assistance to prospective applicants and to respond to questions of a general nature. Questions regarding the programmatic or technical aspects of any of the several priority areas should be directed to the central office in Washington, D.C. The persons to contact are listed below:

City	AoA Contact Person(s)
Washington, D.C	Alfred Duncker/Saadia Greenberg, Albert Byrd, (202) 619–0441.
Boston, Massachusetts.	Thomas Hooker, (617) 565–1158.
New York, New York.	Judith Rackmill, (212) 264–2976.
Philadelphia, Pennsylvania.	Paul E. Ertel, Jr., (215) 596–6891.
Atlanta, Georgia	Franklin Nicholson, (404) 331–5900.
Chicago, Illinois	Marion Mengert, (312) 353–3141.
Dallas, Texas	John Diaz, (214) 767–2971.
Kansas City, Missouri.	Larry Brewster, (816) 374–6015.
Denver, Colorado ...	Percy Devine, (303) 844–2951.
San Francisco, California.	Frank Cardenas, (415) 556–6003.
Seattle, Washington	Chisato Kawabori, (206) 615–2298.

E. Statutory Authority

The statutory authority for awards made under the AoA Discretionary Funds Program is contained in Title II and Title IV of the Older Americans Act, (42 U.S.C. 3001 et seq.), as amended by the Older American Act Amendments of 1992, Public Law 102–375, September 30, 1992.

F. Public Comments on this Announcement

AoA invites comments on this Discretionary Funds Program Announcement. In addition, because the field of aging is characterized by rapidly unfolding events, new data, findings and interpretations, and a broad range of issues important to older people, the

Administration on Aging is considering the publication of a FY 1996 Discretionary Funds Program (DFP) Announcement as early as October, 1995. Among the general areas under consideration for support in the FY 1996 DFP, Title IV funding levels permitting, are: (1) *Gerontological education and training;* (2) *prevention of crime and violence against the elderly;* (3) *home and community based long term care;* (4) *the national and international aspects of contemporary and future minority aging issues in an increasingly aging society,* and: (5) *follow-up to the salient issues raised by the 1995 White House Conference on Aging.* We invite comments on the content and timing of the FY 1996 DFP. Please direct your comments to: Administration on Aging, Office of Program Development and Elder Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201.

Part II—Priority Areas

Part II of the Discretionary Funds Program (DFP) Announcement sets forth the priority areas under which applications will be considered for funding by the Administration on Aging. Part II also provides general guidelines concerning eligible applicants as well as project costs and duration. More specific instructions regarding eligibility, the Federal share of project costs, project duration, and deadline dates for the submission of applications may be found under the individual priority areas.

Applications must be directly and explicitly responsive to the expressed concerns of the particular priority area under which they are submitted. AoA reserves the option of screening out and returning any application which manifestly bears no relation to the priority area under which it has been submitted.

A. Eligible Applicants

As a general rule, any public or nonprofit agency, organization, or institution is eligible to apply under this Discretionary Funds Program Announcement. Where there are exceptions to this rule, they are specified in the appropriate priority area description. The Administration on Aging will not consider grant applications from individuals because they are ineligible to receive a grant award under the provisions of Title IV of the Older Americans Act. For-profit organizations are not eligible applicants, but may participate as subgrantees or subcontractors to eligible public or nonprofit agencies.

Any nonprofit organization applying under this program announcement that is not now a DHHS grantee should include, with its application, Internal Revenue Service or other legally recognized documentation of its nonprofit status. A nonprofit applicant cannot be funded without proof of its status.

B. Project Costs and Duration

Under each priority area, AoA has estimated the number of projects to be funded and offered guidelines regarding both the duration of those projects and the anticipated Federal share of project costs. Because applications are reviewed on a competitive basis within priority areas, they are expected to be comparable in terms of cost and duration. Therefore, applicants are strongly urged to adhere to those guidelines.

C. List of Priority Areas

(1) Neighborhood Senior Care Program
(2) Enhanced Capacity and Management of Home and Community Based Long Term Care Service Systems
(3) Research on Minority Elders in a Diverse Aging Society
(4) National Legal Assistance and Elder Rights Projects
(5) Statewide Legal Hotlines for Older Americans
(6) Pension Information and Counseling Program
(7) National Volunteer Senior Aides/ Family Friends Projects

(1) Neighborhood Senior Care Program

Pursuant to Section 429B of the Older American Act, this priority area is designed to solicit proposals that demonstrate innovative neighborhood senior care programs which encourage professionals to provide volunteer services to local residents who are older individuals and who might otherwise have to be admitted to nursing homes and hospitals.

The Neighborhood Senior Care Program is intended to foster professionally oriented, neighborhood-based volunteer programs for the vulnerable elderly by organizing and providing health, social, and similar services in coordination with other community agencies and organizations. Volunteer services may include peer counseling, chore services, assistance with mail and taxes, transportation, socialization, and health and social services. Health and social services may include skilled nursing care, personal care, social work services, homemaker services, health and nutrition education, health screening, home health aide services, and specialized therapies.

Applicants shall:

(A) Describe the activities for which assistance is sought and the methodology for carrying out activities;

(B) Describe the neighborhood in which services are to be provided and a plan for integrating services within the neighborhood;

(C) Provide assurances that nurses, social workers, community volunteers providing volunteer services, and an outreach coordinator involved with the project, live in the neighborhood. If this is not possible, the applicant shall state the reasons such assurances cannot be provided and assure that the nurses, social workers, community volunteers and outreach coordinator who are not neighborhood residents will be assigned repeatedly to the neighborhood;

(D) Provide for a neighborhood advisory board, at least two thirds of which shall be made up of residents from the community to be served;

(E) Describe how the proposal will be implemented in cooperation with appropriate local service providers, community programs for the elderly, and Area and State Agencies on Aging.

(F) Describe how the program will become self sustaining by the end of the Federal funding period.

(G) Provide for an evaluation of the activities and outcomes of the proposed program.

Applicants are encouraged to consider including in their budget a technical assistance component, as needed, whereby they would be provided state-of-the-art information on how to best implement an effective and innovative neighborhood program, and on how to sustain the program after Federal funding is completed.

The Neighborhood Senior Care Program was modeled in part on the Living at Home/Block Nurse Program. Information about the program is available by contacting the Living at Home/Block Nurse Program, Ivy League Place—Suite 322, 475 Cleveland Avenue North, St. Paul, MN 55104–5101 (612–649–0315).

Preference in awarding funds will be given to applicants who are experienced in operating community programs and meeting the independent living needs of older individuals and who propose new model programs or innovative improvements in existing models. Applicants are advised that they are competing under a national demonstration program authorized by Title IV of the Older American Act. Therefore, applications will be screened by AoA to assure that they are not local service projects, but rather are responsive to issues of national significance, such as the ability of the

elderly to remain independent in their own homes and communities, and will result in findings, reports, and products with national implications such as the effective use of neighborhood resources to promote the independence of older persons.

AoA intends to make approximately 10–13 awards with a Federal share of approximately $100,000-$120,000 for a 17 month project period.

(2) Enhanced Capacity and Management of Home and Community Based Long Term Care Service Systems

Under this priority area, AoA intends to award, through a Cooperative Agreement, one project grant for the purpose of providing expert technical assistance and training to all States aimed at strengthening the capacity of State and Area Agencies on Aging in managing and improving their home and community based long term care service systems. Although the proposed project has general applicability to the critical leadership role of the Aging Network in fostering the growth of home and community based long term care, it is especially timely now in light of the enhanced leadership role of AoA in promoting home and community-based services, and other major legislative changes which may impact on the program and fiscal underpinnings of State long-term care programs.

The Administration is seeking additional Title IV program resources to promote home and community-based services which would be directed toward meeting the major strategic initiative of the Assistant Secretary for Aging aimed at assisting all States and their communities in developing better home and community-based long term care service systems for older persons and persons with disabilities. The focus is on long-term care because it is a critical issue facing the nation. The focus is on home and community-based long term care services because they are, for the overwhelming majority of older and disabled persons and their families, the much more preferred alternative to institutional care. The focus is on States and their communities because they have been, are now, and will be the testing and proving ground in this nation for building an efficient and cost-effective infrastructure of home and community based services that responds to the long term care needs of their citizens.

The proposed Title IV increase is a modest but very much needed down payment toward building our country's future system of home and community-based care. The States are now in varying stages of developing home and community-based long term care service systems. The technical assistance, consultation, and training project to be funded under this priority area is intended to provide to the States and their communities the requisite program information, knowledge base, consultation, staff training guides, and other program resources to capitalize on the core funding provided by Title IV and to demonstrate to critical audiences of policy makers and taxpayers alike that home and community-based care is a compelling alternative to institutional care.

The manner in which funds are provided to States and the way in which programs are operated is being debated. There are divergent viewpoints about the appropriate federal and state role in funding long-term care services. Based on which of these approaches is implemented, States and local aging entities will need assistance in modifying their systems of care to ensure that they remain responsive to individual consumers and are run in an efficient, effective and accountable manner. Based on the approach, decisions will need to be made about consolidation of delivery vehicles in light of different consumer preferences or on how to reach consensus on performance outcomes with federal, state and local representatives having different agendas.

Because of the rapidly changing environment, it is critical that a mechanism be developed for communication among the States, peer consultation, technical assistance, training, and joint ventures for planning and systems design.

The successful applicant under this priority area will be responsible for providing technical assistance and consultation to all States that encompasses key components of the management of effective home and community based long term care service systems. The applicant must demonstrate the ability to respond rapidly to the specific needs of States, and must be mobile and versatile enough to address the diversity of issues facing States in the enhancement of their home and community-based service delivery systems. In this regard, the applicant should serve as an institute without walls, responding wherever assistance is needed.

The applicant must be able to:

(1) Provide opportunities for communication between States, consultation among States, and consultation with experts, training and technical assistance;
(2) Address critical issues identified by States;
(3) Facilitate joint ventures between States in planning and systems design; and
(4) Develop a report on issues identified by States and mechanisms and solutions developed by the States.

The key components of managing an effective systems which the applicant must be capable of addressing include:

- Developing, designing, implementing or enhancing data collection, analysis and reporting systems for programs to provide reliable information about the services delivered and the people served. Technical assistance and training will be aimed at enhancing State capacity to target and track the services provided and to report on program performance and effectiveness, proving that home and community based care is a cost-effective means of serving those at risk of being institutionalized.
- Providing training and consultation programs that draw upon our already extensive base of experience and knowledge in building home and community based long term care systems, such training and consultation programs to use proven best practices an models, well tested guides and manuals, as well as other useful products, for the education and training of State staff, local staff and providers.
- Ensuring better coordination of programs and agencies within their States and communities through interagency agreements, task forces, policy councils and work groups, with an emphasis on leveraging and managing other funds (Social Services Block Grant, Medicaid, and State General Revenue) which address the home and community based long-term care needs of older people and disabled individuals of all ages.

AoA anticipates that the Federal share of project costs for this technical assistance project will be approximately $250,000 per year for a project period of up to three years.

(3) Research on Minority Elders in a Diverse Aging Society

Although research to date has made very important contributions to bettering the lives of older Americans, too little attention has been paid to some key subgroups among the older population. Research on racial and ethnic minorities especially has been in short supply. Without solid research that advances our understanding of minority elders, we are missing that essential knowledge base from which to mount policy and program efforts that are both well informed and well designed to make fundamental changes, not the least of which is to empower

minority elders to help themselves. Particularly needed are studies applicable to the economic, social, and health status of minority elders, research that examines and analyzes their impact on, and role in, the increasingly diverse aging society of the 21st century.

Among the applied and policy research topics encompassed by this priority area are the following:

- *In the context of the future aging of the baby boom generation*, we need: (1) To develop accurate forecasts of the changing size and composition of racial and ethnic minority populations and (2) to better understand and respond to the impact of growing proportions of racial and ethnic minorities among this diverse aging cohort.
- *In the context of immigration and aging*: (1) What are the effects of the new wave of immigration and of current immigration policy on an aging society? (2) What are the demographic, economic, health, and related implications of the recent surge in the number of older immigrants (aged 50 and over) which is expected to continue into the next century? and (3) What opportunities and challenges are presented by this infusion of greater diversity into the aging society of the 21st century?
- *In the context of family caregiving and support among minority older population groups*, we need to better understand the factors that sustain and strengthen the family's role as a support network within and across generations, the changing patterns of family support within and across generations, and the consequences these changes have for the long term care of older family members. Among the questions to be studied are: (1) What will be the effects of the independent life styles of current and future generations on traditional norms of obligation and duty to older family members? (2) What models of long term care services are appropriate for minority older persons when the family can no longer manage the care at home? and (3) How can aging services programs win greater acceptability in minority communities as a suitable complement or, when necessary, alternative to family caregiving?
- *In the context of international transfer of knowledge*, we will be able to better serve racial and ethnic minority elders if we have a better understanding of their cultures of origin. Among the questions to be studied: (1) What are the cultural norms, attitudes, and practices identified with aging, particularly in those countries with special relevance to the U.S., such as Central and South America and the Pacific Rim countries? (2) How do the social, economic, and health statuses of the elderly in these other nations influence aging policies, programs, and services? With what implications for the development of a blueprint for responding to the challenges of an aging society in the U.S.? and (3) More specifically, in what areas can we best apply a fuller understanding of the social services, programs, delivery systems and innovations in other countries that would be beneficial to U.S. programs serving racial and ethnic minority elderly? Crosscultural comparative studies examining issues related to the elderly both in the country of origin and in the U.S. are among the acceptable approaches to the questions raised above. Federal funds may be used for international travel.

Applications for funding under this priority area may be either general in scope or focus on individual racial and ethnic groups, including African Americans, Hispanics, Native Americans, and Asian Americans and Pacific Islanders. AoA intends to make approximately 6–8 awards with a Federal share of approximately $100,000 per year for a project period of up to two years.

(4) National Legal Assistance and Elder Rights Projects

The Administration on Aging (AoA) expects to make discretionary project awards aimed at continued support of a national system of legal assistance support activities to State and Area Agencies on Aging which will assist them in developing an elder rights system and providing, developing and supporting legal assistance for older people. In the 1992 amendments to the Older Americans Act, legal assistance was made an integral part of the new Title VII, Vulnerable Elder Rights Protection program. Therefore, AoA is expanding the role of the national system to encompass elder rights systems development.

AoA now funds national resource centers to develop knowledge and apply research findings, provide training and technical assistance, disseminate information, and conduct related activities in support of the *Long-Term Care Ombudsman and Elder Abuse Prevention (Chapters 2 and 3 of Title VII).* Therefore, these two programs are outside the focus of this priority area.

Awards under this priority area are made under the authority of Title IV, Section 424 of the Older Americans Act and are aimed at building and strengthening the national system of legal assistance in support of the vulnerable elder rights protection program activities of State and Area Agencies on Aging. Proposed projects should have two principal objectives. *First*, enhance the leadership capacity of State and Area Agencies on Aging in accomplishing the mandate of Title VII through such efforts as:

- Assisting in the development of a State-wide elder rights advocacy system, involving a range of agencies involved in elder rights activities;
- Assisting in the development of a responsive State-wide systems of legal assistance, including support for AAA supported legal assistance projects;
- Assisting Area Agencies on Aging in integrating legal assistance programs for older people into existing community based service delivery systems;
- Assisting State Agencies on Aging to develop methods to ensure that legal counsel is available to all Long-Term Care Ombudsmen.

Second, improve the quality and accessibility of the legal assistance provided to older people through such efforts as:

- Providing training to State and Area Agencies on Aging, legal assistance providers, elder rights advocates, and other staff providing assistance to older people;
- Providing training to staff responsible for benefits, insurance, and pension counselling to vulnerable older people; and
- Providing substantive assistance, including case consultation and advice on systems development and implementation, to those agencies and staff that provide legal assistance to older people.

Title IV, Section 424 of the Older Americans Act specifies four component activities of a national legal assistance support system. Each activity is a valuable resource in developing systems of legal assistance for older people, and in improving the quality and accessibility of such services, as part of the overall system of services for older people. AoA expects that the projects funded under this priority area will encompass at least these four components:

(1) *Case consultations.* Appropriate case consultation will be made available to those legal assistance programs funded under Title III of the Older Americans Act. Building on the results of case consultations, grantees should provide such follow-up activities as: Documenting the resolution of those cases and issues which have precedent-setting implications; and making that documentation and analysis available to providers of legal assistance to older

people and State Agencies on Aging nationwide;

(2) *Training.* AoA expects the applicant to propose a strategy for meeting the training and technical assistance needs of legal assistance providers, benefits counselors, elder rights advocates, and other appropriate persons, as identified by State Agencies on Aging. That strategy should describe the training and technical assistance to be provided; the intended target audience; the materials and curricula which will be utilized and made available to State agencies for the replication of such training; and any follow-up activities to assist those who have been trained;

(3) *Provision of substantive legal advice and assistance.* AoA expects the applicant to provide substantive information in areas where legal assistance can assist older people to maintain their independence. The applicant should analyze the substantive issue area, explain its importance to older people, and identify a suitable reporting format (policy paper, newsletter, etc.) and dissemination plan. The substantive areas could include, but are not limited to, such important areas as: income; health care; long-term care; nutrition; housing; utilities; protective services; abuse and neglect; guardianship; age discrimination; pension and health benefits; insurance; consumer protection; surrogate decisionmaking; public benefits; and dispute resolution.

(4) *Assistance in the design, implementation, and administration of legal assistance delivery and elder rights advocacy systems to local providers of legal assistance for older individuals.* The applicant should show how it will assist State and Area Agencies on Aging to work toward the development of a system for providing legal assistance and elder rights protection to older persons throughout the State. Areas for assistance could include the identification of alternative approaches to meeting legal needs and the design of and assistance in implementing strategies for supporting Area Agencies on Aging in their work with local providers. The applicant is expected to show how regular ongoing assistance and consultation in systems issues will be provided in such areas as: targeting; access; evaluation; selection of providers; priority setting; use of pro bono resources; use of volunteers; issues advocacy; and relationships with other parts of the services system.

For each of the activities it proposes to undertake, the applicant should:

- Present the current state of knowledge and experience and document what it perceives to be serious gaps in information and practice;
- Specify the nature and scope of efforts needed to close those gaps, and how those efforts will advance the rights of older people;
- Indicate its plan for achieving national coverage of the assistance to be provided; and
- Provide detailed descriptions of specific products or outcomes proposed for development or modification.

As provided by Title IV, Section 424(c), eligibility is limited to national nonprofit legal assistance organizations experienced in providing support, on a nationwide basis, to legal assistance programs. AoA expects to fund approximately 5–7 projects under this priority area. The Federal share of project costs is expected to range from $75,000 to $150,000 per year depending upon the scope of the component elements of the national legal assistance support system proposed by an approved applicant. Projects may not exceed three years.

(5) Statewide Legal Hotlines for Older Americans

Consistent with Section 424(a)(2) of the Older Americans Act, which provides for the support of ''demonstration projects to expand or improve the delivery of legal assistance to older individuals with social or economic needs,'' AoA is inviting applications from public and/or non-profit organizations currently engaged in the provision of legal services to the elderly, to continue existing Statewide Legal Hotlines for older persons or to develop and establish new Hotlines.

With AoA assistance, Statewide Legal Hotlines have been established in Arizona, northern California, the District of Columbia, Florida, Michigan, Maine, New Mexico, Ohio, Pennsylvania, Puerto Rico and Texas. An evaluation of their operations showed that Legal Hotlines and corresponding referral services resolved 81% of callers' legal questions and 50% of their legal problems. The continuation of existing Hotlines and expansion into other States would make legal assistance available to many more older people. In that regard, Legal Hotlines are a valuable resource for implementation of the vulnerable elder rights protection programs set forth in Title VII of the Older Americans Act.

To maximize discretionary program resources and to promote a level playing field of competition, distinctions are made by AoA under this priority area between (A) applicant organizations with existing Legal Hotlines and (B) those organizations which aspire to develop new Legal Hotlines.

Sub-Priority Area 5A: Program Improvement Grants for Existing Legal Hotlines

In order for existing Legal Hotlines to compete for program improvement grants, they must indicate in their application a willingness and intent to focus future efforts of the Hotline on those crucial and urgent concerns facing the at-risk elderly including, but not limited to, income, health care, long-term care, nutrition, housing, utilities, protective services, abuse and neglect, guardianship, age discrimination, pension and health benefits, insurance, consumer protection, surrogate decisionmaking, public benefits and dispute resolution.

To better evaluate the progress and the potential for improvement of existing Legal Hotlines competing under this sub-priority area, the application should contain the following information for each of the past three years:

- Number of households/persons served in comparison to the number of older persons in the State and the number of low income older persons in the State;
- Number of cases handled; number of calls handled;
- Average number of 1) calls and 2) cases that a Hotline attorney handles in an hour;
- Total cost per year of operating the Hotline over the past three years;
- Average cost per call; average call per case;
- If available, evaluative data on the Hotline's performance, the source of which is either the elderly clients themselves, or an independent third party, or both.

AoA expects to make 2–4 program improvement awards to existing Legal Hotlines, with a Federal share of approximately $75,000–90,000 per year for an expected project period of approximately 3 years.

Sub-Priority Area 5B: Program Development Grants for New Legal Hotlines

Applications submitted under this priority area to operate new Legal Hotlines should be modeled after previously funded AoA Legal Hotlines. It is the applicant's responsibility to review and adapt the program experience of the District of Columbia, Puerto Rico and States with existing Hotlines to the resources, needs, and realities of their State. Applicants should recognize and reflect in their project plan that considerable time is

needed to cement the range of endorsements and agreements, and to develop other resources, essential to both the developmental and the operational phases of the Legal Hotlines project. The applicant is expected to submit a fully developed Legal Hotlines program application, including solid commitments from the appropriate participating organizations and individuals.

Based upon the experience to date, certain elements are essential to the successful establishment and effective operation of a Statewide Legal Hotline to serve older persons.

The applicant must address, at a minimum, these elements:

I. Staffing
- A. A full time managing attorney;
- B. The equivalent of two additional full-time attorneys to take calls and respond directly to older persons in need of assistance; and
- C. Staff persons to answer the phones when the attorneys are busy.

II. Telephones
- A. Two incoming toll-free lines, and one outgoing WATTS line.
- B. Experience has shown that the total telephone budget will be a minimum of $20,000–$25,000 per year after the Legal Hotline is operational.

III. Computer Equipment
- A. An allocation of approximately $20,000 for computer equipment.
- B. Legal Hotline software (included in the above mentioned $20,000) can be researched through the American Association of Retired Persons/ Legal Counsel for the Elderly (AARP/LCE).

IV. Reduced Attorneys Fees
- A commitment to recruit a statewide panel of attorneys in private practice willing to accept significantly reduced hourly rates as well as fee caps on common services such as $45–$50 for a simple will.

V. Training Program
- Develop and provide a training program for the Legal Hotlines attorneys and modify reference materials used in other Legal Hotlines to conform with your State law.

In approving applications for funding, the Assistant Secretary for Aging will pay particular attention to those which focus on providing services (1) to ethnic and/or racial minority older persons and (2) to those elderly in greatest economic and social need.

Applications meeting the following criteria will receive preference:

A. Applications from States which rank in the top third of all States in either (1) population age 60 and above, or (2) percentage of elderly population whose income is less than 125% of the poverty line, or (3) percentage of elderly population comprised of minority elderly (African-Americans, Hispanics, Asians/Pacific Islanders, and Native Americans).

B. Applications that show plans for special outreach activities to low income and minority older populations;

C. Applications which demonstrate the ability to deliver services to the non-English speaking population;

D. Applications which demonstrate that Title III/VII and Legal Services Corporation funded legal services programs within the State are willing to coordinate their services with the proposed Legal Hotline;

E. Applications that offer the largest grantee cost sharing, and thus request the fewest AoA dollars. (The minimum grantee share of project costs is 25%);

F. Applications which offer a practical plan for funding the Legal Hotline once the AoA grant ends.

Endorsements: Applications should include the endorsement of the State Agency on Aging and the State Bar Association, the voluntary and/or mandatory Bar, whichever is appropriate. Special justification must be provided by the applicant if these endorsements are not included in the application.

Geographic Coverage: It is highly unlikely that a single Legal Hotline would be adequate in responding to the unique size and diversity of the older population in New York and California. With the exception of these two States, Legal Hotlines will be expected to serve the entire State. AoA will consider applications which serve either (1) New York City, Nassau, and Suffolk Counties or (2) the rest of New York State, but not both areas. Because AoA is now funding a Legal Hotline which serves northern California, only application(s) to serve the elderly of southern California will be considered from that State.

AoA expects to make 2–4 program development awards for new Legal Hotlines, with a Federal share of approximately $100,000–120,000 per year for an expected project period of approximately 3 years.

(6) Pension Information and Counseling Program

Retirement means many things to different people. For most people, it means an end to the regular workaday world of full time employment and a switch to part time work or leisure time and volunteer activities. For most people, retirement also means a change in the amount and the source of their income.

Depending on a person's age at the time of retirement, he or she will be eligible for social security. But social security does not and was not intended to provide all the income that a person needs in retirement. Most government employees and many people in private industry are covered by some sort of pension plan to assist them in retirement. Employee pensions account for almost 20% of the income of older persons. Overall, two out of every five older household units receive income from public and/or private pension benefits other than Social Security.

The adequacy, availability, coverage, and reliability of pensions remain as issues, however. In particular, problems arise when people move from company to company during their careers, when companies go out of business, or when companies are bought out by other companies and their pension plans take on a different form. Compounding this problem are the myriad of different entitlements and restrictions that are built into different pension plans, occasionally rendering them almost unintelligible to anyone but highly trained legal experts.

Recognizing the large unmet need to provide older Americans with information and counseling in the area of pension benefits, Congress provided in Section 429J of the Older Americans Act for the funding of Pension Rights Demonstration Projects. In response to that mandate, the Administration on Aging (AoA) funded seven demonstration projects in 1993 as well as a training and technical assistance project which has provided technical support to the pension information and counseling effort.

To build on that effort, AoA intends, under priority area 6A, to fund demonstration projects at the State or local level that provide outreach, information, counseling, referral and assistance in the area of pension benefits. Preference in awarding grants will be given to applicants that propose new model programs for providing pension rights information and counseling or innovative improvements in existing models. These proposed projects shall:

- Provide counseling and assistance to individuals needing information that may assist them in establishing rights to, obtaining and filing claims or complaints relative to pension and other retirement benefits;
- Provide information on sources of pension and other retirement benefits;

- Make referrals to legal and other advocacy programs;
- Establish a system of referrals to Federal, State, and local Departments or agencies relative to pensions and other retirement benefits; and
- Establish outreach programs to provide information, counseling, assistance and referral regarding pension and other retirement benefits with particular emphasis on outreach to women, minorities and low income retirees.

Projects should consider the possibility of locating at senior centers or other places where seniors tend to congregate. They should also consider training volunteers to work with claimants on many of the details that do not require legal interventions. This has proven to be a useful vehicle for several of the pension information and counseling projects funded by AoA in 1993. Other operational factors that can be gleaned from the experience of this group of pension projects, and which applicants may wish to build upon, include the following:

- The process of pension counseling is a far more difficult process than health benefits counseling and requires volunteers who are able to cope with complexity;
- Applicants should be established, known presences in their respective communities, and should be led by experienced and enthusiastic directors;
- Imaginative and innovative use of the media for outreach is often a significant factor in a successful project;
- Successful projects develop partnerships with the private sector (e.g., lawyers and actuaries) and community agencies, as well as with local offices of Federal agencies.
- Finally, any of a variety of structures can be used to develop a successful project; e.g., the staff may or may not include lawyers or paralegals or volunteers or stipend volunteers.

Applicant eligibility for pension information and counseling demonstration project awards is limited by statute (Section 429J of the 1992 Older Americans Act Amendments) to State and Area Agencies on Aging and nonprofit organizations with proven experience in the counseling of older persons regarding retirement benefits and pension rights. AoA intends to fund approximately 5–7 projects under priority area 6A with a Federal share of approximately $60,000–$75,000 per year and an expected project period of 2 years. Under exceptional circumstances, the applicant may choose to submit a three year project application, provided that strong justification is made for the additional year of activities.

Under priority area 6B, AoA intends to fund one technical assistance project that will strengthen the role of the demonstration projects, State and Area Agencies on Aging and legal services providers, both public and private, in providing pension assistance and encouraging coordination among these groups. This project will provide technical assistance to the demonstration projects and to legal services projects that seek to develop programs on pension benefits counseling. The project will (1) develop a cadre of trained legal experts who are willing to work with local personnel and claimants who need to access the private pension sector and (2) provide training for professional and volunteer personnel who will work with older Americans at the State and local level in assisting them to understand and better access their pension rights and options.

Applicants for this grant must demonstrate a strong knowledge base and a track record of providing national information, counseling, and advocacy in matters related to pension and other retirement benefits. On the basis of its strong knowledge base and its assessment of the progress of the demonstration projects, the grantee will be expected to analyze the implications of the demonstration projects in the broader context of tax policy, pension reform, and retirement planning, and to offer recommendations for future program initiatives related to pensions and income security for older Americans.

AoA intends to support this project at a Federal share of approximately $150,000 a year for a project period of two years.

(7) Volunteer Senior Aides for Families With Disabled or Chronically Ill Children

In 1991, AoA began implementation of the Volunteer Senior Aides (VSA) Program (based on the Family Friends model) pursuant to the legislative mandate of Section 10404 of the 1989 Omnibus Budget Reconciliation Act (OBRA). Section 10404 authorized this program for community-based demonstrations to determine to what extent volunteer senior aides, by providing basic medical assistance and support to disabled/chronically ill children and their families, can reduce the cost of care for such children. (The prototype for these OBRA provisions was NCOA's Family Friends program.)

In 1991 AoA funded six VSA demonstration sites. Upon completion of their three year project periods, AoA awarded six more grants to six other organizations for new VSA demonstrations.

Because of the continuing need for and the proven success of Family Friends and VSA, AoA is now soliciting applications to develop and implement three additional new VSA projects. Projects should be proposed to demonstrate the use of Volunteer Senior Aides to assist families of disabled/chronically ill children, thereby reducing the cost of care for such children. These projects will effectively employ the unique skills, varied experience, good will, and availability of older volunteers in assisting the Nation's children who are severely disabled or chronically ill.

VSA Project Parameters

Volunteer Senior Aides projects, usually tri-generational, are designed to benefit everyone involved. The children, who have serious, chronic illnesses or disabilities and range in age from infancy to 12 years, receive physical care, self-help instruction, emotional support, and nurturing. Their siblings may receive greater attention or may benefit indirectly as their family is strengthened, empowered. The parents (or, in some cases, grandparents) of these children are given encouragement and respite—intangibles that they need to carry on. The volunteers—aged 55 and older—have a mission and are rewarded with a sense of personal pride and accomplishment. They become less isolated, more involved in the community, and develop an affectionate relationship with their new ''granddaughters'' or ''grandsons'' and/or other family members.

The community is strengthened by older citizens voluntarily providing supportive services to younger citizens. Health care costs are reduced. And people learn to rely on each other, connecting with an ''extended family'' in this era of disconnected families.

The older volunteers (''family friends'') are extensively trained to find the best way to help a family. The type of help depends upon what's needed at the time. They may tutor the child, teach personal care and self-help skills, or take the child to recreational/cultural events. These volunteers often act as advocates, serving as ''case coordinator'' and speaking on behalf of the family to the various professionals who plan and manage the child's care. They also provide social and emotional support and, in many cases, respite to weary parents. (Respite is provided only, however, when the child is medically stable and by agreement of parents, project director, and volunteer and is

limited to half of the time the volunteer spends with the child.)

VSA/Family Friends essential program components include:

Recruitment, screening, interviewing, and careful selection of volunteers;

- Recruitment, interviewing, and selection of families/children;
- Sixty (60) hours of intensive training for volunteers;
- Careful matching of volunteers with families, based on compatibility, proximity/transportation, personal styles and needs, health of volunteer, schedules, and language barriers;
- Supervision of volunteers;
- Fund raising and promotion of the program; and
- Project evaluation.

AoA plans to fund approximately three (3) demonstration projects under this priority area at a Federal share of approximately $36,000 per year for a project period of up to approximately three (3) years. Eligible applicants are restricted to public or non-profit community-level agencies, organizations, or institutions proposing new Family Friends or VSA projects at the local level. These funds may not be used for continuation or expansion of existing VSA or Family Friends projects. Each proposal should include participation of both a health care facility and a social service agency. Proposals should include participation in the project by a project advisory board or committee. Because less funding is available this year than in previous years, applicants are strongly encouraged to energetically pursue sources of matching funds beyond the minimum required. AoA expects applicants to propose a level of effort which is realistic and in keeping with their funding level (from all sources).

Proposals should follow the Family Friends/VSA paradigm, briefly outlined above but thoroughly documented in materials available from NCOA's Family Friends Resource Center. Recommended materials include: Bringing Family Friends to Your Community, a manual detailing a step-by-step approach to developing and implementing these projects; and Family Friends—A Program Guide. Prospective applicants may call or write the Family Friends Resource Center at: Address: Family Friends Resource Center, National Council on the Aging, 409 Third Street SW., Washington, DC 20024, Telephone: (202) 479–6675, Fax: (202) 479–0735.

Demonstration projects funded under this priority area will receive technical assistance and guidance in the development and implementation of their projects from the Family Friends Resource Center which was funded in FY 94 for this purpose.

Part III—Information and Guidelines for the Application Process and Review

Part III of this Announcement contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal to the Administration on Aging (AoA). General guidelines on applicant eligibility were provided in Part I. Specific eligibility guidelines were provided in Part II under certain priority areas.

A. General Information

1. Review Process and Considerations for Funding

Within the limits of available Federal funds, AoA makes financial assistance awards consistent with the purposes of the statutory authorities governing the AoA Discretionary Funds Program and this Announcement. The following steps are involved in the review process.

a. *Notification:* All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it.

b. *Screening:* To insure that minimum standards of equity and fairness have been met, applications which do not meet the screening criteria listed in Section D below, will not be reviewed and will receive no further consideration for funding under this Announcement.

c. *Expert Review:* Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the evaluation criteria specified in Section F, below. This independent review of applications is performed by panels consisting of qualified persons from outside the Federal government and knowledgeable non-AoA Federal government officials. The scores and judgments of these expert reviewers are a major factor in making award decisions.

d. *Other Comments:* AoA may solicit views and comments on pending applications from other Federal departments and agencies, State and Area Agencies on Aging, interested foundations, national organizations, experts, and others, for the consideration of the Assistant Secretary for Aging in making funding decisions.

e. *Other Considerations:* In making funding award decisions, the Assistant Secretary for Aging will pay particular attention to applications which focus on older persons with the greatest economic and social need, with particular attention to the low-income minority elderly. Final decisions may also reflect the equitable distribution of assistance among geographical areas of the nation, and among rural and urban areas. The Assistant Secretary for Aging also guards against wasteful duplication of effort in making funding decisions.

f. *Other Funding Sources:* AoA reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

g. *Decision-Making Process:* After the panel review sessions, applicants may be contacted by AoA staff to furnish additional information. Applicants who are contacted should not assume that funding is guaranteed. An award is official only upon receipt of the Financial Assistance Award (Form DGCM 3–785).

h. *Timeframe:* Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant is at least two months and often three months or more in duration. This length of time is required to review and process grant applications.

2. Notification Under Executive Order 12372

This is not a covered program under Executive Order 12372.

B. Deadline for Submission of Applications

The closing date for submission of applications is June 12, 1995. Applications must be either sent or hand-delivered to the address specified in Section D, below. Hand-delivered applications are accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Eastern Time, Monday through Friday. An application will meet the deadline if it is either:

1. Received at the mailing address on or before the applicable deadline date; or

2. Sent before midnight of the applicable deadline date as evidenced by either (1) a U.S. Postal Service receipt or postmark or (2) a receipt from a commercial carrier. The application must also be received in time to be considered under the competitive independent review mandated by Chapter 1–62 of the DHHS Grants Administration Manual. Applicants are strongly advised to obtain proof that the application was sent by the applicable deadline date. If there is a question as

to when an application was sent, applicants will be asked to provide proof that they have met the applicable deadline date. Private metered postmarks are not acceptable as proof of a timely submittal.

Applications which do not meet the above deadlines are considered late applications. The Office of Administration and Management will notify each late applicant that its application will not be considered under the applicable grant review competition.

AoA may extend a deadline date for applications because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail, or when AoA determines an extension to be in the best interest of the government. Depending upon the precipitating factor(s), the extension will apply to all potential applicants in the area affected by the natural disaster, or to all potential applicants across the nation. Notice of the extension will be published in the Federal Register.

C. Grantee Share of the Project

Under the Discretionary Funds Program, AoA does not make grant awards for the entire project cost. Successful applicants must, at a minimum, contribute one (1) dollar, secured from non-Federal sources, for every three (3) dollars received in Federal funding. The non-Federal share must equal at least 25% of the total project cost. Applicants should note that, among applications of comparable technical merit, the greater the non-Federal share the more favorably the application is likely to be considered.

There are two exceptions to this cost sharing formula. First, for applications submitted by Tribal Organizations the non-Federal share must equal at least 20% of total project costs. Second, applicants from the Virgin Islands, the Northern Mariana Islands, American Samoa, or Guam are covered by Section 501(d) of Public Law 95–134, as amended, which requires the Department to waive ''any requirement for local matching funds under $200,000.''

The non-Federal share of total project costs for each budget period may be in the form of grantee-incurred direct or indirect costs, third party in-kind contributions, and/or grant related income. Indirect costs may not exceed those allowed under Federal rules established, as appropriate, by OMB Circulars A–21, A–87, and A–122. If the required non-Federal share is not met by a funded project, AoA will disallow any unmatched Federal dollars. A common error is to match 25% of the Federal share rather than 25% of the entire project cost.

D. Application Screening Requirements

All applications will be screened to determine completeness and conformity to the requirements of this announcement. These screening requirements are intended to assure a level playing field for all applicants. Applications which fail to meet either of the two criteria described below will not be reviewed and will receive no further consideration. Complete, conforming applications will be reviewed and scored competitively.

In order for an application to be reviewed, it must meet the following screening requirements:

1. Applications must be either postmarked by midnight, June 12, 1995, or hand-delivered by 5:30 p.m., Eastern Time, on June 12, 1995 to: Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue SW., Room 4644, Washington, D.C. 20201, Attn: AoA–95–1.

2. An application must be relevant and responsive to the priority area under which it was submitted for competitive review and funding consideration and the applicant must meet any eligibility requirements specified by that same priority area. (For everyone's benefit, the applicant should be sure that the priority area has been clearly identified in the application).

Only those applications meeting these screening requirements will be assigned to reviewers.

The applicant is also strongly advised to adhere to the following standards in preparing the application:

- The application should not exceed forty (40) pages, double-spaced, exclusive of certain required forms and assurances which are listed below. Applications whose typescript is single-spaced or space-and-a-half will be considered only if it is determined the applicant has not thereby gained a competitive advantage.
- The following documents are excluded from the 40 page limitation: (1) Standard Form (SF) 424, SF 424A (including up to a four page budget justification) and SF 424B; (2) the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements; (3) proof of non-profit status, and; (4) indirect cost agreements.
- The following portions of the application are subject, in the aggregate, to the forty (40) page limitation:

—Summary description (suggested length: one page);
—Narrative (suggested length: twenty-five to thirty pages);
—Applicant's capability statement, including an organization chart, and vitae for key project personnel (suggested length: five to ten pages) and;
—Letters of commitment and cooperation (suggested length: four pages).

All applications will be checked against the aggregate forty (40) page limitation. Any material, of whatever content, in excess of the forty (40) page limitation will be withheld from the reviewers.

E. Funding Limitations on Indirect Costs

1. Training projects awards to institutions of higher education and other non-profit institutions are limited to a Federal reimbursement rate for indirect costs of eight (8) percent of the total allowable direct costs or, where a current agreement exists, the organization's negotiated indirect cost rate, whichever is lower. Differences between the applicant's approved rate and the 8% limitation may be used as Federal cost sharing. See Section J–2, Item 6j, below.

2. For all other applicants, indirect costs generally may be requested only if the applicant has a negotiated indirect cost rate with the Department's Division of Cost Allocation or with another Federal agency. Applicants without a negotiated indirect cost rate may apply for one in accordance with DHHS procedures and relevant OMB Circulars.

F. Evaluation Criteria

Applications which pass the screening will be evaluated by an independent review panel of at least three individuals. These reviewers, experts in the field, are from academic institutions, non-profit organizations, state and local government, and, upon occasion, Federal government agencies other than AoA. Based on the specific programmatic considerations set forth in the priority area under which an application has been submitted, the reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

Applications are scored by assigning a maximum of 100 points across four criteria:

(1) Purpose and Need for Assistance (20 points),
(2) Approach/Method - Workplan and Activities (30 points)
(3) Anticipated Outcomes, Evaluation and Dissemination (30 points),

(4) Level of Effort (20 points).

1. Purpose and Need for Assistance Weight: 20 points

a. Does the proposed project clearly and adequately respond to the program and/or policy issues of the priority area under which it was submitted?

b. Does the application adequately and appropriately describe and document the key problem(s)/condition(s) relevant to its purpose? Is the proposed project justified in terms of the most recent, relevant, and available information and/or knowledge?

c. Does the applicant, where appropriate, adequately describe the needs of special population groups—low income, minority, women, disabled, rural—in addressing problem(s)/conditions(s) relevant to its proposal?

2. Approach/Method—Workplan and Activities Weight: 30 points

a. Does the proposal clearly express and organize a workplan that systematically includes specific objectives, tasks, and activities which are responsive to the statement of needs and purpose?

b. Does the workplan include a detailed schedule, with sufficient time commitments for key staff, to accomplish the proposed tasks and objectives? Is the sequence and timing of events logical and realistic?

c. Are the roles and contribution of staff, consultants, and collaborative organizations clearly defined and linked to specific objectives and tasks? Does the workplan specify who will be responsible for managing the project; for the preparation and dissemination of project results, products, and reports; and for communications with the Administration on Aging should the project be approved for funding?

3. Anticipated Outcomes, Evaluation and Dissemination Weight: 30 points

a. Are the expected project benefits and/or results clearly identified, realistic, and consistent with the objectives of the project? Are outcomes likely to be achieved and will they significantly benefit older persons through improvement in policy or practice, and/or contribute knowledge to theory and research?

b. Is the plan for project evaluation clear and relevant to the scope of activity proposed? Does this plan identify the type of data to be collected and the method of analysis to be used in measuring project achievement and significance?

c. Does the proposal include a plan for dissemination which is likely to increase the awareness of project activities and events during project performance? Is this plan adequate for communicating project outcomes and products to all appropriate audiences?

4. Level of Effort Weight: 20 points

a. Do the proposed project director(s), key staff and consultants have the background, experience, and other qualifications required to carry out their designated roles?

b. Is the budget justified with respect to the adequacy and reasonableness of resources requested? Are budget line items consistent with workplan objectives?

c. Are letters from participating organizations included and do they express the clear commitment and areas of responsibility of those organizations, consistent with the workplan description of their intended roles and contributions?

d. Are the writers of the proposal identified and will they be involved in its oversight and implementation? If not, is there a logical explanation for their non-participation?

G. The Components of an Application

To expedite the processing of applications, we request that you arrange the components of your application, the original and two copies, in the following order:

- SF 424, Application for Federal Assistance; SF 424A, Budget, accompanied by your budget justification; SF 424B (Assurances); and the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements.

Note: The original copy of the application must have an original signature in item 18d on the SF 424.

- Proof of nonprofit status, as necessary:
- A copy of the applicant's indirect cost agreement, as necessary;
- Project summary description;
- Program narrative;
- Organizational capability statement and vitae;
- Letters of Commitment and Cooperation;
- A copy of the Check List of Application Requirements (See Section K, below) with all the completed items checked.

The original and each copy should be stapled securely (front and back if necessary) in the upper left corner. Pages should be numbered sequentially. In order to facilitate the handling and reproduction of the application for purposes of the review, please do not use covers, binders or tabs. Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to include such items in the review process. They will be discarded if submitted as part of the application.

H. Communications with AoA

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified by mail of the receipt of their application and informed of the identification number assigned to it. This number and the priority area should be referred to in all subsequent communication with AoA concerning the application. If acknowledgment is not received within seven weeks after the deadline date, please notify the Office of Program Development by telephone at (202) 619–0441.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number for quick retrieval. It will be difficult for AoA staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants are advised that, prior to reaching a decision, AoA will not release information to an applicant other than that its application has been received and that it is being reviewed. Unnecessary inquiries delay the process. Once a decision is reached, the applicant will be notified as soon as possible of the approval or disapproval of the application.

I. Background Information and Guidance for Preparing the Application

1. Current Projects and Previous Project Results

In the Program Narrative of the application (see Section J–6 below), applicants are expected to demonstrate familiarity with recent and ongoing activity related to their project proposal. With respect to AoA-supported discretionary grant projects, information on current AoA projects may be obtained by contacting the Office of Program Development at 202/619–0441. Regarding completed AoA projects, copies of all AoA discretionary grant final reports and printed materials are sent to: the National Aging Information Center (to be established by April/May 1995); the National Technical Information Service (NTIS), a clearinghouse and document source for Federally sponsored reports; Ageline Database, a bibliographic database

service sponsored by the American Association of Retired Persons, available online through BRS and DIALOG; and the U.S. Government Printing Office Library Program, a catalog and microfiche service for 1400 depository libraries located throughout the United States.

Information concerning access to the bibliographic and document referral services provided by these clearinghouses can be obtained through most public and academic libraries.

For direct information, use the following contacts:

(a) National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4600

(c) Ageline Database

- BRS Customer Service, 8000 Westpark Drive, McLean, VA 22102, (800) 345–4BRS
- DIALOG Customer Service, 3460 Hillview Avenue, Palo Alto, CA 94304, (800) 3DIALOG, (415) 858–2700 (in California)

(d) U.S. Government Printing Office Acquisition Unit, Library Programs Service, North Capital and H Streets NW., Washington, DC 20401, (202) 275–1070

2. Dissemination and Utilization

The purposes and expectations associated with Title IV discretionary projects extend well beyond the immediate confines of a particular project's local impact. Projects should have a ripple effect in the field of aging in terms of replicating their design, utilizing their results, and applying their benefits to a widening circle of older persons. This section suggests certain principles of dissemination to be considered in developing your application:

- the most useful projects make dissemination and utilization a central, not peripheral, component of the project;
- dissemination starts at the beginning of a project not when it is completed;
- potential users should be involved in planning the project, if possible, and products developed with the needs of potential users in mind;
- dissemination is a networking process;
- at a minimum, dissemination includes getting your final products into the hands of appropriate users and making presentations at conferences; and
- coordination with other related projects may increase the chances of your products being used.

J. Completing the Application

In completing the application, please recognize that the set of standardized forms and instructions is prescribed by the Office of Management and Budget (approved under OMB control number 0348–0043) and is not perfectly adaptable to the particulars of AoA's Discretionary Funds Program. First-time applicants, in particular, may have some misgivings that they have not crossed the final ''t'' or dotted the last ''i'' of their application. Any applicant should, of course, take reasonable care to avoid technical errors in completing the application, but the substantive merits of the project proposal are the determining factors. In these instructions, we offer several pointers aimed at clarifying matters, overcoming difficulties, and preventing the more common technical mistakes made by applicants. If the need arises, please call (202) 619–0441 for assistance.

Forms SF 424, SF 424A, SF 424B, and the certification forms (regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements) have been reprinted as part of this Federal Register announcement for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You should reproduce single-sided copies from the reprinted form and type your application on the copies. Please do not use forms directly from the Federal Register announcement as they are printed on both sides of the page.

To assist applicants in completing Forms SF 424 and SF 424A correctly, samples of completed forms have been provided as part of this announcement. These samples are to be used as a guide only. Be sure to submit your application on the blank copies. Please prepare your application consistent with the following guidance:

1. *SF 424, Cover Page:* Complete only the items specified in the following instructions:

Top Left of Page. In the box provided, enter the number of the priority area under which the application is being submitted.

Item 1. Preprinted on the form.

Item 2. Fill in the date you submitted the application. Leave the applicant identifier box blank.

Item 3. Not applicable.

Item 4. Leave blank.

Item 5. Provide the legal name of applicant; the name of the primary organizational unit which will undertake the assistance activity; the applicant address; and the name and telephone number of the person to contact on matters related to this application.

Item 6. Enter the employer identification number (EIN) of the applicant organization as assigned by the Internal Revenue Service. Please include the suffix to the EIN, if known.

Item 7. Enter the appropriate letter in the box provided.

Item 8. Preprinted on form.

Item 9. Preprinted on form.

Item 10. Preprinted on form.

Item 11. The title should describe concisely the nature of the project. Avoid repeating the title of the priority area or the name of the applicant. Try not to exceed 10 to 12 words and 120 characters including spaces and punctuation.

Item 12. Preprinted on form.

Item 13. Enter the desired start date for the project, beginning on or after September 1, 1995 and the desired end date for the project. Projects may be from 17 to 36 months in duration. Check the description of the priority area under which you are applying for the expected project duration.

Item 14. List the applicant's Congressional District and the District(s), if any, directly affected by the proposed project.

Item 15. All budget information entered under item #15 should cover either: (1) The total project period if that period is 17 months or less; or (2) just the first 12 months if the project period is for 24 or 36 months. The applicant should show the Federal grant support requested under sub-item 15a.

Check: Please make sure you have presented budget amounts only for the first year if you are proposing a multi-year project. A common error is to present budget totals for a full project period of 24 or 36 months in item 15. Sub-items 15b-15e are considered cost-sharing or ''matching funds''. Applicants should review cost sharing or matching principles contained in Subpart G of 45 CFR Part 74 before completing not just Item 15, but the Budget Information Sections A, B and C that follow. It is important that the dollar amounts entered in sub-items 15b-15e total at least 25 percent of the total project cost (total project cost is equal to the requested Federal funds plus funds from non-Federal sources). In general, costs borne by the applicant and cash contributions of any and all third parties involved in the project, including sub-grantees, contractors and consultants, are considered cash matching funds. Most contributions from third parties will be non-cash or

in-kind and should not be combined with cash contributions. Examples include volunteered time and use of facilities to hold meetings or conduct project activities. A third form of non-Federal match, is projected program income derived from activities of the grant such as participant fees and sale of publications. Only program income which is to be used as part of the qualifying match should be shown here. (see Form 424, Part B and the narrative budget justification instructions below for how to show program income which is not designated as qualifying non-Federal match.

Item 16. Preprinted on form.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by an authorized representative of the applicant organization. A document attesting to that sign-off authority must be on file in the applicant's office.

2. SF 424A—Budget Information

This form (SF424A) is designed to apply for funding under more than one grant program; thus, for purposes of this AoA program, most of the budget item columns/blocks are superfluous and should be regarded as not applicable. The applicant should consider and respond to only the budget items for which guidance is provided below. Section A—Budget Summary and Section B—Budget Categories should include both Federal and non-Federal funding for the proposed project covering (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period is for 24, 36, or 48 months.

Section A—Budget Summary. On line 5, enter total Federal Costs in column (e) and total non-Federal Costs (including third party in-kind contributions but not program income) in column (f). Enter the total of columns (e) and (f) in column (g).

Section B—Budget Categories. Use only the last column under Section B, namely the column headed Total (5), to enter the total requirements for funds (combining both the Federal and non-Federal shares) by object class category. Do not include the in-kind (third party) match contributions shown in Item 15 on the face sheet of Form 424.

A separate budget justification should be included which shows the breakdown of budget cost items by Federal, non-Federal, and total funds and which fully explains and justifies each of the major budget items: personnel, travel, other, etc., as outlined below. Non-Federal funds shown as a separate column in the budget line item portion of the justification is limited to cash match contributions (see instructions for item 15 on the face sheet of the 424 Form). Third party in-kind contributions and program income designated as non-Federal match contributions should be justified below the budget line items.

All budget line and non-cash match justifications must identify both the purpose and basis of dollar estimation. Formulas for application of approved indirect cost rates must be explained. All entries for item 15 on the 424 face sheet and Part B must be described in the justification. The complete budget justification should not exceed four typed pages and should immediately follow the SF 424 forms.

Line 6a—Personnel: Enter total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included under 6h—Other.

Justification: Identify the principal investigator or project director, if known. Specify the key staff, their titles, and time commitments in the budget justification.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Line 6c—Travel: Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation.

Justification: Include the total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all equipment to be acquired by the project. For state and local governments, including Federally recognized Indian Tribes, ''equipment'' is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other grantees, the threshold for equipment is $500 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified as necessary for the conduct of the project. The equipment, or a reasonable facsimile, must not be otherwise available to the applicant or its sub-grantees. The justification also must contain plans for the use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

Line 6f—Contractual: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies.

Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors indicating the name of the organization, the purpose of the contract, and the estimated dollar amount. If the name of the contractor, scope of work, and estimated costs are not available or have not been negotiated, indicate when this information will be available. Whenever the applicant/grantee intends to delegate a substantial part (one-third, or more) of the project work to another agency, the applicant/grantee must provide a completed copy of Section B, Budget Categories for each contractor, along with supporting information.

Line 6g—Construction: Leave blank since new construction is not allowable and Federal funds are rarely used for either renovation or repair.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to: insurance, medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments; and staff development costs.

Line 6i—Total Direct Charges: Show the totals of Lines 6a through 6h.

Line 6j—Indirect Charges: Enter the total amount of indirect charges (costs), if any. If no indirect costs are requested, enter ''none.'' Indirect charges may be requested if: (1) The applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency; or (2) the applicant is a State or local government agency. Applicants other than state and local governments are requested to enclose a copy of this agreement. Local and state governments

should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be also charged as direct costs to the grant.

In the case of training grants to other than state or local governments (as defined in 45 CFR Part 74), Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, stipends, post-doctoral training allowances, contractual items, and alterations and renovations. As part of the justification, applications subject to this limitation should specify that the Federal reimbursement will be limited to 8%.

For training grant applications, the entry for line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, alterations and renovations.

(c) Subtract b* from a*. The remainder is what the applicant can claim as part of its matching cost contribution.

Line 6k—Total: Enter the total amounts of Lines 6i and 6j.

Line 7—Program Income: Estimate the amount of income, if any, expected to be generated from this project which you wish to designate as match (equal to the amount shown it Item 15 on Form 424). Warning: Any program income indicated at the bottom of Section B and item 15 on the face sheet of Form 424 will be included as part of non-Federal match and will be subject to the rules for documenting completion of this pledge. If program income is expected, but is not needed to achieve matching funds, do not include that portion here or on Item 15 of the Form 424 face sheet. Non-match anticipated program income should be described in the Level of Effort section of the Program Narrative.

Section C—Non-Federal Resources

Line 12—Totals: Enter amounts of non-Federal resources that will be used in carrying out the proposed project. Do not include program income unless it is used to meet match requirements.

Section D—Forecasted Cash Needs: Not applicable.

Section E—Budget Estimate of Federal Funds Needed for Balance of the Project This section should be completed only if the total project period exceeds 17 months.

Line 20—Totals: Enter the estimated required Federal funds (exclude estimates of the amount of cost sharing) for the period covering months 13 through 24 under column ''(b) First;'' and, if applicable, for months 25 through 36 under ''(c) Second.''

Section F—Other Budget Information

Line 21—Direct Charges: Not applicable

Line 22—Indirect Charges: Enter the type of indirect rate (provisional, predetermined, final or fixed) to be in effect during the funding period, the base to which the rate is applied, and the total indirect costs.

Line 23—Remarks: Provide any other explanations or comments deemed necessary.

3. SF 424B—Assurances

SF 424B, Assurances—Non-Construction Programs, contains assurances required of applicants under the Discretionary Funds Program of the Administration on Aging. Please note that a duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances.

With the possible exception of an Assurance of Protection of Human Subjects, no other assurances are required. For research projects in which human subjects may be at risk, an Assurance of Protection of Human Subjects may be needed. If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301) 496–7041.

4. Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (3) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

5. Project Summary Description

On a separate page, provide a project summary description headed by two identifiers: (1) The name of the applicant organization as shown in SF 424, item 5 and (2) the priority area as shown in the upper left hand corner of SF 424. Please limit the summary description to one page with a maximum of 1,200 characters, including words, spaces and punctuation.

Be specific and succinct. Outline the objectives of the project, the approaches to be used and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as manuals, data collection instruments, training packages, audio-visuals, software packages). The project summary description, together with the information on the SF 424, becomes the project ''abstract'' which is entered into AoA's computer data base. The project description provides the reviewer with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal.

6. Program Narrative

The Program Narrative is the critical part of the application. It should be clear, concise, and, of course, responsive to the priority area under which the application is being submitted. In describing your proposed project, make certain that you respond fully to the evaluation criteria set forth in Section F above. The format of the narrative should, in fact, parallel the criteria, beginning with an integrated discussion of (A) the project's purpose(s), relevance, significance, and responsiveness to the priority area, which answers the questions of why the project should be undertaken and what it intends to accomplish. The next section of the narrative provides a detailed explanation of (B) the approach(es)/methodology the project will follow to achieve its purpose(s), leading to a discussion of (C) the anticipated outcomes/results/benefits of the project, how these will be evaluated, disseminated, and utilized. The narrative concludes with (D) the level of effort needed to carry out the project, in terms of the Project Director and other key staff, funding, and other resources.

Please have the narrative typed on one side of 8 ½″ x 11″ plain white paper with 1'' margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) should be sequentially numbered, beginning with ''Objectives and Need

for Assistance'' as page number one. (Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement). The narrative should also identify the author(s) of the proposal, their relationship with the applicant, and the role they will play, if any, should the project be funded. This narrative guidance is in accordance with that provided in OMB Circular A–102. The checklist (see Section K, below) is consistent with that approved under OMB control number 0937–0189.

7. Organizational Capability Statement and Vitae for Key Project Personnel

The organizational capability statement should describe how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized, the nature and scope of its work and/or the capabilities it possesses. This description should cover capabilities of the applicant not included in the program narrative. Include descriptions of any current or previous relevant experience. Describe the competence of the project team and its record for preparing cogent and useful reports, publications, and other products. Include an organization chart showing the relationship of the project to the current organization. Include vitae for key project staff only.

K. Checklist for a Complete Application

The checklist below should be typed on 8½″ x 11″ plain white paper, completed and included in your application package. It will help in properly preparing your application.

Checklist

I have checked my application package to ensure that it includes or is in accord with the following:

—One original application plus two copies, each stapled securely (no folders or binders) with the SF 424 as the first page of each copy of the application;
—SF 424; SF 424A—Budget Information (and accompanying Budget Justification); SF 424B—Assurances; and Certifications;
—SF 424 has been completed according to the instructions, signed and dated by an authorized official (item 18);
—The number of the priority area under which the application is submitted has been identified in the box provided at the top left of the SF 424;
—As necessary, a copy of the current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency;
—Proof of nonprofit status, as necessary;
—Summary description;
—Program narrative;
—Organizational capability statement and vitae for key personnel;
—Letters of commitment and cooperation, as appropriate.

L. Points to Remember

1. There is a forty (40) double-spaced page limitation for the substantive parts of the application. Before submitting your application, please check that you have adhered to this requirement which is spelled out in Section D.

2. You are required to send an original and two copies of an application.

3. Indicate the priority area in the box at the top left hand corner of the SF 424.

4. The summary description (1,200 characters or less) should accurately reflect the nature and scope of the proposed project.

5. To meet the cost sharing requirement (see Section C above), you must, at a minimum, match $1 for every $3 requested in Federal funding to reach 25% of the total project cost. For example, if your request for Federal funds is $90,000, then the required minimum match or cost sharing is $30,000. The total project cost is $120,000, of which your $30,000 share is 25%.

6. Indirect costs of training grants may not exceed 8%.

7. In following the required format for preparing the program narrative, make certain that you have responded fully to the four (4) evaluative criteria which will be used by reviewers to evaluate and score all applications.

8. Do *not* include letters which endorse the project in general and perfunctory terms. In contrast, letters which describe and verify tangible commitments to the project, e.g., funds, staff, space, should be included.

9. If duplicate applications are submitted under different priority areas, AoA reserves the right to select the single priority area under which it will be reviewed.

10. If more than one project application is submitted, each should be submitted under separate cover.

11. Before submitting the application, have someone other than the author(s): 1) apply the screening requirements to make sure you are in compliance; and 2) carry out a trial run review based upon the evaluative criteria. Take the opportunity to consider the results of the trial run and then make whatever changes you deem appropriate.

12. Each application must be mailed by midnight, June 12, 1995 or hand-delivered by 5:30 p.m., Eastern Time, on June 12, 1995.

Mail or hand-deliver the application to: Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue SW., Room 4644, Washington, D.C. 20201 Attn: AoA–95–1.

Dated: April 6, 1995

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

BILLING CODE 4150–04–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: *Application* ☐ Construction ☒ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE: Not Applicable	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other *(specify)*: _____

9. NAME OF FEDERAL AGENCY: Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 93.048

TITLE: Special Programs for the Aging--Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*: Nation-wide Applicability

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS	93.048	$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE 6.7

2. DATE SUBMITTED: May 30, 1995 — Applicant Identifier:

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

3. DATE RECEIVED BY STATE: Not Applicable — State Application Identifier:

4. DATE RECEIVED BY FEDERAL AGENCY: — Federal Identifier:

5. APPLICANT INFORMATION

Legal Name: ABC Agency

Organizational Unit: Division on Aging

Address (give city, county, state, and zip code):
1234 Craig Avenue
Parsons, MT

Name and telephone number of the person to be contacted on matters involving this application (give area code)
Edwin Wallach Marcus
(345) 678-9012

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 23-4567890

7. TYPE OF APPLICANT: (enter appropriate letter in box) B
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify):

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify):

9. NAME OF FEDERAL AGENCY: Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 93.048
TITLE: Special Programs for the Aging--Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Improved Long Term Care Services

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Nation-wide Applicability

13. PROPOSED PROJECT: Start Date 09/01/95; Ending Date 08/31/97

14. CONGRESSIONAL DISTRICTS OF: a. Applicant 3; b. Project 2-5

15. ESTIMATED FUNDING:

a. Federal	$ 100,000	.00
b. Applicant	$ 33,333	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$ 133,333	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative: Mike Spurlock
b. Title: Executive Director
c. Telephone number: (987)654-3210
d. Signature of Authorized Representative:
e. Date Signed: May 27, 1995

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS	93.048	$	$	$ 100,000	$ 33,333	$ 133,333

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 60,000
b. Fringe Benefits					16,000
c. Travel					5,000
d. Equipment					
e. Supplies					3,333
f. Contractual					7,000
g. Construction					N.A.
h. Other					15,000
i. Total Direct Charges (sum of 6a - 6h)					106,333
j. Indirect Charges					27,000
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$ 33,333	$	$	$ 33,333

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$ 100,000	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal Appropriated Funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress in connection with the warding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an Federal contract, grant, loan or cooperative agreement, the undersigned shall complete an submit Standard Form-LLL, "Disclosure Form to Report Lobbing," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Margaret A. Tolson, Director; Grants Management Division; 330 Independence Avenue, S.W., Room 4256-COHEN; Washington, D.C. 20201-0001

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency:

(b) have not within a 3-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(Continued on reverse side of this sheet)

HHS--Certification Regarding Drug-Free Workplace Requirements--continued from reverse page

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

[FR Doc. 95–8950 Filed 4–12–95; 8:45 am]

BILLING CODE 4150–04–C

Food and Drug Administration

[Docket No. 95F–0065]

BASF Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a polyamide-ethyleneimine-epichlorohydrin resin as a component of paper and paperboard in contact with aqueous and fatty food.

DATES: Written comments on the petitioner's environmental assessment by May 15, 1995.

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

FOR FURTHER INFORMATION CONTACT: Diane E. Robertson, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4452) has been filed by BASF Corp., 1609 Biddle Ave., Wyandotte, MI 48192. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of a polyamide-ethyleneimine-epichlorohydrin resin as a component of paper and paperboard in contact with aqueous and fatty foods.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before May 15, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: March 24, 1995.

Eugene C. Coleman,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–9180 Filed 4–12–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0064]

Johnson Matthey Chemicals; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Johnson Matthey Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the safe use of silver chloride coated titanium dioxide in resinous and polymeric coatings.

DATES: Written comments on the petitioner's environmental assessment by May 15, 1995.

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

FOR FURTHER INFORMATION CONTACT: Diane E. Robertson, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4453) has been filed by Johnson Matthey Chemicals, c/o 1000 Potomac St. NW., Washington, DC 20007. The petition proposes to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of silver chloride coated titanium dioxide as a preservative in resinous and polymeric coatings.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before May 15, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: March 24, 1995.

Eugene C. Coleman,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–9179 Filed 4–12–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0068]

Polymer Technology Division of Wilmington Partners L. P.; Premarket Approval of BOSTON Advance® Comfort Formula Conditioning Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Polymer Technology Division of Wilmington Partners L. P., Wilmington, MA, for

premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the BOSTON Advance® Comfort Formula Conditioning Solution. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 1, 1995, of the approval of the application.

DATES: Petitions for administrative review by May 15, 1995.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On December 29, 1992, Polymer Technology Division of Wilmington Partners L. P., Wilmington, MA 01887, submitted to CDRH an application for premarket approval of the BOSTON Advance® Comfort Formula Conditioning Solution. The device is a disinfecting and soaking solution and is indicated for disinfecting and soaking fluoro silicone acrylate and silicone acrylate rigid gas permeable contact lenses.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On March 1, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 15, 1995, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 24, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–9181 Filed 4–12–95; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Office of the Assistant Secretary for Health

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 60 FR 8410, February 14, 1995) is amended to reflect a title change for the Office of Management, Office of the Assistant Secretary for Health.

Office of the Assistant Secretary for Health

Under Chapter HA, Office of the Assistant Secretary for Health, Section HA–10, Organization, change item.11. Office of Management (HAU) to 11. Office of Management and Budget (HAU).

Under Section HA–20, Functions, following the title and statement for Office of Emergency Preparedness (HAP), change the title for Office of Management (HAU) to Office of Management and Budget (HAU).

Under Chapter HA, Section HA–30, Delegations of Authority, add the following:

Delegations of authority made to and by the Director, Office of Management will continue in the successor position Deputy Assistant Secretary for Health (Management and Budget) pending further redelegation.

Delegations of authority made to and by the Deputy Assistant Secretary for Health Management Operations will continue in the successor position Deputy Assistant Secretary for Health (Management and Budget) pending further redelegation.

Dated: March 28, 1995.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 95–9040 Filed 4–12–95; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. R–95–1700; FR–3517–N–03]

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 within thirty (30) days from the date of this Notice. 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) 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).

Date: April 5, 1995.

David S. Christy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Grant Program (CGP) (FR–3517).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: A final Comprehensive Grant Program (CGP) rule was published in the Federal Register on August 30, 1994. This rule amended the CGP by simplifying and expediting the planning and funding process for housing authorities that own or operate 250 units or more.

Form Number: HUD–52831, 52832, 52834, 52835, 52836, 52837, and 52840.

Respondents: State, Local, or Tribal Governments and the Federal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	904		1		109		98,620

Total Estimated Burden Hours: 98,620.

Status: Revision.

Contact: Gwendolyn A. Watson, HUD, (202) 708–1640; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 5, 1995.

[FR Doc. 95–9139 Filed 4–12–95; 8:45 am]

BILLING CODE 4210–01–M

Office of Fair Housing and Equal Opportunity

[Docket No. D–95–1088; FR–3906–D–01]

Order of Succession

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), HUD.

ACTION: Notice of order of succession for the Assistant Secretary for Fair Housing and Equal Opportunity.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity designates the Order of Succession for the position of Assistant Secretary for FHEO, and revokes the prior Order of Succession for this position.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Dianne D. Taylor, Administrative Officer, Office of Fair Housing and Equal Opportunity, Administrative Support Division, Department of Housing and Urban Development, 451 7th Street SW, Room 5124, Washington, DC 20410–2000; telephone (202) 708–2701. (This is not a toll-free number). A telecommunications device for hearing impaired persons (TDD) is available at 1–800–543–8294.

SUPPLEMENTARY INFORMATION: In this document, the Assistant Secretary for Fair Housing and Equal Opportunity is issuing the Order of Succession of officials authorized to serve as Acting Assistant Secretary for FHEO when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for FHEO is not available to exercise the powers or perform the duties of the office. Succession to act for and exercise the powers of the Assistant Secretary for FHEO pursuant to this order shall be subject to the time limitations specified in the Vacancies Act, 5 U.S.C. 3348. This revised Order of Succession is being issued due to a reorganization of the Office of the Assistant Secretary for FHEO.

Accordingly, the Assistant Secretary for FHEO designates the following officials in the order specified to act for and assume the powers of the Assistant Secretary for FHEO:

Section A. Order of Succession

During any period when, by reason by absence, disability, or vacancy in office, the Assistant Secretary for Fair Housing and Equal Opportunity is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for FHEO, the following are hereby designated to serve as Acting Assistant Secretary for FHEO:

(1) Deputy Assistant Secretary for Policy and Initiatives;

(2) Deputy Assistant Secretary for Enforcement and Investigations;

(3) Deputy Assistant Secretary for Operations and Management;

(4) Director, Office of Investigations;

(5) Director, Office of Program Standards and Evaluation;

(6) Director, Office of Fair Housing Assistance and Voluntary Programs;

(7) Director, Office of Regulatory Initiatives and Federal Coordination;

(8) Director, Office of Management and Field Coordination;

(9) Director, Office of Economic Opportunity;

(10) Director, Office of Program Compliance and Disability Rights.

These officials shall serve as Acting Assistant Secretary for FHEO in the order specified herein and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason

of absence, disability, or vacancy in office.

Authorization to serve as Acting Assistant Secretary for FHEO shall not exceed the time limitations imposed by the Vacancies Act, 5 U.S.C. 3348.

Section B. Authority Revoked

The Order of Succession of the Assistant Secretary for FHEO, published on the Federal Register on February 9, 1993, at 58 FR 7809, is hereby revoked.

Authority: Sec.7(d), Department of Housing and Urban Development Act [42 U.S.C. 3535(d)].

Dated: April 5, 1995.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 95–9086 Filed 4–12–95; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of receipt of applications.

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.*).

Permit No. PRT–787392

Applicant: San Bernardino County Museum, Redlands, California.

The applicant requests amendment of their permit to include authorization to take (capture, mark, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) in Orange, Riverside, and San Diego Counties, California, for the purpose of enhancing the survival of the species.

Permit No. PRT–789266

Applicant: Patricia Ann Hobell, Oceanside, California.

The applicant requests amendment of her permit to include authorization to take (survey populations and monitor nesting) the western snowy plover (*Charadrius alexandrinus nivosus*) and take (survey populations, monitor nesting, band and measure chicks) the California least tern (*Sterna antillarum browni*) in Orange and San Diego Counties, California, for the purpose of enhancing the survival of the species.

Permit No. PRT–797665

Applicant: Regional Environmental Consultants, San Diego, California.

The applicant requests amendment of their permit to include authorization to take (capture, handle, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*), take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), vernal pool fairy shrimp (*Branchinecta lynchi*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*), and remove and reduce to possession from areas under Federal jurisdiction (for translocation from disturbed areas) *Eryngium aristulatum* var. *parishii* (San Diego button-celery), *Orcuttia californica* (California Orcutt grass), *Pogogyne abramsii* (San Diego mesa mint), and *Pogogyne nudiuscula* (Otay mesa mint) throughout the range of the species in California for the purpose of enhancing the survival of the species.

Permit No. PRT–799679

Applicant: Santa Barbara Museum of Natural History, Santa Barbara, California.

The applicant requests a permit to take (survey and monitor nesting colonies) the California least tern (*Sterna antillarum browni*) on Vandenburg Air Force Base, Santa Barbara, California, for the purpose of enhancing the survival of the species.

Permit No. PRT–800291

Applicant: Ibis Environmental Services, Tiburon, California.

The applicant requests a permit to take (survey using taped calls) the California clapper rail (*Rallus longirostris obsoletus*) in the San Francisco Bay area, California, for the purpose of enhancing the survival of the species.

Permit No. PRT–800783

Applicant: California Department of Parks and Recreation, Division of Off-Highway Motor Vehicles, Sacramento, California.

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), vernal pool fairy shrimp (*Branchinecta lynchi*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) from vernal pools in Rancho Cordova and Oroville, California, for the purpose of enhancing the survival of the species.

Permit No. PRT–800783

Applicant: Jepson Prairie Reserve, Solano County, California.

The applicant requests a permit to take (harass by survey, collect and release) the conservancy fairy shrimp (*Branchinecta conservatio*), vernal pool fairy shrimp (*Branchinecta lynchi*), and vernal pool tadpole shrimp (*Lepidurus packardi*) from vernal pools on the Jepson Prairie Reserve, California for educational programs for the purpose of enhancing the survival of the species.

Permit No. PRT–800793

Applicant: Ray Griffiths, Georgetown, California.

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and vernal pool tadpole shrimp (*Lepidurus packardi*) from vernal pools throughout the range of the species in California for the purpose of enhancing the survival of the species.

Permit No. PRT–800794

Applicant: Zentner and Zentner, Inc., Sacramento, California.

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), vernal pool fairy shrimp (*Branchinecta lynchi*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) from vernal pools throughout the range of the species in California for the purpose of enhancing the survival of the species.

Permit No. PRT–800797

Applicant: Donald L. Davis, Oakview, California.

The applicant requests a permit to take (harass during population and nest monitoring, removal of non-native vegetation from nesting areas, and establishment of predator exclosures) the California least tern (*Sterna antillarum browni*) in Ventura County, California, for the purpose of enhancing the survival of the species.

Permit No. PRT–800924

Applicant: Renee Y. Owens, San Marcos, California.

The applicant requests a permit to take (survey using taped vocalizations and monitor nests) the California gnatcatcher (*Polioptila californica californica*) and the least Bell's vireo (*Vireo bellii pusillus*) in San Diego and Orange Counties, California for the

purposes of enhancing the survival of the species.

Permit No. PRT–800926

Applicant: California Department of Transportation, District 8, San Bernardino, California.

The applicant requests a permit to take (survey using taped vocalizations and monitor nests) the California gnatcatcher (*Polioptila californica californica*) and the least Bell's vireo (*Vireo bellii pusillus*) in Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties, California for the purpose of enhancing the survival of the species.

Permit No. 801019

Applicant: Aqua Farms, LLC, Portland, Oregon.

The applicant requests a permit to take (collect and sacrifice) Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostrum*) larvae at the confluence of the upper Klamath Lake, 'A' Canal, and Link River for scientific research for the purpose of enhancing the survival of the species.

DATES: Written comments on the permit applications must be received by May 15, 1995.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: 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, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Telephone: 503–231–2063; FAX: 503–231–6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: April 6, 1995.

David L. McMullen,

Acting Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–9131 Filed 4–12–95; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[AZ-050–05–1430–00; AZA–29060]

Arizona: Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Mohave County and La Paz County, Arizona, AZA–29060.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—Recreation and Public Purposes (R&PP) Act classification; Mohave County, and La Paz County, Arizona.

SUMMARY: The following public lands in Mohave County, and La Paz County, Arizona have been examined and found suitable for classification for lease or conveyance, under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease or conveyance until at least 60 days after the date of publication of this notice in the Federal Register. The lands described below have been developed by the Arizona State Parks Department (State Parks) for park purposes, and are currently in use for that purpose. The lands are currently leased to State Parks by the United States pursuant to Reclamation lease authority, and particularly pursuant to the Acts of June 17, 1902, (32 Stat. 388) and August 4, 1939, (53 Stat. 1187, 1196) as amended by the Act of August 18, 1950 (64 Stat. 463). This action will allow lease or conveyance of lands to State Parks under current and more appropriate Recreation and Public Purposes Act authority. All legal descriptions are within the Gila and Salt River Meridian, Arizona.

The following lands are hereby classified suitable for lease to State Parks:

1. Cattail Cove State Park

T. 12 N., R. 18 W.,
Sec. 19, that portion of lot 4 acquired for use by the Bureau of Reclamation (approximately 18 acres);
T. 12 N., R. 19 W.,
Sec. 25, lots 1, 2 & 3, NE¼NE¼ (136.82 acres).

Containing 154.82 acres, more or less.

2. Lake Havasu State Park

T. 13 N., R. 20 W.,
Sec. 23, lots 2 & 3, E½SW¼, W½W½SE¼, SE¼NW¼SE¼, E½SW¼SE¼, SE¼SE¼.

Containing 239.39 acres, more or less.
Total lands classified suitable for lease is 394.21 acres, more or less.

The following public lands are hereby classified suitable for conveyance to State Parks:

1. Buckskin Mountain State Park

T. 11 N., R. 18 W.,
Sec. 32, all, excepting that portion of the SW¼ lying west of Arizona State Highway 95 as rerouted (approximately 400 acres);
Sec. 33, lots 10, 11 & 12, S½NW¼, S½ (507.38 acres).

Containing 907.38 acres, more or less.

2. Cattail Cove State Park

T. 12 N., R. 18 W.,
Sec. 19, all, excepting that portion of lot 4 acquired for use by the Bureau of Reclamation (approximately 600 acres);
Sec. 20, W½, excepting that portion east of Arizona State Highway 95 (approximately 200 acres);
Sec. 29, all, excepting that portion east of Arizona State Highway 95 (approximately 500 acres);
Sec. 30, all (481.42 acres);
T. 12 N., R. 19 W.,
Sec. 24, all (628.20 acres).

Containing 2409.62 acres, more or less.

3. Lake Havasu State Park

T. 13 N., R. 20 W.,
Sec. 23, lot 5, NE¼SE¼, NE¼NW¼SE¼ (61.33 acres);
Sec. 26, lots 1–4, NE¼ (290.93 acres).

Containing 352.26 acres, more or less.
Total lands classified suitable for conveyance is 3669.26 acres, more or less. Total lands classified for lease or conveyance is 4063.47, more or less.

The final lease or patent documents will reflect resurveyed and revised descriptions of certain parcels. The lands are not needed for Federal purposes. Lease or conveyance conforms to the Yuma District Resource Management Plan and would be in the public interest. Leases or patents, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. All prior and existing rights.

5. All lands adjacent to Lake Havasu below 450 feet above mean sea level are excepted and reserved to the United States for the operation of Parker Dam and Lake Havasu.

6. An inundation easement is reserved to the United States for all parcels adjacent to Lake Havasu for those lands between 450 and 455 feet above mean sea level for the operation of Parker Dam and Lake Havasu.

7. An inundation easement is reserved to the United States for those lands

adjacent to the Colorado River downstream from Parker Dam for the operation of Parker and Headgate Dams.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona. Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Levi Deike, Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406.

CLASSIFICATION COMMENTS: Interested parties may submit comments on the suitability of the lands for park purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with State and Federal programs.

Any adverse comments will be reviewed by the Arizona State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for park purposes.

FOR FURTHER INFORMATION CONTACT: Joe Liebhauser, Yuma District, Havasu Resource Area Office at the address above, or by telephone at (520) 855–8017.

Dated: April 6, 1995.

Maurenn A. Merrell,

Assistant District Manager, Administration/ Acting District Manager.

[FR Doc. 95–9100 Filed 4–12–95; 8:45 am]

BILLING CODE 4310–32–P

[VT–046–01–1430–00]

Notice of Realty Action, Conveyance of Public Land in Garfield County, Utah, Panguitch City Airport, UTU–71137; Correction

SUMMARY: In notice document UTU–71137 beginning on page 9393 in the issue of Friday, February 17, 1995, the lands to be conveyed are incorrectly described. On page 9394, in the first column, under the heading, ''Panguitch City Airport'', in the land description, in T. 34 S., R. 5 W., ''Section 14, SW¼NW¼SW¼NE¼; W½SW¼SW¼NE¼; S½NE¼SE¼NW¼; SE¼NE¼SE¼NW¼; E½SW¼SE¼NW¼; SE¼SE¼NW¼'' should read ''Section 14, SW¼NW¼SW¼NE¼; W½SW¼SW¼NE¼; S½NE¼SE¼NW¼; SE¼NW¼SE¼NW¼; E½SW¼SE¼NW¼; SE¼SE¼NW¼''.

FOR FURTHER INFORMATION: Detailed information concerning this action is available for review at the Kanab Area Office, 318 North 1st East, Kanab, Utah 84741, telephone (801) 644–2272.

Dated: April 7, 1995.

G. Von Swain,

Acting District Manager.

[FR Doc. 95–9101 Filed 4–12–95; 8:45 am]

BILLING CODE 4310–DQ–M

[ES–960–9800–02] ES–047193, Group 85, Arkansas

Filing of Plat of Survey; Arkansas

The plat, in four sheets, of the dependent resurvey of the south boundary, Township 15 North, Range 20 West, a portion of the subdivisional lines, the survey of the subdivision of certain sections, and the survey of certain exceptions to U.S. Forest Service Tracts, Township 14 North, Range 20 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 22, 1995.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor for Cadastral Survey, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., May 22, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: April 5, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–9053 Filed 4–12–95; 8:45 am]

BILLING CODE 4310–GJ–M

[CO–942–95–1420–00]

Colorado: Filing of Plats of Survey

April 5, 1995.

The plats of survey of the following described land are officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m. on March 31, 1995.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and a portion of the subdivision of sections 1 and 2, T. 32 N., R. 13 W., New Mexico Principal Meridian, Colorado, Group No. 725, was accepted March 1, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the subdivisional line between sections 13 and 24, T. 3 N., R. 90 W., Sixth Principal Meridian, Colorado, Group No. 1057, was accepted December 16, 1994.

The plat representing the dependent resurvey of a portion of the subdivision of section 34, T. 6 N., R. 100 W., Sixth Principal Meridian, Colorado, Group No. 1066, was accepted December 16, 1994.

The supplemental plat amending the labeling of three easement areas from ''wetlands easement'' to ''flood easement'' and ''public road easement'', in sections 13 and 24, T. 51 N., R. 7 W., New Mexico Principal Meridian, Colorado, was accepted February 9, 1995.

The supplemental plat creating new lots 12 and 13 from original lot 7 in section 24, T. 36 N., R. 6 E., New Mexico Principal Meridian, Colorado, was accepted February 9, 1995.

The supplemental plat, eliminating lot 42 and correcting the boundary and area of lot 33 in the NW 1/4 of section 18, T. 10 S., R. 84 W. Sixth Principal Meridian, Colorado, was accepted March 17, 1995.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of portions of the east and north boundaries, a portion of the subdivisional lines, the subdivision of certain sections, and the metes-and-bounds survey of parcel A and a portion

of Parcel B, in section 14, T. 7 N., R. 85 W., Sixth Principal Meridian, Colorado, Group No. 979, was accepted March 2, 1995.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 27 S., R. 57 W., Sixth Principal Meridian, Colorado, Group No. 1001, was accepted February 23, 1995.

The plat representing the dependent resurvey of a portion of the Third Standard Parallel South (south boundary), a portion of the north boundary, and a portion of the subdivisional lines, T. 15 S., R. 85 W., Sixth Principal Meridian, Colorado, Group No. 1060, was accepted January 27, 1995.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

Carl F. Nagy,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 95–9102 Filed 4–12–95; 8:45 am]

BILLING CODE 4310–JB–P

[ID–942–7130–00–7661]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., April 6, 1995.

The plat representing the dependent resurvey of portions of the north boundary, subdivisional lines, and meanders of the Middle Fork of the Clearwater River, the subdivision of section 5, and a metes-and-bounds survey in section 5, T. 32 N., R. 4 E., Boise Meridian, Idaho, Group No. 893, was accepted, April 3, 1995.

The plat representing the dependent resurvey of portions of the North Boundary of the Nez Perce Indian Reservation and the subdivisional lines, and the subdivision of section 20, T. 37 N., R. 1 W., Boise Meridian, Idaho, Group No. 897, was accepted April 3, 1995.

These surveys were executed to meet certain administrative needs of the Bureau of Indian Affairs, Northern Idaho Agency.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: April 6, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–9103 Filed 4–12–95; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–359]

Chile: Probable Economic Effect on U.S. Imports, Industries, Consumers, and Exports of Accession to the North American Free Trade Agreement and Report on Services Trade

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: April 6, 1995.

SUMMARY: Following receipt on March 8, 1995, of a request from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–359, Chile: Probable Economic Effect on U.S. Imports, Industries, Consumers, and Exports of Accession to the North American Free Trade Agreement and Report on Services Trade, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of—

(a) Advising the President, with respect to each item in chapters 1 through 98 of the Harmonized Tariff Schedule of the United States (HTS), as to the probable economic effect of providing, under the North American Free Trade Agreement (NAFTA), duty-free treatment for imports of products of Chile on industries in the United States producing like or directly competitive articles and on consumers;

(b) Advising the President, with respect to each product sector, of the probable economic effect on U.S. exports to Chile of the removal of Chilean import duties under the NAFTA; and

(c) Preparing a report on U.S. service transactions with Chile that would (1) provide an overview of the nature and extent of such transactions; (2) highlight key U.S. service industries that export services to Chile; (3) identify principal nontariff barriers that impede the participation of U.S. services providers in the Chilean market; and (4) assess the effects of such barriers on U.S. service providers.

As requested by the USTR, the advice will assume that U.S. nontariff measures that are incompatible with the NAFTA will not be applicable to such imports, and the Commission will note in its report any instance in which the continued application of a U.S. nontariff measure would result in different advice with respect to the effect of the removal of the duty.

Similarly at the request of the USTR, the advice with respect to the removal of Chilean duties on U.S. products will assume that any known Chilean nontariff measures incompatible with the rules of the NAFTA will not be applicable to U.S. products, and any instance where the continued application of such a Chilean nontariff measure would result in different advice will be noted by the Commission.

The Commission expects to submit its report by September 8, 1995.

FOR FURTHER INFORMATION: Information on general topics may be obtained from the project leader, Mr. James Lukes, Office of Industries (202–205–3426) or the assistant project leader, Ms. Gail Burns, Office of Industries (202–205–2501) and on legal aspects, from Mr. William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). For information on a product basis, contact the appropriate member of the Commission's Office of Industries, as follows:

(1) Agricultural and forest products, Mr. Douglas Newman (202–205–3328)
(2) Chemical, energy-related, textile, apparel, and footwear products, Mr. Lee Cook (202–205–3471)
(3) Minerals, metals, machinery, and miscellaneous manufactures, Ms. Gail Burns (202–205–2501)
(4) Electronic and transportation products, Ms. Deborah McNay (202–205–3425)
(5) Service industries, Mr. Christopher Melly (202–205–3461)

Background

The request letter noted that at the conclusion of the Summit of the Americas meeting in Miami in December, President Clinton, the Prime Minister of Canada, and the Presidents of Mexico and Chile jointly announced their decision to begin the process by which Chile will accede to the NAFTA. The announcement also stated that the Ministers responsible for trade from the four countries would meet by May 31, 1995, and that accession negotiations would begin expeditiously thereafter. The USTR indicated in his request letter that the Commission's assistance is needed in the work of preparing for these negotiations.

The USTR requested that the Commission provide its advice with respect to the removal of U.S. tariffs as if this request had been made pursuant to section 131 of the Trade Act (the Trade Act). If trade agreement negotiating and legislative procedures

requiring advice under section 131 of the Trade Act are enacted by Congress prior to completion of the Commission's report, the USTR indicated in the request letter that he will request that the advice with respect to U.S. tariffs be converted to a report under section 131. If trade agreement negotiating and legislative procedures requiring advice under section 131 of the Trade Act are enacted by Congress after the report is completed, the request letter indicated that the Commission will be requested to provide such advice under section 131.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on July 19, 1995, and continuing, as required, on July 20. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., July 7, 1995. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., July 10, 1995; the deadline for filing post-hearing briefs or statements is 5:15 p.m., July 25, 1995.

In the event that, as of the close of business on July 7, 1995, no witnesses are scheduled to appear at the hearing, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–2000) after July 7, 1995, to determine whether the hearing will be held.

Because the Commission expects to provide detailed advice on narrowly defined industries and product lines, testimony and briefs should focus on specific industries and products rather than broad issues of trade policy. In the context of specific industries and products, the Commission is interested in receiving information on existing nontariff barriers to trade with Chile.

Requests to appear at the hearings must contain the following information:

a. A description of the article or articles on which testimony will be presented, including, if possible, the item number or numbers in the Harmonized Tariff Schedule of the United States (1995) covering the article or articles.

b. The name and organization of the witness or witnesses who will testify, and the name, address, telephone number, and organization of the person filing the request.

c. A statement indicating whether the testimony to be presented will be on behalf of importers, domestic producers, consumers, or other interests.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Because the Commission intends to use the information collected in the course of the section 332 investigation in the section 131(b) investigation, should one be requested, the Commission requests that all such requests for confidential treatment filed in connection with the section 332 investigation contain the following consent statement: ''I consent to the use of this confidential business information by the Commission in preparing its advice to the President on this matter under section 131(b) of the Trade Act of 1974.'' Submissions requesting confidential treatment not containing this consent statement will be returned to the submitter. Any grant of confidential treatment to information received in the section 332 investigation would continue to apply to such information if it is used in the section 131(b) investigation.

All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on July 25, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: April 7, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–9088 Filed 4–12–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *United States of America* v. *Bayard Mining Corp., Mining Remedial Recovery Corp., and VIACOM International Inc.,* Civil Action No. 95–285–MVLFG, was lodged on March 21, 1995 with the United States District Court for the District of New Mexico. Contemporaneously with the lodging of the consent decree, the United States filed a civil action under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9606 and 9607, for injunctive relief to abate an imminent and substantial endangerment to the public health and welfare or the environment due to the release or threatened release of hazardous substances from a facility, and for recovery of response costs that have been and will be incurred by the United States in response to releases or threatened releases of hazardous substances from the same facility, known as the Cleveland Mill Superfund site, located in Grant County, New Mexico. Under the proposed Consent Decree, Settling Defendants will conduct or finance 100% of the remedial design and remedial action at the Site; pay 100% of past and future costs; and pay for damages to natural resources at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044. Comments should refer to *United States of America* v. *Bayard Mining Corp., Mining Remedial Recovery Corp., and VIACOM International Inc.,* DOJ Ref. #90–11–3–1171.

The proposed consent decree may be examined at the office of the United States Attorney, 625 Silver, SW, Suite

400 Albuquerque, New Mexico; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library.

In requesting a copy, please enclose a check in the amount of $21.25 (25 cents per page reproduction cost) payable to the ''Consent Decree Library.''

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–9106 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed partial consent decree in *United States* v. *Pierce*, Civil Action No. 83–CV–1623, was lodged on March 29, 1995 with the United States District Court for the Northern District of New York.

The complaint in the *Pierce* action was filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*, to recover costs incurred by the United States in taking response actions in connection with the first operable unit cleanup at the York Oil Superfund Site located in Moira, Franklin County, New York (''Site'').

The proposed Consent Decree embodies an agreement by defendant Aluminum Company of America (''Alcoa'') to design and implement a remedy selected for the first operable unit at the Site involving the cleanup of contaminated soils and groundwater. Alcoa has also agreed to perform the subsequent operation and maintenance for this remedial work, and to reimburse EPA for 40% of the first $400,000 of EPA's oversight and periodic review costs. Alcoa has also agreed to pay $1,907,259 towards EPA's past costs at the Site.

The proposed Consent Decree includes an agreement by certain federal agencies (the Department of the Army, the Department of the Air Force, the Department of Transportation, and the U.S. Postal Service) to pay for 35% of the cost of the remedy and of the cost of operation and maintenance, and to reimburse EPA for 35% of the first $400,000 of EPA's oversight and periodic review costs. The federal agencies have also agreed to pay $1,668,852 toward EPA's past costs at the Site.

The proposed Consent Decree includes an agreement by sixteen additional potentially responsible parties at the Site to pay for approximately 9% of the cost of the remedy and of the operation and maintenance, and to pay $428,881.31 toward EPA's past costs at the Site. The proposed Consent Decree also includes an agreement by the EPA Hazardous Substance Superfund to pay for 16.11% of the cost of the remedy.

The proposed Consent Decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. § 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Pierce*, DOJ Ref. #90–5–2–1–585. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at the Region 2 Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10278, at the U.S. Attorney's Office, 100 South Clinton Street, Syracuse, NY, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $61.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–9107 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 98–95]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the United States Marshals Service, Department of Justice (DOJ), proposes to establish a new system of records entitled ''Joint Automated Booking Stations, Justice/USM–014.''

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be provided a 30-day period in which to comment on the new routine uses of a system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires that it be given a 40-day period in which to review the new system.

Therefore, please submit any comments by May 15, 1995. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20503 (Room 850, WCTR Building).

A description of the system of records is provided below. In accordance with 5 U.S.C. 552a(r), DOJ has provided a report on the proposed new system to OMB and the Congress.

Dated: March 30, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration.

USM–014

SYSTEM NAME:

Joint Automated Booking Stations (JABS), USM–014

SYSTEM LOCATION:

U.S. Marshals Service (USMS) headquarters, 600 Army Navy Drive, Arlington, Va. 22202–4210; and regional office of the Drug Enforcement Administration (DEA) at 6320 NW 2nd Avenue, North Miami Beach, FL 33167.[1]

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Alleged criminal offenders who have been arrested and booked.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include certain generic or ''common'' data elements which have been collected by an arresting Federal, State, or local agency and booked by that agency at its automated booking station (ABS), or booked by an agency on behalf of another agency which performed the arrest.[2] Such common

[1] The Miami repository will be physically housed at DEA facilities; nevertheless, management and oversight—including the physical security of the system—will be the responsibility of USMS personnel. When appropriate, the ''system location'' will be revised to include additional repositories.

[2] Initially, these records will include only those of the Department of Justice (DOJ) law enforcement components. However, at such time as other

Continued

data (approximately 60 data elements) have been identified by law enforcement as those case and biographical data generally collected by the law enforcement community during booking arrests, e.g., name, date and place of birth, citizenship, hair and eye color, height and weight, occupation, social security number, place, date and time of arrest and jail location, charge, armed description, sentenced or unsentenced, and health status, etc. Such data may also include case agent name, notes and observations regarding subjects' physical or mental condition, degree of psychological stability or acumen, reported use of habit forming substances, substances for which the subject has a valid prescription, names of individuals from which the subject is to be segregated, extraordinary handling procedures to include precautionary warnings, names of acquaintances (criminal/non-criminal), Federal writ, and any other pertinent information related to known activities relevant or unique to the record subject. Finally, as the technology is developed, such data may include electronic fingerprints, mugshots, and voice samples.

Categories of records may include paper records where the USMS has a need to print copies, e.g., copies of mugshots.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 534, 564; 5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE:

The primary purpose of the JABS system is to enable Federal, State, and local agencies which conduct arrests and/or booking activities to store such data in regional repositories to eliminate duplication efforts among multiple law enforcement agencies participating in a single booking/arrest, to follow the arrestee through the booking process, and thereby share ''realtime'' booking and arrest data within a region. It will also assist in ancillary law enforcement efforts by permitting law enforcement to learn of the arrest and apprehension of a fugitive by another agency in that region; verify the identity of an arrestee or, as the technology is developed, obtain identifying data that will assist with surveillance and wiretap activities in the event the arrestee becomes a fugitive subsequent to booking. Finally, it may assist other judicial/law enforcement agencies in obtaining such information as will permit them to perform their official duties.

JABS will also assist law enforcement at the national level through interface of its regional repositories with the Federal Bureau of Investigation's (FBI) Identification Division Records System, Justice/FBI–009 (IDENT). IDENT currently serves as a ''national'' repository for fingerprint data. As the technology is developed, electronic fingerprint, mugshot, and voice sample data, together with certain personally identifying data, date of arrest, etc. may be copied from JABS regional repositories to IDENT. (Consistent with published routine use disclosures for the IDENT system of records, IDENT may then respond to electronic inquiries from other JABS regional repositories to verify fingerprint or other identifying data, to learn of the arrest of a fugitive in another regional jurisdiction; and/or, where indicated by the IDENT record, to allow an inquiring regional repository to determine that a more complete arrest record resides with, and may be requested from, another JABS regional repository; and/or to otherwise assist in the conduct of other authorized law enforcement activities such as surveillance and wiretap.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) The regional repositories may be electronically accessed by Federal, State, and local law enforcement agencies to input and retrieve booking and arrests data on criminal offenders and thereby eliminate the need for duplicate bookings in that region, i.e., the collection of much the same data by multiple agencies in prisoner processing activities involving such agencies from arrest through incarceration. (For example, an individual arrested by the Bureau of Alcohol, Tobacco, and Firearms (ATF) and transported by the USMS to a Federal correctional institution may be processed by ATF, USMS, and the Bureau of Prisons.) Such repositories may be electronically accessed by these and other local law enforcement agencies in the region also for other law enforcement purposes such as to learn about the arrest of a fugitive wanted in several local jurisdictions, to verify the identity of an arrestee, or to assist in the conduct of surveillance and/or wiretap activities. In addition, access by one regional repository to the complete record residing in another regional repository, e.g., to obtain access to the record of a fugitive wanted in one or more regional jurisdictions, may be accomplished by a telephone request until such time as technology may permit electronic requests between regional repositories. Further, at such time as the technology is available, other judicial/law enforcement agencies such as the courts, probation, and parole agencies may have direct electronic access to JABS in order to obtain data which may assist them in performing their official duties. For example, the courts may need direct electronic access to verify the identity of an individual who appears in court claiming not to be the individual identified by the arresting agency.

Finally, where necessary and/or appropriate, the USMS may disclose relevant information from the repositories as follows:

(b) To any Federal, State, and/or local authorities to the extent necessary to permit them to perform their law enforcement responsibilities; or to any Federal, State, and/or local authorities, or to any other entity or person, to the extent required to solicit information necessary for law enforcement purposes;

(c) To other judicial/law enforcement agencies such as the courts, probation, and parole agencies to assist them in performing their official duties;

(d) To a Federal agency in response to its request and in connection with hiring or retention of an employee, the issuance of the required security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter;

(e) To private contractors and/or maintenance personnel but only to the extent that access is needed to perform contractual duties such as maintenance or other administrative support operations;

(f) To a Member of Congressor staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(g) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(h) To a court or adjudicative body before which the USMS or other appropriate DOJ component is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS or other

---

Federal, State and local agencies either establish similar ABS's or use the ABS of another agency to upload ''common'' data to the repositories (i.e., ''common'' data as described by this system of records), this system of records will also include records provided by non-DOJ law enforcement agencies.

appropriate DOJ component to be arguably relevant to the litigation:

(i) The USMS or DOJ component, or any subdivision thereof, or (ii) any employee of the USMS or DOJ in his or her official capacity, or (iii) any employee of the USMS or DOJ in his or her individual capacity where the DOJ has agreed to represent the employee, or (iv) the United States, where the DOJ determines that the litigation is likely to affect it or any of its subdivisions;

(i) To the National Archives and Records Administration (NARA) and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(j) To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of an investigation or case (e.g. an arrest) arising from the matters of which they complained and/or of which they were a victim; and

(k) To any person or entity to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in computerized media and on printed copy.

RETRIEVABILITY:

Data may be retrieved by name or identifying number.

SAFEGUARDS:

Access will be limited to those with a need to know. Facilities and offices which house computer systems will be protected at all times by appropriate locks, security guards, and/or alarm systems. Access to the systems equipment is limited to those with a need-to-know through encryption and password protection measures.

RETENTION AND DISPOSAL:

A disposition schedule will be developed for approval by the USMS Records Management Officer and NARA. Upon approval of such schedule, this notice will be revised to reflect the correct retention and disposal schedule for these records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Marshals Service, 600 Army-Navy Drive, Arlington, Virginia 22202–4210

NOTIFICATION PROCEDURE:

Same as ''Record Access Procedures.''

RECORD ACCESS PROCEDURE:

Address all requests for access to JABS records, in writing, to the system manager identified above, ''Attention: FOIA/PA Officer.'' Clearly mark the letter and envelope ''Privacy Act request.'' Clearly indicate the name of the requester, nature of the record sought, and approximate date of the record. In addition, provide the required verification of identity (28 CFR 16.41(d)) and a return address for transmitting the information.

CONTESTING RECORDS PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

The record subject; Federal, State, and local law enforcement personnel; the courts; and medical personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted records in this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(5), (e)(8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 95–9105 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—High Performance Composites Cooperative Arrangement

Notice is hereby given that, on November 17, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), BDM Federal, Inc., acting on behalf of the High Performance Composites Cooperative Arrangement (''HPC''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AVCO Corporation, acting through its Textron Specialty Materials Division, Lowell, MA, has become a member of the HPC.

No other changes have been made in either the membership or planned activity of the HPC. Membership remains open, and the HPC intends to file additional written notification disclosing all changes in membership.

On April 6, 1994, BDM Federal, Inc., acting on behalf of the HPC, filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on June 3, 1994 (59 FR 28899).

The last notification was filed with the Department on September 21, 1994. A notice was published in the Federal Register on February 8, 1995 (60 FR 7584).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9111 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bell Communications Research, Inc.

Notice is hereby given that, on August 18, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Bell Communications Research, Inc., (''Bellcore'') has filed written notifications on behalf of Bellcore; Hughes Network Systems (''Hughes''); and Motorola Inc. (''Motorola'') simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; Hughes, Germantown, MD; and Motorola, Schaumburg, IL.

Bellcore; Hughes; and Motorola entered into an agreement effective as of July 28, 1994, to engage in cooperative research into technologies related to wireless access communications systems (WACS) and derivatives thereof to better understand the feasibility and application of these technologies for exchange and access services, including experimental prototype fabrication for the demonstration of such technology and obtaining an understanding of the issues on which technical standards can be proposed to public standards bodies.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9109 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bell Communications Research, Inc.

Notice is hereby given that, on November 29, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Bell Communications Research, Inc. (''Bellcore'') has filed written notifications on behalf of Bellcore; AT&T Corporation (AT&T); Bell Atlantic Network Services, Inc. (''Bell Atlantic''); BellSouth Telecommunications, Inc. (''BellSouth''); and Pacific Telesis Group (''Pacific'') simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; AT&T, Murray Hill, NJ; Bell Atlantic, Silver Spring, MD; BellSouth, Atlanta, GA; and Pacific, San Ramon, CA. Bellcore; AT&T; Bell Atlantic; BellSouth; and Pacific entered into Articles of Collaboration, effective as of October 31, 1994, establishing a consortium to engage in a collaborative research effort of limited duration in order to gain further knowledge in the area of multiwavelength optical fiber communications technology, including weavelength division multiplexing and cross-connect networking architectures, and hybrid optical integration technology, and to better understand the applications of such technology for telecommunications networks, particularly exchanged and exchange access and interexchange service networks.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9110 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—BP Chemicals, Inc.

Notice is hereby given that, on February 3, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), BP Chemicals, Inc., for itself and on behalf of its members, has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: BP Chemicals, Inc., Cleveland, OH; Praxair, Inc., Tonawanda, NY; and SSC, Inc., Woodinvale, WA. BP's general area of planned activity is to engage in an interactive cooperative research and development effort, funded in part by a grant from the National Institute of Standards and Technology Advanced Technology Program, relating to material development and testing, element and module development, modeling and process/system development and ion/electron conducting ceramic membranes. These membranes are expected to find application in industrial gas production and chemicals production. The grant is expected to run for four years commencing on about March 1, 1995.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9112 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on December 30, 1994, pursuant to the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') and General Instrument Corporation of Delaware (''GI'') have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties and its general area(s) of planned activity are CableLabs, Boulder, CO; and GI, Hatboro, PA.

The area of planned activity is to conduct certain tests of a prototype modem for digital signal transmission on North American cable television systems.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9113 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Curagen Corp. and American Cyanamid Co.

Notice is hereby given that, on February 12, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Cyanamid Company and CuraGen Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notices were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are CuraGen Corporation, Branford, CN; and American Cyanamid Company, Wayne, NJ. The general area of planned activities is to develop an integrated multi-disciplinary approach to determining how proteins involved in molecular recognition events recognize one another and to apply this information to the rapid development of potential drugs.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9108 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Electronics Industries Foundation

Notice is hereby given that, on October 25, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Electronics Industries Foundation (''EIF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b)

of the Act, the identities of the parties are: The Boeing Company, Seattle, WA; Hughes Aircraft Company, Newport Beach, CA; nCHIP Inc., San Jose, CA; MicroModule Systems Inc., Cupertino, CA; and Texas Instruments Inc., Dallas, TX.

The purpose of this venture is to develop, characterize, and validate high-throughput, reliable and low-cost large format equipment for the manufacture, assembly and test of deposited multichip modules.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9114 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Research and Production Act of 1993—Collaboration for Development of a Manufacturing Competency for High Performance Composites

Notice is hereby given that, on February 23, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), E.I. du Pont de Nemours and Company (''E.I. du Pont'') have filed written notifications simultaneously with the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature of objectives of a cooperative arrangement known as the ''Collaboration for Development of a Manufacturing Competency for High Performance Composites for Civil Infrastructure Applications.'' The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: E.I. du Pont, Newark, DE; Hardcore Du Pont Composites L.L.C., New Castle, DE; The Dow Chemical Company, Freeport, TX; Brunswick Technologies, Inc., Brunswick, ME; and Johns Hopkins University, Baltimore, MD. The purpose of the cooperative arrangement is to develop a manufacturing competency for large composite structures based on resin infusion technology focusing on commercial applications for the civil infrastructure market. The program resulted from an award by the National Institute of Standards and Technology, United States Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9115 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Financial Services Technology Consortium, Inc.

Notice is hereby given that, on December 21, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the new Principal Members of the Consortium are: Corestates Financial Corp., Philadelphia, PA; and Cardinal Bancshares, Inc., Atlanta, GA. The following parties were admitted as Associate Members of the Consortium: Sun Microsystems Laboratories, Inc., Mountain View, CA; and Master Card International, New York, NY. The following party was admitted as an Advisory Member of the Consortium: The National Security Agency, Washington, DC.

No other changes have been made in either the membership or planned activity of the group research project. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On October 21, 1993, the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on November 22, 1994. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on March 20, 1995 (60 FR 14779).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9116 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corp.

Notice is hereby given that, on July 15, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Microelectronics and Computer Technology Corporation (''MCC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: (1) Celestica, Inc. (a subsidiary of IBM Corporation), North York, Ontario, CANADA, has agreed to participate in MCC's Portable Electronic Systems Packaging Project; (2) Ceridian Corporation, Minneapolis, MN, has agreed to participate in MCC's Flip Chip 2 Technology Development Project; its Portable Electronics Systems Packaging Project; its Mixed Signal Open Systems Project; and its Opto-Electronics Technology Study; Computing Devices International (a division of Ceridian Corporation), Minneapolis, MN, has agreed to participate in MCC's Experimental System Laboratories ADA Fault Tolerance Project; (3) Savantage, LLC., Austin, TX, has agreed to participate in MCC's MultiChip Systems Design Advisor Project in the High Value Electronics Division; and (4) The Boeing Company is no longer an MCC Shareholder.

On December 21, 1984, MCC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on May 3, 1994. A notice was published in the Federal Register pursuant to section 6(b) of the Act on June 30, 1994 (59 FR 33782).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9117 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Modular Tanker Consortium Joint Venture

Notice is hereby given that on February 6, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), the participants in the Modular Tanker Consortium Joint Venture (the ''Consortium'') have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the Consortium and (2) the nature and

objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and the general area of planned activity are: ABB Industry Oy, Helsinki, FINLAND; Bethlehem Steel Corporation, BethShip Sparrows Point Yard, MD; Bird-Johnson Company, Walpole, MA; Kvaerner Masa Marine, Annapolis, MD; McDermott, Inc., St. Rose, LA; Seaworthy Systems, Essex, CT; and Wartsila Diesel, Annapolis, MD.

The nature of the research program performed in accordance with this Consortium is to engage in a collaborative research effort of limited duration to gain further knowledge and understanding of the technologies, market strategies, and financing options for the construction of an internationally competitive high-technology tanker vessel.

Information about participating in this Consortium may be obtained by contacting Daniel W. Kabel, Wartsila Diesel, Annapolis, MD.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9118 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Storage Industry Consortium

Notice is hereby given that, on July 26, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.*, (''the Act''), National Storage Industry Consortium (''NSIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically the identities of the new members of NSIC are: Advanced Development Corporation, Burlington, MA; Advanced Materials Corporation, Pittsburgh, PA; Ampex Corporation, Redwood City, CA; Conner Peripherals, Longmont, CO; Datatape, Incorporated, Pasadena, CA; Deacon Research, Palo Alto, CA; GTE Government Systems Corporation, Rockville, ME; Hutchinson Technology, Hutchinson, MN; Intevac, Incorporated, Santa Clara, CA; Mountain Optech, Boulder, CO; Pacific Sierra Research, Arlington, VA; and Virtual Storage Systems, Campbell, CA.

The following colleges and universities have joined NSIC as university associate members: Boston University, Boston, MA; Cornell Information Technologies, Ithaca, NY; Cornell Theory Center, Ithaca, NY; Fermi Labs, Batuvia, IL; Los Alamos National Laboratory, Los Alamos, NM; Massachusetts Institute of Technology, Cambridge, MA; National Center for Atmospheric Research, Boulder, CO; National Media Lab, Arlington, VA; Oakridge National Lab, Oak Ridge, TN; Ohio Supercomputer Center, Columbus, OH; Penn State University, University Park, PA; Pittsburgh Supercomputing Center, Pittsburgh, PA; San Diego Supercomputer Center, La Jolla, CA; Sandia National Laboratory, Albuquerque, NM; Stanford Research University, Palo Alto, CA; University of Arkansas, Fayetteville, AR; University of Dayton, Dayton, OH; and University of Michigan, Ann Arbor, MI. NSIC's area of activity remains the sponsorship of research in the area of information storage technology.

No other changes have been made in either the membership or planned activity of the group research project. Membership remains open and NSIC intends to file additional written notification disclosing all changes in membership.

On June 12, 1991, NSIC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on August 13, 1991 (56 FR 38465).

The last notification was filed with the Department on November 2, 1993. A notice was published in the Federal Register pursuant to section 6(b) of the Act on May 5, 1994 (59 FR 23234).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9119 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—Enterprise Integration Tool Set

Notice is hereby given that, on January 23, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seg.* (''the Act''), Unisys Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Unisys Corporation, Reston, VA: the Digital Systems Resources, Fairfax, VA. The general area of planned activity is to develop an Enterprise Integration Tool Set (''EITS'') and product demonstration. The activities of this joint venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9120 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Unixware Technology Group Inc.

Notice is hereby given that, on December 12, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UnixWare Technology Group Inc. (UTG) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are: Concurrent Computer, Westford, MA; Cray Research Eadan, MI; and Eicon Technologies, Montreal, Quebec, CANADA. In addition, Microport has discontinued its membership with UTG.

No other changes have been made in either the membership or planned activity of the group research project. Membership remains open, and UTG intends to file additional written notification disclosing all changes in membership.

On July 19, 1994, UnixWare Technology Group, Inc., filed its original notification pursuant to section 6(a) of the Act. A notice was published in the Federal Register pursuant to section 6(b) of the Act on March 23, 1995 (60 FR 15305).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–9121 Filed 4–12–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Work Group on Real Estate Investment; Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Real Estate Investment Work Group of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on May 9, 1995, in room S–3215 A&B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will begin at 1:00 p.m. is to finalize issues to be examined and to determine witnesses and other testimonies to be solicited.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 1, 1995 to Linda Jackson, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 1, 1995.

Signed at Washington, DC this 7th day of April, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–9135 Filed 4–12–95; 8:45 am]

BILLING CODE 4510–29–M

Work Group on Pension Education; Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Pension Education work group of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on May 9, 1995, in Room S–3215 A–B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will begin at 9:00 a.m. is to finalize the issues to be examined and to determine witnesses and other testimonies to be solicited.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 1, 1995 to Linda Jackson, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extend statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 1, 1995.

Signed at Washington, DC this 7th day of April, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–9136 Filed 4–12–95; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on May 10, 1995, in Suite S–2508, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will begin at 1:00 p.m. is to receive status reports of the council's 1995 work groups and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 1, 1995 to Linda Jackson, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Orginizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 1, 1995.

Signed at Washington, DC this 7th day of April, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–9137 Filed 4–12–95; 8:45 am]

BILLING CODE 4510–29–M

Work Group on Defined Contribution Adequacy; Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Society Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Defined Contribution Adequacy of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on May 10, 1995, in Room S–3215, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will begin at 9:00 a.m. is to finalize issues to be examined and to determine witnesses and other testimonies to be solicited.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 1, 1995 to Linda Jackson, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or

telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 1, 1995.

Signed at Washington, DC this 7 day of April, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–9138 Filed 4–12–95; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–71 and DPR–62 issued to the Carolina Power & Light Company (the licensee) for operation of the Brunswick Steam Electric Plant, Units 1 and 2 (BSEP) located in Southport, North Carolina.

The proposed amendment would provide an exception to Technical Specification (TS) 3.0.4. TS 3.0.4 allows entry of a unit into another operational condition only if the conditions of the Limiting Conditions for Operation (LCOs) are met without reliance on TS action statements. The exception requested by the licensee would allow a change in a unit's operational condition in a specific situation in which the unit's LCO concerning the minimum number of operable offsite power circuits is not fully satisfied. Specifically, the exception would allow an operational mode change of a unit if the second unit is in Operational Condition 4 or 5 (i.e., cold shutdown or refueling) and one of the second unit's offsite power circuits is inoperable.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change would allow one unit to transition through Operational Conditions 3, 2, and 1 to full power with the opposite unit in Operation Condition 4 or 5 and one off-site power circuit out of service. The current specification allows one unit to operate for up to 45 days with the other unit shutdown and one of the shutdown unit's off-site power circuits unavailable.

A significant level of redundancy of AC sources remains, even with one of the shutdown unit's off-site circuits unavailable. If the shutdown unit's remaining offsite circuit were to fail during the restart of the other unit, some of the operating unit's components that receive AC power from the shutdown unit's emergency buses and their functions would be unavailable until power is restored to the emergency buses by the emergency diesel generators. For example, with Unit 1 shutdown and Unit 2 transitioning through startup to full power operation, the Unit 2 components fed by Emergency Buses E1 and E2 that would be temporarily unavailable on a loss of both Unit 1 off-site circuits include 2 of the 4 drywell coolers (4 of 8 drywell cooling fans), one conventional service water pump, Residual Heat Removal System (RHR) and RHR service water pumps 2C and 2D, Low Pressure Coolant Injection (LPCI) system injection valves, torus spray valves, and two diesel building exhaust fans. Were Unit 2 shutdown and Unit 1 transitioning through startup to full power operation, a Group 6# valve isolation and reactor building/secondary containment isolations also occurs on the operating unit (Unit 1), as well as a Standby Gas Treatment System automatic start. Temporary loss of these functions and the associated isolations and actuations would not cause an automatic unit reactor trip; therefore, a loss of offsite power to emergency buses on the shutdown unit would not cause a transient initiating event on the operating unit. Therefore, the probability of an accident previously evaluated is not significantly increased by the proposed change.

A loss of auxiliary (off-site) power (LOOP) event is an analyzed transient for the Brunswick Plant. A loss of offsite power is assumed to occur following a loss of all external grid connections or faults in the offsite power system itself. The Brunswick Probabilistic Safety Assessment has modeled the loss of offsite power event. The most probably causes of a loss of offsite power event involve natural events or transmission network maintenance. Neither of these is affected by the proposed change. Therefore, the probability of a previously evaluated transient is not significantly increased.

This change does not affect the remaining off-site Technical Specification requirements nor does it affect the on-site electrical distribution Technical Specification requirements. The existing Technical Specifications require all four diesel generators and the remaining offsite power sources of both units be operable. Technical Specifications 3.8.1.1.c and 3.8.1.1.d will still be applicable to the unit transitioning through the startup evolution. These specifications dictate requirements for the operating unit upon loss of a diesel generator or an additional offsite power circuit. Thus, operability of the emergency diesel generators and the remaining offsite power sources is unaffected by this change. Since the emergency diesel generator capability is unaffected by this change, the proposed change would not affect the capability of accident mitigating equipment; therefore, the consequences of previously evaluated accidents is not affected by the proposed change.

2. The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated. A LOOP is one of the transients analyzed in the Brunswick Update Final Safety Analysis Report. The proposed action would not affect the conclusions of that analysis. In addition, the Brunswick design basis accident analyses accommodate a loss of off-site power coincident with the design basis accident and a single failure of one emergency diesel generator. The proposed change does not affect operability requirements of the emergency diesel generators. Therefore, no new malfunction or accident is introduced by the proposed action.

3. The proposed amendments do not involve a significant reduction in a margin of safety. The basis of Technical Specification 3.0.4 is to ensure that facility operation is not initiated with either required equipment or systems inoperable or other limits being exceeded. Exceptions to this provision are provided for specifications when startup with inoperable equipment would not affect plant safety. Sufficient redundancy of AC power will continue to exist and no fewer sources of AC power will be available than would be allowed for power operation for up to 45 days under Specification 3.8.1.1.a. Therefore, the proposed change would not impact safety and the margin of safety imposed by either Technical Specification 3.0.4 or Specification 3/4.8.1 would not be significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 15, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Data gram Identification Number N1023 and the following message addressed to David B. Mathews, petitioner's name and telephone number, date petition was mailed plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington,

DC 20555, and to General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 31, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 6th day of April.

For the Nuclear Regulatory Commission.

David C. Trimble,

Project Manager, Project Directorate II–I, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–9141 Filed 4–12–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Request under review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer, (202) 942–8800

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, N.W., Washington, D.C. 20549

Reinstatement: The Focus Group Research Survey

File No. 270–386

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission (''Commission'') has resubmitted for the Office of Management and Budget approval for a request to execute a focus group research survey. The survey will attempt to assess the public's understanding of mutual funds and other financial matters. The results will enable the Commission to better understand the level of investor comprehension of mutual fund prospectuses and financial issues.

The survey is estimated to require approximately 126.00 burden hours. Approximately 40 people will participate in the focus group sessions. Each session will contain 10 individuals and will last about 3.15 hours.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated burden hours for compliance with the Securities and Exchange Commission to David T. Copenhafer, Acting Director, Office of Information Technology, 450 Fifth Street, N.W. Washington D.C. 20549 and the Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: March 28, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–9075 Filed 4–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35573; International Series Release No. 800 File No. SR–CBOE–95–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options on the CBOE Latin 15 Index

April 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 1995, the Chicago Board Options Exchange (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list for trading options on the CBOE Latin 15 Index (''Latin 15 Index'' or ''Index''). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style [3] stock index options on the Latin 15 Index, a narrow-based index created by the Exchange.

The Latin 15 Index consists of fifteen components, including American Depositary Receipts (''ADRs''), American Depositary Shares (''ADSs''), and closed-end country funds from four Latin American countries: Argentina, Brazil, Chile, and Mexico.[4] The exchange represents that no proxy for the performance of these emerging economies is currently available in the U.S. derivative markets, and options on the Index will provide investors with a low-cost means to participate in the performance of these markets or to hedge the risk of emerging markets investments.

Index Design

As noted above, the Latin 15 Index consists of fifteen components, consisting of ADRs, ADSs, and closed-end country funds. All of the components of the Index currently trade on the New York Stock Exchange (''NYSE'').

The components comprising the Index ranged in capitalization from $77.2 million to $10.6 billion as of March 14, 1995. The total capitalization as of that date was $38.8 billion; the mean capitalization was $2.6 billion;

[3] European-style options can only be exercised during a specified period before the options expire.

[4] The components of the Index are: Argentina Fund Inc.; Telefonica de Argentina S.A.; YPF Sociedad Anonima S.A.; Aracruz Celulose S.A.; Brazil Fund, Inc.; Brazilian Equity Fund, Inc.; Banco Osorno Y La Union; Compania de Telefonos de Chile; Empresa Nacional Electricidad S.A.; Empresas La Moderna S.A. de C.V.; Grupo Tribasa S.A. de C.V.; Coca Cola Femsa S.A.; Telefonos de Mexico S.A.; Grupo Televisa S.A.; and Vitro Sociedad Anonima.

and the median capitalization was $812.5 million. The largest component accounted for 11.67% of the total weight of the Index, and the five largest components accounted for 46.67% of the total weight of the Index. On that same date, the smallest component accounted for 5.00% of the total weight of the Index. The components of the Index were initially balanced to have a combined weight for each country as follows: Argentina—17.5%, Brazil—35%, Chile—17.5%, and Mexico—30%.

Calculation

The Index will be calculated by CBOE or its designee on a real-time basis using last-sale prices and will be disseminated every 15 seconds by CBOE. If a component share is not currently being traded on its primary market, the most recent price at which the share traded on such market will be used in the Index calculation.

The Index is calculated on a ''modified equal-dollar-weighted'' basis, meaning that each of the components (fund shares or individual stocks) from each of the four countries is represented in approximately equal dollar amounts in relation to the other shares from that country. The countries in the index are then weighted, at the beginning of each quarter, as follows: Argentina—17.5%, Brazil—35%, Chile—17.5%, and Mexico—30%. The Exchange believes this methodology will present a fairer representation of the respective economies. The ''modified'' description refers to the fact that the dollar-weighting is done on a country by country basis and not between shares of different countries.

The value of the Index equals the current market value (based on U.S. primary market prices) of the assigned number of shares of each of the components in the Index divided by the current Index divisor. The Index divisor was initially calculated to yield a benchmark value of 150.00 at the close of trading on January 3, 1994. The value of the Index at the close on March 14, 1995, was 111.68.

Maintenance

The Index will be maintained by CBOE. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, certain rights issuances, quarterly re-balancing, and component security changes.

The Index is re-balanced after the close of business on Expiration Fridays on the March quarterly cycle. In addition, the Index will be reviewed on approximately a monthly basis by the CBOE staff. The CBOE may change the composition of the Index at any time or from time to time to reflect changes affecting the components of the Index or the Latin American markets generally. If it becomes necessary to remove a component from the Index, every effort will be made to add a component that preserves the character of the Index. In such circumstances, CBOE will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement component. CBOE will not decrease the number of components to less than 10.

Additionally, the Exchange will not make any composition change to the Index that would result in less than 80% of the number of components or 85% of the weight of the Index satisfying the initial equity option listing criteria set forth in CBOE Rule 5.3, Interpretation and Policy .01 (for components which are not the subject of standardized options trading) or the maintenance criteria in CBOE Rule 5.4, Interpretation and Policy .01 (for components which are currently the subject of standardized options trading).[5]

Index Option Trading

The Exchange proposes to base trading in options on the Latin 15 Index on the full value of that Index. The Exchange may list full-value long-term index option series (''LEAPS''), as provided in Rule 24.9. The Exchange also may provide for the listing of reduced-value LEAPS, for which the underlying value would be computed at one-tenth of the value of the Index. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

Exercise and Settlement

Latin 15 Index options will have European-style exercise and will be ''A.M.-settled index options'' within the meaning of the Rules in Chapter XXIV, including Rule 24.9, which is being amended to refer specifically to Latin 15 Index options. The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be second business day (ordinarily a Thursday) preceding the expiration date.

[5] Telephone conversation between Eileen Smith, Director, Product Development, Research, CBOE, and Brad Ritter, Senior Counsel, Office of Market Supervision, Division, Commission, on April 5, 1995.

Exchange Rules Applicable

Except as modified herein, the rules in Chapter XXIV of the CBOE Rules will be applicable to Latin 15 Index options. In accordance with Chapter XXIV of CBOE's Rules, the Index will be treated as a narrow-based index for purposes of policies regarding trading halts and suspensions,[6] and margin treatment.[7]

Index option contracts based on the Latin 15 Index will be subject to the position limit requirements of Rule 24.4, pursuant to which position and exercise limits for options on the Index would currently be set at 10,500 contracts. Positions in Index LEAPS will be aggregated with positions in Index options on a one-for-one basis. Ten reduced-value options will equal one full-value Index option or Index LEAP for purposes of aggregating position.

CBOE has the necessary systems capacity to support new series that would result from the introduction of the Latin 15 Index options.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it will provide investors with an opportunity to invest in options based upon the Latin 15 Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i)

[6] See CBOE Rule 24.7.

[7] See CBOE Rule 24.11.

[8] 15 U.S.C. 78f(b)(5) (1988).

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–20 and should be submitted by May 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–9077 Filed 4–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35569; File Nos. SR–MCC–95–01 and SR–MSTC–95–04]

Self-Regulatory Organizations; Midwest Clearing Corporation and Midwest Securities Trust Co.; Notice of Proposed Rule Changes Relating to Indemnification of Committees

April 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 8, 1995 and January 14, 1995, respectively, the Midwest Clearing Corporation (''MCC'') and the Midwest Securities Trust Co. (''MSTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which items have been prepared mainly by MCC and MSTC, self-regulatory organizations (''SROs''). The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes will amend MCC's and MSTC's mandatory indemnifications requirements, which are set forth in Article 6, Section 1 of MCC's By-Laws and Article VI, Section 1 of MSTC's By-Laws by requiring MCC and MSTC to indemnify members of their committees.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, MCC and MSTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. MCC and MSTC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

MCC and MSTC currently have provision in their By-Laws (*i.e.*, Article 6, Section 1 of the MCC's By-Laws and Article VI, Section 1 of MSTC's By-Laws) that requires MCC and MSTC to indemnify, to the fullest extent permitted by the General Corporation Law of Delaware, any person who was or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director or officer of MCC or of MSTC or was or is serving at MCC's or MSTC's request as a director or officer of another corporation, partnership, joint venture, trust, or other committee. The purpose of the proposed rule changes is to give members of MCC's and MSTC's committees, including members of their Risk Assessment Committees, the same indemnification protection that is currently given to MCC's and MSTC's directors and officers.[2]

MCC and MSTC believe that the proposed rule changes are consistent with Section 17A of the Act[3] in that they will remove impediments from MCC's and MSTC's efforts to attract competent persons to serve on their committees, such as their Risk Assessment Committees. Thus, MCC and MSTC believe that the proposed rule changes will help them in providing fair procedure with respect to: (1) The disciplining of participants, (2) the denial of participation to any person seeking participation, and (3) the prohibition or limitation by MCC or MSTC of any person with respect to access to services.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

MCC and MSTC believe that no burden will be placed on competition as a result of the proposed rule changes.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

MCC and MSTC have neither solicited nor received any comments on this rule proposal.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) By order approve the proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

---

[9] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Under MCC's and MSTC's rules, their Risk Assessment Committees have substantial authority. This includes, among other things, the authority to determine: (1) Whether a participant that has failed to make timely payment to MCC should continue as a participant, (2) whether a participant has been responsible for fraudulent or dishonest conduct, and (3) whether a participant poses a financial risk to MCC. See MCC Rules, Article VIII, Rule 2; MSTC Rules, Article V, Rule 2.

[3] 15 U.S.C. 78q–1 (1988).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section and at the principal offices of MCC and MSTC. All submissions should refer to File Nos. SR–MCC–95–01 and SR–MSTC 95–04 and should be submitted by May 4, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–9079 Filed 4–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35568; File No. SR–NYSE–95–03]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for the Initial Comparison of Equity Security Trade Sides Submitted for Comparison Through the On-Line Comparison System

April 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 21, 1995, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NYSE–95–03) as described in Items I, II, and III below, which Items have been prepared primarily by NYSE. 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 rule change modifies NYSE's fee structure for trade comparison. Commencing on or about March 1, 1995, NYSE will charge participants for the comparison of each side of a trade in an equity security[2] submitted to it on the day of the trade (''initial trade data'') through its On-Line Comparison System (''OCS''). NYSE has not previously charged for this service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE 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. NYSE 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

On August 15, 1994, NYSE began requiring its clearing members to submit listed equity comparison data to NYSE's OCS within two hours of the time of a trade's execution or at two-hour intervals (*e.g.*, 12:00 noon, 2:00 p.m., 4:00 p.m., and 6:00 p.m.) on each business day.[3] Under this procedure, by the end of each trading day NYSE forwards the day's initial trade data, which consists of both compared and uncompared trades, to a qualified clearing agency for final processing.[4]

From August 1994 to date, NYSE has provided these OCS services to its clearing members without charge. NYSE states, however, that its costs for providing these services have been rising due to increased usage and that it now proposes to recoup some of these additional costs by charging a processing fee based on the number of shares per sides. While the NYSE will continue charging no fee for sides from one share to 999 shares, the fee for each side from 1,000 shares to 2,999 shares will be $0.06, and the fee for each side for 3,000 shares to any higher amount will be $0.18. As noted, the NYSE will commence charging this new fee on or about March 1, 1995.

NYSE believes the rule change provides for the equitable allocation of fees among its members. Therefore, NYSE believes the rule change is consistent with the requirements of the Act and particularly with Section 6(b)(4) of the Act.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE believes that the proposed rule changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NYSE has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (e)(2) of Rule 19b–4 thereunder because it establishes a due, fee, or other charge imposed by NYSE.[7] At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For the purposes of this rule proposal, NYSE is using the term ''side'' to mean a purchase or a sale that consists of two or more separate transactions made with the same firm, in the same security, at the same price, on the same side of the market, and which have been added together and submitted for comparison as one item. NYSE refers to this process as summarization.

[3] For background on NYSE's trade date comparison procedure, refer to Securities Exchange Act Release No. 34153 (June 3, 1994), 59 FR 30071 [File No. SR–NYSE–94–08] (order approving proposed rule change).

[4] For the purpose of this rule proposal, the term ''qualified clearing agency'' means a clearing agency that: (1) is registered under the Act, (2) maintains facilities through which NYSE's trades may be compared or settled, (3) has agreed to supply NYSE with data in connection with NYSE's compliance duties under the Act, and (4) has agreed to establish rules and procedures to facilitate the comparison of transactions as provided in NYSE Rule 130 (*i.e.*, NYSE's principal rule governing trade comparison). NYSE Rule 130, Supplementary Material .10 and NYSE Rule 132, Supplementary Material .10.

[4] 17 CFR 200.30–3(a)(12) (1994).

[5] 15 U.S.C. 78q–1(f)(b)(4) (1988).

[6] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[7] 17 CFR 204.19b–4(e)(4) (1994).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to File No. SR–NYSE–95–03 and should be submitted by May 4, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–9078 Filed 4–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35574; File No. SR–PTC–95–02]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Modifying PTC's Program for the Early Distribution of Principal and Interest on Government National Mortgage Association I Securities

April 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 7, 1995, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–PTC–95–02) as described in Items I and II below, which Items have been prepared primarily by PTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies PTC's program for the early distribution of principal and interest (''P&I'') on Government National Mortgage Association (''GNMA'') I securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC 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. PTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Background

Before November 1993, PTC's rules and procedures provided that PTC disburse P&I by means of a credit to participants' cash balances. This resulted in participants receiving at the end of the day as part of the settlement process the amount of the P&I net of any account debits and/or credits. In November 1993, PTC's rules were amended to eliminate the requirement that P&I be disbursed by means of a credit to participants' cash balances and to permit PTC to make intraday Fedwire distributions of collected and available GNMA I P&I.[2]

PTC's present program for the early distribution of GNMA I P&I permits the distribution of up to fifty percent of collected and available P&I on GNMA I securities by intraday Fedwire transfer of funds on the distribution date, generally the sixteenth day of the month, with the balance distributed by credit to participant's cash balances payable at the end of the day settlement.[3] Participants are permitted to elect to receive the intraday distribution or they may choose to receive the entire distribution at the end of the day settlement.[4]

Unlike the GNMA II program, there is no central paying agent for GNMA I securities and issuers make payment to PTC directly, sometimes by means of a check. Because of these inefficiencies in collecting and disbursing GNMA I P&I, PTC funds the total GNMA I P&I disbursement from several sources: (1) collected and available P&I payments that are timely received; (2) PTC's own funds; (3) the cash portion of the participants fund; and (4) borrowed funds secured by the P&I receivables or the securities portion of the participants fund.

GNMA I P&I Proposal

PTC proposes to increase the percentage of collected and available GNMA I P&I that may be distributed intraday, from the current maximum of fifty percent to a maximum of sixty-five percent of the total distribution, commencing with the April 1995 GNMA I distribution. PTC believes that based on PTC's experience with the GNMA I collection process, an amount in excess of sixty-five percent may reasonably be anticipated to be available by noon on the distribution date for disbursement intraday.[5] The balance would be distributed by means of a credit to the participants' credit balances payable at the end of the day settlement, as is currently the practice. In the event the amount of collected and available funds is insufficient to make the scheduled intraday distribution amount, whether it be the current fifty percent maximum or the proposed sixty-five percent maximum, the shortfall is allocated ratably among participants scheduled to receive intraday distribution according to the relative amounts of their scheduled distributions.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[6] and the rules and regulations thereunder in that it facilitates the prompt and accurate clearance and settlement of securities transactions and provides for the safeguarding of securities and funds in PTC's custody or control or for which PTC is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition not necessary or

---

[8] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] PTC Rules, Article III, Rule 2, Section 1, ''Principal and Interest Payments.'' For a complete description of PTC's amendments, refer to Securities Exchange Act Release Nos. 33132 (November 9, 1993), 58 FR 59501 [File No. SR–PTC–93–02] (order approving proposed rule change) and 33856 (April 12, 1994), 59 FR 59501 [File No. SR–PTC–93–05] (order approving proposed rule change).

[3] In November 1994, the intraday distribution program was extended to permit early distribution of one hundred percent of collected and available GNMA II P&I. Securities Exchange Act Release No. 34988 (November 18, 1994), 59 FR 61016 [File No. SR–PTC–94–05] (order approving proposed rule change).

[4] PTC disbursed a total of $103.9 billion in GNMA I P&I payments to its participants in 1994, of which $51.1 billion was distributed intraday. As of February 1, 1995, fifty participants elected to receive the intraday distribution.

[5] During 1994, an average of 72.5% of funds to be distributed were available by 12 noon on the distribution date.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

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

PTC has not solicited comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that PTC's proposal to increase the percentage of collected and available GNMA I P&I that may be distributed to participants by intraday fedwire transfer should help promote prompt and accurate clearing and settlement. The proposal enables participants to have access to such funds earlier in the day, allowing them the use of the funds elsewhere, as needed, which increases liquidity in other markets.

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. In order to assure that PTC can implement the proposal commencing with the April 1995 distribution, it is necessary that PTC receive the appropriate approval in advance of that date. The Commission, therefore, finds sufficient cause to accelerate approval of this proposal. In addition, the staff of the Board of Governors of the Federal Reserve System (''Board of Governors'') agrees with the accelerated approval.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR–PTC–95–02 and should be submitted by May 4, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PTC–95–02) be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–9076 Filed 4–12–95; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[8] Telephone conversation between William R. Stanley, Board of Governors, and Ari Burstein, Division of Market Regulation, Commission (April 5, 1995).

[Release No. 34–35579; File No. SR–CBOE–95–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to its Retail Automatic Execution System for Transactions in SPX Options

April 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 30, 1995, the Chicago Board Options Exchange, Incorporated (''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 Exchange. The Exchange subsequently filed Amendment No. 1 to the proposed rule change on April 3, 1995.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules respecting use of the CBOE's Retail Automatic Execution System (''RAES'') for transactions in Standard & Poor's 500 Index (''SPX'') options by individual members, joint account participants and nominees of member organizations having multiple nominees. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 purpose of the proposed rule change is to amend Rule 24.16 (''RAES Eligibility in SPX'') in respect of use of RAES by individual members, joint account participants, and market-maker/nominees associated with member organizations. The amendments would incorporate into Rule 24.16, provisions respecting individual member use of RAES and provisions respecting joint account and member organization use of RAES (the ''group account'' provisions) presently contained in its rules respecting use of RAES for transactions in Standard & Poor's 100 Index (''OEX'') options.[4] Currently, Rule 24.16 contains fewer provisions regulating individual members' eligibility to use RAES for SPX options than is the case under rule 24.17 for use of RAES for OEX options. Similarly, Rule 24.16 contains only one provision addressing RAES eligibility for member organizations having multiple market-maker/nominees, while Rule 24.17 contains numerous provisions respecting use of RAES by participants in both types of group

[9] 17 CFR 100.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 (1991).

[3] In Amendment No. 1, the CBOE states that the reference to Rule 24.17 in the original filing (see infra note 4 and accompanying text) was intended to be a reference to Rule 24.16, and amends the proposal accordingly. In addition, Amendment No. 1 defines the term ''brief interval,'' as used to describe the allowable period during which RAES participants can leave the trading floor. See infra note 7 and accompanying text. See also Letter from Timothy Thompson, Attorney, CBOE, to John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated March 31, 1995. (''Amendment No. 1'').

[4] See CBOE Rule 24.17 (''RAES Eligibility in OEX'').

accounts. The OEX RAES provisions have worked well, and the Exchange accordingly believes that the substance of all the OEX provisions should now be incorporated into the SPX RAES rules.

The proposed rule change would incorporate, in the introductory clause to paragraph (a) of Rule 24.16, the provisions contained in subparagraph (a)(i) of Rule 24.17, which, among other things, requires individual market makers to sign the RAES Participation Agreement and complete the RAES instructional program before they may use RAES. The proposed rule change also would incorporate in paragraph (a) of Rule 24.16 the preconditions to use of RAES that are contained in subparagraph (a)(v) of Rule 24.17, including the requirement that individual members be engaged at CBOE principally as market makers and that they execute at least 75% of their options contracts in SPX and at least 75% of their trades in SPX options in person.

CBOE also proposes to add new paragraphs (c) and (d) to Rule 24.16.[5] Paragraph (c) would establish preconditions to initial use of RAES by joint account participants and would impose minimum SPX trading activity standards on joint account market markers on RAES. Paragraph (c) would also includes log-on and log-off requirements for each joint account market maker, as well as procedures for obtaining relief from those requirements, and would grant the SPX Floor Procedures Committee authority to restrict or condition a joint account member's participation in RAES.[6] In turn, paragraph (d) would contain provisions, similar to those in proposed paragraph (c), respecting access to RAES by market makers associated with member organizations having multiple nominees.

All the foregoing changes would, in general, conform SPX RAES requirements to the corresponding OEX RAES requirements.[7] Several differences, however, would remain.

Under the proposed SPX rules, a member who has logged onto RAES must log off RAES whenever he leaves the trading crowd unless the departure is for ''a brief interval.''[8] THe OEX RAES rules do not currently contain the ''brief interval'' exception, though the Exchange anticipates filing an amendment to Rule 24.17 that would establish such an exception for OEX RAES market makers.

In addition to the foregoing changes in RAES eligibility and use requirements, the proposed rule change would establish group account size limit standards. A new paragraph (e) would authorize the SPX Floor Procedures Committee to set such a limit at a number not to exceed 33⅓ percent of the prior quarter's average number of RAES participants. This approach contrasts somewhat with the OEX RAES provisions, which permit a group account to include as many as 50 participants, or 25 percent of the prior quarter's average, whichever is smaller.

The Exchange believes that the proposed differences in approach and applicable percentage limit are appropriate to SPX RAES for several reasons. First, the Exchange anticipates that this rule change will make SPX participation more attractive to members, which should lead to higher RAES participation levels. Increases in participation levels may be substantial and may well occur at unpredictable rates. In such a context, a specific numerical limit would be an impediment to efficient administration of the rule. The Exchange believes that any specific number it selects at this time would, at a later date, likely be either artificially high (triggering the application of the percentage limit) or inappropriately low (requiring periodic rule change filings as participation levels rise). Accordingly, the Exchange proposes to adopt only a percentage limit for RAES use in SPX options, at least until the projected SPX RAES growth rates appear to stabilize.

Second, the SPX trading crowd is considerably smaller at present than the OEX trading crowd. About 20 participants, on average, use SPX RAES on any given day, whereas about 150 participants use OEX RAES. Were the proposed rule to use the 25 percent limit that exists in the current OEX RAES rule, no more than twelve members could participate in one joint account. The Exchange believes, however, that a larger joint account base should be encouraged in order to increase SPX RAES participation levels.

The Exchange believes that the proposed 33⅓ percent limit would enable expansion in the use of RAES without permitting undue concentration of trading interest. Although in theory the 33⅓ percent limit would allow all SPX RAES participants to join one of the three accounts (rather than one of four as is permitted in OEX), that degree of consolidation on SPX RAES is unlikely. Moreover, were it to occur and generate adverse effects, the SPX Floor Procedures Committee would have authority under proposed paragraph (e) to reduce the applicable group size limit.

Finally, the proposed rule change includes a new paragraph (h) that would incorporate in the SPX RAES rules the fee schedule included in the OEX RAES Rule 24.17 for failure to adhere to the various RAES log-on and log-off requirements. The provisions of proposed paragraph (h) match those in the OEX RAES Rule 24.17.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation with persons engaged in facilitating and clearing transactions in securities, 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden of competition; (3) was provided to the Commission for its

[5] See Amendment No. 1, *supra* note 3.

[6] In this regard, references in current Rule 24.16 to the Market Performance Committee would be replaced by references to the SPX Floor Procedures Committee, which, as a more product-specific committee, would henceforth have authority under Rule 24.16.

[7] The changes also would clarify that all participants in a joint account may use the joint account for trading on RAES in all series of SPX options, and to that end would delete a contrary provision in paragraph (a) of the current Rule 24.16. In connection with approval of this rule change, the Exchange will issue a regulatory circular amending Regulatory Circular 92-47, to clarify that more than one joint account member may participate on behalf of the joint account on any joint account transaction in SPX options, whether or not executed on RAES. This clarification will unify the treatment of SPX joint account trades with the treatment accorded such trades in OEX options.

[8] The Exchange agrees to restrict the term ''brief interval'' to a period no longer than 10–15 minutes. The purpose for the brief interval is to give members time to attend to their personal needs. In addition, the Exchange expects the trading crowd and the Order Book Official (''OBO'') for a particular trading post to police compliance with the brief interval exception. OBOs will be instructed to log off a member from RAES if he has been absent from a trading crowd for more than a brief interval. See Amendment No. 1, *supra note 3.*

review at least five days prior to the filing date; and (4) does not become operative for 30 days from April 3, 1995,[9] the rule change proposal has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposal would qualify as a ''noncontroversial filing'' in that the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–95–17 and should be submitted by May 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–9147 Filed 4–12–95; 8:45 am]

BILLING CODE 8010–01–M

[9] Because the Exchange filed Amendment No. 1 subsequent to the original filing date, the 30-day period commences on the filing date of Amendment No. 1.

[10] 17 CFR 200.30–3(a)(12) (1994).

[Release No. IC–20991; File No. 812–9490]

Kemper Securities, Inc., et al.; Notice of Application

April 6, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Kemper Securities, Inc. (''Sponsor''); Kemper Tax-Exempt Insured Income Trust, Kemper Tax-Exempt Income Trust, Ohio Tax-Exempt Bond Trust, Kemper Insured Corporate Trust, Kemper Government Securities Trust (U.S. Treasury Portfolio), Kemper Government Securities Trust (GNMA Portfolio), Kemper Bond Enhanced Securities Trust, Kemper Equity Portfolio Trusts, Kemper Defined Funds U.S. Treasury Portfolio, Kemper Defined Funds GNMA Portfolio, Kemper Defined Funds Insured Corporate, Kemper Defined Funds Corporate Income, Kemper Defined Funds Insured National, Kemper Defined Funds Insured State, Kemper Defined Funds (the ''Trusts'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 22(d), and 26(a)(2)(C) of the Act and rule 22c–1 thereunder, and under section 11(a) for relief from section 11(c).

SUMMARY OF APPLICATION: Applicants request an order that would permit the Trusts to impose deferred sales charges, waive the deferred sales charge in certain cases, and exchange units with deferred sales charges.

FILING DATES: The application was filed on February 21, 1995, and was amended on March 31, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 1, 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 who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 77 West Wacker Dr., Chicago, IL 60601; cc: Mark J. Kneedy, Chapman and Cutler, 111 West Monroe St., Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Bradley W. Paulson, Staff Attorney, at (202) 942–0147, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Trust is a unit investment trust sponsored by the Sponsor. Each Trust has one or more separate series (''Series'') created by a trust indenture among the Sponsor, an evaluator, and a banking institution or trust company serving as trustee. The Sponsor acquires a portfolio of securities and deposits them with the trustee in exchange for certificates representing fractional undivided interests in the portfolio of securities (''Units''). Units currently are offered to the public through the Sponsor and other underwriters and dealers at a price based upon the aggregate offering side evaluation of the underlying securities plus an up-front sales charge. The sales charge currently ranges from 5.5 percent to 1 percent of the public offering price, and is subject to reduction as permitted by rule 22d–1.

2. Applicants request an order permitting them, future series of the Trusts, and future trusts sponsored by the sponsor to impose sales charges on Units on a deferred basis and waive the deferred sales charge in certain cases. Under applicants' proposal, the Sponsor will continue to determine the amount of sales charge per Unit at the time portfolio securities are deposited in a Series. The Sponsor will have the discretion to defer collection of all or part of this sales charge over a period following the purchase of Units. The Sponsor will in no event add to the deferred amount initially determined any additional amount for interest or any similar or related charge to reflect or adjust for such deferral.

3. The Sponsor anticipates collecting a portion of the total sales charge immediately upon purchase of Units. A portion of the outstanding balance will be deducted periodically by the trustee from distributions on the Units and paid to the Sponsor until the total amount of the sales charge is collected. If distribution income is insufficient to pay a deferred sales charge installment,

the trustee will have the ability under the trust indenture to sell portfolio securities in an amount necessary to provide the requisite payments. These securities will be sold on a pro rata basis, to the extent practicable, so that the remaining composition of the Trust will be similar to its composition prior to the sale. If a unitholder redeems or sells to the Sponsor his or her Units before the total sales charge has been collected from installment payments, the balance of the sales charge may be collected at the time of such redemption or sale.

4. For purposes of calculating the amount of the deferred sales charge due upon redemption or sale of Units, it will be assumed that Units on which the balance of the sales charge has been collected from installment payments are liquidated first. Any Units disposed of over such amounts will be redeemed in the order of their purchase so that Units held for the longest time are redeemed first.

5. The Sponsor intends to waive collection of the unpaid balance of the deferred sales charge upon any sale or redemption of Units. If applicants later decide to collect the unpaid balance of the deferred sales charge upon sale or redemption, they may nonetheless waive payment of the balance of the deferred sales charge on redemptions or sales of Units in certain specific cases. Any such waiver will be disclosed in the prospectus and will satisfy the other conditions of rule 22d–1.

6. The Sponsor believes that the operation and implementation of the deferred sales charge program will be disclosed adequately to potential investors as well as unitholders. The prospectus for each Series will describe the operation of the deferred sales charge, including the amount and date of each installment payment. The prospectus also will contain disclosure pertaining to the trustee's ability to sell portfolio securities if the income generated by a Series' portfolio is insufficient to pay an installment. The securities confirmation statement sent by the Sponsor to each purchaser will state the amount of the ''up-front'' sales charge, if any, and the amount of the deferred sales charge to be deducted in regular installments. The annual report of each Series will state the amount of annual installment payments deducted during the previous fiscal year on both a per Trust and per Unit basis.

7. The maximum sales charge on Units acquired in the secondary market normally ranges from 5.5 percent to 1.0 percent of the public offering price of the Units. Applicants request that the order also permit them to allow unitholders to exchange Units of one Series for Units of another subject to an additional sales charge not to exceed 2.5 percent of the public offering price of the acquired Units. This sales charge is calculated as the greater of (a) 2.5 percent per Unit, or (b) an amount that together with the sales charge already paid on the exchanged Units equals the normal sales charge on the acquired Units if either Units are exchanged within five months of their acquisition for Units of another Series with a higher sales charge, or Units with a deferred sales charge are exchanged for Units of another Series with an ''up-front'' charge before the deferred sales charge on the exchanged Units has been collected.

8. If Units subject to a deferred sales charge are exchanged for Units of a Series not having a deferred sales charge, the deferred sales charge will be collected at the time of the exchange. If Units subject to a deferred sales charge are exchanged for Units of a Series with a deferred sales charge, installment payments will continue to be deducted from the distributions on the acquired Units until the balance of the sales charge owed on the exchanged Units has been collected. In either case, the additional sales charge will be imposed at the time of the exchange.

Applicants' Legal Analysis

1. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that implementation of the deferred sales charge program in the manner described above would be fair and in the best interests of the unitholders of the Trusts.

2. Section 2(a)(32) defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Because the imposition of a deferred sales charge may cause a redeeming unitholder to receive an amount less than the net asset value of the redeemed Units, applicants seek an exemption from section 2(a)(32) so that Units subject to a deferred sales charge are considered redeemable securities for purposes of the Act.[1]

3. Section 2(a)(35) defines the term ''sales load'' to be the difference between the sales price and the proceeds to the issuer, less any expenses not properly chargeable to sales or promotional expenses. Because a deferred sales charge is not charged at the time of purchase, an exemption from section 2(a)(35) is necessary.

4. Rule 22c–1 requires that the price of a redeemable security issued by an investment company for purposes of sale, redemption, and repurchase be based on the investment company's current net asset value. Because the imposition of a deferred sales charge may cause a redeeming unitholder to receive an amount less than the net asset value of the redeemed Units, applicants seek an exemption from this rule.

5. Section 22(d) requires an investment company and its principal underwriter and dealer to sell securities only at a current public offering price described in the investment company's prospectus. Because sales charges traditionally have been a component of the public offering price, section 22(d) historically required that all investors be charged the same load. Rule 22d–1 was adopted to permit sale of redeemable securities ''at prices that reflect scheduled variations in, or elimination of, the sales load.'' Because rule 22d–1 does not extend to scheduled variations in deferred sales charges, applicants seek relief from section 22(d) to permit them to waive or reduce their deferred sales charge in certain specified instances.

6. Section 26(a)(2) in relevant part prohibits a trustee or custodian of a unit investment trust from collecting from the trust as an expense any payment to a depositor or principal underwriter thereof. Because of this prohibition, applicants need an exemption to permit the trustee to collect the deferred sales charge installments from distribution deductions or Trust assets.

7. Paragraphs (a) and (c) of section 11 prohibit any offers of exchange of the securities of a registered unit investment trust for the securities of any other investment company, unless the terms of the offer have been approved by the SEC. Applicants assert that the reduced sales charge imposed at the time of exchange is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses incurred in connection with the exchange.

[1] Without an exemption, a trust selling Units subject to a deferred sales charge could not meet the definition of a unit investment trust under section 4(2) of the Act. Section 4(2) defines a unit investment trust as an investment company that issues only ''redeemable securities.''

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Whenever the exchange option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the exchange option, or to delete a Series that has terminated; and (b) No notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Trust under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) a Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the exchange option will pay a lower aggregate sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Trust offering exchanges and any sales literature or advertising that mentions the existence of the exchange option will disclose that the exchange option is subject to modification, termination or suspension, without notice except in certain limited cases.

4. Each Series offering Units subject to a deferred sales charge will include in its prospectus the table required by item 2 of Form N–1A (modified as appropriate to reflect the differences between unit investment trusts and open-end management investment companies) and a schedule setting forth the number and date of each installment payment.

For the Commission, by the Division of Investment Management, pursaunt to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–9074 Filed 4–12–95; 8:45 am]

BILLING CODE 8010–01–M

U.S. SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2766]

California; Declaration of Disaster Loan Area (Amendment #1)

The above-numbered Declaration is hereby amended, effective March 24, 1995, to include Alameda, Alpine, Calaveras, Contra Costa, Merced, San Francisco, San Joaquin, and San Mateo Counties in the State of California as a disaster area due to damages resulting from severe winter storms causing flooding, landslides, and mud debris flows beginning on February 13, 1995 and continuing.

All counties contiguous to the above-named counties have previously been declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is May 11, 1995, and for loans for economic injury the deadline is December 12, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 7, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–9145 Filed 4–12–95; 8:45 am]

BILLING CODE 8025–01–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

National Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Change of meeting date.

SUMMARY: This is to announce a change in the date for the National Advisory Board meeting schedule for April 27 as published in the Federal Register, March 30, 1995, page 16529. The meeting is rescheduled for May 31 at the Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C.

DATES: Wednesday, May 31, 9 a.m. to noon.

ADDRESSES: Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW, Washington, DC 20232, 202/416–2626.

Dated: April 7, 1995.

Jill Nevius,

Committee Management Officer.

[FR Doc. 95–9055 Filed 4–12–95; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

NAFTA Land Transportation Standards Subcommittee Work Program

AGENCY: Office of the Secretary, Office of International Transportation and Trade, DOT.

ACTION: Notice.

SUMMARY: This notice gives the status of the Department of Transportation's (DOT) actions to implement the Land Transportation Standards Subcommittee (LTSS) work program set forth in the North American Free Trade Agreement (NAFTA). It also describes the LTSS' scope of work, notifies the public of upcoming meetings, and invites interested parties to write to DOT to be included in the Department's distribution list for LTSS reports and related information.

The United States, Canada, and Mexico intend to continue to work to develop more compatible land transportation standards through the LTSS in accordance with a timetable set in the NAFTA. Five working groups of federal and state government technical experts from the three countries were established last year to accomplish this work under the direction of the LTSS. The groups made considerable progress during the NAFTA's first year, including the completion of efforts related to cross-border rail operations. Representatives from industry, labor, and safety advocacy organizations, while not directly involved in the LTSS process, may take part in briefings and listening sessions conducted before or after the official meetings. In 1994, the LTSS held one plenary session, one executive session, and eight working group meetings. Copies of the LTSS 1994 Annual Report will be available in mid-May. The U.S. Department of Transportation conducted two public briefings in August and November 1994. The Department intends to publish periodic notices on the LTSS' activities, and to distribute regularly relevant information to individuals and organizations on its mailing list. Respondents are requested to send a fax or a post card with their full names and addresses to DOT, specifying the group(s) about which they would like to receive information.

Background

The NAFTA establishes a Committee on Standards-Related Measures, and requires that it create a subcommittee to seek—to the extent practicable—compatibility of land transportation standards among the United States, Canada, and Mexico. Annex 913.5.a-1 of the NAFTA sets forth the work program that the LTSS will follow for seeking compatibility of the countries' standards-related measures for bus and truck operations, rail personnel standards that are relevant to cross-border operations, and the transportation of hazardous materials.

Land Transportation Standards Subcommittee

The LTSS meets once a year chaired, on the U.S. side, by the Director of the Office of International Transportation and Trade, Office of the Secretary of Transportation. The chair gives general guidance and direction to U.S. working group heads, establishes the parameters for participation of U.S. delegates in delegation and trinational meetings, and prepares policy recommendations—with the help of working group chairs—for the Secretary of Transportation's consideration. U.S. participants to the LTSS include: (1) Federal officials from the Office of the Secretary of Transportation (OST), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Research and Special Programs Administration (RSPA), the U.S. Department of State, the Office of the U.S. Trade Representative, and other federal agencies as appropriate; and (2) state policy-makers identified by the National Governors' Association. Direct participation in the LTSS by other-than-government entities was extensively debated by U.S., Canadian, and Mexican officials, with only the United States favoring the inclusion of such entities in the LTSS. As a result, the three countries agreed to hold trinational listening sessions before each plenary meeting and to conduct independent briefings as each country deemed appropriate. The LTSS held its first plenary session on July 12, 1994, in Cancun, Quintana Roo, Mexico. The heads of the three delegations also held an executive session on November 14, in Washington, D.C., to assess their progress. The working groups met on July 11 and at various other times in 1994. Dates of upcoming meetings are included below; meetings may be added or cancelled on short notice.

Working Groups

Five working groups comprising of federal, state, and provincial officials from the three countries were formed last year. In the United States, each working group operates under the leadership of a DOT official. The working groups analyze technical issues and provide the LTSS chair with information and advice on which to base policy options and recommendations. By invitation, representatives of state government organizations such as the American Association of State Highway and Transportation Officials, the American Association of Motor Vehicle Administrators, the Commercial Vehicle Safety Alliance, the International Association of Chiefs of Police, the National Association of State Regulatory Utility Commissioners, the Cooperative Hazardous Materials Enforcement Development Program, and others may also participate on the working groups. Individual working groups determine the frequency of meetings depending on the scope of work and the time-frame established in the NAFTA for seeking compatibility for the specific standards under each group's jurisdiction. Following is information on the working groups and their accomplishments to date.

1. Working Group 1—This group will consider medical and non-medical standards-related measures for drivers, including age and language requirements. It will also review measures with respect to vehicles such as tires, brakes, parts and accessories, cargo securement, maintenance and repair, inspections, and emissions and environmental pollution levels not covered by the Automotive Standards Council's work program established under Annex 913.5.a-3 of the NAFTA. In addition, it will examine standards related to the supervision and enforcement of motor carrier safety compliance. The group met in Winnipeg in October 1994 with representatives of state and provincial organizations to discuss standards related to the age and language of drivers. Soon after, on November 22, 1994, Mexico passed a law raising the age of commercial vehicle drivers from 18 to 21 and requiring that drivers have a secondary education that includes language courses in English. The new requirements are consistent with U.S. standards. Canadian action is pending. The group has developed a plan setting the priorities and time-frames for examining the standards for brakes, parts and accessories, and the securement of cargo. The plan involves reviewing each country's individual standards to assess their level of equivalency, determining whether discrepancies would impede cross-border trade, and reaching agreements on how to make them more compatible. At the Winnipeg meeting, the group passed a resolution agreeing to use the Commercial Vehicle Safety Alliance's (CVSA) criteria for performing vehicle inspections and placing vehicles out-of-service. The group will hold its next meeting on April 26, 1995, in Colorado. For more information call Tom Kozlowski, International Programs Coordinator, Office of Motor Carriers/FHWA, at (202) 366–5370.

2. Working Group 2—This group will analyze the development of more compatible vehicle weight and dimension standards. As a first step, an ad hoc group of technical experts did an extensive comparison of U.S., Canadian, and Mexican standards last year. The tables are now being revised to reflect changes in Mexican requirements which were published on November 24, 1994. Working Group 2 will hold its second meeting on April 11 and 12, 1995, to agree on a work plan for making the size and weights standards of the three countries more compatible. There are two proposals under consideration, one presented by Mexico in July 1994 and another one submitted by Canada in October 1994. For information call Susan Binder, Division Administrator/FHWA, at (410) 962–4440.

3. Working Group 3—This group is responsible for seeking compatibility of standards-related measures relating to traffic control devices. The working group has met twice (July and October 1994) and produced a comparison of traffic control devices in the three countries. A report prepared by the working group leaders identifies differences and recommends possible actions. The report notes that existing discrepancies in this area will not significantly hinder the movement of cargo and vehicles. For information call Ernest D. L. Huckaby, Traffic Control Device Team Leader, Office of Highway Safety/FHWA, at (202) 366–9064.

4. Working Group 4—This group was charged with working towards making more compatible standards related to rail operating personnel that are relevant to cross-border operations, as well as standards related to locomotives and other rail equipment. In accordance with the NAFTA timetable, the group completed its work in January 1995. A final report describing the group's efforts and listing technical standards that need to be made compatible in the future is now in preparation. As appropriate, U.S., Canadian, and

Mexican delegates will continue to work on bilateral or trilateral issues outside the LTSS structure. For information and copies of the report call Jane Bachner, Deputy Associate Administrator for Policy/FRA, at (202) 366–0344.

5. Working Group 5—This group is seeking compatibility of standards related to the transportation of hazardous materials. Both the United States and Canada have essentially equivalent hazardous materials transportation requirements based on the United Nations Recommendations on the Transport of Dangerous Goods. Mexico has enacted legislation that provides for the development of standards consistent with the U.N. recommendations. The working group held meetings in October 1994 and in January 1995. Last fall the United States and Mexico issued jointly the U.S. Emergency Response Guidebook (ERG) in Spanish, of which 30,000 copies have been distributed in Mexico. This enabled harmonization of U.S. and Mexican emergency response information requirements. The three countries plan to issue a North American ERG by January 1996 by consolidating the information in the U.S. and Canadian guidebooks. In addition, Mexico has adopted a number of other standards that are compatible with U.S. and Canadian hazardous materials transportation regulations. For information call Frits Wybenga, International Standards Coordinator for Hazardous Materials/RSPA, at (202) 366–0656.

Meetings and Deadline

The LTSS will hold its second plenary session on June 28, 1995, at the Wall Center Garden Hotel, 1088 Burrard Street, Vancouver, British Columbia, Canada. In conjunction with the plenary meeting, the working groups may meet at the same location on June 27 and 28. Also at the same site, on June 27, special sessions will be held for representatives for the truck, bus, rail, and chemical manufacturing industries, transportation labor unions, brokers, and shippers, public safety advocates, and others who have notified us of their interest to attend and have submitted copies of their presentations to DOT at the address below by May 12, 1995. Subsequently, the Department of Transportation will hold a public briefing in Washington, D.C., to discuss the results of the listening session and the plenary and working group meetings. A notice announcing the meeting's date, time, and place will be published in the Federal Register two weeks in advance.

FOR FURTHER INFORMATION: Contact David DeCarme, Chief, Maritime, Surface, and Facilitation Division, Office of International Transportation and Trade, Office of the Secretary of Transportation, at (202) 366–2892.

ADDRESS AND FAX NUMBER: Individuals and organizations interested in being placed on the mailing list for receiving LTSS-related information are requested to send a post card indicating the complete name and address where the information should be sent, and specifying the group or groups about which information is desired. Mail post cards to David DeCarme, U.S. Department of Transportation, OST/X–20, Room 10300, 400 Seventh Street, S.W., Washington, DC 20590. Respondents may also send the above information by fax at (202) 366–7417.

Arnold Levine,

Director, Office of International Transportation and Trade.

[FR Doc. 95–9182 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 95–024]

Demonstration of Software to Electronically Prepare Shipping Articles, Certificates of Discharge, and Transmit Mariner Sea Service Time to the Coast Guard

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is sponsoring a demonstration of the User Interface System (UIS). The UIS is a project to automate the collection and reporting process of mariner sea service data required by statutes. The UIS will allow shipping companies to electronically create shipping articles and certificates of discharge and transmit sea service data to the Coast Guard. The Coast Guard is also soliciting for participants in the testing process.

DATES: The demonstration will be held on Wednesday April 26, 1995, between 9 a.m. and 3 p.m.

ADDRESSES: The demonstration will be held at Science Applications International Corporation (SAIC) Tower 1, 1710 Goodridge Drive, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Mrs. Justine Bunnell, Project Officer, G–MVP–1, (202) 267–0238, Merchant Vessel Personnel Division of the Office of Marine Safety, Security and Environmental Protection. U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: The User Interface System (UIS) is a component of the Mariner Identification card project (the new Merchant Mariner's Document). The UIS is being developed for the Coast Guard to improve the recordkeeping and transmittal of merchant mariner sea service data. The system will provide for electronic transfer of data from the shipping companies to the Coast Guard database located at Coast Guard Headquarters in Washington, DC. The software will provide an interface with the Mariner Identification card and the Merchant Mariner License and Document program, a national database of merchant mariner transactions, as well as maintain compatibility with common systems used in the marine industry.

The system was developed in a stand-alone PC environment to allow users to purchase off the shelf equipment or use existing equipment to operate the software. The UIS will allow the user to enter voyage specific information, enter and maintain mariner and ratings information, report data contained on shipping articles and certificates of discharge, electronically report sea service information to Coast Guard Headquarters, and at the company's option, read the Mariner's ID (MID) card magnetic stripe for expedient data entry and verification. Shipping companies with existing computer systems may also develop their own software to electronically transmit sea service information to the Coast Guard.

The demonstration will include an explanation of the software, the methods used to develop the software, how to use the program, and hands-on work by the participants. The development team will be available to assist with the hands-on work and answer questions. Participants may bring their own personal computer (PC) if they desire. The test participants will receive a copy of the UIS program to use for 30 days in their work environment. They will use the software to generate shipping articles, certificates of discharge, and reports. The test participants will electronically transmit sea service information to the Coast Guard during the test period. They will identify any problems, make suggestions for improvement, and evaluate the software. The problems, suggestions and evaluation information will be collected on forms provided with the software. The suggestion/evaluation forms will be submitted to the Coast Guard Project Officer.

Please notify Mrs. Justine Bunnell at (202) 267–0238 by April 19, 1995, if you plan to attend the demonstration, plan to bring your own PC to the demonstration, or are interested in participating in testing the software.

Dated: April 4, 1995.

G.N. Naccara,

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

[FR Doc. 95–9039 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Manager, Transport Standards Staff, ANM–110, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW, Renton, WA 98055–4056, telephone (206) 227–2190, fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is transport airplane and engine issues. These issues involve the airworthiness standards for transport category airplanes in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Recommend disposition of public comments made to Notice of Proposed Rulemaking No. 94–29, which proposed to revise the gust load design requirements for transport category airplanes, and provide for harmonization of the discrete gust requirements with the Joint Aviation Requirements (JAR) of Europe as recently amended.

Contrary to the usual practice, the FAA is not asking ARAC as part of this task to develop a final draft of the next action (i.e., supplemental notice, final rule, or withdrawal). However, ARAC must provide a document setting forth the rationale for the recommended disposition of each of the comments.

ARAC Acceptance of Task

ARAC has accepted the task and has chosen to assign it to the existing Loads and Dynamics Harmonization Working Group. As a result of the new task assigned to the working group, membership is being reopened. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Reports to ARAC

The Loads and Dynamic Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. For each task, draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. A status report at each meeting of ARAC held to consider transport airplane and engine issues.

Participation in the Working Group

The Loads and Dynamic Harmonization Working Group is composed of experts from those organizations having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Loads and Dynamics Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on April 10, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–9154 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; General Aviation and Business Airplane Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Mr. John Colomy, Assistant Executive Director, Aviation Rulemaking Advisory Committee, FAA Small Airplane Directorate, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6930.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation—related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is general aviation and business airplane issues. These issues involve the airworthiness standards for small and commuter category airplanes in 14 CFR part 23 and parallel provisions in 14 CFR parts 91 and 135.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advise and recommendation on the following harmonization task:

Recommend disposition of comments made to Notices of Proposed Rulemaking (NPRM) Nos. 94–19, 94–20, and 94–22, which propose to harmonize 14 CFR part 23 with the Joint Aviation Requirements (JAR) 23. If ARAC determines rulemaking documents or advisory circulars are appropriate to dispose of these comments, those documents should be developed by ARAC along with the proper justification and any legal and economic analysis. Harmonize any resulting Federal Aviation Regulations with the Joint Aviation Requirements.

ARAC Acceptance of Task

ARAC has accepted the task and has chosen to assign it to the existing JAR/FAR 23 Harmonization Working Group. As a result of the new task assigned to the working group, membership is being reopened. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, if forwards them to the FAA as ARAC recommendations.

Working Group Activity

The JAR/FAR 23 Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider general aviation and business airplane issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. For each task, draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. A status report at each meeting of ARAC held to consider general aviation and business airplane issues.

Participation in the Working Group

The JAR/FAR 23 Harmonization Working Group is composed of experts from those organizations having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the JAR/FAR 23 Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on April 10, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–9153 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on April 26 and 27, 1995 beginning at 8:30 a.m. on April 26. Arrange for oral presentations by April 13, 1995.

ADDRESSES: The meeting will be held at the Hyatt Regency, 320 West Jefferson, Louisville, Kentucky.

FOR FURTHER INFORMATION CONTACT:

Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held April 26 and 27, 1995 at the Hyatt Regency, 320 West Jefferson, Louisville, Kentucky. The agenda for the meeting will include:

- Opening remarks.
- Review of action items.
- Reports of working groups.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by April 13, 1995, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on April 10, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–9155 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–13–M

Civil Tiltrotor Development Advisory Committee; Economics Subcommittee; Meetings

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Economic Subcommittee that will be held on April 24, 1995 in Philadelphia, PA at the Philadelphia International Airport in the Tour Room located on the Concourse between Terminals C and D.

The meeting will begin at 10:00 a.m. and conclude by 4:00 p.m.

THIS IS A CHANGE IN BOTH DATE AND PLACE. Previously, the meeting had been scheduled on April 17 in Cambridge, MA.

The agenda for the third Economics Subcommittee meeting will include the following:

(1) Review and discussion on the draft executive summary of the economics report.

(2) Review of assumptions.

(3) Review of schedule and work plans.

Persons who plan to attend the meeting should notify Ms. Karen Braxton on 202–267–9451 by April 20. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton at least three working days prior to the meeting.

Issued in Washington, D.C., April 7, 1995.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 95–9156 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Adair County, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent Cancellation.

SUMMARY: The FHWA is issuing this notice to advise the public that a Notice of Intent (NOI) to prepare an environmental impact statement for a proposed project in central Missouri is canceled. The NOI was published in the Federal Register on March 10, 1994. This cancellation is based on the issuance of a Finding of No Significant Impact (FONSI) on March 10, 1995, by the FHWA. The FONSI is based on the environmental reevaluation of a formerly approved environmental assessment (EA).

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Programs Engineer, Federal Highway Administration, PO Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, PO Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: This project involves the proposed upgrade of U.S. Route 63 to a dual-lane facility starting approximately 1.5 mile south of Missouri Route T and continuing to a point approximately 1 mile south of Missouri Route KK in Adair County, Missouri.

Issued on: April 5, 1995.

Donald Neumann,

Program Review Engineer, Jefferson City.

[FR Doc. 95–9122 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Broome County, NY

AGENCY: Federal Highway Administration (FHWA), New York State Department of Transportation (NYSDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge crossing the Susquehanna River connecting Route 17C with Route 17 and Route 434 in eastern Tioga/western Broome Counties, New York.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127.

or

Richard R. Church, Regional Director, New York State Department of Transportation, Binghamton State Office Building, 44 Hawley Street, Binghamton, New York 13901–3200, Telephone: (607) 721–8116.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the NYSDOT, will prepare an Environmental Impact Statement (EIS) on a proposal to construct a bridge and associated approach roadway and interchange ramps for a new crossing of the Susquehanna River connecting NYS Route 17C with NYS Route 17 and NYS Route 434 in one of the four corridors located between Hiawatha Boulevard in the town of Owego, Tioga County and NYS Route 26 in the town of Vestal and village of Endicott, Broome County.

Four alternatives and the no-build alternative are under consideration. The four build alternatives (referred to as A1, B2, C4 and D2) represent the bridge alignments deemed most feasible in each of the proposed corridors. All four of the alternatives would connect Route 434 with Route 17C. Alternatives A1, B2 and C4 would also provide access to Route 17. Alternative D2, being a local connector, would not.

All four bridge alternatives would span the Susquehanna River. Alternatives A1, B2 and C4 would also span Route 17 on the south side of the river and the Conrail tracks on the north side of the river. Betterments being considered along Route 434 and Route 17C would be limited to intersection improvements required at the termini of the proposed bridge alternatives.

The proposed project has possible benefits including reduced traffic congestion, improved mobility, and increased potential for community cohesion, growth and economic development.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and others who have previously expressed interest in this proposal. Public information meetings were held in the town of Vestal on November 30, 1993 and in the town of Apalachin on December 1, 1993. Meetings were also held with local officials in the towns of Vestal, Union and Owego in September 1993. The issues raised by written correspondence and at the local public information meetings will be incorporated into the EIS. The Draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above by May 15, 1995.

Issued on: April 4, 1995.

Stanley Gee,

Division Administrator, Assistant Federal Highway Administration, Albany, New York.

[FR Doc. 93–9123 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Newport County, Rhode Island

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed construction of a marine terminal facility in Newport, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Gordon G. Hoxie, Division Administrator, Federal Highway Administration, 380 Westminster Mall, Room 547, Providence, Rhode Island, Telephone: (401) 528–4541, or Marjorie Keefe, Project Manager, Rhode Island Department of Transportation, Two Capitol Hill—Room 372, Providence, RI 02903, Telephone: (401) 277–2023.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Rhode Island Department of Transportation (RIDOT), will prepared an environmental impact statement (EIS) to evaluate alternatives to provide a proposed marine terminal facility or facilities serving cruise ships and/or commuter vessels and ferries on Aquidneck Island, Rhode Island.

Marine terminal facilities are needed to alleviate congestion in both the harbor and on local streets in Newport, Rhode Island, for both current as well as projected levels of activity. Linking the Newport Gateway Center, a multi-modal ground transportation and visitor hub located in Newport's business tourist district, with a marine terminal would integrate ground transportation with waterborne commuter vessels, tour boats, and cruise ships. This link would create a true multi-modal complex capable of providing numerous transportation options and destinations while relieving congestion in both the harbor and on local streets. Alternatives under consideration include: (1) Taking no action; (2) a combination of sites within the Newport Inner Harbor including State Pier No. 9, American Shipyard, and/or Goat Island; (3) Fort Adams (eastern and western sides); (4) Newport Naval Pier No. 1 (Derektors Pier); and (5) Melville Marina. Other reasonable alternatives identified during the scoping process will also be considered.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in the proposed project. A public scoping meeting will be held in Newport, Rhode Island during May 1995. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number *20.205,* Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and other activities apply to this program)

Issued on: April 5, 1995.

Gordon G. Hoxie,

Division Administrator, Providence, Rhode Island.

[FR Doc. 95–9124 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) received from the Southern Pacific Transportation Company a request for a waiver of compliance with certain requirements of the Code of Federal Regulations. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

Southern Pacific Transportation Company (SP) (Waiver Petition, Docket Number RST–95–1)

The SP has requested to be relieved of compliance with § 213.57(b) of the Federal Track Safety Standards (Title 49 CFR part 213). That section refers to maximum allowable train operating speeds on nontangent track as a function of existing curvature and superelevation and, further, introduces the concept of unbalanced superelevation. The idea of trains negotiating curved track at speeds producing either positive or negative unbalance was discussed previously in the Federal Register (52 FR 38035 on October 13, 1987). Currently, Section 213.57(b) permits a maximum of 3 inches to be used as the 2 underbalance term in the formulation of curve/speed tables by track maintenance engineers defining intermediate train speeds and curved track superelevations for any route between two points.

SP petitioned for permission to substitute the value of 4 inches instead of 3 inches in determining maximum train speeds on several hundred route-miles of track owned by the railroad and used under contract by the National Railroad Passenger Corporation (Amtrak). SP has stated that it is doing this to assist Amtrak in improving its operating efficiency. SP believes that passenger trains can be operated safely at 4 inches of underbalance and cites Amtrak's experience in operating comparable equipment on the Union Pacific Railroad Company and the Burlington Northern Railroad Company at 4 inches of underbalance. SP's policy to operate freight trains at less than 3 inches of underbalance will be unaffected by the proposed waiver.

Interested parties may submit written views, data, or comments on this petition. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires and opportunity for comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communication concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–95–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) in room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on April 6, 1995.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–9142 Filed 4–12–95; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 31, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0202.
Form Number: ATF F 5110.34.
Type of Review: Extension.
Title: Notice of Change in Status of Plant.
Description: ATF F 5110.34 is necessary to show the use of distilled spirits plant premises for other activities or by alternating proprietors. It describes proprietor's use of plant premises and other information to show that the change in plant status is in conformity with law and regulations. It also shows what bond covers the activities of the distilled spirits plant (DSP) at a given time.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1512–0209.
Form Number: ATF F 5100.50.
Type of Review: Extension.
Title: Tax Deferral Bond—Distilled Spirits (Puerto Rico).
Description: ATF F 5100.50 is the bond necessary to secure payment of excise taxes on distilled spirits shipped from Puerto Rico to the United States on deferral of tax. The form identifies the principal, the surety, purpose of bond, and allocation of penal sum among the principal's locations.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–9127 Filed 4–12–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

April 7, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0242.
Form Number: ATF F 5400.6.
Type of Review: Extension.
Title: User-Limited Permit (Explosives).
Description: The User-Limited permit is useful to the person making a one-time purchase from out-of-State. It is to be used one time only and is nonrenewable. The explosives distributor makes entries on the form and returns the form to the permittee to prevent reuse of the $2 permit.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,092.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 22 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–9128 Filed 4–12–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

April 7, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0094.
Form Number: None.
Type of Review: Extension.
Title: Regulations Governing Payments by the Automated Clearing House Method on Account of United States Securities.
Description: The information is needed in order to make payments to investors in United States Securities by the Automated Clearing House (ACH) method.
Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Respondents: 256,107.
Estimated Burden Hours Per Response: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 61,537 hours.
Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt,

200 Third Street, Parkersburg, West VA 26106–1328

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–9129 Filed 4–12–95; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

April 7, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0056.

Form Number: IRS Forms 1023 and 872–C.

Type of Review: Revision.

Title: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (Form 1023); and Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code (Form 872–C).

Description: Form 1023 is filed by applicants seeking Federal income tax exemption as organizations described in section 501(c)(3). IRS uses the information to determine if the applicant is exempt and whether the applicant is a private foundation. Form 872–C extends the statute of limitations for assessing tax under section 4940.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 29,409.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law of the form	Preparing, and sending the form to IRS
1023 Parts I to IV	55 hr., 29min.	4 hr., 37 min.	8 hr., 7 min.
1023 Sch. A	7 hr., 10 min.	0 min.	7 min.
1023 Sch. B	4 hr., 47min.	30 min.	36 min.
1023 Sch. C	5 hr., 1 min.	35 min.	43 min.
1023 Sch. D	4 hr., 4 min.	42 min.	47 min.
1023 Sch. E	9 hr., 20 min.	1 hr., 5 min.	1 hr., 17 min.
1023 Sch. F	2 hr., 39 min.	2 hr., 53 min.	3 hr., 3 min.
1023 Sch. G	2 hr., 38 min.	0 min.	2 min.
1023 Sch. H	1 hr., 55 min.	42 min.	46 min.
1023 Sch. I	3 hr., 35 min.	0 min.	4 min.
872–C	1 hr., 26 min.	24 min.	26 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 2,038,354 hours.

OMB Number: 1545–0976.

Form Number: IRS Form 990–W.

Type of Review: Revision.

Title: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

Description: Form 990–W is used by tax-exempt trusts and tax-exempt corporations to figure estimated tax liability on unrelated business income and on investment income for private foundations and the amount of each installment payment. Form 990–W is a worksheet only. It is not required to be filed.

Respondents: Not-for-profit institutions, Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 27,265.

Estimated Burden Hours Per Respondent/Recordkeepers:

Form	Recordkeeping	Learning about the law of the form	Preparing the form
990–W	8 hr., 8 min.	1 hr., 29 min.	1 hr., 41 min.
990–W, Sch. A (Pt. 1)	11 hr., 14 min.	18 min.	29 min.
990–W, Sch. A (Pt. II)	23 hr., 26 min.	18 min.	41 min.
990–W, Sch. A (Pt. III)	5 hr., 16 min.	0 min.	5 min.
Tax computation for trusts	2 hr., 52 min.	0 min.	3 min.

Frequency of Response: Annually.

Estimated Total Reporting/Reporting Burden: 323,309 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–9130 Filed 4–12–95; 8:45 am]

BILLING CODE 4830–01–P

Office of Thrift Supervision

[AC–20; OTS No. 6033]

Neosho Savings and Loan Association, F.A., Neosho, Missouri; Approval of Conversion Application

Notice is hereby given that on April 5, 1995, the Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority,

approved the application of Neosho Savings and Loan Association, F.A., Neosho, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 West John Carpenter Freeway, Suite 600, Irving, Texas 75261–9027.

Dated: April 7, 1995.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–9054 Filed 4–12–95; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Claims Adjudication Commission, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that the Veterans' Claims Adjudication Commission will meet on Tuesday, April 18, 1995, and Wednesday, April 19, 1995, at the Washington, D.C. office of The American Legion, 1608 K Street (7th Floor), N.W., Washington, D.C. The Commission shall meet on April 18 from 9:00 a.m. to 4:30 p.m. and on April 19 from 9:00 a.m. to 12:00 Noon.

The central topic for discussion will concern the current state of the Department of Veterans Affairs claims adjudication and appellate processes. The Commission will receive presentations on these subjects from representatives of the Veterans Benefits Administration and the Board of Veterans' Appeals. The Commission will also hear discussion on matters relating to ADP initiatives at the Department of Veterans Affairs and remands of veterans' claims from the Board of Veterans' Appeals and the U.S. Court of Veterans Appeals, and will address its future agenda.

The meeting is open to the public; however, no specific amount of time is allocated for the purpose of receiving oral presentations from the public. The Commission will accept appropriate written comments from interested parties on the subject matter addressed during the meeting. Such comments may be referred to the Commission at the following address: Veterans' Claims Adjudication Commission (20C), U.S. Department of Veterans Affairs, 810 Vermont Ave., N.W., Washington, DC 20420.

Additional information concerning this meeting may be obtained by contacting the Commission at (202) 275–2142.

Dated: March 30, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–9173 Filed 4–12–95; 8:45 am]

BILLING CODE 8320–01–M

Wage Committee, Notice of Meetings

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, April 19, 1995, at 2:00 p.m.
Wednesday, May 17, 1995, at 2:00 p.m.
Wednesday, June 14, 1995, at 2:00 p.m.

The meetings will be held in Room 1225, Department of Veterans Affairs, Tech World Plaza, 801 I Street, NW, Washington, DC 20001.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additonal information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1225, 801 I Street, NW, Washington, DC 20001.

Dated: March 30, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–9174 Filed 4–12–95; 8:45 am]

BILLING CODE 8320–01–M

A Child Development Center at the VAMC Richmond, VA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Richmond, VA, Department of Veterans Affairs Medical Center (VAMC) for an Enhanced-Use development. The Department intends to enter into a long-term lease of real property with the developer whose proposal will provide the best quality child development and care at the greatest economic advantage for children of VAMC employees. The developer will be responsible for all aspects of construction, ownership, maintenance, and operation of the Child Development Center.

FOR FURTHER INFORMATION CONTACT: Jacob Gallun, Office of Asset and Enterprise Development (089), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420, (202) 233–3307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved:

Jesse Brown,

Secretary, Department of Veterans Affairs.

[FR Doc. 95–9175 Filed 4–12–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 71
Thursday, April 13, 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).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, April 18, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, April 20, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinions:
AOR 1995–02: Peter H. Rodgers on behalf of New York Mercantile Exchange (NYMEX) and NYMEX Political Action Committee.
AOR 1995–08: Congressman Bart T. Stupak, Stupak, for Congress, Inc.
AOR 1995–09: Matt Dorsey, Treasurer, on behalf of NewtWatch PAC.
Audit:
Final Audit Report on Bennett for Senate.
Regulations:
Presidential Primary and General Election Regulations: Draft Final Rules and Explanation and Justification. Continued from meeting of April 6, 1995.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 95–9295 Filed 4–11–95; 3:39 pm

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 60, No. 71
Thursday, April 13, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150-AF07

Revision of Fee Schedules; 100% Fee Recovery FY 1995

Correction

In proposed rule document 95–6485 beginning on page 14670 in the issue of Monday, March 20, 1995, make the following corrections:

1. On page 14675, in the third column,in Table I, the entry under Part 171 ''Estimated amount'' should read ''24.9[1]''.

2. On page 14678, Table IV should read as follows:

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES[1]

	Program total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Reactor Program				
Cost Center: Reactor Regulation:				
Inspections	$4,350	471.4	$4,350	471.4
Reactor Oversight	11,615	357.0	11,615	357.0
Reactor and Site Licensing	1,660	26.3	1,660	26.3
Reactor Aging and Renewal	19,973	54.7	19,973	54.7
Safety Assessment and Regulatory Development	33,687	69.5	33,687	69.5
Independent Analysis of Operational Experience	7,939	47.0	7,939	47.0
Technical Training and Qualification	4,728	19.0	4,728	19.0
Investigations, Enforcement and Legal Advice	11	59.0	11	59.0
Independent Review	536	42.0	536	42.0
Cost Center Total	.....	.....	$84,499	1,145.9
Cost Center: Standard Reactor Designs:				
Design Certification	6,873	91.6	6,873	91.6
Safety Assessment	14,885	19.7	14,885	19.7
Legal Advice	.....	3.0	.....	3.0
Independent Review	86	10.0	86	10.0
Cost Center Total	.....	.....	$21,844	124.3
Nuclear Materials and Nuclear Waste Program				
Cost Center: Fuel Facilities:				
Licensing and Inspection	1,304	28.5	.....	.1
Cost Center: LLW and Decommissioning:				
Licensing and Inspection	50	2.6	.....	.9
Reactor Decommissioning	100	6.7	100	6.7
Radiological Surveys	1,653	.....	331	.....
Cost Center Total	.....	.....	$431	7.6

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES[1]—Continued

	Program total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Management and Support Programs				
Cost Center: Special Technical Programs:				
Educational Grants	1,050	.....	1,050	.....
Small Business Innovation Research	1,844	.....	1,844	.....
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	850	.7
Cost Center Total	.....	.....	$3,744	.7
Reactor Program Total	.....	.....	$110,518	1,278.6
Total Base Fee Amount Allocated to Power Reactors				[2] $385.0 million
Less Estimated Part 170 Power Reactor Fees				$119.8 million
Part 171 Amount for Operating Power Reactors				$265.2 million
Part 171 Base Fee For Each Operating Reactor				265.2 million
				108 reactors = $2,456,000 per reactor

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($214,765) and adding the program support funds.

3. On page 14681, Tables VI and VII should read as follows:

TABLE VI.—ALLOCATION OF NRC FY 1995 BUDGET TO FUEL FACILITY BASE FEES [1]

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	Program support $,K	FTE
Cost Center: Fuel Facilities:				
Fuel Fabricators Oversight and Inspections	$1,698	59.0	$1,486	56.1
Cost Center: LLW and Decommissioning:				
Decommissioning	4,447	50.0	325	1.7
Cost Center: Other Nuclear Materials and Waste:				
Independent Analysis of Operating Experience	346	8.0	69	1.6
Technical Training and Qualification	692	2.0	138	.4
Adjudicatory Reviews	.....	1.0	.....	.5
Investigations, Enforcement, Legal Advice	11	39.0	1	1.6
Cost Center: Special Technical Program:				
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	47	.....
Total	.....	.....	$2,066	61.9
Total Base Fee Amount Allocated to Fuel Facilities				[2] $14.6 million
Less Part 170 Fuel Facility Fees				4.5 million
Part 171 Base Fees For Fuel Facilities				$10.1 million

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($203,096) and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1995 BUDGET TO MATERIAL USERS' BASE FEES[1]

	Total program element		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
Nuclear Materials & Nuclear Waste Program				
Cost Center: Materials Users:				
Licensing/Inspection of Materials Users	2,436	113.0	721	82.3
Materials Licensee Performance	700	1.8	189	.5
Materials Regulatory Standards	1,494	12.8	403	3.5

TABLE VII.—ALLOCATION OF FY 1995 BUDGET TO MATERIAL USERS' BASE FEES[1]—Continued

	Total program element		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
Radiation Protection/Health Effects	1,621	5.3	438	1.4
Cost Center Total	.....	.....	$1,751	87.7
Cost Center: LLW and Decommissioning:				
Licensing & Inspections	50	2.6	.....	.2
Decommissioning	214	32.8	69	3.5
Radiological Surveys	1,653	.....	372	.....
Cost Center Total	.....	.....	441	3.7
Cost Center: Other Nuclear Materials:				
Analysis of Operational Experience	$346	8.0	184	1.7
Technical Training	692	2.0	498	1.4
Adjudicatory Reviews	.....	1.0	.....	.5
Investigations/Enforcement	11	39.0	9	24.4
Event Evaluation	.....	16.0	.....	4.4
Cost Center Total	.....	.....	$691	32.4
Total Program	.....	.....	$2,883	123.8
Management and Support Program				
Cost Center: Special Technical Programs:				
Nuclear Material Management and Safeguard Systems	1,165	1.0	74	.1
Total All Programs	.....	.....	$2,957	123.9
Base Amount Allocated to Materials Users				[2] $28.1 million
Less Part 170 Material Users Fees				3.2 million
Part 171 Base Fees for Material Users				$24.9 million

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($203,096) and adding the program support funds.

4. On page 14687, in §170.31, in the table, in column one and two, after 2A.(3), insert ''Inspection.....Full Cost''.

BILLING CODE 1505–01–D

Federal Register

Thursday
April 13, 1995

Part II

Department of Agriculture

Forest Service

36 CFR Parts 215, 217 and 219

National Forest System Land and Resource Management Planning; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 215, 217, and 219

RIN 0596–AB20

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service requests comment on a proposed rule to guide land and resource management planning for the 191-million acre National Forest System. This proposed rule, which would revise and streamline the existing planning rule, describes the agency's framework for National Forest System resource decisionmaking; incorporates principles of ecosystem management into resource planning; and establishes requirements for implementation, monitoring, evaluation, amendment, and revision of forest plans. The intended effect is to simplify, clarify, and otherwise improve the planning process; reduce burdensome and costly procedural requirements; and strengthen relationships with the public and other government entities.

DATES: Comments must be submitted in writing and received by July 12, 1995.

The agency will provide briefings to assist the public in understanding the proposed rule on April 24 at the locations and times listed under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Send written comments to Director, Ecosystem Management (1920; 3 CEN), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the Office of the Director, Third Floor, Central Wing, Auditor's Building, 14th and Independence Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead (202–205–1034) to facilitate entry into the building.

Briefings will be held at the addresses set out under **SUPPLEMENTARY INFORMATION** of this notice for proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Ann Christensen, Land Management Planning Specialist (202–205–1034).

SUPPLEMENTARY INFORMATION:

Public Briefings and Locations

The Forest Service will hold public briefings on April 24 in the following cities at the addresses and times shown:

1. Washington, DC—April 24, 1995, 9:30 a.m. to 11:30 a.m., Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia, 22202.

2. Missoula, Montana—April 24, 1995, 9 a.m. to 11 a.m., 4B's Inn and Conference Center, 3803 Brooks Street, Missoula, Montana, 59801.

3. Denver, Colorado—April 24, 1995, 6:30 p.m. to 8:30 p.m., USDA Forest Service, Rocky Mountain Regional Auditorium, 740 Simms Street, Golden, Colorado, 80401.

4. Grand Junction, Colorado—April 24, 1995, 6:30 p.m. to 8:30 p.m., Grand Junction Ranger District, 764 Horizon Drive, Grand Junction, Colorado, 81506.

5. Durango, Colorado—April 24, 1995, 6:30 p.m. to 8:30 p.m., San Juan Forest Supervisor's Office, 701 Camino del Camino, Durango, Colorado, 81301.

6. Chadron, Nebraska—April 24, 1995, 6:30 p.m. to 8:30 p.m., Nebraska National Forest Supervisor's Office, 125 N. Main Street, Chadron, Nebraska, 69337.

7. Rapid City, South Dakota—April 24, 1995, 6:30 p.m. to 8:30 p.m., Pactola Ranger District Office, 800 Soo San Drive, Rapid City, South Dakota, 81506.

8. Casper, Wyoming—April 24, 1995, 6:30 p.m. to 8:30 p.m., Holiday Inn, 300 ''F'' Street, Casper, Wyoming, 82601.

9. Albuquerque, New Mexico—April 24, 1995, 9 a.m. to 11 a.m., Southwestern Regional Office, 517 Gold Avenue, S.W., Albuquerque, New Mexico, 87102.

10. Phoenix, Arizona—April 24, 1995, 9 a.m. to 11 a.m., Tonto National Forest Supervisor's Office, 2234 East McDowell Road, Phoenix, Arizona, 85010.

11. Boise, Idaho—April 24, 1995, 2 p.m. to 4 p.m., National Interagency Fire Center, Training Building Auditorium, 3833 Development Avenue, Boise, Idaho, 83705.

12. Salt Lake City, Utah—April 24, 1995, 2 p.m. to 4 p.m., Federal Building, Room 2404, 125 South State Street, Salt Lake City, Utah, 84138.

13. Sacramento, California—April 24, 1995, 1 p.m. to 3 p.m., Radisson Hotel Sacramento, 500 Leisure Lane, Sacramento, California, 95815.

14. Portland, Oregon—April 24, 1995, 9 a.m. to 11 a.m., USDA Forest Service Pacific Northwest Regional Office, Robert Duncan Plaza, 333 S.W. First Avenue, Portland, Oregon, 97208.

15. Atlanta, Georgia—April 24, 1995, 12:30 p.m. to 2:30 p.m., USDA Forest Service Southern Region Office, 1720 Peachtree Road, N.W., room 199, Atlanta, Georgia, 30367.

16. Brookfield, Wisconsin—April 24, 1995, 7 p.m. to 9 p.m., Brookfield Marriott Hotel, 375 South Moorland Road, Brookfield, Wisconsin, 53005.

17. Juneau, Alaska—April 24, 1995, 1 p.m. to 3 p.m., Alaska Native Brotherhood Hall, 320 Willoughby Avenue, Juneau, Alaska, 99801.

Public comments will not be taken at these briefings, which will consist of video presentations prepared by the Chief's Office. As of May 1, one copy of this video material will also be available at the Chief's Office, each Regional Office, each Forest Supervisor's Office, each Research or Experiment Station, the Forest Products Laboratory, the Northeastern Area State and Private Forestry Office, and the International Institute of Tropical Forestry. The video may be borrowed by interested parties on a reservation basis by contacting their local Forest Service office or calling the telephone number listed under **FOR FURTHER INFORMATION CONTACT** earlier in this notice.

Background

The Forest Service is responsible for managing the land and resources of the National Forest System. It is headed by the Chief of the Forest Service and includes 191 million acres of lands in 42 States, the Virgin Islands, and Puerto Rico. The National Forest System consists of 155 National Forests, 20 National Grasslands, and various other lands under the jurisdiction of the Secretary of Agriculture. Under the Multiple-Use, Sustained-Yield Act of 1960 (16 U.S.C. 528) and the National Forest Management Act of 1976 (16 U.S.C. 1600), these lands are managed for a variety of uses on a sustained basis to ensure a continued supply of goods and services to the American people in perpetuity.

The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) (88 Stat. 476 *et seq.*), as amended by the National Forest Management Act of 1976 (90 Stat. 2949 *et seq.*; 16 USC 1601–1614) (hereafter, NFMA), specifies that land and resource management plans shall be developed for units of the National Forest System. Regulations to implement NFMA are set forth at 36 CFR part 219.

A forest plan has been approved for every National Forest except the Klamath, Shasta-Trinity, Mendocino, and Six Rivers National Forests, all located in California. It remains the agency's intent that these National Forests complete their plans under the requirements for forest plan development described by the existing regulation, adopted September 30, 1982 (47 FR 43026), as amended June 24, 1983 (48 FR 29122), and September 7, 1983 (48 FR 40383), and as set out in the

Code of Federal Regulations as of July 1, 1993.

During the 18 years since enactment of NFMA, much has been learned about planning for management of National Forest System lands. The original vision of NFMA raised many varied expectations, some of which remain unfulfilled. Although forest planning efforts to date have produced notable accomplishments in addressing forest management issues and fostering public participation in public land management, many controversies linger. For each National Forest, difficult resource management choices must be made among competing interests, often where there are no universally accepted answers. In such a setting, forest planning cannot be expected to revolve all differences; however, improvements in forest planning requirements and procedures can help better focus the issues and choices and lead to better, more informed decisions.

This proposed rule is the culmination of a systematic and comprehensive review of forest planning rules and processes. The nature of this review and its findings were described in detail in the Advance Notice of Proposed Rulemaking published on February 15, 1991 (56 FR 6508), along with a history of forest planning and an overview of the existing planning rule.

Critique of Land Management Planning

Of particular note in development of this proposed rule is the Critique of Land Management Planning. The Forest Service initiated this comprehensive review of its land management planning process in March 1989. Conducted with the help of The Conservation Foundation, the Department of Forestry and Natural Resources at Purdue University, and others, the purpose of the Critique was to document what had been learned since passage of the National Forest Management Act and to determine how best to respond to the planning challenges of the future.

The Critique involved over 3,500 people both within and outside the Forest Service. Workshops and interviews were conducted involving over 2,000 people who had participated in or had responsibilities for forest planning. These participants represented a broad cross-section of all those who were involved in planning, including members of the general public, interest groups, representatives of other agencies, elected officials, representatives of Indian tribal governments, Forest Supervisors, Regional Foresters, resource specialists, and members of interdisciplinary planning teams. Additionally, there were written comments received from 1,500 interested people. The Critique was completed in May 1990. The results of the Critique are documented in a summary report, ''Synthesis of the Critique of Land Management Planning'' (Vol. 1) and 10 other more detailed reports. In the interest of economy and brevity, the findings of the Critique and other material are not repeated here but should be considered as the foundation and background for this proposed rule.

Advance Notice of Proposed Rulemaking

An Advance Notice of Proposed Rulemaking was published on February 15, 1991 (56 FR 6508). The public comment period closed May 16, 1991. The Advance Notice of Proposed Rulemaking included preliminary regulatory text completely revising the existing regulation, based largely on the findings of the Critique. Four public informational meetings were held to stimulate public interest in and comment on the proposal in the Advance Notice and to assist the public in understanding the ideas presented in the Notice. Meetings were held as follows: Washington, DC, February 26, 1991; Portland, Oregon, April 8, 1991; Denver, Colorado, April 10, 1991; and Atlanta, Georgia, April 12, 1991. Altogether, approximately 50 people attended these meetings.

In addition to publishing the Advance Notice of Proposed Rulemaking in the Federal Register, the Forest Service mailed approximately 20,000 copies to known interested parties and invited comment on the rule. Over 600 groups and individuals provided nearly 4,700 comments. Approximately 10 percent were from business and industry groups; 11 percent from Federal, State, and local government agencies; 11 percent from environmental and conservation groups; 2 percent from recreation and user groups; 1 percent from academia; 1 percent from civic organizations; 9 percent from agency employees; and the remaining 55 percent from individual citizens.

As stated in the Advance Notice of Proposed Rulemaking, the agency received a petition on November 1, 1990, from the National Forest Products Association and 79 other organizations ''to engage in a rulemaking to amend the regulations set out at 36 CFR Part 219 to improve the implementation of land and resource management plans ('forest plants'), provide for prompt amendment, establish specific environmental documentation requirements, and for related reasons.'' This petition for rulemaking included proposed regulatory text and the rationale for it. It represented an alternative approach to changing the NFMA planning regulation at 36 CFR Part 219. The specific recommendations in the petition, along with supplemental comments received from the National Forest Products Association during the public comment period, were considered as part of the public comment associated with the Advance Notice of Proposed Rulemaking.

Basic Conclusions Underlying This Proposal

The proposed rule now being published rests on many of the same basic conclusions as the Advance Notice of Proposed Rulemaking, which are highlighted here.

1. Many Recommendations of the Critique of Land Management Planning can and Should be Adopted by Revising the Planning Rule

Although a number of specific recommendations have been used in developing this proposed rule, the following major recommendations identified by the Critique are particularly important:

(*a) Simplify, Clarify, and Shorten the Planning Process*

The Critique found that the complexity of the forest planning process was so overwhelming that few people really fully understood it. Further, the Critique found that this complexity often inhibited meaningful communication with the public and other governments, reduced agency credibility, and increased the time and cost needed to complete plans.

The Critique also identified the problems associated with trying to resolve socio-political issues through a highly technical and systematic set of planning procedures. The importance of balancing technical information with the values and concerns of the public was highlighted in the Critique reports.

Finally, the planning process is so lengthy and complex that the process of completing forest plans is frustrating for the public and agency employees alike. In addition, the financial expenditure required for such a lengthy and complex process has had a major impact on the agency and diverted funds and personnel from project decisionmaking and other activities.

While endorsing the need to simplify, clarify, and shorten the planning process, the Forest Service also recognizes that forest planning is inherently complex due to the multitude of resources and statutory responsibilities involved. Sound, yet often complex, technical analyses serve

a critical role in evaluating resource trade-offs and ensuring that resource decisions are based on the best possible information. A balance must be found between the simplicity most people desire and the complex reality of forest planning.

(b) Clarify the Decision Framework

The existing regulation does not precisely address the nature of forest plan decisions and the appropriate scope of environmental analysis. During development of the existing forest plans, many people believed that forest plans would make irretrievable resource commitments for all projects necessary to fully implement the goals and objectives of the plan. Confusion over the nature of forest plan decisions has been a principal source of controversy for many plans. Most of the administrative appeals of forest plans challenge whether forest plans and accompanying environmental impact statements satisfy particular requirements of NFMA, NEPA, the Endangered Species Act, the Clean Water Act, and other environmental laws. Forest plan appellants frequently argue that forest plans irretrievably commit the agency to individual projects but fail to provide the analysis and documentation required by these statutes.

In fact, the environmental impact statements accompanying forest plans do not attempt to identify, evaluate, and decide every individual project that may be permissible during the normal 10-year period of a forest plan. It would be practically impossible to satisfy these obligations in one single set of decisions or in a single environmental impact statement. Court decisions as well as administrative appeal decisions by the Chief of the Forest Service and the Assistant Secretary of Agriculture have explained the content of forest plan decisions and the scope of environmental analysis. To avoid confusion, the existing rule should be revised accordingly.

(c) Provide for an Incremental Approach to Revising Forest Plans

The Critique firmly endorsed an incremental approach to forest plan revision. It was considered a key element to achieving the major recommendations of the Critique to ''Simplify, clarify, and shorten the planning process.'' In Volume 2 of the Critique report, the merits of incremental planning are addressed:

> Wiping the slate clean and beginning anew allows the entire universe to alternatives to be examined, unprejudiced by directions and choices that have gone before. In fact, however, change is incremental when the alternatives available are heavily influenced—and circumscribed—by the choices made in the past. Examining the entire universe of alternatives in great detail may be both interesting and informative, but it imposes a tremendous demand for analysis that may go largely unused in the real decision process * * *. Federal regulations should be revised to permit an explicitly incremental approach to the revision of forest plans.'' (p. 61)

2. While NFMA Has Some Limitations, It Remains Basically Sound

Such NFMA principles as integrated resource planning, public participation, and an interdisciplinary approach to planning continue to provide a solid foundation for agency planning efforts. The Act also provides flexibility to make needed improvements through rulemaking or agency directives.

Many of the problems with forest planning are not directly associated with the provisions of NFMA. Public land management is complicated by a long series of laws and regulations enacted over many years. This has resulted in a situation once described by Federal District Court Judge Lawrence K. Karlton as a ''crazy quilt of apparently mutually incompatible statutory directives.'' (*United States* v. *Brunskill*, Civil S–82–666–LKK (E.D. Cal. Nov. 8, 1984) unpublished opinion, aff'd, 792 F.2d 9938 (9th Cir. 1986)). Thus, the controversy which often has surrounded forest planning must be viewed in light of the many requirements imposed by statutory and regulatory requirements other than the National Forest Management Act (e.g., the National Environmental Policy Act, Endangered Species Act, Clean Water Act, Clean Air Act). It is often the interaction of these other laws and regulations that has increased the controversy surrounding forest planning and land use.

Some of the dissatisfaction with NFMA can be traced to unrealistic expectations. One of the major findings of the Critique of Land Management Planning was the need for adjustments in the public's expectations of forest planning. Volume 2 of the report of the Critique explicitly addressed this as follows:

> Expectations for forest planning are high in some cases, unrealistically so. Some workshop participants expected forest planning would lead to establishment of ''reasonable and sustainable'' production goals. Others thought it would free resource allocation from politics while building a powerful case for budgets and appropriations sufficient to accomplish plan goals. And many apparently thought that forest planning would be a way to influence the political process and sway management to their purposes. Probing more deeply, we found that it was not so much the process to which people objected, but the results of that process. In retrospect, it was inevitable that this would occur. When the law was enacted, representatives of both the Sierra Club and the National Forest Products Association returned to their constituents and proclaimed victory. Obviously, both had different expectations of outcomes under the law. (p.3)

3. Many Opportunities Exist to Streamline the Existing Regulatory Text

In addition to finding numerous opportunities to streamline the substantive procedural requirements for forest planning, one of the findings of the review of the existing regulation was that much could be done to simplify the regulatory text itself and to enhance its readability regardless of major substantive changes. For example, there were numerous opportunities to simplify language, shorten definitions, eliminate similar or duplicative provisions, improve structural organization, and reduce overlap with other laws, regulations, or Executive orders. In addition, language without real substance should be removed. The composite effect of such changes can be a significant reduction in the length of the regulation, an enhancement of its readability, and a positive step forward towards better understanding and simplification of forest planning.

In reviewing the existing regulation, the agency also has considered the relative roles of the planning regulation at 36 CFR part 219 and the Forest Service Directive System. The review indicated that the rule is better suited for defining the purpose and desired results of planning and the minimum standards for planning than for giving detailed procedural guidelines. As a result, some streamlining has been achieved in the proposed rule by shifting detailed procedural direction to agency directives. To implement the revised regulation, the agency plans to reorganize and revise its directives related to forest planning. Subject to procedures in 36 CFR part 216, substantive revisions to planning direction in Forest Service Manual Chapter 1920 will be made available for public review and comment prior to being adopted.

4. The Solution to Some Problems With the Planning Process Are Not Within the Scope of the Planning Regulation

Only about one-third of the 232 Critique recommendations concern changes that are appropriate to implement through revision of the planning regulation or issuance of related guidance through the Forest

Service Directive System. The remaining two-thirds of the recommendations must be addressed through other actions or channels, such as increasing accountability for performance or improving training.

In addition, even though some aspects of planning are within the scope of the regulation, the real success or failure of some endeavors will depend on the commitment and understanding of agency personnel and the public. A good example of this is public involvement. No amount of regulatory detail can guarantee effective and open communication. Certain expectations can be defined and minimum procedures established, but ultimately the success or failure of the communication between the agency and public depends upon the people involved. As a result, the agency recognizes that even though modifying the planning regulation is a major and essential step towards improving the effectiveness of forest planning, such improvements must occur in concert with other changes and commitments in order for the full potential of forest planning to be realized.

In addition to the preceding four conclusions which had been addressed in the Advance Notice of Proposed Rulemaking, one additional finding has guided development of this proposed rule which were not reflected in the Advance Notice.

5. Principles of Ecosystem Management Need to be Reflected in the Planning Regulation

In the decade following promulgation of the existing planning rule, the concept of ecosystem management has slowly and steadily evolved, and the agency has made clear its intention to move toward an ecosystem management approach to National Forest System management. In recent years, the agency has actively promoted implementation of ecosystem management principles within existing legal requirements. Other Federal agencies are proceeding similarly. Additionally, the spotted owl controversy in the Pacific Northwest has become a focal point for exploring ways to implement the principles of ecosystem management. The validity of an ecosystem approach was recently upheld when the Record of Decision (ROD) for the Range of the Northern Spotted Owl was sustained from programmatic challenge (*SAS* v. *Lyons*, No. C92–479WD (W.D. WA, Dec. 21, 1994)). In that decision, Judge Dwyer stated, ''Given the current condition of the forests, there is no way the agencies could comply with environmental laws without planning on an ecosystem basis'' (slip. Op. @ 32).

In light of the experience in the Pacific Northwest and elsewhere, there is much interest in finding ways for Federal land management agencies to better incorporate the principles of ecosystem management when conducting resource planning and decisionmaking activities. The existing NFMA planning regulation was promulgated in 1982, long before the concept of ecosystem management had begun to be widely recognized. By contrast, the proposed rule has been promulgated with recognition of the role of ecosystem management and represents a significant step toward incorporating ecosystem management into the planning process to the extent permitted by current law.

While basic principles of NFMA remain sound, there are questions as to whether statutory changes may be appropriate if ecosystem management is to become a fully operational concept for the management of National Forest System lands. A related consideration is the interaction of NFMA requirements with numerous other relevant statutes, such as the National Environmental Policy Act (42 U.S.C. 4321), the endangered Species Act of 1973 (16 U.S.C. 1501 *et seq.*), or the Federal Advisory Committee Act (86 Stat. 770). Experience to date has shown that the existing ''crazy quilt'' framework of statutes creates some limitations and uncertainties regarding implementation of ecosystem management concepts. Although progress can be made within the existing legal framework, the agency believes that a review of NFMA and other relevant statutes may be appropriate before the concept of ecosystem management can be transformed from an evolving vision into a fully operational reality.

Moreover, it must be recognized that ecosystem management is a continuously evolving concept. There is still much to be learned regarding how best to implement the principles of ecosystem management when fulfilling the agency's responsibilities for management of National Forest System lands. As a result, the proposed rule should not be viewed as the agency's ultimate vision for implementing ecosystem management, but rather as a transitional step for beginning to incorporate the concepts of ecosystem management into land and resource management planning procedures and to do so in a manner consistent with the requirements of NFMA.

In summary, as the first generation of forest plans prepared under NFMA is coming due for revision, the Forest Service proposes a substantially streamlined planning rule that builds on 15 years of planning experience and evolving concepts of resource management. The primary outcomes anticipated from the proposed rule include: forest plans and forest planning procedures that are simpler, more understandable, and less costly; stronger relationships with the public and other government entities; the incorporation of ecosystem management principles into forest planning; and clarification of the nature of forest plan decisions and their relationship to other planning and decisionmaking processes.

Comparison of Outlines of Proposed Rule to Existing Rule

The following table allows comparison of the existing table of contents for 36 CFR part 219, subpart A to that in the proposed rule:

Proposed rule	Existing rule
219.1 Purpose and principles	219.1 Purpose and principles.
219.2 Definitions	219.2 Scope and applicability.
219.3 Relationships with the public and government entities	219.3 Definitions and terminology.
219.4 Sustainability of escosystems	219.4 Planning levels.
219.5 Framework for resource decisionmaking	219.5 Interdisciplinary approach.
219.6 Forest plan direction	219.6 Public participation.
219.7 Ecosystem analysis	219.7 Coordination with other public planning efforts.
219.8 Interdisciplinary teams and information needs	219.8 Regional planning—general procedure.
219.9 Forest plan amendments	219.9 Regional guide content.
219.10 Forest plan revision	219.10 Forest planning—general procedure.
219.11 Forest plan implementation	219.11 Forest plan content.
219.12 Monitoring and evaluation	219.12 Forest plan process.

Proposed rule	Existing rule
219.13 Statutory timber management requirements	219.13 Forest planning—resource integration requirements.
219.14 Special designations	219.14 Timber resource land suitability.
219.15 Applicability and transition	219.15 Vegetative management practices.
	219.16 Timber resource sale schedule.
	219.17 Wilderness designation.
	219.18 Wilderness management.
	219.19 Fish and wildlife resource.
	219.20 Grazing resource.
	219.21 Recreation resource.
	219.22 Mineral resource.
	219.23 Water and soil resource.
	219.24 Cultural and historic resource.
	219.25 Research natural areas.
	219.26 Diversity.
	219.27 Management requirements.
	219.28 Research.
	219.29 Transition period.

Section-by-Section Description

The principal features of the proposed rule are summarized here, keyed to the proposed CFR section numbers.

Section 219.1 Purpose and Principles

The proposed rule would: (1) Describe the agency's framework for National Forest System resource decisionmaking; (2) incorporate principles of ecosystem management; (3) establish requirements for the implementation, monitoring, evaluation, amendment, and revision of forest plans; and (4) articulate the relationship between resource decisionmaking and compliance with the National Environmental Policy Act (hereafter, NEPA). Unlike the existing rule, the proposed rule would not provide direction for development of initial forest plans, because all but four of those plans are in effect.

Paragraph (b) would identify 10 principles which provide the basis for National Forest System resource decisionmaking and management. The existing rule contains 14 principles. Although the 14 original principles are basically sound in and of themselves, the agency believes the new set of principles better reflects the concepts of ecosystem management and the agency's approach to resource decisionmaking.

The first principle states the agency's commitment to managing for sustainable ecosystems and the multiple benefits which they can yield. The second principle articulates a key aspect of the agency's approach to ecosystem management—that people are part of ecosystems and that meeting people's needs and desires within the capacities of natural systems is a primary role of resource decisionmaking.

The third principle reflects the dynamic nature of ecosystems and that they occur at a variety of spatial scales, with the resulting need for flexible planning processes that consider ecological changes over time. The fourth principle recognizes that ecosystems often cross many ownerships and jurisdictions, making it important to coordinate planning efforts for National Forest System lands with other landowners, governments, and agencies. This principle also addresses the need to respect private property rights and the jurisdictions of other government entities.

The fifth principle notes the importance of open, ongoing, and equitable public involvement. This embodies the agency's belief that such participation by all interested publics is an important and integral part of National Forest System management.

The sixth principle highlights the vital role of scientists in gathering and analyzing information for resource decisionmaking.

The seventh principle recognizes that a fundamental goal of managing National Forest System lands is the optimization of net public benefits, which includes consideration of both quantitative and qualitative criteria.

The eighth principle emphasizes the importance of being able to efficiently adjust forest plans in response to changing conditions and new information.

The ninth principle makes clear that NEPA procedures define the scope and level of analysis conducted for resource decisionmaking and the need for analysis to be commensurate with the scope and nature of decisions being made.

The last principle acknowledges the uncertainty inherent in resource decisionmaking, and the need for resource decisionmaking to proceed using an adaptive approach to resource management.

The 10 principles highlight the underlying concepts and assumptions upon which the remaining sections of the proposed rule are based and set out many of the principles of ecosystem management which are reflected in the proposed rule.

Section 219.2 Definitions

The following words are defined in the existing rule, but would not be included in the definitions provided in the proposed rule, because they are not used or do not vary in meaning from common or well-established use of the term:

Base sale schedule
Biological growth potential
Capability
Corridor
Cost efficiency
Diversity
Even-aged management
Goods and services
Integrated pest management
Management concern
Management direction
Management intensity
Management practice
Planning horizon
Present net value
Public issue
Real dollar value
Receipt shares
Responsible line officer
Sale schedule
Silvicultural system
Suitability
Sustained-yield of products and services
Timber production
Uneven-aged management

The following terms are not defined in the Definitions section of the existing rule, but would be defined in the proposed rule:

Catastrophic event
Category 1 candidate species
Category 2 candidate species

Chargeable timber volume
Conservation agreement
Culmination of mean annual increment
Decision document
Directive
Directive System
Ecosystem analysis
Ecosystem management
Environmental assessment
Environmental impact statement
Even-aged stand
Forest Supervisor
Guideline
Infrastructure
NEPA documents
NEPA procedures
Previous planning rule
Project
Proposed action
Regional Forester
RPA Program and Assessment
Resource conditions
Responsible official
Species and natural community rankings
Standard
Station Director
Sustainability of ecosystems
Tribal governments

The following definitions appear in the existing rule and would be modified or retained unchanged in the proposed rule:

Allowable sale quantity
Forested land (previously listed as ''forest land'')
Goal
Long-term sustained-yield timber capacity
Management prescription
Objective
Multiple-use
Plan area (previously listed as ''planning area'')
Plan period (previously listed as ''planning period'')

Readers of this Supplementary Information should refer to the definitions section of the proposed rule (§ 219.2) for definitions of terms used in this preamble.

Section 219.3 Relationships With the Public and Government Entities

This section focuses on building and maintaining relationships with the public and other government entities and, in conjunction with numerous provisions in other sections of the proposed rule, would substantially strengthen the role of public participation and government coordination compared to the existing rule. This emphasis responds to findings of the Land Management Planning Critique, which highlighted the critical role of ongoing and meaningful public involvement and the need to strengthen coordination with other Federal agencies and State, local and tribal governments. Although the Federal Advisory Committee Act imposes some limitations on how involvement activities can be conducted, a cornerstone of ecosystem management and this proposed rule is the recognition that the public and other agencies and governments must work closely together if resource management issues are to be addressed effectively.

Although this section would specifically address public participation and government coordination, there are numerous other sections of the proposed rule that reflect the agency's recognition of the importance of people in resource management and that reflect the agency's intent to expand opportunities for public involvement in agency planning and for public comment. For example, six of the principles in proposed § 219.1 highlight the role of people in managing the National Forest System (§ 219.1(b)(1), (2), (4)–(7)). There would be two new opportunities for public notice and comment—a 30-day comment period for some minor amendments (§ 219.9(c)(2)(i)) and a 30-day comment period prior to updating a monitoring and evaluation strategy (§ 219.12(c)(2)). In addition, three new provisions designed to provide more information to the public are proposed: (1) the requirement for an annual monitoring and evaluation report (§ 219.12(e)); (2) the requirement to periodically update estimated levels of goods and services and management activities (§ 219.11(d)(2)); and (3) the requirement to conduct and make available the results of a prerevision review when initiating the revision process (§ 219.10(c) and (d)). Involvement in the revision process would also be strengthened by a requirement to provide opportunities for participation in the prerevision review (§ 219.10(c)(2)) and in formulation of a communications strategy for the prerevision review and revision effort (§ 219.10(c)(2)(ii)). Finally, the proposed rule provides opportunities for involvement and coordination in monitoring and evaluation efforts (§ 219.12(a)(1)(x)).

Separate sections in the existing rule for Public Participation (§ 219.6) and Coordination With Other Public Planning Efforts (§ 219.7), would be combined into one section in the proposed rule. Combining the two sections is not intended to diminish the distinctive roles and importance of the public and cooperating agencies and governments; rather, combining these sections allows the agency to avoid repeating the many provisions that are applicable to both the public and cooperating agencies and governments while still providing the ability to address their specific and unique needs.

Proposed paragraph (a) asserts that building and maintaining relationships with the public and other Federal agencies and State, local, and tribal governments is an essential and ongoing part of National Forest System planning and management. Paragraphs (a) (1)–(5) would expand on this statement by further describing five purposes for establishing and maintaining communication with parties interested in forest planning.

The first purpose is to develop a shared understanding of the variety of needs, concerns, and values held by the public. In the past, public involvement efforts have too often promoted polarization of parties and interests. The agency believes communication and understanding of needs, concerns, and values is essential if polarization is to be replaced with cooperative problem solving and a genuine desire to move towards consensus.

A second purpose is to coordinate planning efforts with other Federal agencies and State, local, and tribal governments. This reflects the agency's desire to strengthen working relationships with other agencies and governments as well as an awareness of the distinct roles and jurisdictions that must be recognized during resource planning efforts. This purpose also is consistent with the emphasis in ecosystem management that all parties interested in an ecosystem work together rather than approaching resource planning efforts in isolation. The provision would encourage coordination of planning efforts between the Forest Service and other government entities. However, the Forest Service recognizes that the Federal Advisory Committee Act is an important consideration that can influence the extent to which such coordinated efforts can occur.

The third purpose is to improve the information base influencing decisions and to promote a shared understanding of the validity of this information. If the public is to have confidence in resource decisions made by the agency, there must be confidence in the information used in making those decisions. The public and other agencies and governments can play an integral part in improving the information base used and in helping to assess its validity. For example, this could mean working together with the public, scientific community, and other agencies to conduct an ecoregion assessment, or development of joint data bases with

other agencies. This could also involve providing more opportunities for the public to review the information being used early in the decision process so that concerns about its validity can be identified and resolved in a cooperative and ongoing manner.

The fourth purpose is to strengthen the scientific basis for resource management decisions through involvement of members of the scientific community. Although the agency has always considered the scientific community as part of the public, the proposed rule would highlight the particular importance of the involvement of scientists in resource planning. This emphasis is appropriate because the concept of ecosystem management recognizes and validates the important role of science and the need to integrate scientific expertise more effectively into resource planning and management.

The fifth and final purpose is to resolve conflicts associated with resource decisionmaking. The first four goals, if achieved, lay the groundwork for conflict resolution. Although the Forest Service recognizes that resource management issues are often highly controversial and consensus may not be achievable, agency involvement and coordination efforts, nevertheless, should strive to promote the kind of communication and understanding that helps diminish differences and encourages parties with varying interests to work through issues together.

Paragraph (b) of proposed § 219.3 would require the Forest Supervisor to maintain and periodically update a mailing list of interested individuals, organizations, scientists, and government agencies and officials. This provision is intended to assure a means by which anyone who so desires can be informed of planning activities.

Proposed paragraph (c) would require the maintenance of planning records that document forest plan amendments, revisions, and monitoring and evaluation and would ensure public access to these records. This is generally comparable to § 219.10(h) of the existing rule.

Proposed paragraph (d) would require copies of forest plans and monitoring and evaluation strategies to be accessible to the public at designated locations and is generally comparable to § 219.6(i)(3) of the existing rule.

Paragraph (e) of this section would direct Regional Foresters to seek to establish a memorandum of understanding or other form of agreement to guide coordination of planning efforts when desired by State officials or affected tribal governments. Paragraph (1) (i)–(ii) set forth the content requirements for such agreements, and paragraphs (1) (iii)–(iv) indicate when Forest Supervisors may execute such agreements and when a memorandum of understanding can be jointly executed by two Regional Foresters. This new provision is intended to help strengthen communication and cooperation between the Forest Service and State and tribal governments. This provision would supplement Forest Service authority to enter into such agreements with other Federal agencies or local governments.

Proposed paragraph (f) highlights the need for public involvement and government coordination procedures to conform with NEPA requirements and other applicable laws, Executive orders, or regulations. This is included as a reminder that there are numerous requirements already in place with which the agency must comply. Perhaps the two most notable are public involvement requirements associated with NEPA procedures and the Federal Advisory Committee Act. The Federal Advisory Committee Act has been increasingly recognized as having a substantial impact on how public involvement activities are to be conducted.

Section 219.4 Sustainability of Ecosystems

This section is the central focus of the agency's shift toward an ecosystem approach to resource management. The fundamental premise is that the principal goal of managing the National Forest System is to maintain or restore the sustainability of ecosystems and that this is essential because sustained yield of benefits for present and future generations is more likely to occur when the ecosystems from which those benefits are produced are in a sustainable condition.

This section is also based on the premise that a diversity of plant and animal communities is an inherent feature of sustainable ecosystems. Therefore, this proposed regulation is premised on the assumption that maintaining or restoring the sustainability of ecosystems simultaneously meets the NFMA provision to, ''provide for diversity of plant and animal communities'' (16 U.S.C. 1604(g)(3)(B)).

Seven key themes are woven throughout this section.

1. *Adoption of Sustainable Ecosystems As a Goal.* This proposed section explicitly establishes the maintenance or restoration of the sustainability of ecosystems as a goal and recognizes that the agency has the discretion to determine what processes and information will be used to work toward this goal. Under the proposed rule, the agency would retain the discretion to determine for each plan area which conditions are indicative of sustainable ecosystems and how the plan area could be managed to promote achievement of those conditions. There is nothing in the proposed rule that establishes a concrete standard regarding ecosystem sustainability or diversity.

This discretionary, goal-oriented approach to diversity and maintenance of sustainable ecosystems is consistent with the statutory basis for forest planning and the NFMA diversity provision which has been interpreted by court rulings to be a goal within the context of multiple use. ''Diversity is not the controlling principle in forest planning, although it is an important goal to be pursued in the context of overall multiple-use objectives.'' *Sierra Club* v. *Robertson*, 845 F. Supp. 485, 502 (S.D. Ohio, 1994). The interpretation of the NFMA diversity provision as a goal rather than a concrete standard is supported by the legislative history of the Act and has been upheld to date in a number of court cases. In *Sierra Club* v. *Espy*, No. 93–5050 (5th Cir. Nov. 15, 1994) the court recognized that the Forest Service has discretion to determine how it provides for diversity. See also, *Sierra Club* v. *Robertson*, 784 F. Supp. 593, 609 (W.D. Ark. 1991); *ONRC* v. *Lowe*, 836 F. Supp. 727 (D. Ore. 1993); *Glisson* v. *USFS* (S.D. Ill. August 26, 1993); *Sierra Club* v. *Marita*, 843 F. Supp. 1526 (E.D. Wisc. 1994); *Krichbaum* v. *Kelly*, 844 F. Supp. 1107 (W.D. Va. 1994); *Sierra Club* v. *Marita (Robertson)*, 845 F. Supp. 1317 (E.D. Wisc 1994); in which courts have upheld Forest Service decisions based on NFMA diversity grounds.

In addition, the goal statement in paragraph (a) of proposed § 219.4 is consistent with Section 4(a) of the Multiple-Use, Sustained-Yield Act of 1960 (16 U.S.C. 528) which calls for ''* * * harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land * * *.'' Similarly, Section 2(B) of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1501 *et seq.*, hereafter, ESA), states that one of the purposes of the Act is to ''provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved * * *.''

The premise is that by maintaining or, where needed, restoring the sustainability of ecosystems, the productivity of the land will not be impaired and the ecosystems upon which plant and wildlife species depend will be functioning properly. Thus, the ecological foundation is in place from which multiple benefits can be derived over time. Without those natural systems functioning properly, the ability to provide multiple benefits would be at risk.

The goal in proposed paragraph (a) also is consistent with the multiple-use mission of the National Forest System as mandated by Section 2 of the Multiple-Use, Sustained-Yield Act, which directs the Secretary to ''* * * develop and administer the renewable surface resources of the national forests for multiple-use and sustained-yield of the several products and services obtained therefrom.'' The Act specifically identifies recreation, range, timber, watershed, wildlife, and fish as values for which national forests are administered. Later, at § 219.6(a), the proposed rule would make clear that forest plans address the full range of multiple-uses in an integrated manner and on a sustained-yield basis.

2. *Recognition of the Relationship between Sustainable Ecosystems and Meeting the Needs of People.* The goal statement of § 219.4(a), which is the foundation for this proposed section, clearly links the sustainability of ecosystems to the ability to provide multiple benefits to present and future generations. As stated at § 219.1(b)(2) of the proposed rule, people are considered part of ecosystems, and meeting people's needs and desires within the capacities of natural systems is a primary role of resource decisionmaking. The proposed rule is based on the premise that National Forests are managed to provide multiple benefits to people in a manner that is sustainable over time, and that those benefits which people need and desire will only be sustained when the ecosystems from which they are derived are sustained.

Although proposed section § 219.4 is focused on the biological and physical aspects of sustainable ecosystems, the proposed rule would make clear that forests plans address the full range of multiple-uses (§ 219.6(a)). In addition, proposed § 219.8(c) would make clear that the social and economic effects of resource decisions must be considered when amending or revising the forest plan. Thus, the proposed rule provides a holistic approach to National Forest management by assuring that the needs of people and the capacities of natural systems in both the near and long-term are considered when making resource decisions.

3. *Adoption of ''Coarse Filter/Fine Filter'' Approach.* This section of the proposed rule incorporates the ''coarse filter/fine filter'' concept of conservation biology, which holds that a strategy focused on maintaining the function, composition, and structure of an ecosystem as a whole will be adequate to meet the needs of most species. In essence, most species' needs are ''caught'' by the mesh of the ''coarse filter.'' In contrast, some species have additional needs or more narrow habitat requirements that are not adequately met by focusing solely on the ecosystem as a whole. Under these circumstances, additional ''fine filter'' measures are needed to ''catch'' and support the special needs of species whose needs otherwise would have gone unmet.

The proposed rule provides the ''coarse filter'' by requiring that forest plan goals and objectives address the desired composition, function, and structure of ecosystems. These three aspects are generally considered to be integral to understanding and describing sustainable natural systems. Ecosystem structure includes the distribution and pattern of ecosystem elements such as forest openings and riparian corridors at a landscape scale, and the amount and arrangement of special habitat features such as seeps, snags and down woody material at smaller scales. Ecosystem composition includes the plant and animal species which make up an ecosystem. Ecosystem function includes processes and the relationships among processes, such as nutrient cycling in a system. In many cases, these three aspects of ecosystems will be described in the forest plan for ecosystems at fairly large scales, such as for ecosystems encompassing sizable portions of the plan area.

The ''coarse filter'' can be provided at a variety of spatial scales, however. For example, proposed paragraph (b)(3) would direct that forest plans are to provide for the protection of rare natural communities. In many cases, these areas provide the ''coarse filter'' even though they may only be a fraction or an acre in size. By protecting rare natural communities, many individual species that are dependent on those habitats and communities are protected, thereby exemplifying the ''coarse filter/fine filter'' concept.

The ''fine filter'' safeguard is provided in the proposed rule through the requirements to protect threatened and endangered species. For example, proposed § 219.4(b)(4) would require that forest plans provide for the conservation of species listed as threatened and endangered, or proposed for listing, under the Endangered Species Act (ESA). It also would make explicit that once a species is listed or proposed for listing, management activities on National Forest System lands which affect the habitat of the species must comply with the requirements of ESA. Additional ''fine filter'' protection is provided by the requirements of Option I to protect sensitive species, and the requirements of Option II to address viability of species which are addressed later in this section.

4. *Clear Intent to Seek to Prevent Listing of Species Under the Endangered Species Act.* This proposed rule would send a clear signal that forest plan direction should seek to prevent the need for a species being listed under the Endangered Species Act (ESA). The ESA addresses the conservation of species that have been listed as threatened or endangered, but does not address protection of those species for which there is evidence of a trend toward listing but which are not yet listed. Option I of the proposed rule would target and treat as sensitive those species for which there is some evidence of risk but which are not yet imperiled to the point of being listed as threatened or endangered.

5. *Emphasis on Strengthening Cooperation and Sharing of Professional Expertise.* Another theme of the proposed rule is strengthened cooperation and coordination with other resource professionals. For example, Option I of the proposed rule utilizes the expertise of the U.S. Fish and Wildlife Service and the Network of Natural Heritage Programs and Conservation Data Centers in the identification of sensitive species and natural communities. In addition, this section of Option I of the proposed rule parallels both the spirit and application of a Memorandum of Understanding (MOU) recently signed by the Forest Service, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and other government agencies (94–SMU–058; January 25, 1994) to guide cooperation and participation in the conservation of species toward listing. Like this Memorandum of Understanding, the proposed rule (Option I) focuses on those species tending toward listing in order to preclude their designation as threatened or endangered, stresses interagency cooperation to address this goal, and recognizes the value of addressing species conservation within an ecosystem approach.

6. *Focus on Habitat Rather Than Populations.* Option I of the proposed rule would emphasize the management of habitat for fish and wildlife species, and not the management of populations as some would interpret the existing rule. As used in this section, habitat capability includes the quantity, quality, and distribution of habitats needed by a species. A focus on habitat capability is more appropriate than a focus on populations because there are many factors affecting populations that are not under the agency's direct control. These may include disease, predation, hunting or fishing pressures, natural cyclical changes and conditions occurring or actions being taken outside the plan area.

The proposed rule would not alter the current cooperative relationship with State fish and wildlife agencies. The Forest Service role has traditionally been to provide habitat rather than manage numbers of species. States generally exercise jurisdiction over hunting and fishing on National Forest System lands.

7. *Use of Best Available Information.* The agency recognizes that there are many uncertainties regarding how to maintain or restore sustainable ecosystems and that scientific knowledge will always be incomplete and evolving. The terms ''sustainable,'' ''restoration,'' ''maintenance,'' or ''deteriorated ecosystem'' are all subject to varying and evolving interpretations. Furthermore, there is an infinite number of ecosystems, and realistically, planning efforts must be allowed to focus on only those ecosystem considerations of most relevance to decisionmaking. Therefore, in concert with the principle that the agency must retain discretion in its approach to maintaining or restoring sustainable ecosystems, the proposed rule (§ 219.4(e)) also recognizes the inevitable need to use the best available information in making the various decisions associated with approval of a forest plan. The proposed rule makes clear that there is no expectation that there will ever be a precise and universally accepted understanding or measure of what sustainable ecosystems are and the actions appropriate to maintain or restore them; rather, the expectation established by this proposed rule is that the agency will use the best information available and an adaptive management approach in its efforts to maintain or restore sustainable ecosystems and to manage the National Forest System toward that outcome.

Adaptive management is considered one of the cornerstones of ecosystem management. This concept acknowledges that our understanding of ecosystems is always changing, that we learn by observing how natural systems respond to actual situations, and that we should adapt our actions accordingly. Adaptive resource management recognizes that decisions cannot always be halted until research is complete, especially since, at times, inaction can have far-reaching consequences.

Proposed paragraph § 219.4(e) not only would establish the use of an adaptive management approach for dealing with incomplete and changing information, but also would clearly signal that resource decisionmaking need not be halted if there is uncertainty or incomplete knowledge. In accordance with NEPA procedures (40 CFR 1502.22), decisionmaking is expected to proceed using the best information available commensurate with the decision being made, and monitoring and evaluation is to be used to assess the effects of those decisions and to identify new information which may come available. Since project decisions for the decade of the forest plan are approved incrementally during the plan period, the opportunity exits to adapt those decisions as needed to respond to new information.

Options for Providing Diversity

In addition to the provisions of § 219.4(b)(1)–(4), this proposed rule sets out two options for providing diversity. Proposed Option I would provide for diversity by addressing sensitive species. By contrast, Option II which is basically the requirements of the current regulation would provide for diversity by addressing viability of species.

Option I. Proposed § 219.4(b)(5) creates a system for protection of habitat capability for sensitive species in order to prevent the need for listing the species as threatened or endangered under ESA and to preclude extirpation of the sensitive species from the plan area.

Paragraph (b)(5)(i) describes how sensitive species would be identified. First, sensitive species can encompass species, subspecies, populations, or stocks of vertebrates, invertebrates, vascular plants, bryophytes, fungi, and lichens. Second, the species must be known to occur or to be likely to occur on National Forest System lands. Third, the species must meet one of the criteria described at (b)(5)(i)(A)–(C). These criteria utilize a combination of information derived from the U.S. Fish and Wildlife Service and the Network of Natural Heritage Programs and Conservation Data Centers.

The U.S. Fish and Wildlife Service is the Federal agency with primary responsibility for administering ESA. The Network of Natural Heritage Programs and Conservation Data Centers is generally considered to have one of the most comprehensive and accurate compilations of information on species that are imperiled in the United States. The Network consists of approximately 85 data centers, including at least one in each State. Each data center is established within a local institution, most frequently as part of a government agency responsible for natural resource management and protection, and each center functions in support of Natural Heritage Programs. The Nature Conservancy is involved in the establishment and operation of the data centers by providing technical, scientific, and administrative support and training. The Conservancy also makes available the computer technology, data inventory and management methodology, and procedural manuals used.

Natural Heritage Programs and the Conservation Data Centers provide continuously updated, computer-assisted inventories of the biological and ecological features and biodiversity preservation of the region in which they are located. Most data centers use the Biological and Conservation Data System as the basis for operation, a system developed and refined by The Nature Conservancy since 1974.

Proposed paragraphs (b)(5)(ii) (A) and (B) would establish the process for ensuring that forest plan direction is responsive to the needs of sensitive species. The first step is to identify the sensitive species for the plan area using the rankings and listings and to identify their habitat needs. Second, the habitat needs for the sensitive species, or assemblages of sensitive species, are compared against current forest plan direction with consideration of the likely contribution of lands outside the plan area. When the forest plan is being revised, habitat needs are compared to the tentatively proposed revisions to forest plan direction. This provides for consideration of sensitive species habitat needs throughout the forest plan revision process and inclusion of this direction in the draft environmental impact statement and proposed revised forest plan when they are released for public comment.

In accordance with (b)(5)(ii)(B)(1), forest plan direction must be modified if a continuing downward trend in habitat capability is predicted to occur within the plan area and that downward trend is predicted to result in the need for Federal listing of the species or if it is predicted that the sensitive species will be extirpated from the plan area.

Paragraph (b)(5)(ii)(B)(2) would establish that if a conservation agreement has been approved by the Forest Service and either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, and if relevant direction from that agreement has been incorporated by amendment into the forest plan, the requirement to establish direction to protect the habitat capability of the species is met. The forest plan amendment requires full NEPA analysis and disclosure.

Paragraph (b)(5)(ii)(B)(3) would affirm that the needs of a threatened or endangered species take precedence over a sensitive species should a conflict occur relative to protective measures needed. Although it is not anticipated such a conflict would happen often, it is important that the rule provide for such circumstances because the proposed rule's requirements for protection of both sensitive species and threatened and endangered species could theoretically be in conflict. It is reasonable that the rule provide that listed species be given priority in the event of conflict with the needs of a sensitive species since listed species are at greater risk than sensitive species and there is a statutory obligation to provide for the conservation of listed species.

Paragraph (b)(5)(ii)(B)(4) would require management direction for sensitive species to be established using the best information available commensurate with the decision being made. This idea is also echoed in paragraph (e) of this section. In addition, paragraph (b)(5)(ii)(B)(4) would make clear that determinations of whether the habitat needs of sensitive species are adequately met and the degree of protection needed are inherently dependent on professional judgment.

Paragraph (b)(5)(iii) proposes procedures for handling newly identified sensitive species. The categories and rankings of sensitive species would be reviewed annually as part of monitoring and evaluation, and if additions to the listings have occurred, the adequacy of existing forest plan management direction to meet the needs of those species would be assessed. This paragraph also would make clear that even though the rankings and categories are required to be reviewed on an annual basis, this does not relieve the agency of its obligation to consider new information at any time a project is under consideration that affects the habitat capability of a sensitive species.

Option II. As an alternative to the regulatory text proposed in Option I of § 219.4(b)(5), the agency has set forth alternative regulatory text, which is almost identical to the existing rule at § 219.19; however, a few nonsubstantive edits have been made to assure consistency of terminology and coding with the remainder of the proposed rule.

There are five key differences between the Option I approach to sensitive species and the alternative text of Option II which is based on § 219.19 of the existing rule. These are (1) use of the term ''viability''; (2) establishment of clear analytical expectations that are reasonable to implement; (3) scope of species protected; (4) goal of protective measures; and (5) role of management indicator species.

First, in Option I the proposed rule does not use the term ''viability''. NFMA does not use the term ''viability,'' nor is there anything in the statute or legislative history that indicates the agency was expected to insure viable species or pursue the type of viability analyses described in current scientific literature (for example, M.E. Soule, Viable Populations for Conservation (Cambridge, 1989), 189pp.) Rather, the statute requires that the Secretary of Agriculture promulgate regulations to guide the Forest Service development and revision of Forest Plans. One of the statutory requirements is ''specifying guidelines for land management plans developed to achieve the goals of the Program which * * * (B) provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple use objectives * * *.'' 16 USC 1604(g)(3)(B).

Translating the statutory language to provide for diversity of plant and animal communities through regulations, plans and actions has been and continues to be a formidable challenge, as the Committee of Scientists who provided scientific advice to the Forest Service on the crafting of the current regulation accurately predicted at the time of their promulgation. The Committee stated that, ''it is impossible to write specific regulations to 'provide for' diversity: and that ''there remains a great deal of room for honest debate on the translation of policy into management planning requirements and into management programs'' (44 FR 26,6000–01 & 26,608).

The Forest Service has found that the term ''viability'' has been subject to continuously evolving scientific interpretation and no longer meets the agency's expectations at the time the rule was written. When the existing rule was finalized, ''viability'' was a general concept not associated with specific scientific interpretations. Since 1982, however, the concept of viability has become the object of intense discussion and varying interpretation within the scientific community. The extensive and expensive amount of scientific expertise, data, and technology needed for conducting species viability assessments as currently described in the scientific literature is far beyond what was originally envisioned by the Committee of Scientists when developing the planning rule.

Even when addressing the overall topic of diversity, the Committee of Scientists clearly had not envisioned the type of highly quantitative analysis which has come to be associated with viability assessments. The Committee stated, ''We analyzed the issue in our report and stressed that, in our opinion, Congress used the term diversity to refer to biological variety rather than any of the quantitative expressions now found in the biological literature.'' (Rules and Regulations, Final Environmental Impact Statement, Appendix E—Supplementary Final Report of the Committee of Scientists (August 17, 1979), 44 FR 53967 (September 17, 1979)).

Furthermore, the current regulatory requirement is ''to insure viable populations will be maintained.'' As a practical matter, there is a growing recognition that a requirement to ''insure'' viable populations, if interpreted literally, envisions an outcome impossible to be guaranteed by any agency, regardless of the analytical resources marshalled.

Rather than continuing use of a regulatory term which is subject to such varying interpretations and expectations, Option I would define more precisely what is required for species protection. This approach in Option I is consistent not only with the original intent of the regulation, but also with the underlying statute.

Second, the analysis needed to meet the requirements of Option I is better defined, more meaningful, and more capable of accomplishment than the analysis some associate with the existing rule. Species viability analysis has evolved to where it currently involves such information as species habitat needs, trends in habitat capability, trends in other factors affecting population (e.g.—disease, predation, overutilization), relationship of habitat capability to population numbers, population demographics (e.g.—reproductive success, sex ratios, mortality rates), effective population size, genetic measurements, and development of risk assessments. The

technology, data, and scientific expertise to conduct and maintain numerous scientifically sound viability analyses given current scientific interpretations is far beyond what is available to any agency or scientific institution. Although the agency's position has been upheld in court that the requirements of § 219.19 of the existing rule can be met without such complex analyses, the proposed rule offers a timely opportunity to clarify analytical expectations.

In addition, it is expected that for most sensitive species, the requirements of (b)(5)(ii)(B) of Option I of the proposed rule can be met using habitat capability information. Analyses involving population demographics and prediction of population trends, which requires far more extensive and costly data, would likely only be needed when a continuing downward trend in habitat capability is predicted to be leading toward the listing or extirpation of the species. In addition, it is intended that there be no circumstances where Option I of the proposed rule would trigger the need for studies of long-term genetic diversity, in contrast to the case if thorough viability assessments were to be required.

Furthermore, Option I of the proposed rule recognizes that individual sensitive species may often be able to be grouped into assemblages of sensitive species with similar habitat needs. By focusing on assemblages of sensitive species rather than individual species whenever possible, analytical burden and costs are reduced without impairment to species protection.

The third key difference between the proposed approach to sensitive species in Option I and that in Option II is the scope of the species addressed. In contrast to § 219.19 of the existing rule which addresses only native and desired non-native vertebrate species, Option I the proposed rule would include vertebrates, invertebrates, vascular plants, bryophytes, fungi, and lichens. This is appropriate since species other than vertebrates play an important role in ecosystems and merit protection when at risk.

The scope of proposed Option I also varies from the existing rule in that it would include as sensitive species only those species at risk range-wide; that is, those species imperiled throughout their range. For example, a plant species abundant in several States, but very limited in a particular plan area, would not be of range-wide concern and thus would not be identified as a sensitive species under Option I of the proposed rule.

The agency believes the focus on species on range-wide concern is appropriate in order to address the two underlying reasons for protecting sensitive species: (1) To address how the agency will meet the NFMA goal of providing a diversity of plant and animal communities, and (2) to attempt to preclude the listing of species under ESA. Both are achieved by proposed Option I without expanding the scope of sensitive species to include those of only local concern.

Option I of the proposed rule puts considerable emphasis on providing a diversity of plant and animal communities. For example, the provisions of proposed § 219.4 address establishing forest plan direction for sustainable ecosystem conditions, soil and water protection, protection of rare natural communities, protection of threatened and endangered species, and protection of sensitive species in order to attempt to prevent extirpation from the plan area or listing under ESA. These all work together to provide a diversity of plant and animal communities within the plan area.

Under the ''coarse filter/fine filter'' concept, the ecological conditions which will occur as a result of these various provisions for providing diversity should meet the needs of many species of local, but not range-wide, concern. For example, many species of local concern, but not at risk range-wide, are associated with rare natural communities addressed in the proposed rule at § 219.4(b)(3). The agency believes that adding yet another ''fine flter'' layer of protection, by including as sensitive species those not at risk range-wide, and the extensive additional analysis this would require, goes beyond what is necessary to meet the two underlying reasons for protecting sensitive species. It should be noted, however, that nothing in the proposed rule precludes the Forest Service from working with State agencies and organizations to determine whether to protect species of local concern even though such protection would be beyond the requirements of Option I of the proposed rule.

The fourth key difference between the approach to sensitive species in Option I and the alternative text in Option II is the goal of protective measures. Under the existing rule, the goal is to ensure that viable populations are maintained. But, as explained previously, the concept of a ''viable population'' has been subject to evolving interpretations. Option I of the proposed rule would make the goal much more explicit; that is, for sensitive species, to prevent their listing under the ESA and to prevent their extirpation from the plan area. This second goal is deemed appropriate because, for species of range-wide concern, the agency feels it is undesirable to lose their representation from the plan area due to their contribution to providing a diversity of plant and animal communities. Under some circumstances the first goal, to prevent listing of a sensitive species, may not be adequate to prevent extirpation of a sensitive species from the plan area because a species extirpated from one plan area may not necessarily be more prone to listing as threatened or endangered.

The final key difference is the Option I of the proposed rule would not require the identification of management indicator species. As noted in the 1991 Advance Notice of Proposed Rulemaking, there is diminishing scientific support for focusing solely on individual species as indicators of the welfare of a group of associated species. Instead of requiring management indicator species, the monitoring and evaluation provisions of the proposed rule would allow for establishing whatever measurable indicators are appropriate in order to determine progress towards achieving goals. In some cases, individual species may be an appropriate measure of whether ecosystem goals are being achieved and can be used as indicators.

Dynamic Nature of Ecosystems. Paragraph (c) of proposed § 219.4 recognizes the dynamic nature of ecosystems and the importance of evaluating ecosystem disturbances in the context of ecological processes and resilience. Ecosystem disturbances are those events that significantly change the existing pattern of an ecological system. Examples of such disturbances include both natural or human-induced phenomena such as wildfires, floods, or oil spills. Resilience is a term used to describe the ability of an ecological system to maintain its functions despite disturbance.

Paragraph (c) recognizes that disturbances are a natural and sometimes even essential part of many ecosystems. Similarly, other changes may be naturally occurring within an ecosystem, such as the progression of vegetation from one seral stage to another over time. Therefore, sustaining an ecosystem does not imply reaching or maintaining a static condition, but rather managing in such a way that naturally occurring disturbances and changes allow the ecosystem to retain the characteristics which provide resiliency.

Some examples of ecosystems in which disturbance is required for

sustainability are the fire-adapted pine forests. Lodgepole pine and sand pine communities require stand replacement fire (or some surrogate) to sustain those communities through time. Ponderosa pine and longleaf pine communities require recurring, low intensity fires to sustain the structure and functioning of the ecosystem.

Paragraph (c) would assure that forest plan direction intended to maintain or restore sustainable ecosystems was developed with recognition of the dynamic nature of ecosystems and natural role of disturbances. It should be noted that this provision does not specifically require analysis of the ''range of natural variability'' or require that future conditions stay within historic ranges of variability. The value of the ''range of natural variability'' in gaining a better understanding of sustainable ecosystem conditions is recognized, but the agency does not intend to mandate that all forest plans must provide for conditions within such a range.

Multiple Spatial Scales. Paragraph (d) recognizes that ecosystems exist at multiple scales and are infinite in number. For example, the span of ecosystems can range from the microscopic world of life occurring on the trunk of a fallen tree to the range of a migratory bird that travels annually from the tropics to the arctic. It is impossible and unnecessary to expect a forest plan to address all of the ecosystems which occur within a plan area. Therefore, paragraph (d) would establish that the forest plan should address those ecosystems of most relevance to forest plan decisionmaking, with the intent being to limit efforts to a practical number and scope.

Role of Lands Outside the Plan Area. Consideration of conditions outside the plan area is an integral part of the concept that Federal lands should be managed from an ecological perspective rather than one limited by jurisdictional boundaries. This consideration must occur, however, without detriment to the rights of private landowners or the authorities of other government jurisdictions. Paragraph (a) of this section of the proposed rule would, in part, direct consideration of the contribution of lands outside the plan area when establishing forest plan direction. For example, when evaluating the habitat capability of a sensitive species, the quality, quantity, and distribution of habitat within the species' range would be considered in the context of the plan area. However, this consideration does not mean that the forest plan would in any way address how to manage these other lands. Instead, the responsible official might choose to alter decisions in the forest plan regarding management of National Forest System lands due to conditions on these other lands, if that should be determined to be desirable to help maintain or restore sustainable ecosystems.

Protection of soil and water resources. Paragraph (b)(2) would address soil and water resources. This paragraph of the proposed rule would not only provide for forest plans to address the protection of soil and water resources, but also the restoration of existing conditions harmful to soil and water quality.

Section 219.5 Framework for Resource Decisionmaking

Paragraph (a) explains that the agency uses a staged decisionmaking process, with forest plans being used to allocate the lands and resources of the plan area through management prescriptions, and project decisionmaking being the point at which site-specific activities are authorized. Paragraph (a) also explains that forest plan and project decisions must adhere to legal requirements and that an additional source of direction guiding management of the National Forest System is direction issued through the agency's Directive System.

The staged decisionmaking process described in the proposed rule is consistent with a series of administrative appeal decisions. These include the Chief's appeal decision on the Idaho Panhandle Land and Resource Management Plan (Appeal No. 2130, August 15, 1988); the Chief's appeal decisions on the Flathead National Forest Land and Resource Management Plan (Appeals No. 1467 and No. 1513, August 31, 1988). For court decisions upholding the staged decisionmaking approach of forest plan and project levels, see *Cronin* v. *USDA,* 919 F.2d 439, 447–49 (7th Cir. 1990); *Idaho Conservation League* v. *Mumma,* 956 F.2d 1508, 15511–12 (9th Cir. 1992); *Resources Ltd Inc.* v. *Robertson,* 789 F. Supp. 1529 (D.Mt. 1991) aff'd in part (NEPA, NFMA) and reversed in part (ESA), 8 F.3d 713 (9th Cir. 1993) (amended July 5, 1994); *Swan View Coalition* v. *Turner,* 824 F.Supp. 923 (D. Mt. 1992); *Sierra Club* v. *Robertson,* 810 F.Supp. 1021 (W.D. Ark 1992); Eighth Circuit found no standing and alternatively affirmed lower court on the merits, 23 F.3d. 753 (8th Cir. 1994).

There is currently a conflict between the Eighth and Ninth Circuits as whether the forest plans without a project decision present a justiciable controversy. ''We are aware that on several occasions the Ninth Circuit has entertained challenges to forest plans similar to the Plan here in issue. [citations deleted] * * * we decline to apply them [Ninth Circuit decisions] as a basis for finding that the appellants have standing to attack the Plan outside the context of a proposed site-specific action that causes or threatens to cause injury in fact.'' *Sierra Club* v. *Robertson,* 28 F.3d 753, 759–60 (8th Cir. 1994). See also, *Wilderness Society* v. *Alcock,* F. Supp. (N.D. Ga. September 30, 1994) finding the Eighth Circuit reasoning more persuasive and holding that plaintiffs' claims against approval of the Cherokee forest plan did not present a justiciable controversy.

Even the Ninth Circuit recognizes that forest plan EIS's are ''an early stage, where the EIS is 'merely' programmatic.'' *Idaho Conservation League* v. *Mumma,* 956 F.2d at 1523. The Ninth Circuit has also held that when a programmatic EIS ''is prepared, site-specific impacts need not be fully evaluated until a 'critical decision' has been made to act on site development.'' *Salmon River Concerned Citizens* v. *Robertson,* 32 F.3d 1346, 1357 (9th Cir. 1994).

Paragraph (a)(1) describes the first stage of the agency's staged decisionmaking process—forest plans. Forest plans allocate the land and resources of the plan area through management prescriptions which consist of goals, objectives, standards, and guidelines.

Paragraph (a)(1) would also establish a key point essential to understanding the nature of a forest plan; i.e., that forest plans do not compel the agency to plan for or undertake any specific projects, but do establish limitations on actions that may be authorized later during project decisionmaking. This concept is central to understanding the role of a forest plan and is addressed in more detail under the preamble discussion of § 219.6.

Paragraph (a)(1) also would clarify that forest plans must not conflict with laws or regulations and should not conflict with policy and procedure issued through the Forest Service Directive System. Although it has generally been understood that forest plans must not conflict with laws or regulations, there is not such common understanding of the relationship of directives issued through the Directive System to forest plan direction. The proposed rule seeks to end this misunderstanding. As noted in paragraph (b)(1), any conflict with an agency directive should be identified and the rationale for not complying with such a directive provided at the time of forest plan amendment or revision. The relationship between forest plans and

directives is addressed in further detail under the preamble discussion of § 219.5(b)(2).

Proposed paragraph (a)(1)(i) would limit the area covered by a forest plan to one or more National Forests and/or other units of the National Forest System within the jurisdiction of a single Forest Supervisor. One forest plan can be developed, however, when a single National Forest is administered by several Forest Supervisors. Currently, the Tongass National Forest in Alaska is the only National Forest administered by more than one Forest Supervisor. These provisions are not substantively different from the requirements of the existing rule at § 219.4(b)(3).

Establishing a plan area based on administrative boundaries may appear to conflict with the principles of ecosystem management. Some may argue that resource planning should occur based on areas with shared ecological conditions rather than on boundaries established for administrative purposes. The agency recognizes the benefits that can be gained from taking a more ecological approach to establishing the area to be encompassed by a forest plan. In the long run, a realignment of plan boundaries should be considered. In the short-run, however, there are practical considerations for continuing the current approach.

First, NFMA does not clearly articulate the area to be covered by a forest plan. Although Section 6(f)(1) of NFMA directs ''one integrated plan for each unit of the National Forest System,'' a unit is not specifically defined. The determination of the unit for planning is complicated by provisions of Section 13 of NFMA, which require certain limitations on timber removal to be determined on a National Forest basis. Provided such timber-related requirements could be met, the agency believes it does have discretion under the statute to redefine, through a new rule, the geographic area to be covered by a forest plan.

However, realigning the entire National Forest System into a new set of plan areas for forest planning introduces significant new and immediate challenges. For example, where should new boundaries be drawn? Ecosystems exist at a variety of scales, and ecological units can be defined variously. Determining the best boundaries for planning purposes is not a simple process. How can the public be involved in delineating the new plan area? How might a change in boundaries of the plan area affect the public's interest and ability to participate in the planning process? Might the change be perceived to be more advantageous to some segments of the public than others? How would such a change effect National Forests where revision efforts are already underway or scheduled to begin in the near future? How should such a realignment be coordinated with the planning efforts of other agencies and governments? These are questions which the agency is currently not prepared to answer, but which merits careful examination before changes in plan area boundaries should occur.

This agency also recognizes that roughly two-thirds of all forest plans are or will be undergoing either significant amendment or revision in the next 1–2 years. Redefining plan areas would delay revision, which would be detrimental to the public interest and to resource management, as well as increase the risk of exceeding the 15-year period between revisions. Rather than introducing a complex and time-consuming new decision to be made before initiating the planning process, the agency expects to take various administrative actions to mitigate the disadvantages of planning based on administrative boundaries.

For example, planning efforts can be synchronized among those National Forests that share ecological characteristics through the use of joint planning teams and development of parallel schedules. Similarly, the mechanism for simultaneous plan amendment or revision, as addressed at proposed § 219.5(a)(1)(ii), is intended to facilitate achieving such coordination across plan area boundaries.

Proposed paragraph (a)(1)(ii) would permit forest plan direction to be established for more than one plan area by simultaneously amending or revising the appropriate forest plans. Since this occurs through the amendment or revision of forest plans, NEPA procedures would still apply. For example, if the Regional Forester wanted to establish a forest plan standard for all lands within the range of a particular wildlife species, and the range encompassed three plan areas, the Regional Forester could establish a new standard by simultaneously amending those three forest plans, with associated NEPA disclosure of effects.

The concept of simultaneous amendment or revision is an essential part of integrating ecosystem management into the agency's resource decisionmaking framework. Ecosystem management necessitates a flexible approach to the spatial scale for planning and decisionmaking; the proposed approach allows resource decisions to be made at whatever scale is appropriate. Even though a forest plan document itself is limited to administrative boundaries, the forest plan direction it contains can be derived from analysis and decisions at any appropriate scale or land area regardless of administrative boundaries.

The proposed rule would discontinue regional guides as required by the existing rule. As noted in the Advance Notice of Proposed Rulemaking, agency experience has shown that regional guides may no longer be the most effective and efficient means for providing regional direction. In reality, most regional guides did not fully achieve the role of being the meaningful or effective documents originally envisioned. Moreover, the rigorous requirements of §§ 219.8 and 219.9 in the existing rule siphoned a significant investment of staffing and funds from forest or project planning efforts. The provision for simultaneous amendment or revision would provide a means to establish resource direction at a regional scale, or any other appropriate scale, and, therefore, is believed to be a more effective approach to providing multi-forest direction than a regional guide.

Proposed paragraph (a)(2) would identify project decisions as the second stage of the agency's decisionmaking process. The proposed rule would make clear that it is at the project level that the authorization is made to conduct resource activities, not at the forest plan level. Paragraph (a)(2) would also make clear that NEPA procedures must be followed when approving a project, and projects must be consistent with the forest plan.

As discussed previously, various court decisions have upheld the staged decision approach of forest plans and project decisionmaking. One important basis for this staged approach and the relationship between forest plans and projects rests largely upon the requirements for compliance with NEPA. In a landmark court case (*State of California* v. *Block*, 690 F.2d 753 (9th Cir. 1982)), the Ninth Circuit stated that ''the critical inquiry in considering the adequacy of an EIS prepared for a large scale, multi-step project is not whether the project's site-specific impact should be evaluated in detail, but when such detailed evaluation should occur.'' The court determined that ''[t]his threshold is reached when, as a practical matter, the agency proposes to make an irreversible and irretrievable commitment of the availability of resources to a project at a particular site.''

As a practical matter, it is impossible for a forest plan to identify all of the projects to be implemented for a 10-year period, adequately disclose their site-

specific environmental effects in an accompanying environmental impact statement, and comply with the multitude of statutes and regulations applicable to project activities. Furthermore, new information regarding the relationship among proposed projects and effects of proposed actions within a forest is constantly being developed. No matter how sophisticated forest models become, it is doubtful that the order and relationship of possible activities can ever be forecast with enough precision at the forest plan approval stage to meet the requirements of environmental laws or correspond to the realities of a changing world. In addition, many activities occurring on a forest are initiated by forest users and not the Forest Service. The relationship of projects initiated by others and projects planned by the Forest Service is continuously changing. Thus, the forest plan is best viewed as a dynamic management system that provides the framework for further decisionmaking at the project level.

Under the existing rule, project decisions can be made in a forest plan provided they are identified in the Record of Decision and adequately disclosed in associated NEPA documents. The proposed rule would eliminate this Option in order to clarify the distinction between the two stages of decisionmaking and because this option has not been commonly used in the past.

The two-stage decisionmaking process described in the proposed rule does not preclude multiple steps at the project level. Examples include some multi-stage recreational development decisions such as for ski areas (*Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 322, 336–37 (1989)), or the multiple decision points in oil and gas leasing, exploration, and development where a series of decisions is made over time (see 36 CFR 228, 228.102 (55 FR 10423, March 21, 1990)). In most cases, however, project decisions are not of this complexity, and the project decision occurs in a single step.

Paragraph (b) of proposed § 219.5 would explain how forest plans are to be reconciled with changing legal requirements, new agency directives, or new information from other planning efforts. In accordance with proposed paragraph (b)(1), if a change in law or regulation conflicts with forest plan direction, the Regional Forester must direct that the plan be brought into compliance following the procedures of § 219.9 or § 219.10 and specify the timing for doing so. The proposed provision to permit nondiscretionary changes at § 219.9(e) provides a mechanism for quickly changing forest plan direction to respond to changes in legal requirements for which there is no discretion in the manner of compliance.

Proposed § 219.5(b)(2) (i) and (ii) address responsibilities regarding reconciliation of forest plans with changes in agency direction issued through the Directive System. As described at paragraph (b)(2)(i), an official issuing a directive must determine if forest plans are to be made consistent with a newly issued directive when it appears that the directive would conflict with forest plan direction. If so, the official must specify that plans be changed following the procedures of § 219.9 or § 219.10 and the timing for doing so. In the event of conflict between an agency resource directive and direction in a forest plan, the forest plan takes precedence. Accordingly, the agency maintains discretion to determine when a forest plan should be amended to be consistent with agency directives. As stated at § 219.5(a) of the proposed rule, agency directives are subject to NEPA procedures, as is the process for forest plan amendment.

Reconciliation of forest plans and agency directives as described at paragraph (b)(2)(ii) addresses those situations where a directive has been issued, but it was not readily apparent at the time that it might conflict with forest plans. To address such situations, the Forest Supervisor is responsible for periodically reviewing resource management amendments or supplements to the Directive System as part of the monitoring and evaluation process. If a conflict occurs between forest plan direction and a newly issued directive, the Forest Supervisor must either amend the forest plan so that it no longer conflicts with the directive, or notify the Regional Forester why such an amendment is not deemed appropriate. Consistent with agency policy at FSM 1103, if the directive had been issued at the National level, the Regional Forester would be expected to notify the Chief of the concerns with the newly issued directive.

The provisions of (b)(2)(i)–(ii) are closely related to the provision of paragraph (a)(1) of this section which directs that where there is substantial conflict between a resource management directive and a forest plan amendment or revision, the responsible official is expected to identify the conflict and include the rationale for the departure in the decision document. In order to enhance understanding of these provisions, a brief explanation of the Directive System is provided as follows.

The Forest Service Directive System consists of the Forest Service Manual and Handbooks in which the agency's policy, practice, and procedure are codified. The system serves as the primary basis for the internal management and control of all programs and as the primary source of administrative direction to Forest Service employees. The Forest Service Manual contains legal authorities, management objectives, policies, responsibilities, delegations, general instructions, and guidance needed on a continuous basis by Forest Service line officers and staff at more than one unit to plan and execute programs. New or revised direction is issued by amendment or interim directive, whereas direction which expands on directives issued by a higher level is issued by supplement. For example, a Regional Forester may issue a regional supplement in order to expand on the national direction issued by the Chief.

Directives issued through the Directive System are subject to NEPA procedures. In addition, issuance of some Manual direction may be subject to public notice and comment procedures in accordance with 16 USC 1612 and 36 CFR 216.6(a), which requires public notice and comment for standards, criteria, and guidelines, when substantial public interest in or controversy over a proposed Manual directive can be expected. Reviewers are encouraged to study 16 USC 1612 and 36 CFR part 216 if further information is desired on public review and comment related to changes in Manual direction.

As previously noted, there are two main reasons why it is important to consider agency directives when amending or revising forest plans. First, it would be unreasonable and illogical for forest plans to substantially conflict with officially established agency objectives, policy, and procedure. Although direction in an approved forest plan would take precedence in case of a conflict, such conflicts should be avoided when establishing forest plan direction to prevent conflicts in performance expectations and potential loss of national or regional consistency.

A second reason for identifying any substantial conflicts between forest plans and agency directives at the time of amendment or revision relates to the nature of agency directives. Some directives have been established through extensive agency effort and adopted following public review and comment procedures under 36 CFR part 216; for example, the agency's policy and procedures for reauthorizing recreation residences (FSM 2300 and

2700). Other policies are required to be published for comment under other statutes; for example, the regulations implementing NEPA at 40 CFR parts 1500–1508 require the agency's NEPA policy and procedures, as issued in FSM Chapter 1950 and FSH 1909.15, to be published. On the other hand, not all agency directives are fully up-to-date, and some inconsistencies may and often do exist within the Directive System. Allowing the responsible official the flexibility to depart from agency directives, provided a rationale is given, will prevent forest plans from having to adhere to inappropriate or outdated agency directives and also will help the agency identify where directive changes are needed. The flexibility to be provided in the planning rule is consistent with current policy in FSM 1103 which requires employees to notify higher authorities when departure from direction is deemed necessary or when directives need to be revised.

It is not anticipated, however, that there will often be substantial conflict between forest plans and agency directives. First, the proposed rule provides for greatly reducing the amount of repetition between forest plans and directives (§ 219.6(b)(2)). Second, the provision for simultaneous plan amendment or revision, as addressed at § 219.5(a)(1)(ii), provides a mechanism for establishing direction known to affect more than one plan, thus eliminating the need to establish such direction through the Directive System. Third, directives are generally very broad and programmatic in nature, thus leaving considerable discretion for forest plans and project decisionmaking to establish more precise and site-specific direction. As a result, there are generally ample opportunity to establish more detailed direction at the forest plan or project stage without substantially conflicting with directives. Fourth, paragraph (a)(1) applies to resource management directives that would conflict with forest plan direction. Directives which provide procedural guidance on the process for amending or revising forest plans is not encompassed by the requirement.

Paragraph (b)(3) would address the link between the RPA Program and forest plans. Following adoption of a new RPA Program, the Chief would determine those elements of the RPA Program that should be considered in forest plan implementation, monitoring, and evaluation as well as establish any necessary agency-wide procedures to achieve this. In addition, § 219.12(a)(1)(vii)(A) of the proposed rule would require the monitoring and evaluation process to consider a newly issued RPA Program. As a result, there would be a link established whereby each new RPA Program would be reviewed to determine whether there is new information which makes it appropriate to initiate forest plan amendment procedures.

Paragraph (b)(4) would direct Forest Supervisors, as part of monitoring and evaluation, to periodically review results of any applicable ecosystem analyses that have been completed subsequent to plan approval to determine if there is new information which would indicate the need to consider changing the forest plan. Although ecosystem analysis is not a decision process, it may generate information that indicates a need to consider changing a resource decision.

Section 219.6 Forest Plan Direction

Paragraph (a) of this section of the proposed rule would direct that forest plans provide for integration and coordination of all resources on a multiple-use and sustained-yield basis. This paragraph lists the numerous resources to be addressed in a forest plan when such resources occur within the plan area. It also would assure that forest plans address infrastructure needs and land ownership and access patterns to the extent appropriate. None of this would represent a change from the scope of most current forest plans.

Although forest plans address the full range of resources found within the plan area, this regulation does not attempt to provide direction for management of individual resources except where necessary to respond to specific requirements of NFMA. In contrast to the existing rule which contained 13 sections on individual resources, the proposed rule does not include such detailed direction. For example, the proposed rule does not define goals and objectives for specific resources nor prescribe requirements for how each resource will be evaluated during amendment or revision of forest plans. It is the agency's intent to provide through directive issuances any additional direction necessary to specify how individual resources are addressed in forest plans.

The agency believes this planning regulation should stay focused on the specific requirements of NFMA, the authorizing statute. It would be beyond the reasonable scope of any one regulation to address all of the laws, regulations, and Executive orders under which National Forest System resources are managed. In addition, the shift to an ecosystem management orientation diminishes the relevance of focusing on individual resources, and supports the need for the more holistic approach taken in the proposed rule.

Proposed paragraph (b) provides that a forest plan allocates the land and resources of the plan area through management prescriptions which consist of goals, objectives, standards, and guidelines. These four types of direction, and the maps or similar information delineating where they are applicable, constitute forest plan direction. It is important that the proposed rule clearly define what constitutes forest plan direction, since plan direction can only be changed by amendment. Other information within the forest plan document is not forest plan direction and can be updated without going through amendment procedures.

The existing rule is not explicit regarding the nature of forest plan decisions, resulting in some confusion by both the public and employees over the years. As noted in the preceding discussion of proposed § 219.5, the nature of a forest plan under the existing rule has been articulated through a series of administrative appeal decisions and court decisions. The proposed rule reflects many of these decisions and explicitly defines forest plan direction and the contents of the forest plan document.

In *Citizens for Environmental Quality* v. *Lyng,* 731 F. Supp. 970, 977–78 (D. Colo. 1989), the court upheld the agency's position under the existing rule regarding the decisions made in forest plans. That court decision confirmed that approval of a forest plan results in: (1) Establishment of forest multiple-use goals and objectives; (2) Establishment of forest-wide management requirements (standards and guidelines) applying to future activities; (3) Establishment of management areas and management area direction (management area prescriptions) applying to future activities in that management area; (4) Designation of suitable timber land and establishment of allowable timber sale quantity; (5) Nonwilderness allocations or wilderness recommendations; and (6) Establishment of monitoring and evaluation requirements.

Forest plan direction, as defined at proposed paragraph (b), in concert with other provisions of the proposed rule, overlap most, but not all, of the six items identified as forest plan decisions in *Citizens for Environmental Quality* v. *Lyng.* For example, goals, objectives, standards, and guidelines—both on a forest-wide basis and for specific portions of the plan area—are terms common to both the existing rule and

the proposed rule. The definition of ''objectives'' has been modified in the proposed rule, however, as explained at the preamble discussion of § 219.6(b)(1) and (d). Also, under both the existing and proposed rule, management prescriptions are the means by which direction is allocated to specific portions of the plan area. Similarly, although designation of suitable timber land, nonwilderness allocations, and wilderness recommendations are not individually identified in proposed § 219.6, they are encompassed by the management prescriptions described at § 219.6(b) and are addressed specifically at § 219.13(b)(2) and § 219.14.

Although the term ''management area'' has not been used in the proposed rule, nothing in the rule prohibits continuation of the traditional use of the term, and some mechanism for delineating where direction applies is required regardless of the terminology used. It is anticipated that the term ''management area'' will continue to be used in many forest plans. The proposed rule has not required the use of this term in order to allow the flexibility to develop other terms, if beneficial, to describe the areas to which specific management prescriptions apply. This flexibility is desirable since ecosystem management has heightened the likelihood of direction being established at a variety of scales, and more effective ways may be possible to delineate where a management prescription applies than the traditional management area concept.

Although there is considerable overlap between the six decisions resulting from forest plan approval under the existing rule and forest plan decisions under the proposed rule, two points of notable difference relate to forest plan objectives and monitoring and evaluation requirements. These differences are addressed in this preamble discussion of §§ 219.6(b)(1), 219.6(d), and 219.12.

Under paragraph (b)(1) of proposed § 219.6, projected levels of goods and services or projected levels of management activities would not constitute forest plan direction. In addition, the proposed rule makes explicit that any projections of the rate of achieving desired resource conditions would not be forest plan direction.

Based on the definition of ''objectives'' provided in the existing rule, ''objectives'' as used in the existing rule would encompass the types of projections addressed in proposed paragraph (b)(1). The proposed rule would make clear that such predictions addressing the rate of implementation are not forest plan direction. For example, under the proposed rule the forest plan would define resource conditions desirable to achieve, but would not address the rate at which achievement should occur. Instead, any such projections of the rate of achievement would be provided in an appendix in accordance with § 219.11(d).

These changes are proposed for two reasons. First, experience has shown that the rate at which forest plans will be implemented cannot be established for a 10-year period. As explained earlier, the agency's decision framework provides for staged decisionmaking, with project decisions, rather than the forest plan, being the point at which site-specific activities are authorized. Decisions to approve and implement individual projects are subject to many variables, such as the results of project-level NEPA analysis, availability of funding, agency priorities, administrative appeals, and litigation. Since the rate at which forest plans can be implemented is based on decisions which occur during the plan period rather than decisions that can be made at the time of approving or revising a forest plan, it is important to make clear that the rate of implementation is not a decision that can be made in the forest plan.

Second, if rate-specific direction were to be included in a forest plan, it increases the likelihood of creating a false expectation that specific implementation rates, particularly levels of goods and services, can be assured during the 10-year plan period. As already noted, the agency cannot provide such guarantees. Elimination of rate-specific projections from forest plan direction, in concert with the provisions of § 219.11(d), should enhance understanding of the agency's staged decisionmaking process and produce more realistic expectations of what may occur during the plan period.

While excluding any rate-specific objectives from forest plan direction may appear to some to be a major change from the existing rule, this approach is consistent with a variety of court decisions which have affirmed the agency's staged decisionmaking process and verified that the agency has no obligation to produce the goods and services or to undertake the management activities identified in forest plans. The most notable actual difference resulting from the proposed rule would be that projections of implementation rates can be updated during the plan period without amendment procedures.

The approach that would be taken under proposed paragraph (b)(1) also represents an evolution in understanding of the relationship between forest plans and the agency's process for formulating budgets. In the past, there have been expectations that the objectives in forest plans would drive the budget process; that is, that funds would be requested at whatever level was necessary to achieve the objectives of the forest plan over the course of a decade, and any lower funding level was interpreted as less than full implementation of the forest plan by many people. In addition, most forest plans were developed without imposing budget constraints, so there was no attempt to establish objectives at levels that reflected probable budget levels. Over time, the agency has recognized the shortcomings of these earlier expectations and approaches, and has been re-evaluating and clarifying the link between forest plans and the budget process.

The proposed rule is consistent with the recommendations of a national team of Forest Service personnel chartered to study the linkage between budgets and forest plans. Rather than expecting the forest plan to define a desired rate of implementation to guide the budget process, the proposed rule would result in a process where budgets are formulated by considering forest plan direction, the results of monitoring and evaluation, and continuously updated information regarding national and agency priorities. This approach recognizes that annual program development and budgeting, rather than the forest plan, is the most timely and effective mechanism for responding to the continuously changing information which influences the rate at which plan goals can be achieved.

Proposed § 219.6(b)(2) would direct that forest plans focus on management of the resources specific to the plan area. It would further explain that forest plans should generally not provide direction on procedural aspects of how future project decisions will be made nor repeat other direction established through the Directive System, regulation, Executive order, or law. The existing rule does not have a comparable requirement, and this does represent a change from the way most current forest plans have been developed.

A sample of forest plans has been reviewed to determine the amount of overlap between direction in forest plans and direction already established through the Directive System, regulation, Executive order, or law. In one case, almost all of the forest-wide

goals and about half of the standards and guidelines overlapped direction that was already established and applicable to almost any National Forest in the country. Although the percentage of overlap varies with each plan, this sample does not appear to be exceptional. It seems there is a high degree of repetition in forest plans of direction that has already been established and applicable to most plan areas.

This repetition results, in part, from the desire to provide in one document all the direction applicable to the plan area. The reality, however, is that given the volume and breadth of laws, Executive orders, regulations, and agency directives that apply to National Forest lands, it is infeasible to consolidate all of that direction into one document. While some forest plans may currently appear to encompass all relevant direction, it is inevitable that one must still refer to other sources to fully grasp all of the direction applicable to the plan area.

There are four main sources of overlap which would be eliminated under the proposed rule. First, forest plans would not restate goals or policies that are already established by law, regulation, Executive order, or agency directive. Secondly, forest plans would not repeat procedural direction on how to conduct project analysis and decisionmaking. This type of administrative procedure is appropriate to issuance in the Directive System and not in forest plans. Under the proposed rule, forest plans will be clearly focused on desired resource conditions for the plan area, focusing on management of resources rather than on management of the administrative processes used to make decisions. For example, the Directive System is the definitive source of agency guidance and information on how to conduct NEPA analysis and should be the source of any guidance for conducting specific evaluations or analyses required to make a resource decision.

Third, forest plans would not repeat instructions related to public involvement and coordination with other government entities. Considerable direction on these topics is already established by law, regulation, Executive order, agency directive, and any additional direction needed is appropriately issued through the Directive System.

Finally, procedural guidance on how to conduct routine professional tasks would not be repeated in forest plans. For example, agency directives describe how to locate hiking trails and factors to consider when designing recreation sites. Such direction is applicable anywhere in the country and, as a result, should not be repeated in a forest plan. In contrast, if there are special circumstances in the plan area that require establishment of specific standards or guidelines to address local resource conditions, then such local direction would be appropriate for the forest plan.

The agency anticipates several benefits from reducing the overlap between forest plans and direction already established by law, regulation, Executive order, or agency directives. First, forest plan direction should be substantially shorter, making forest plans more readable and easier to understand. Second, forest plans should be much more focused on local conditions and management needs. Third, the public should have a clearer understanding of the decisions that are actually being made in the forest plan.

Paragraph (b)(3) of this proposed section would limit the main body of the forest plan document to forest plan directionk. Other information would appear in a brief preface or appendices. One benefit is to make it easier for the reader to distinguish between forest plan decisions and other information that may be found within the document. Currently, it is often difficult for readers to quickly locate the decisions made in the forest plan, and sometimes direction appears to be repeated or intermingled in multiple locations. Another benefit of this approach is that forest plans should be substantially shorter and easier to understand.

Proposed paragraph (c) would describe the role and function of forest plan goals. Goals would be concise statements that describe a desired end result; they would normally be expressed in broad general terms rather than quantitatively; and there would be no time period specified for achievement. Forest plan goals would serve as the link between broad agency goals already established through legal requirements, agency directives, or the RPA Program and specific, measurable desired resource conditions as defined by objectives in the forest plan. As a result, they will help to translate national goals into end results of more local relevance to the plan area. Pursuant to paragraph (b)(2) of this proposed section, forest plan goals would not repeat national goals, but would rather translate them into end results more specific to the local conditions of the plan area.

Because forest plan goals are not quantitative in nature, progress towards achieving goals is determined by monitoring achievement of the measurable desired conditions established by forest plan objectives and, if necessary, additional measurable indicators can be established through the monitoring and evaluation process (§ 219.12(a)(1)(ii)).

Paragraph (d) describes the role of forest plan objectives. Objectives would describe measurable desired resource conditions, or ranges of conditions, intended to achieve forest plan goals. In many cases, a range of conditions is likely to be a more desirable target than a specific condition, because natural systems usually have ranges within which some variation is typical and acceptable. In addition, defining a desired range of conditions is appropriate when there is not enough information to make a more precise statement, or when such precision is not necessary, given the decision being made.

Paragraph (d) would make clear that objectives must be defined in a manner that permits measurement of whether the objective is being achieved. The ability to directly measure the achievement of an objective, its greater degree of specificity, and its scope being limited to resource conditions are the three features which help to distinguish an objective from a goal. The proposed rule would explain that objectives can be defined to encompass natural resource conditions, conditions resulting from human influences, or the manner in which resources are perceived. As further explained at the preamble discussion of § 219.6(b)(1), this use of the term ''objectives'' in the proposed rule is not the same as use of the term in the existing rule.

Paragraphs (e)(1)–(2) describe the role of forest plan standards. These paragraphs would make explicit that standards are limitations on management activities and that adherence to standards is mandatory. They are the basis for determining if a project is consistent with the forest plan (§ 219.11(a)).

One particularly important feature of standards is that they must be defined in such a manner that they are clearly within the authority or ability of the agency to enforce; that is, compliance must be within the agency's control. This characteristic is essential, because under the proposed rule standards it would be used for assessing project consistency with the forest plan (§ 219.11). When undertaking a project, the two things that the agency has the authority to control are the specific activities authorized and how they are conducted. The agency cannot control the actual results, however, since there are usually various factors beyond the

agency's influence that can affect results. For example, usual weather events or wildfires can affect actual on-the-ground results in unpredictable and uncontrollable ways.

Proposed paragraph (f) describes the role forest plan guidelines would play under the proposed rule. Guidelines would be used to describe a preferred or advisable course of action. Unlike standards, variation from a guideline does not trigger a forest plan amendment. Guidelines would play two key roles.

First, guidelines would be used to describe a preferred or advisable method of conducting resource activities. For example, a guideline might recommend that shelters on hiking trails be located at least one mile from trailheads. If terrain or other circumstances related to a specific project made compliance infeasible, the flexibility would exist to locate the shelter closer to a trailhead. However, the guideline would have served to advise the responsible official that construction of a shelter less than one mile to the trailhead should not occur unless special circumstances exist.

Second, guidelines would be used to describe a preferred or advisable sequence or priority for implementing various types of projects when such guidance is useful in facilitating achievement of a forest plan goal. For example, the forest plan might have a goal which addresses the restoration of hydrologic processes in a particular watershed. Various objectives could be defined describing resource conditions associated with restoration of the hydrologic processes, such as desired vegetative conditions within the watershed, the presence of down woody material in the stream channel, stream temperatures, or turbidity levels. Guidelines could be used if there is a preferred sequence for implementing the types of projects that would achieve these objectives and the ultimate goal. For example, if revegetating exposed soils within the riparian area are needed more urgently than soil restoration projects elsewhere in the watershed, a guideline can indicate that priority. Such guidelines would not be used to identify specific projects, but rather to specify if certain types of projects should be implemented before others in order to achieve a goal in the most timely manner.

Paragraph (g) would establish requirements for coordinating forest plan direction across plan areas. The intent is to improve consistency between forest plans. In many cases currently, it is difficult to compare forest plan decisions for adjacent forests covered by different forest plans, and direction often changes at an administrative boundary even though the management situation appears to be identical. Paragraph (g) recognizes that there may often be legitimate reason for differences, but that, unless such reasons exist, forest plan decisions within a Forest Service administrative Region and for plan areas adjacent to the Region should be consistent in at least four ways.

First, management prescriptions for adjacent lands should be the same. The direction for managing a specific area of land should not change at the boundary between forest plan plan areas unless a good reason exists for such change. In addiiton, maps used in the forest plans should be consistent to facilitate review and comparison. For example, this would mean using maps of the same scale and with the same legends and formats.

Second, management prescriptions for specially designated areas should be the same when they cross plan area boundaries, unless good reason exists for change. For example, direction for managing a wilderness area, scenic trail, or similar specially designated area (§ 219.14) should not change simply because of a change in administrative boundary.

Third, forest plan direction should be the same for adjacent areas when findings of an ecosystem analysis or research used as a basis for the direction are applicable to more than one plan area, unless local circumstances justify variation. For example, if the research used as a basis for establishing a habitat protection standard for a threatened or endangered species applies to a broad area covered by several forest plans, that standard should be the same in each of those plans, unless valid reason existed to alter it.

Finally, consistency would be required in the use of terminology and classification systems. The intent is to have the same terms and classification systems used wherever feasible.

In summary, the provisions proposed in § 219.6 would incorporate the results of landmark administrative appeal decisions and court cases which have clarified the nature and scope of decisions made in forest plans. In addition, this section would establish a uniform approach to what appears in the main body of the forest plan and what can be presented in the preface and appendices. These changes to the contents of a forest plan will result in shorter, simpler forest plans that are easier to use and understand, as well as forest plans that are more highly focused on direction specifically tailored for management of the resources of the plan area.

Section 219.7 Ecosystem Analysis

This section would introduce the concept of ecosystem analysis to the planning process, a topic not addressed in the existing rule. Paragraph (a) would define ecosystem analysis as a broad term used to denote various interdisciplinary studies conducted to provide information on and enhance understanding of the physical, biological, social, or economic aspects and interactions of an ecosystem. Because the agency considers humans to be an integral part of ecosystems, studies of social and economic aspects of ecosystems are within the scope of these analyses. Ecoregion assessments and landscape-level analyses are only two examples of the different types of studies that are conducted at various scales which fall under the general umbrella of ecosystem analysis.

Paragraph (a) would also address the geographic scope of ecosystem analysis. It acknowledges that such analyses can be conducted at any scale deemed appropriate, and emphasizes that areas subject to ecosystem analyses should generally be delineated based on ecological considerations rather than administrative or jurisdictional boundaries.

Reviewers are cautioned not to confuse the concept of ecosystem analysis with the analysis and evaluation of environmental effects which occurs as part of the NEPA process. The requirements associated with NEPA procedures would be unchanged by the provisions of this proposed section. The two documents used to disclose environmental assessment, are distinct in nature and purpose from an ecosystem analysis.

Proposed § 219.7 would not require an ecosystem analysis to be conducted as a precursor to resource decisionmaking. In fact, ecosystem analyses are not mandatory, and it is left to agency discretion to conduct them as appropriate. While the area covered by an ecosystem analyses is defined by the ecosystem and not by jurisdictional or administrative boundaries, the proposed rule would in no way impose resource decisions of the Forest Service on private lands. However, in order to make decisions for National Forest System lands, the agency believes it is important to be knowledgeable of the conditions on non-Forest Service lands within an ecosystem being studied. This is considered an essential part of taking an ecological approach to management of National Forest System lands.

Proposed paragraph (b) would make an important distinction between an ecosystem analysis and resource decisionmaking. As noted earlier, ecosystem analysis is not a decisionmaking effort and does not result in a resource decision. Therefore, it does not trigger NEPA analysis nor does the result of ecosystem analysis substitute for a NEPA disclosure document. Rather, an ecosystem analysis is a process by which information is gathered and synthesized in order to enhance and understanding of ecosystems. This information is usually intended as one—but not the only—source of information to be used later when making resource decisions.

One key provision of paragraph (b) intended to help draw the distinction between ecosystem analysis and resource decisionmaking is the requirement that the findings of ecosystem analysis not be used as a substitute for forest plan goals, objectives, standards, or guidelines. The proposed rule would make clear that the findings of an ecosystem analysis may indicate the need to change forest plan direction, but that such changes must occur through amendment or revision procedures. The agency does not intend ecosystem analysis to be used to identify any preferred or desired alternatives or outcomes. Identification of such preferences would reflect value judgments on the part of those conducting the ecosystem analysis without the benefit of utilizing NEPA procedures. The agency also hopes such a requirement will reduce any confusion regarding the expected results of ecosystem analysis and diminish the risk that such analyses might be mistaken for decisionmaking processes.

The proposed rule would make clear that ecosystem analysis may be used to identify opportunities for achieving goals and objectives that have already been established by law, Executive order, regulation, agency directive, or the forest plan. For example, this could include identifying various management options or scenarios that might meet established goals and assessing the results if such options were chosen or scenarios were to occur. This kind of assessment can be helpful in determining the potential to resolve issues given existing forest plan direction, or in evaluating the probable effects if current direction were to remain unchanged. In addition, paragraph (b) would make clear that an ecosystem analysis may be used to provide information that indicates a need to initiate forest plan amendment procedures. It will be incumbent upon the agency official responsible for the ecosystem analysis to ensure that such findings are properly utilized and that any consideration of options or strategies is conducted in a manner complementary to using the information for subsequent compliance with NEPA procedures associated with resource decisionmaking.

Paragraph (c) would list various possible results of ecosystem analysis, depending upon the scope and specific purpose of each analysis. Eleven examples are provided of the type of information which might result from an ecosystem analysis. This is not intended to be an all-inclusive list, but rather to represent the type of results that might be expected. All eleven items are informational in nature and do not represent resource decisions or a narrowing of options to be considered in future decisionmaking efforts.

Section 219.8 Interdisciplinary Teams and Information Needs

Paragraph (a) would require the use of an interdisciplinary team when preparing amendments, revisions, and monitoring and evaluation strategies and reports and when conducting ecosystem analysis. Although the proposed rule would clearly identify when interdisciplinary teams must be used, it would be less specific than § 219.5 of the existing rule, which addresses in more detail the functioning and selection of interdisciplinary teams. Such detail is in excess of what is appropriate to this regulation, especially since NEPA procedures already provide guidance on the use of interdisciplinary teams. The proposed rule would limit interdisciplinary team membership to Forest Service and other Federal personnel. This limitation is primarily due to the Federal Advisory Committee Act, which imposes extensive requirements on the creation and use of committees that include non-Federal personnel for the purpose of advising Federal agencies.

Paragraph (b) would direct that the responsible official must strive to obtain and keep updated inventory data needed for decisionmaking. This is intended to emphasize the importance of maintaining data on a continuous basis rather than allowing inventories to become outdated. This is of particular importance in implementing an adaptive approach to resource management. The ability to know if and how management should be adjusted depends on ongoing analysis of information throughout the plan period.

Maintaining inventory data is also critical to avoiding delays in the revision process. Some forests took as much as two years or more to gather the inventory data needed to develop their initial forest plans. As envisioned under the proposed rule, such information would be maintained throughout the plan period, with little delay needed at the time of revision to obtain new data. Realistically, many forests do not have fully updated inventories at this time, so, regrettably, such delays must still be expected in some cases when forest plans are revised. The updating process would occur prior to or during the prerevision review, however.

In addition, paragraph (b) would clarify that the information compiled should be commensurate with the decisions being made. It is wasteful to try to obtain highly precise estimates if the decision being made does not require such precision. The proposed rule would make clear that the precision of the data should be commensurate with the precision needed to make the decision (see also § 219.4(e)). Paragraph (b) also emphasizes the need for carefully focused analysis efforts, a noteworthy change from the existing rule. The proposed rule intends that analytical efforts will be focused on the critical questions relevant to specific decisionmaking needs rather than dispersed across a wide range of standardized analytical requirements that may not be relevant to local conditions, issues, and concerns.

Although paragraph (b) would provide enhanced flexibility to tailor analysis to meet local needs, this should not be interpreted as deemphasizing the importance of sound analyses. While the proposed rule is certainly intended to better focus the analysis, there may or may not be a reduction in the overall quantity of analysis conducted on any given forest. For example, the extensive benchmark analyses required by the existing rule at § 219.12(e) would no longer be required in the proposed rule. In many cases, the effort invested in these benchmark analyses has often diverted too much time and energy from more critical analyses needed for decisionmaking. However, in other cases, the data derived from some of the benchmark analyses proved very helpful. The proposed rule would not require that standardized benchmark analyses be conducted for all resources on all forests, but it would also signal the expectation that such analyses should occur if and when needed for informed decisionmaking.

This focused approach to analysis is also intended to enhance understanding of and confidence in the agency's analytical procedures. Findings of the Critique of Land Management Planning clearly indicated that many people distrust analytical procedures and view

computer models as mysterious ''black boxes'' that produce incomprehensible and unverifiable answers. The approach in paragraph (b) would keep analytical procedures highly focused and relevant to local decisionmaking needs and thus should help increase public and employee confidence in methodologies and results. Although computer models will still be used, analytical efforts should be better tailored to local needs. Under this provision, forest analysts could devote more time and effort to understanding the data relevant to the specific decisions to be made and to improving ways of communicating that information to the public and decisionmakers.

Paragraph (c) would assure that social and economic effects are considered when amending or revising the forest plan. As stated at § 219.1(b)(2), meeting people's needs and desires within the capacities of natural systems is a primary role of resource decisionmaking. The forest plan addresses management of land and resources, but decisions as to how those lands and resources should be managed is inherently dependent on considering the effects on people as well as on the resources themselves. Paragraph (c) would assure that commensurate with the decision being made, appropriate indicators of social and economic change, such as changes in community stability or employment, are evaluated during amendment and revision.

Paragraph (d) would require Forest Supervisors to identify the research needed for decisionmaking, including, but not limited to, the research needed to help resource managers ensure that management practices do not produce substantial impairment of the productivity of the land. This latter requirement responds to Section 6(g)(3)(C) of NFMA. Comparable provisions of § 219.28 of the existing rule are more detailed. By contrast, the proposed rule focuses more directly on making sure that research needs are identified, but would leave to normal agency administrative processes the task of directing formulation of budgets and reporting procedures.

Section 219.9 Forest Plan Amendment

Paragraph (a) would provide for three types of amendments to forest plans—major, minor, and interim. It also would make explicit that: (1) only those elements defined as forest plan direction are subject to amendment, and (2) that amendment is the only method by which forest plan direction can be changed between revisions, unless the changes are nondiscretionary as described at § 219.9(e).

The term ''major amendment'' in the proposed rule would replace the term ''significant amendment'' as used in the existing rule. This change in terminology should help avoid confusion with the term ''significance'' as it is used in the context of NEPA compliance. Criteria for determining significance for NEPA compliance differ from the criteria for distinguishing the significance of amendments under NFMA. These differences have caused considerable confusion both within and outside the agency with regard to ''significant'' plan amendments. Under the proposed rule, the term ''minor amendment'' would be used to refer to amendments which do not meet the criteria for a ''major'' or ''interim'' amendment.

Proposed paragraph (b) addresses major amendments. Paragraph (b)(1) would define the only three circumstances which trigger a major amendment. The existing rule does not define specific criteria for triggering a significant amendment, stating simply that ''if the change resulting from the proposed amendment is determined to be significant, the Forest Supervisor shall follow the same procedure as that required for development and approval of a forest plan'' (§ 219.10(f)).

In the absence of criteria in the existing rule, the agency has issued, at FSM 1922.52, two examples indicative of circumstances that may cause a significant change to the forest plan. In addition, FSH 1909.12 describes four factors to be used in helping to determine significance. The two circumstances described at FSM 1922.52 are: (1) Changes that would significantly alter the long-term relationship between levels of multiple-use goods and services originally projected, and (2) changes that may have an important effect on the entire forest plan or affect land and resources throughout a large portion of the planning area during the plan period. Both of these examples are subject to varying interpretation.

In reassessing the circumstances that should trigger a major amendment, the agency has focused on two key provisions of Section 6(f)(4) of NFMA. First, this section recognizes that some amendments may result in a significant change in the plan. Second, it establishes special requirements for those amendments that would result in a significant change to the forest plan—a three-month comment period and associated requirements for public involvement.

With these provisions of NFMA in mind, the agency proposes establishing in the proposed rule at § 219.9(b)(1), rather than in the Forest Service Manual, three criteria for triggering a major amendment. The first trigger would be a change to a forest plan standard. The second would be when the chargeable timber volume that can be sold for a decade is amended in such a manner that it exceeds the long-term sustained-yield timber capacity of a proclaimed National Forest within the plan area. The third circumstance would be if the forest plan is changed to permit harvest of even-aged stands that have not reached culmination of mean annual increment of growth.

The first criterion, changing a forest plan standard, reflects the heightened importance of forest plan standards under the proposed rule. As explained earlier in this preamble, adherence to forest plan standards would be mandatory, and standards would be used to assure compliance with legal requirements and to provide environmental safeguards. As a result, standards would have a distinctly stronger role in the forest plan than goals, objectives, or guidelines. Subsequently, the proposed rule would consider a change to a standard or where a standard is applied as a significant change to the forest plan, which thus would trigger a major amendment unless the exceptions identified at § 219.9(c) (4) and (5) apply. The exceptions are when a standard is changed to accommodate a particular site-specific project, or the allocation of a management prescription, which typically includes some standards, to newly acquired lands and the prescription is consistent with the purposes for which the land was acquired.

The other two circumstances that would trigger a major amendment derive directly from NFMA. In the case of the decadal chargeable volume that can be sold from a proclaimed National Forest exceeding the long-term sustained yield timber capacity of that Forest, Section 13 of NFMA requires that such a variation be made following the same public involvement requirements as those for a major amendment or revision; i.e., a 90-day comment period. Similarly, Section 6(m)(2) of NFMA requires a 90-day comment period if stands are to be harvested before reaching culmination of mean annual increment of growth. As a result, the proposed rule would require that such changes be considered major amendments.

Proposed paragraph (b)(2) would provide that the Regional Forester is the responsible official for major amendments. This delegation of

authority is the same as that under the existing rule.

Proposed paragraph (b)(3) would describe the procedural requirements associated with major amendment. These differ from those of the existing rule in two main ways. First, there is no automatic requirement to develop an EIS for a major amendment. The intent is to allow NEPA procedures to guide the determination of whether an EIS or an environmental assessment is appropriate for the decision being made. Second, the proposed rule would drop the requirement to use the same process for a major amendment as for development of initial forest plans and revisions (§ 219.12(a) of the existing regulation). Instead, the proposed rule would rely on established NEPA procedures to guide the process for major amendment.

Both changes are expected to help focus and streamline analyses. As described at proposed § 219.8(b), one intent of the proposed rule is to focus analyses on the information needed for decisionmaking and thus to ensure that the nature, scope; and complexity of analyses are commensurate with the nature, scope and impact of the decisions to be made. Relying on NEPA procedures to determine the type of disclosure that is appropriate is a sound means of assuring that analysis and documentation match the nature of the decision.

Similarly, the requirement in the existing rule to repeat the same steps for a significant amendment as for a revision has proven excessively burdensome. This existing requirement has often resulted in a variety of analysis efforts, such as developing benchmarks or reevaluating the suitability of lands for timber production, which proved to be of little benefit or utility and which diverted energy and focus from more critical factors related to the decision.

Paragraph (b)(3) of the proposed rule also would state the requirement to provide a 90-day period for public review and comment on a major amendment. This paragraph also specifies the minimum actions the Regional Forester would be required to take to provide for public participation in the major amendment process.

Paragraph (b)(4) would require publication of legal notice of adoption of a major amendment. Paragraph (b)(5) provides that the effective date of an approved major amendment is the eighth calendar day following publication of legal notice of the decision in accordance with administrative appeal rules at 36 CFR 217.10.

Proposed paragraph (c) would establish requirements for a minor amendment, which is triggered whenever a change is being made to the forest plan which does not meet the circumstances for triggering a revision, major amendment, or interim amendment.

Paragraph (c)(1) would designate the Forest Supervisor as the responsible official for minor amendments, unless that authority is retained by the Regional Forester.

Paragraph (c)(2) addresses public comment periods for minor amendments. As is the case with major amendments, the proposed rule does not specify what type of NEPA documentation must accompany a minor amendment. Instead, NEPA procedures would provide this guidance. Although NEPA procedures require a 45-day comment period for review of a draft EIS, there is no requirement under NEPA procedures for public comment on a draft environmental assessment. Nevertheless, the agency believes that the public should have an opportunity to comment on a minor amendment to a forest plan when an environmental assessment is prepared. Therefore, the proposed rule requires at least a 30-day comment period when an environmental assessment is prepared and at least a 45-day comment period when an EIS is prepared.

Paragraph (c)(3) indicates that 36 CFR part 217 provides for administrative appeal of forest plan amendments and revisions and guides public notice of decisions to adopt a minor amendment, as well as their effective date. This is further clarified in a conforming amendment to 36 CFR 217.3(a).

Proposed paragraphs (c)(4) and (c)(5) describe two circumstances where a minor amendment, not a major amendment, is the appropriate mechanism for changing a forest plan even though such an amendment involves changing a standard or changing where a standard applies. Under paragraph (c)(4), a minor amendment would be appropriate when a management prescription is extended to apply to newly acquired land and the prescription is compatible with the purposes for which it was acquired. Without this provision, such a change would trigger a major amendment since management prescriptions include standards, and allocating lands to a management prescription changes where those standards are applied.

Paragraph (c)(5) provides instructions for handling a proposed site-specific project that would conflict with a forest plan standard. As required at § 219.11(a) of the proposed rule, a project cannot be approved if it conflicts with a forest plan standard. If the responsible official has determined that the project merits an exception to a forest plan standard, but wishes the exception to apply only to the site-specific project rather than changing the standard for all future projects, the proposed rule would specify that the change be made by minor amendment. This is appropriate because of the limited, site-specific scope of the change in the standard(s). However, a minor amendment cannot be used when the circumstances described at (b)(1)(ii)–(iii) apply, since NFMA requires a 90-day comment period on changes of that nature.

Under the proposed rule, the public could review and comment on a proposed site-specific amendment as part of the project decisionmaking process rather than as disjointed decisions. The disclosure of effects associated with changing the standard would be addressed as part of the NEPA documentation associated with the site-specific project decision. One intent of this integrated approach is to avoid duplicating analysis and documentation. It would be burdensome and confusing for both the public and the agency if a project decision had to be made separately from the forest plan amendment needed to authorize the site-specific exception from the standard.

The length of the comment period under these circumstances would vary, depending on the nature of the decision being made. If the project decision or amendment required an EIS, then at least a 45-day comment period would be provided in accordance with NEPA procedures. If an environmental assessment would be adequate, then at least a 30-day comment period would be provided in accordance with 36 CFR 215.5.

A minor amendment associated with a site-specific project would not be subject to administrative appeal under the provisions of 36 CFR part 217, but instead would be appealable under 36 CFR part 215 which already governs appeal procedures when a project decision includes a plan amendment. Similarly, the time period between the decision and project implementation is also governed by 36 CFR part 215.

Paragraph (d)(1) of this proposed section introduces the concept of ''interim amendment.'' The agency believes there is a clear need to provide streamlined procedures for updating forest plan direction when there is new information that indicates a compelling need to promptly change the forest plan in order to provide resource protection,

or when a catastrophic even has occurred, and the process for major amendment, minor amendment, or revision would result in an unacceptable delay.

Due to the length of time it often takes to fully analyze new information and to complete appropriate amendment procedures, there can be quite a gap between the time the agency is aware that it needs to address a problem and the time normal procedures can be completed. In the meantime, environmental damage may be occurring as a result of these procedural delays. The interim amendment would be a means of addressing those situations where such delay is unacceptable, but would still assure that a thorough analysis of the new information is conducted and possible alternative responses are considered while such interim measures are in place.

Proposed paragraph (d)(2) would designate the Regional Forester as the responsible official for interim amendments, unless such authority is reserved by the Chief. Placing approval authority at the Regional Forester level should help to ensure that interim amendments are used and developed in a consistent manner and that they are not used when the needed changes can be made within the normal amendment process.

Paragraph (d)(3) describes the requirements for public notice of an interim amendment and the information that must be disclosed at the time an interim amendment is issued.

Paragraph (d)(4) establishes an explicit finding that an environmental impact statement is not required for interim amendment. Any change to a forest plan made by interim amendment will be limited in scope and duration and made only to respond to catastrophic events or to ensure resource protection. Given the limited circumstances where it could be used, an interim amendment would never meet the criteria for preparing an EIS as required by NEPA procedures. Nothing in paragraph (d)(4) would limit the preparation of an environmental assessment for an interim amendment.

As specified in paragraph (d)(5), the effective date for interim amendments is the eighth calendar day after legal notice of the decision is published in a newspaper of general circulation or, if the Chief is the responsible official, in the Federal Register.

Paragraph (d)(6) provides for a 45-day comment period starting upon issuance of legal notice of the interim amendment. Unlike most comment periods which occur prior to making a decision, this 45-day comment period would occur after the interim amendment is in effect. Based on the comments received, the responsible official may decide to modify the interim amendment or have it remain in effect unchanged. Under either circumstance, the public must be notified and rationale provided. Since an interim amendment is designed to respond to those circumstances where a quick change is necessary, it is not reasonable to delay issuance of the interim amendment until a comment period can occur. However, the provision of paragraph (d)(6) assures the opportunity to public review and comment as soon as possible, provides the responsible official an opportunity to change the interim amendment in a timely manner based on those comments, and ensures that the public is notified of whether the interim amendment is retained without change or is modified and why.

The duration of an interim amendment would be limited by paragraph (d)(7) to two years. If an interim amendment has not been superseded by an approved amendment or revision within two years, the responsible official would have the option of reissuing the interim amendment or issuing a modified interim amendment. Under such circumstances, all of the limitations and notice and comment requirements for use of interim amendments would still apply. This limit on the duration of an interim amendment is intended to assure that direction established using these procedures is indeed interim in nature.

Paragraph (d)(8) would expressly prohibit including an interim amendment in a decision document for a specific project. As discussed, the provisions of § 219.9(c)(5) address those circumstances where a forest plan needs to be amended to permit one specific project.

Paragraph (d)(9) would make clear that under 36 CFR part 217 an interim amendment is not subject to administrative appeal. Since neither the existing planning rule nor the appeals rule address interim amendments, a conforming amendment to 36 CFR part 217 is proposed to exclude interim amendments from the administrative appeals process. Such an exclusion is appropriate due to the short duration of an interim amendment and the circumstances for its use. The 45-day public comment period should provide an effective way for the public and other government entities to communicate with the responsible official about any potential concerns.

Paragraph (e) would permit nondiscretionary changes to forest plan direction under specified circumstances. There is no similar provision in the existing rule. This provision would allow forest plan direction to be changed without completion of the more rigorous amendment and public comment procedures when the change is needed to comply with a law or regulation and the agency has no discretion in the manner in which it complies. Under such a circumstance, NEPA procedures would not need to be completed and there would be no public comment period. However, the public would be given notice through the annual monitoring and evaluation report that such changes had been made. Examples of such nondiscretionary changes include designating an area as wilderness after passage of wilderness legislation. Paragraph (f) would make clear that the Forest Supervisor may, at any time, make certain changes to a forest plan without amendment procedures. Such changes would be identified in the monitoring and evaluation report. Circumstances allowing such an approach include when changes do not alter forest plan management direction or when the changes are non-substantive in nature, such as correcting typographical errors.

In addition, corrections to maps which delineate where a management prescription is applied can be made without amendment, provided such changes are due to improved on-the-ground information about the condition to which the management prescription was described to apply. For example, if a management prescription were to apply to all areas visible from a scenic highway but the visible area had not been precisely mapped, the mapped boundaries of where the prescription would apply could be adjusted after a detailed field survey is completed. It is essential that the forest plan state that the prescription is intended to apply to the visible area, however, so that it is clear what attributes the land must have if the map is to be changed in this manner. If, for example, the prescription were to be extended to apply to lands other than those visible from the scenic highway, amendment procedures would have to be followed.

Section 219.10 Forest Plan Revision

This section would significantly revise the procedures for forest plan revision. The existing rule (§ 219.12) requires the agency to use the same process for forest plan revision as for developing initial forest plans. The

proposed rule offers a new process specifically tailored to revision.

Proposed paragraph (a) retains the provision of the existing rule that revision of a forest plan should occur about every 10 years, and no later than 15 years, after approval of the original plan or latest plan revision. Additionally, revisions must occur whenever conditions over most or all of the plan area have changed significantly, for example, to address catastrophic events that have substantially altered resource conditions over most or all of the plan area. These criteria for initiating revisions are based on requirements of Section 6(f)(5) of the National Forest Management Act.

Proposed paragraph (b) would designate the Regional Forester as the responsible official for revision, as is the case in the existing rule.

Proposed paragraph (c)(1)(i) would establish an important new element—the prerevison review of a forest plan, which would be conducted prior to initiating scoping. The purpose of the prerevision review is to identify changed conditions and/or other new information which appear to indicate a need to change direction in the current plan using the results of monitoring and evaluation.

This requirement for a prerevision review is somewhat comparable to the requirement in the existing rule for completing an Analysis of the Management Situation (hereafter, AMS) (§ 219.12(e)), but there are some important differences. The main similarity is that both the AMS and the proposed prerevison review culminate in a determination of the need to change direction in the forest plan. However, a key difference between the AMS and prerevision review is the source of the information and type of analysis required for making such determinations. The existing rule imposes extensive analytical requirements to be met when developing the AMS. As explained earlier in the preamble discussion for proposed § 219.8, these analyses have not always proven relevant to the local situation or helpful to decisionmakers. In fact, the existing requirements have often diverted time and energy from more critical analyses needed for decisionmaking.

In contrast, the proposed rule focuses on using the results of monitoring and evaluation of making such determinations. As part of the prerevision review, the Regional Forester would be responsible for reviewing the cumulative results of monitoring and evaluation, as well as conducting whatever associated analysis is needed in order to propose the scope of the revision process. In some cases, the type of analysis now required as part of the AMS may be appropriate. However, the proposed rule does not impose such specific analytical requirements; instead, the provisions of § 219.8 (Interdisciplinary teams and information needs) and § 219.12 (Monitoring and evaluation) provide sufficient guidance for obtaining appropriate information for the prerevision review.

Proposed paragraph (c)(2) would require the Forest Supervisor to formulate a communications strategy that describes how the public and other government entities may participate on an ongoing basis in both the prerevision review and revision process. As noted earlier in regard to proposed § 219.3, the agency is stressing the importance of building and maintaining strong relationships based on open and ongoing communication. One purpose of these communications efforts is to improve the information base on which decisions are based and to promote a shared understanding of the validity of this information (see § 219.3(a)(3)). Proposed § 219.10(c)(2) is specifically designed to help achieve these aims by encouraging the public to be involved while these initial prerevision analyses are occurring and data is being gathered in addition to involvement during the revision process itself.

By participating in the prerevision review, the public and other government entities will have an opportunity to see the data and analytical methods being developed for the revision and to provide improved information or suggest better approaches. This should enhance public confidence in the data and analysis upon which decisions about revising the forest plan will be made. The results of the prerevision review provide the basis for the Notice of Intent to revise the forest plan and to prepare an environmental impact statement for the revision. The prerevision review also provides the public with a thorough analysis of monitoring and evaluation results, and identifies the direction in the forest plan that the Regional Forester believes may need to be changed.

Paragraph (c)(2)(i) would require a meeting with interested representatives of other Federal agencies and State, local, and tribal governments in order to establish procedures for coordination and ongoing communication. These provisions reflect the importance which the Forest Service places on establishing a strong working relationship with other agencies and governments as well as on coordinating with them during the prerevision review and revision process.

Paragraph (c)(2)(ii) would provide the public and representatives of other government entities the opportunity to express their ideas and suggestions on the communications strategy as it is being formulated. There is no comparable requirement in the existing rule, and this approach is not commonly practiced within the agency now. This new requirement is intended to greatly improve the effectiveness of public involvement efforts during revision. By providing the public an opportunity to comment on how to develop the communications strategy, involvement efforts should be more responsive to public needs and desires, better timed to assure that the public is involved at those points in the process of most interest, and better suited to facilitating the type of interaction, mutual understanding, and commitment necessary for success.

Paragraph (c)(2)(iii) would assure that those who are on the mailing list described at § 219.3(b) are notified of the prerevision review and formulation of the communications strategy.

Paragraph (d) addresses scoping, which is required by NEPA procedures and is undertaken to identify important issues and determine the extent of analysis necessary for an informed decision on a proposed action. Scoping is used not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, thus narrowing the scope of the environmental impact statement accordingly (40 CFR 1500.4(g)). A Notice of Intent to revise a forest plan would be issued in the Federal Register, with a 60-day comment period. The Notice would serve to notify the public of the start of the revision process and would provide information on the anticipated scope of the effort. The Notice would also identify opportunities for public involvement in the revision process.

This process for initiating forest plan revision is a substantial improvement over the existing rule, providing more and better information to the public for use in commenting on the scope of the revision process. In the existing rule, the process for forest plan revision starts from ground zero, repeating the same steps used for developing initial forest plans. Under this current approach, the revision process assumes that the ''slate has been wiped clean;'' that is, that no forest plan currently exists and that there is little information available from which to launch the revision effort.

In contrast, the proposed rule recognizes that substantial information

regarding the adequacy of the forest plan already exists as a result of monitoring and evaluation. Just as importantly, the proposed rule provides for making this information available to the public during the scoping process so that the public has the best possible information upon which to base its comments regarding the scope of the revision effort.

Proposed paragraphs (d)(2)(i)–(iii) identify three actions that the Forest Supervisor would be required to take at the time of issuing the Notice of Intent:

(1) giving notice to those on the mailing list required at § 219.3(b);

(2) giving more general notice through a press release; and

(3) promoting activities to foster ongoing participation in the revision process pursuant to the communications strategy.

Proposed paragraph (e) specifies four required elements of the revision process:

(1) Review of the identification of lands suited and not suited for timber production;

(2) Evaluation of roadless areas for wilderness designation;

(3) Evaluation of rivers for eligibility as wild, scenic, or recreation rivers under specified circumstances; and

(4) Update of the appendix information displaying projected levels of goods and services and management activities for the next decade, as required by § 219.11(d)(1). These four requirements, along with the requirements of § 219.10(c), are the main factors which distinguish forest plan revision from major amendment.

Paragraph (f) would require that a draft EIS be prepared for a proposed forest plan revision. Unlike the existing rule, the proposed rule would not provide additional guidance on how to develop or evaluate alternatives. Rather, the range of alternatives would be developed in accordance with NEPA procedures. Although it is possible that the agency may decide to supplement NEPA procedures to address the unique needs of draft EIS's associated with forest plan revisions, such detailed instructions would be appropriately issued through the Directive System, rather than in a regulation.

Paragraph (g) describes procedural requirements for public notice and comment on the proposed revised forest plan, draft EIS, and draft monitoring and evaluation strategy. These provisions are designed to comply with the requirements of Section 6(d) of NFMA.

Paragraph (h) defines the role of the Regional Forester in overseeing preparation of the final EIS and revised forest plan and also directs that preparation of the final EIS and record of decision be prepared and made public in accordance with NEPA procedures.

Approval of the final plan and determination of the effective date is addressed in proposed § 219.10(i). The final revised forest plan would become effective 30 days after public notice, as required by Section 6(j) of NFMA. Notice of a decision to revise a forest plan must be provided in accordance with 36 CFR part 217, the regulation that guides the process for administrative appeals of forest plans.

Section 219.11 Forest Plan Implementation

Section 6(i) of NFMA requires resource plans, permits, contracts, and other instruments for use and occupancy of National Forest System lands to be consistent with forest plans. This section describes how a determination of consistency is made at the time of project approval, prior to issuing permits or contracts to implement a project decision, as well as how consistency is maintained after forest plan amendments or revisions. This section also provides other direction relevant to forest plan implementation.

Proposed § 219.11(a) describes how the agency would determine project consistency. A determination of consistency with the forest plan would be based on whether a project adheres to forest plan standards, and this determination must be documented at the time of project approval.

Paragraphs (a)(1)–(3) list the options available to a responsible official when faced with a project proposal inconsistent with the forest plan. The options are to: modify the proposal to make it consistent with the plan; reject the proposal, or amend the forest plan to permit the proposal.

Paragraphs (a)(1)–(3) reflect the key role that forest plan standards would play under the proposed rule. As noted earlier in the discussion of proposed § 219.6, standards would be the one component of forest plan direction to which adherence would be mandatory. Unlike goals, objectives, or guidelines, standards define the limitations within which project activities must occur and are limited to those constraints within the agency's authority or ability to enforce. As a result, individual projects can be readily assessed for their compliance with standards.

By contrast, achievement of forest plan goals and objectives would typically be dependent on the cumulative results of individually authorized projects and, in some cases, naturally occurring changes over time. The impact of any specific project on achievement of a goal or objective could be difficult to measure. Monitoring and evaluation is a more meaningful way to account for progress towards goals and objectives than using forest plan goals or objectives in project consistency determinations.

Likewise, project consistency determinations would not be based on guidelines. Guidelines describe a preferred or advisable course of action. Therefore, it would be counter to their intended role if they were used in determining project consistency. In addition, it would be difficult to assess on a project-by-project basis whether a project was consistent with those guidelines that describe specific resource conditions desirable to achieve, just as was the case with forest plan goals.

Paragraph (b) would require that permits, contracts, and other instruments issued or approved for use and occupancy of National Forest System lands be consistent with standards in the forest plan in effect at the time of their issuance. Also, subject to valid existing rights, they must be revised as soon as practicable after a forest plan is amended or revised, if necessary, to be made consistent with the forest plan. Both of these provisions are based on requirements of NFMA (Section 6(i)) and are similar to provisions of the existing rule (§ 219.10(e)), with the exception that the proposed rule would expand this requirement to include amendment as well as revision.

Paragraph (c) would fill an omission existing in the current rule by making clear that an approved forest plan remains in effect until approval of an amendment or revision. The question of the status of forest plans undergoing amendment or revision has arisen often and would be answered definitively by this paragraph.

Paragraph (d) would address possible actions during the plan period. Paragraph (d)(1) would require that a display be included in a forest plan appendix predicting the major goods and services which may be produced, as well as the management activities which may occur during the plan period. Rather than displaying this information as precise figures, paragraph (d)(1)(i) would provide for this information to be expressed in terms of ranges reflecting, when practicable and meaningful, some of the variables most likely to affect actual accomplishment.

Paragraph (d)(1)(ii) would allow a display of the rate of achieving desired

resource conditions identified by forest plan objectives. Once again, this prediction would reflect, to the extent practicable and meaningful, some of the variables most likely to affect achievement. This would not be a required display, but it may be a useful tool for showing how long it would take to achieve the resource conditions envisioned in the forest plan.

Paragraph (d)(1)(iii) would clarify that the information in the displays described at paragraph (d)(1)(i)–(ii) is not forest plan direction and does not compel the agency to take any action.

Paragraph (d)(2) would require periodic updates of the estimated levels of goods and services and management activities, but provides for the intervals and timeframes to be determined as appropriate. It is the agency's intent to utilize information from other ongoing agency efforts rather than requiring the preparation of new or additional information exclusively for the purposes of these updates. Therefore, the agency believes it is important to retain the flexibility to adjust the intervals and timeframes for which these estimates are provided in order to keep synchronized with whatever agency procedures can be most efficiently utilized. Development of these estimates does not require NEPA analysis.

Section 219.12 Monitoring and Evaluation

This section is designed to greatly strengthen the role of monitoring and evaluation and contains several changes from the approach taken in the existing rule. The agency believes an expanded and strenghened role for monitoring and evaluation is a cornerstone for implementing the proposed rule and making adaptive resource management a reality for National Forest System lands.

Paragraph (a) would establish the Forest Supervisor's responsibility to conduct monitoring and evaluation and would require development of a monitoring and evaluation strategy. This strategy would be prepared by the Forest Supervisor simultaneously with revision of a forest plan. In contrast to the existing rule, which provides for monitoring and evaluation to be addressed in the forest plan, the proposed rule would address monitoring and evaluation in a companion strategy document, and it would not be part of the forest plan. Paragraph (a) would also clarify that the strategy does not require NEPA analysis. However, monitoring and evaluation activities are subject to NEPA procedures at the time of implementation.

There are several reasons the agency is proposing to address monitoring and evaluation in a companion document. First, the requirement to develop a companion document should give considerably more emphasis to monitoring and evaluation than at present and should promote greater recognition of monitoring and evaluation as a critical and integrated aspect of National Forest System management. As the first generation of forest plans is facing revision and with the agency shifting to an ecosystem management approach, monitoring and evaluation is receiving greatly increased emphasis within the agency, and considerably more effort is being invested in developing well-designed and coordinated monitoring and evaluation procedures.

The agency also anticipates much more emphasis on joint monitoring with other agencies, coordination of monitoring efforts across plan area boundaries, and a shift from a forest-by-forest approach to a corporate approach to monitoring and evaluation activities. All of this will likely require a document that more easily allows for an expanded length and different formats from what is typically found in most forest plans now. Establishing a separate document for addressing monitoring and evaluation activities allows more flexibility in how all of this information can be aggregated and organized. Given the rapidly expanding technologies and knowledge associated with monitoring and evaluation, it is especially desirable to retain as much flexibility as possible so that the most effective means can be found for structuring and displaying relevant information.

Finally, separating the monitoring and evaluation strategy from decisions in the forest plan should help to streamline the forest plan. The Critique of Land Management Planning revealed that the public wants shorter forest plans, and the agency agrees this is desirable. Yet, circumstances could occur where the length of the monitoring and evaluation strategy could approach the length of the forest plan itself, depending on the monitoring and evaluation format used and the amount of information incorporated from other sources. Therefore, rather than adding to the size of forest plans or creating a disincentive to include all relevant or useful information for monitoring and evaluation in order to keep the forest plan at a manageable size, the agency believes it is appropriate to treat monitoring and evaluation information in a companion document.

In addition to addressing monitoring and evaluation in a companion document, the proposed rule would make clear that the monitoring and evaluation strategy is not considered forest plan direction. There are distinct differences between forest plan direction and the information in a monitoring and evaluation strategy. Unlike the forest plan direction described at § 219.6 (goals, objectives, standards, and guidelines), monitoring and evaluation strategies do not address how to manage resources. Rather than guiding how to manage resources, these strategies guide how to determine if resource management activities are resulting in the outcomes expected. In essence, they are part of the quality control process for implementing the forest plan.

The exclusion of monitoring and evaluation from forest plan direction creates two particularly notable changes. First, updates to the monitoring and evaluation strategy would not be subject to procedures for forest plan amendment. This exclusion is logical because, as provided at proposed § 219.12(a), the strategy does not require NEPA analysis, yet the amendment process is focused on evaluating alternatives following NEPA procedures. However, a second important aspect of amendment procedures is the requirement for a public comment period. In order to assure that the public has an opportunity to comment on updates to the monitoring and evaluation strategy, the proposed rule would require a 30-day comment period.

The second notable change is that the strategy would not be subject to administrative appeal. The monitoring and evaluation strategy does not make decisions about how resources will be managed, but rather establishes procedures for assessing the effects of the forest plan. Although the agency has received hundreds of appeals on forest plans, very few of them involve monitoring and evaluation. Considering the nature of a monitoring and evaluation strategy and the emphasis in the rule on assuring on-going communication and accountability for monitoring and evaluation, the appeals process does not appear to be the most appropriate or effective means for addressing monitoring and evaluation issues.

The proposed rule has established numerous safeguards to assure the agency's accountability for monitoring and evaluation. Some of these include: public review and comment on the strategy at the time of revision (§ 219.12(b)(1)); public comment on proposed updates to the strategy (§ 219.12(c)(2)); public notification of

updates to the strategy in the annual monitoring and evaluation report (§ 219.12(e)(5)); involvement of the applicable Station Director in the development and implementation of monitoring and evaluation strategies (§ 219.12(d)(3)); and the availability of an annual monitoring and evaluation report for public review (§ 219.12(e)). In addition, § 219.12(d)(1) and § 219.3 promote ongoing involvement and communication with the public and other agencies and governments throughout all phases of resource planning and management, including monitoring and evaluation.

Beyond establishing the monitoring and evaluation strategy as a companion document not subject to administrative appeal, paragraph (a) of proposed § 219.12 also would address NEPA responsibilities related to monitoring and evaluation. The monitoring and evaluation strategy does not require NEPA analysis because it does not contain any resource decisions. It is an operational guide that identifies techniques and procedures for gathering relevant information; it does not compel any specific action or prohibit any action. Therefore, due to the nature of the information it contains, the criteria for undertaking NEPA analysis and disclosure are not met and no NEPA documentation is required.

In contrast to the monitoring and evaluation strategy, actual monitoring and evaluation activities are subject to NEPA procedures at the time of implementation. For example, if water quality monitoring activities involve placing instrumentation in a stream or require helicopter access into a remote mountain lake to collect water samples, the environmental effects of such activities would have to be considered. In most cases, monitoring and evaluation activities are categorical exclusions under 7 CFR 1.b(3), which clearly excludes ''Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in scope and intensity.'' Such an exclusion does not apply, however, if extraordinary circumstances exist. Extraordinary circumstances might encompass monitoring and evaluation activities affecting such features as inventoried roadless areas, wetlands, Native American religious sites, and Congressionally designated areas (FSH 1909.15, Sec. 30.3, para. 2).

Proposed paragraph (a)(1) lists the types of instructions provided in a monitoring and evaluation strategy and expands the role of monitoring and evaluation from that in the existing rule. Under paragraphs (a)(1) (i) and (ii), the monitoring and evaluation strategy would provide guidance to make sure that projects are being implemented in accordance with the project decision document, and that progress is being made toward achieving plan goals. Since forest plan goals normally are not expressed in quantitative terms, the rule would require that measurable indicators be used to assess achievement. In many cases, those measurable indicators will be desired resource conditions defined by objectives.

Proposed paragraph (a)(1)(iii) links the monitoring and evaluation strategy for the plan area to monitoring and evaluation efforts needed at scales larger than the plan area. This is a key new concept and reflects how much of the coordination required of the Regional Forester at paragraph (d)(2) of this section will be integrated into forest activities. Proposed paragraph (a)(1)(iv) recognizes that an important role of the monitoring and evaluation strategy is to provide for validating the assumptions upon which plan decisions were based and verifying the accuracy of the predicted effects.

Proposed paragraphs (a)(1) (v)–(x) substantially expand the role of monitoring and evaluation beyond what is required by the existing rule. Under proposed paragraph (a)(1)(v), the monitoring and evaluation strategy would include setting priorities for monitoring and evaluation efforts, and it specifies that the highest priority for monitoring and evaluation is those activities believed to have the greatest potential risk to the environment.

Proposed provision (a)(1)(vi) would require the monitoring and evaluation strategy to address compilation of information to serve as reference points for future evaluations. Similarly, paragraph (a)(1)(vii) would direct that monitoring and evaluation be used to determine if new information exists which substantially affects the validity of the forest plan, such as changes in legal requirements, shifting social or economic trends, new scientific information, or findings resulting from ecosystem analyses. This deliberate outreach for new information is not generally recognized as part of monitoring and evaluation under the existing rule.

Paragraph (a)(1)(viii) would expand the role of monitoring to include the storage and dissemination of information for use in the budget formulation process. A major source of this type of information is expected to be various ecosystem analyses, as well as information being gathered from various other sources. Although storing and disseminating such information is a vital function, its importance is not always recognized.

Tracking goods and services provided and management activities conducted, as would be required at paragraph (a)(1)(ix), is traditionally associated with monitoring and evaluation. The final item, identifying problems and opportunities for resolution, is not traditionally considered part of monitoring and evaluation. Under the proposed rule, however, such efforts would be considered as part of monitoring and evaluation and are considered an integral and critical step whereby the monitoring and evaluation results are synthesized into a clear problem statement and evaluation of opportunities for solution.

The decision as to whether a forest plan needs to be amended or revised is a separate step and not included within the role of monitoring and evaluation. Monitoring and evaluation only goes as far as providing the information which defines the problem and which describes opportunities for solution. The subsequent determination as to whether an amendment or revision is triggered is based on the information provided through monitoring and evaluation. This determination is made available to the public in the annual monitoring and evaluation report that would be required by paragraph (e) of this proposed section.

Paragraph (a)(2) provides additional instructions for developing monitoring and evaluation strategies. The proposed rule would make clear that strategies should be realistic and practicable to implement and should recognize possible fluctuations in funding. This paragraph also would assure that monitoring and evaluation efforts are designed at appropriate spatial scales and for appropriate timeframes.

The agency recognizes that there will always be limitations on the funds and staff available to conduct monitoring and evaluation. One approach for enhancing efficiency is to assure that efforts are designed at the appropriate scales for appropriate timeframes. This will require close coordination of effort and careful planning, but such coordination is essential to prevent redundant efforts and to maximize the results obtained with limited funding.

The provision of paragraph (a)(2) to recognize funding limitations is one of three provisions in this section which work together to address the issue of funding. The first provision is (a)(1)(v), which would require that priorities be set for monitoring and evaluation efforts in the strategy in order to identify monitoring and evaluation efforts

associated with the management activities having the greatest potential risk to the environment. The second is paragraph (a)(2), which would direct monitoring and evaluation strategies to be designed recognizing that the type and intensity of efforts may need to vary depending on the availability of funds. The third related provision is paragraph (a)(3), which would require that, when funds are limited, the highest priority monitoring and evaluation activities be implemented first.

Proposed paragraph (b) would require that the monitoring and evaluation strategy be available for public review and comment along with the proposed revised forest plan. This assures the public an opportunity to review the strategy at the time of revision just as would have been the case if it were contained in the forest plan. An important safeguard for ensuring that a timely monitoring and evaluation strategy is developed is the prohibition against approving a revised forest plan prior to approval of the monitoring and evaluation strategy. This provision would assure that there is no delay between finalizing a revised forest plan and having an approved monitoring and evaluation strategy. Finally, Station Director concurrence would be required when approving the strategy. This provision would help ensure that the monitoring and evaluation strategy is scientifically sound and would promote the involvement of the scientific community in development of these strategies.

Proposed paragraph (c)(1) provides that updates may occur as needed and lists circumstances which might trigger an update. Proposed § 219.12(c)(2) would make the Forest Supervisor responsible for updating monitoring and evaluation strategies as needed and would make clear that such updates do not require NEPA analysis. As previously noted, paragraph (c)(2) would require a 30-day period for public review and comment on proposed updates to a monitoring and evaluation strategy.

Proposed paragraph (d)(1) would promote coordination of monitoring and evaluation efforts, to the extent feasible, with other Federal agencies, State, local, and tribal governments, interested private landowners, the scientific community, and other interested parties. Such coordination offers opportunities to enhance open and ongoing communication, improve the information base for decisionmaking, reduce costs through shared efforts, and promote an ecological approach to resource management across jurisdictional boundaries.

Paragraph (d)(2) would require the Regional Forester to be responsible for assuring that monitoring and evaluation needs which extend beyond a plan area are addressed and coordinated. This expands the role of the Regional Forester from that in the existing rule and clearly establishes the agency's intent to address monitoring and evaluation efforts at whatever scale is appropriate, rather than focusing on efforts within a plan area simply because monitoring and evaluation procedures have historically been forest plan decisions. The proposed rule intentionally would not provide detailed instructions on how this coordination is to be accomplished since the agency has not had extensive experience addressing monitoring and evaluation procedures at this scale and flexibility is needed in order to determine the best way to approach this task.

Paragraph (d)(3) would create an integral and ongoing role for Forest Service research personnel in all phases of monitoring and evaluation. The intent is to provide a sound scientific basis for all monitoring and evaluation activities and to help promote interaction between researchers and land managers. Because the paragraph directs that research personnel should be involved in monitoring and evaluation to the extent practicable, there is recognition that there will be limits to the extent research staff are available for such efforts.

Paragraph (e) of proposed § 219.12 requires the Forest Supervisor to prepare an annual monitoring and evaluation report to be made available to the public, as well as transmitted to the Regional Forester and Station Director. This provision is intended to increase the accountability of the agency for conducting monitoring and evaluation and to enhance communication and involvement of the public. The seven items which would be included in the report assure that the public, Regional Forester, and Station Director are aware of the results of monitoring and evaluation efforts, the implications such results have for needing to change the plan or how it is being implemented, and any changes which have occurred during the year to the plan or monitoring and evaluation strategy.

Paragraph (f) would limit implementation of projects if funds for associated monitoring and evaluation activities are not reasonably expected to be available. There is no comparable requirement in the existing rule. This represents another means by which the agency intends to increase its commitment to accomplishing monitoring and evaluation efforts. This limitation applies to those monitoring and evaluation activities specifically identified in a decision document associated with authorizing a site-specific project. In addition to assuring that monitoring and evaluation needs are considered at the time of project implementation, this provision should be an incentive to improve the manner in which monitoring and evaluation costs are integrated into project planning.

The final paragraph of this section would make clear that none of the requirements for conducting and reporting on monitoring and evaluation preclude initiating an amendment or revision at any time.

Section 219.13 Statutory Timber Management Requirements

This section describes those statutory planning requirements that affect the management and harvest of timber on National Forest System lands. Although most of the provisions of this section are directly responsive to specific requirements of NFMA, a few are discretionary. Those of a discretionary nature are identified in this preamble.

With the agency's emphasis on integrating consideration of resources as part of ecosystem management, devoting an entire section of the proposed rule to the timber resource may seem inconsistent to many reviewers. The attention given to timber in this section, while possibly appearing to be out-of-balance with other resources, is generally the minimum needed to respond to the highly prescriptive requirements for timber management in NFMA. Enacted largely in response to timber-related issues in the mid-1970's, NFMA contains extensive specific direction regarding management of timber resources, much more so than for any other resource.

Proposed § 219.13(a) addresses reviews of timber suitability determinations. Section 6(k) of NFMA requires that lands not suited for timber production be identified in forest plans. Paragraphs (a) through (c) of this section address compliance with Section 6(k) of NFMA.

Proposed paragraph (a)(1) would address the NFMA requirement for the 10-year suitability review, and states that the 10-year review should normally occur as part of the revision process. When done as part of the revision process, the entire land base would be considered. In some case, however, it is possible that revision will not have occurred by the time the 10-year period has elapsed. In these cases, proposed

paragraph (a)(1) would require the 10-year review to consider only the unsuitable lands, with all lands reviewed later at the time of revision.

Although the statute does not require a review of the timber suitability determination for all lands at the time of revision, the agency believes it is appropriate to do so. This comprehensive review will assure that suitable lands are considered for possible reallocation to the unsuited land base rather than focusing only on whether unsuited lands should remain so designated. Proposed paragraph (a)(3) would clarify that the determination of timber suitability may be changed at any time through forest plan amendment.

Proposed § 219.13(b)(1) would direct that unsuited lands have a fixed location and that they should be identifiable on maps or by other readily recognizable means. This provision aims to assure that these lands can be located during project planning and is also intended to facilitate the 10-year review of unsuited lands. One of the problems with the current approach is that unsuited lands are sometimes designated on a forest-wide basis rather than identified with a specific location. For example, 20,000 acres out of a total of 55,000 acres of a particular forest type may have been determined to be unsuited lands, but there is no delineation of which lands within the total are to be treated as unsuited. The location of the unsuited land will be clear if this proposed provision is adopted.

Paragraph (b)(2) would require that management prescriptions be established to ensure that unsuited lands are managed in accordance with the three provisions of the proposed rule which are applicable to them. These include the requirement to limit timber harvesting except for salvage sales or other sales necessitated to protect other multiple-use values (§ 219.13(b)(4)), the provision to continue to reforest unsuited lands (§ 219.13(b)(5)), and the provision to allow exceptions to the five-year reforestation requirement when long-term openings are needed (§ 219.13(b)(3)(v)(B). All three of these provisions are in response to requirements of NFMA.

Paragraph (b)(3) describes the five types of lands that are not suited for timber production. The first type is lands which have been withdrawn from harvest by an Act of Congress, the Secretary of Agriculture, or the Chief of the Forest Service. This is comparable to the requirement at § 219.14(1)(a)(4) of the existing rule.

The second exclusion is lands on which timber harvesting would violate statute, Executive order, or regulation. The third requirement would continue the exclusion of non-forested land, as is currently provided in § 219.14(a)(1) of the existing rule.

The fourth exclusion would be those lands where technology is not available for conducting timber harvesting without irreversible damage to soil and watershed conditions. This parallels a requirement at Section 6(g)(2)(E)(i) of NFMA and § 219.14(a)(2) in the existing rule.

The final exclusion would be those lands where there is not a reasonable assurance of adequate reforestation within five years after timber harvest. This parallels the requirement at Section 6(g)(2)(e)(ii) of NFMA and § 219.14(a)(3) of the existing rule. The proposed rule defines the five year period after final timber harvest to mean five years after clearcutting, after the last overstory removal of a shelterwood or seed tree cutting, or after selection cutting. In shelterwood or seed tree cuts, the entire existing overstory may never be removed, as trees may be left to provide for other considerations. Therefore, the time period begins when the last planned overstory removal is conducted. In selection cutting, the stand is left stocked with trees of varying age and size classes.

There are two supplemental provisions associated with the five-year reforestation criterion. First, the rule specifies that research and experience are the basis for determining a reasonable assurance of restocking. Secondly, the five-year reforestation requirement would not prohibit creating openings for long-term purposes, such as wildlife habitat improvements, scenic vistas, recreation sites, or other similar uses.

Proposed paragraph (b)(4) would permit harvest from unsuitable lands only for salvage sales or sales necessitated to protect other multiple-use values. This requirement is based on the provisions of Section 6(k) of NFMA.

Proposed paragraph (b)(5) would affirm that lands not suited for timber production will continue to receive reforestation treatments to protect other multiple-use values as required by Section 6(k) of NFMA.

Proposed paragraph (b)(6) would explicitly provide that the unsuited land base should not vary among the alternatives at the time of forest plan revision. This requirement is a major change from the existing regulation, and provides a good focal point for comparing differences in the determination of suitability under the proposed rule and the existing rule.

The existing rule essentially has a three-step process. The first step in the existing rule is closely paralleled in the proposed rule, but the other two are not.

The first step, described at § 219.14(a) of the existing rule, defines four screening criteria fairly comparable to the six criteria described in the proposed rule. Thus, under the proposed rule, the unsuited land base would be quite similar to the land base identified as unsuited under the first screening step of the existing rule. This screening step does not differ substantially between alternatives, because the criteria are based on conditions or attributes which remain constant even if management objectives vary.

The second step of the existing rule (§ 219.14(b)) requires an analysis which stratifies those lands not identified as unsuited in the first step. The stratification identifies lands with similar management costs and returns. Consistent with the intent of § 219.8(b) to reduce standardized analysis requirements, there is no comparable requirement in the proposed rule.

The third step in the existing rule (§ 219.14 (c) and (d)) screens lands out of the suitable land base based on the objectives of each alternative. More specifically, lands would be considered not suited for timber production if the multiple-use objectives for the alternative precluded timber production, if other management objectives imposed such limitations on timber harvest that requirements of § 219.27 could not be met, or if the lands were not cost-efficient over the planning horizon in meeting forest objectives.

This third step in the existing rule is also not paralleled in the process for identifying unsuited lands under the proposed rule. The proposed rule would address considerations comparable to the third step in the existing rule at paragraph (c), which would make clear that forest plan standards may be imposed on suited lands to prohibit or limit timber harvesting. Economic considerations or an allocation of land to uses incompatible with timber harvesting would be examples of reasons for imposing such standards on suited lands. In essence, paragraph (c) is fairly comparable to the third step of the process under the existing rule, except that paragraph (c) would limit harvesting by imposing standards on the suited land base rather than declaring those lands to be unsuited for timber production.

In association with the change in determining unsuitable lands, the proposed rule would alter the land base for calculating the allowable sale quantity (ASQ) from that used in the existing rule. In the existing rule, the entire suitable land base is used in calculating the ASQ. Under the proposed rule, as described at § 219.13(d)(1)(i), only those suited lands on which planned periodic entry for timber is allowed over time would be included in ASQ calculations; i.e., if standards have been imposed which are incompatible with timber harvesting over the long-term, then those lands are excluded from the land base used to calculate the ASQ. For example, if a corridor along a scenic hiking trail is allocated to a prescription that does not allow timber harvesting in order to protect scenic values, then the lands would be in the suited land base but would not be included in ASQ calculations.

It is noteworthy that the proposed rule would limit the land base for ASQ calculations to those lands available for planned periodic entries. Lands would not be included in the ASQ calculations if only a one-time harvest were planned but not planned periodic entries. For example, if a salvage harvest was planned to occur during the plan period in an area where harvest would not otherwise occur nor be planned for future decades, then those lands would be excluded from ASQ calculations.

Another notable change between the existing rule and proposed rule as related to timber suitability is the rule of economics. In contrast to the existing rule which addresses the economics of harvesting as part of the timber suitability determination, the proposed rule would address the economics of harvesting in the forest plan through establishment of forest plan standards or guidelines.

Section 6(k) of NFMA states that unsuitable lands are to be identified ''* * * considering physical, economic, and other pertinent factors to the extent feasible, as determined by the Secretary * * *'' Although the agency agrees that economics is an important consideration in determining whether lands should be harvested, experience has proven that it is not feasible to effectively factor in economics as part of the 10-year timber suitability determination. Therefore, in light of the latitude provided by NFMA, the agency is proposing to address economic considerations by means other than the timber suitability process.

There are various reasons for this change. First, economic conditions fluctuate greatly during the course of a plan period. One year a certain area of land or species may be uneconomic to harvest, and another year market conditions may have changed to where the same area or species would be greatly in demand. This makes it difficult to meaningfully assess the economics of harvesting a particular site over a 10-year period.

Also, it is generally accepted that the net value of the timber sale program must be considered as a whole rather than by only evaluating individual timber sales in isolation, since some sales of low value are offset by other higher value sales. The timber program also must be viewed with consideration of non-market contributions, such as enhanced hunting use, and not strictly timber sale costs and receipts. These considerations further add to the difficulty of using the process for identifying unsuited lands in forest plans as an effective and timely means by which economic considerations are addressed.

In contrast to using timber suitability determinations to address economic considerations, the agency believes they can be adequately addressed through other means. For example, forest plan standards can be established to limit harvesting due to economic reasons. Therefore, if harvest limitations are deemed appropriate due to economics, the option exists to use them. In addition, economic considerations can be considered as part of the program development and budget process. This would allow timely adjustment of annual harvest programs, within the limitations imposed by forest plan standards, based on such factors as fluctuating economic conditions. Also, the economics of harvesting any particular site can be considered as part of the project decision to approve harvest of the area.

The agency believes there are four major advantages to the entire set of changes being proposed to the process for determining timber suitability. First, under the proposed rule, suitability determinations are much simpler and more efficient to conduct, and yet there is no compromise of the ability to exclude lands from timber harvest or from calculation of the ASQ. Secondly, the 10-year review will be completed more quickly, reducing the diversion of time and energy from revision efforts which are generally expected to be occurring at the same time. Third, it allows unsuited lands to be readily identifiable, making it easier for both the public and agency personnel to locate those lands when designing projects. Finally, it allows economic factors to be considered in a more effective and timely manner while reducing an analysis step that has not proven highly beneficial.

In order to assure that the availability of lands for timber harvest is readily evident despite the proposed change in process for determining suitability, proposed paragraph (c) would require an appendix to display the number of acres of suitable lands where standards have been imposed prohibiting or limiting timber harvest as well as the number of acres where such limitations do not apply. This is not part of the suitability determination, but does provide information comparable to what is currently available in forest plans as part of the timber suitability information.

Proposed paragraph (d) addresses the allowable sale quantity and makes clear that the ASQ is neither a projection of future sale levels nor a target to be achieved. Although this position is well supported in case law, there has been widespread misunderstanding that the ASQ is a target level for timber production from a National Forest. The proposed rule would make clear this is not the case.

Proposed § 219.13(d)(1) sets out procedures for calculating the allowable sale quantity (ASQ). As stated at (d)(1)(i) of the proposed rule, the land base for ASQ calculations would be limited to suitable lands on which planned periodic timber harvest is allowed over time.

Paragraph (d)(1)(ii) explains the role of the long-term sustained yield timber capacity (LTSYTC) when calculating the ASQ. The LTSYTC is defined at § 219.2 and represents the highest uniform wood yield that may be sustained in perpetuity consistent with the forest plan.

Consistent with Section 13 of NFMA, the chargeable timber volume which can be sold for a decade cannot exceed the LTSYTC except where necessary to meet overall multiple-use objectives. An example of such a departure may be in the case of a forest having severe forest health problems, where accelerated silvicultural manipulations and accelerated timber harvest are critical to its ecological restoration.

Under the proposed rule, the land base for calculating the LTSYTC would be calculated using the same lands and forest plan standards used to determine the ASQ. Where two or more proclaimed National Forests are included in the forest plan, the proportionate contribution of each National Forest to the total ASQ for the plan area cannot exceed the LTSYTC for each corresponding proclaimed National Forest. In order to assure this

would not happen, a non-interchangeable component could be defined in accordance with (d)(3) of this section. This limitation on the chargeable volume that can be sold for a decade from a proclaimed National Forest does not apply where the proclaimed National Forest has fewer than 200,000 acres of land suited for timber production. These provisions are based on the requirements of Section 13 of NFMA, and do not vary from the existing situation, although the existing rule does not address this to the same degree of detail.

Paragraph (d)(1)(iii) would continue a non-declining flow requirement. When a new ASQ is determined, it may be higher, lower, or the same as the current ASQ. Such fluctuations might be caused by such factors as changes in the suitable land base, new standards, or revised timber growth and yield projections. However, whatever level is established for the decade of the plan must be capable of being sustained or increased during subsequent decades, with exceptions only to meet overall multiple-use goals. This limitation is intended to help assure that harvesting will not occur at so high a rate in the short-term that decline is inevitable in the future, unless such a decline is recognized as being necessary to meet multiple-use goals. An example of when such an exception might be appropriate would, once again, be in the case of a forest having severe health problems, where higher levels may be beneficial in the short-term in order to correct imbalances of the forest structure and promote ecological restoration, but with lower harvest levels planned once the restoration phase was complete.

Paragraph (d)(1)(iv) is a requirement of Section 6(g)(3)(D) of NFMA and would require that, when the ASQ is being recalculated, any predicted yields based on intensive management must be reduced if such practices have not been successfully implemented or adequate funds have not been received to continue substantially as planned. This statutory limitation is intended to help safeguard against over-estimating the ASQ due to faulty yield projections.

Paragraph (d)(2) would clarify that only the timber volume included in the growth and yield projections to determine the ASQ is chargeable to the ASQ. Excluded would be the volume from timber classes not included in the projections, such as merchantable dead timber.

Paragraph (d)(3) would allow for the establishment of non-interchangeable components (NIC's). NIC's allow for separating discrete quantities of the ASQ into individually accountable categories. The proposed rule would stipulate that chargeable timber volume from one NIC cannot be substituted for the achievement of the volume limit of another NIC. In addition, such components would be required where management prescriptions for roadless areas allow planned periodic entries over time for timber harvest. Establishment of NIC's is not limited to roadless areas, however. On forests where the product or species mix is deemed important, the use of NIC's provides a means to maintain the intended balance.

The provision for roadless area NIC's is intended to help reduce the pressure to over-harvest areas outside of roadless areas if anticipated timber production from roadless areas does not materialize. Although the proposed rule would make clear at paragraph (d) of this section that the ASQ is not a target or projection of future harvest levels, this requirement to establish NIC's for roadless areas is intended to further reinforce this idea and to help to reduce erroneous expectations regarding the role of the ASQ. In addition, other forest plan standards serve to prevent over-harvesting anywhere in the plan area.

Paragraph (d)(4) addresses a provision of Section 13(b) of NFMA and clarifies that the ASQ may not be used to limit the harvesting of timber for salvage or sanitation purposes or for harvesting timber stands substantially damaged by fire, wind or other catastrophe, or which are in imminent danger from insect or disease attack. If such timber volume were included in the calculation of the ASQ, it may be substituted for timber volume that would otherwise have been sold under the plan. If the sanitation/salvage timber volume had not been included in the calculation of ASQ, or if it had and it is infeasible to substitute it for other volume, it can be sold over and above the ASQ.

Paragraph (e) responds to the requirements of Section 6(m) of NFMA and would require that all even-aged stands scheduled for harvest during the planning period will generally have reached the culmination of mean annual increment (CMAI) of growth unless certain listed exceptions apply. This paragraph is similar to the existing rule, except that any change to a forest plan to permit exceptions must be made through a major amendment or done at the time of plan revision (see § 219.9(b)(1)(iii)).

Proposed paragraph (f) would address the selection of cutting methods. It would make clear that the determination of the appropriate harvest method is to be made at the project level. This has been a source of considerable confusion in the past, with many administrative appeals received by the agency questioning the adequacy of the analysis associated with a forest plan to support the selection of cutting methods. The proposed rule is consistent with numerous court decisions that confirm such decisions are made at the project level rather than in the forest plan. (For example, *Sierra Club* v. *Robertson*, 810 *F. Supp.* 1021, 1026 (W.D. Ark 1992) aff'd 28 F 3d 753, 760 (8th Cir. 1994)).

Paragraph (f) also responds to the requirement of NFMA at Section 6(g)(3)(F)(i) which limits the use of clearcutting to those cases where it is determined to be the optimum method. The existing rule does not address what was meant by optimum. Paragraph (f) would establish seven purposes for which clearcutting can be used, provided it is the optimum method and the only practical method for meeting one or more of the purposes. These provisions reflect the agency's intent to continue to reduce the amount of clearcutting from levels which have historically occurred, tailoring its use to those situations which meet the purposes listed. Over the past several years, the agency has already substantially reduced its use of clearcutting.

Paragraph (g) would require that the forest plan establish the maximum size of areas that can be clearcut in one harvest operation. This is in response to Section 6(g)(3)(F)(iv) of NFMA. Exceptions are allowed for natural catastrophes, or limits established by the Regional Forester on a project basis after public notice. Currently, harvest size limitations are found in the existing rule and regional guides, but regional guides would no longer be maintained under the proposed rule. In light of the fact that research findings on the effects of harvest size have changed and are likely to continue to change over time, it is not appropriate to include such prescriptive direction in this proposed rule. By addressing such limitations in the forest plan, even though they are not applied until the project level, the constraints are integrated with other resource decisions for the plan area and the public is assured the opportunity to review and comment when they are adopted or changed.

Paragraph (h) would direct the shaping and blending of even-aged harvest methods with the natural terrain to the extent possible in order to ameliorate the visual impacts of such practices. It addresses NFMA Section 6(g)(3)(F)(iii) and is less detailed than the requirements of 219.27(d)(1) of the existing rule.

Paragraph (i) would assure that timber is only harvested where soil and water can be adequately protected. This provision is based on Section 6(g)(E)(iii) of NFMA.

Paragraph (j) would require certain displays of timber-related information that must be included in forest plan appendices. This information is expected to be of interest to the public and provides a concise summary of various timber-related analyses or decisions. Items (i)(1) and (i)(2) are intended to help summarize the availability of lands for timber harvest, while (i)(3) and (i)(4) provide information to assure NFMA requirements have been met. The proportion of probable timber harvest methods forest-wide is required to be included by Section 6(f)(2) of NFMA.

Section 219.14 Special Designations

The purpose of this section is to ensure that forest plans include all of the relevant direction (goals, objectives, standards, and guidelines as described at proposed § 219.6) for lands within the plan area, including those with special designations which may have been evaluated through other planning processes as required by statute. The existing rule addresses only two special designations, research natural areas and wilderness. The proposed rule seeks to integrate direction for all specially designated areas into forest plans to the extent possible.

Paragraph (a) would explain that forest plan amendment or revision is the mechanism to allocate specific areas to prescriptions for special designations, or to recommend special designation by higher authorities. Various examples of special designations are also provided.

Paragraph (b) would require that roadless, undeveloped areas be evaluated for wilderness designation during forest plan revision unless Federal legislation directs otherwise. Roadless, undeveloped areas are defined to be at least 5,000 acres in size unless contiguous to existing or Administration-endorsed units of the National Wilderness Preservation System. Due to the differing conditions in the eastern part of the country, a provision is added so that the size limitation would not apply east of the 100th meridian.

These provisions of the proposed rule differ somewhat from the existing rule. Most notably, the proposed rule is more specific by defining roadless areas in terms of a 5,000-acre minimum for areas in the western part of the country. This size criterion has been agency policy as described in FSH 1909.12, Chapter 7.11, but is not in the existing rule. In contrast, the existing rule provides criteria for evaluating roadless areas, whereas the proposed rule does not, because the agency believes such detailed procedural instructions are better suited for the Directive System.

It should be noted that nothing in paragraph (b) precludes consideration of roadless areas for the full range of management options. Although wilderness designation must be one of the options considered, roadless areas are also subject to consideration for various other uses or degrees of protection, not unlike the case for most portions of the plan area.

Paragraph (c) of this section would provide for evaluation of a river's eligibility for wild, scenic, or recreation river designation during revision if legislation requires such an evaluation or if the river was not evaluated under criteria set forth in July of 1987 in Forest Service Handbook 1909.12. Although many forests have evaluated their rivers under these criteria, many have not. This provision is designed to assure that all potential wild, scenic, or recreation rivers are evaluated under the same set of criteria. Although wild, scenic, and recreation rivers were not addressed in the existing rule, the proposed rule includes them since recommendations for river designation, as is the case for wilderness, are made in forest plans with the final decision made by the Congress.

Paragraph (d) would reinforce the central role of forest plans by requiring that any requirements for additional planning for special areas must be met through forest plans, unless certain identified exceptions exist. This is comparable to § 219.2(a) of the existing rule and is intended to assure that special area planning is integrated with forest plans.

The proposed rule would specifically require that goals, objectives, standards, or guidelines from special area plans be incorporated into forest plans to maintain the role of the forest plan as the central source of local direction as well as to provide a basis for determining project consistency.

Section 219.15 Applicability and Transition

This section provides for an orderly transition from the existing rule adopted in 1982 to the proposed rule. Paragraph (a) would establish that the proposed rule would apply to the entire National Forest System. Although terms such as ''National Forest,'' ''forest'' or ''forest plan'' have been used within the proposed rule and preamble, this does not limit applicability of the rule to only the National Forest components of the National Forest System. For example, the National Forest System includes National Forests, National Grasslands, Purchase Units, Land Utilization Projects, Experimental Forests, Experimental Range, Experimental Areas, and other areas. The applicability of the proposed rule to the National Forest System does not differ from the existing rule.

Paragraph (b) would address those situations where an initial forest plan has not been approved at the time the new rule becomes effective. At this time, there are four National Forests where a forest plan has not yet been approved; these are the Klamath, Mendocino, Shasta-Trinity, and Six Rivers National Forests, all in the Pacific Southwest Region (R–5) (California). The new rule would not apply to development of initial forest plans. Therefore, paragraph (b) provides for unfinished forest plans to be completed under the previous planning rule as adopted in 1982. As a result, there would be consistent regulatory guidance for development of all initial forest plans and no disruption of the planning process for any unfinished plans. Upon approval of those forest plans, the provisions of the proposed rule would then apply to future amendments and revisions.

Paragraph (c) would make clear that forest plans that are already approved remain in effect until amended or revised. This provision is intended to prevent any uncertainty as to the status of existing forest plans.

Paragraph (d) would make clear that forest plans need not be amended in order to comply with requirements of the new rule prior to the forest plan being revised in accordance with the new rule. This provision is included because the agency does not intend for the new rule to immediately trigger either the amendment or revision of forest plans. It would be disruptive, expensive, and impractical to immediately undertake changes to every forest plan in order to adjust to the newly effective rule.

Paragraph (e) allows development of the displays required at § 219.11(d)(1)–(2) and § 219.13(j) to be delayed until the forest plan is revised in accordance with the rules of this subpart.

Paragraph (f) makes clear that the first annual monitoring and evaluation report would be required one fiscal year following adoption of the final rule. This time period allows forests time to plan for and organize work needed to produce the first annual monitoring and evaluation report. Such reports would be developed using the results of monitoring and evaluation activities

described in existing forest plans, since most Forests will not have the newly required monitoring and evaluation strategies developed until the forest plan is revised.

Paragraph (g) addresses how the transition process would occur regarding usage of ''standards'' and ''guidelines'' as defined in the proposed rule. Many existing forest plans do not distinguish between ''standards'' and ''guidelines'' in the same manner as described in the proposed rule at § 219.6 (e) and (f). In addition, it would not be mandatory for each forest plan to be changed to distinguish between ''standards'' and ''guidelines'' until the time of revision. As a result, it would be appropriate to implement the provision of proposed § 219.11(a), which would require project consistency determinations to be based on adherence to ''standards,'' or the provision of § 219.9(b)(1)(i), which would require major amendment when modifying forest plan standards, without recognizing and providing for the impact of this proposed change in terminology.

Under the provisions of paragraph (g), until such time as a forest plan were amended or revised to distinguish between ''standards'' and ''guidelines'' in accordance with the terminology defined in the proposed rule, the words used in each existing ''standard'' or ''guideline'' in the current plan would be used to determine whether it is mandatory. More specifically, many current forest plans contain a mix of ''standards'' and ''guidelines,'' of which only some are mandatory. For example, statements using ''must'' or ''shall'' are mandatory in nature and would generally be comparable to a ''standard'' in the proposed rule. In contrast, statements using ''may,'' ''should,'' or ''ought'' provide the flexibility comparable to a ''guideline'' in the proposed rule.

Proposed paragraph (g)(1) continues existing agency policy that project consistency determinations are based on whether project decisions adhere to mandatory standards or guidelines. This should provide a smooth transition to the new rule.

Paragraph (g)(2) describes instructions for determining if a future amendment is considered ''major'' during the transitional period before a forest plan has been revised. The triggers for a major amendment that apply during the transition period differ somewhat from both the existing rule and the provisions at § 219.9(b)(1) of the proposed rule. The provisions of proposed (219.9(b)(1) would apply only after forest plans have been amended or revised to fully comply with the new terminology. During the transition period before the plan has been changed to be in full compliance with the new terminology, the provisions of § 219.15(g)(2) would apply.

In accordance with § 219.15(g), two circumstances must exist simultaneously for a major amendment to be triggered during the transition period; i.e., prior to a forest plan being amended or revised to be in full compliance with the new usage of standards. First, the amendment must change standards or guidelines in the current forest plan which are mandatory. Since many current forest plans do not distinguish between standards and guidelines, there may be mandatory requirements labelled as guidelines in current plans. Thus, the determination during the transition period focuses on whether the change is to a mandatory provision rather than whether it is labelled as a standard or guideline. In accordance with § 219.6(f), this won't be necessary once a forest plan has been revised because there would be no mandatory requirements labelled as guidelines. If, during the transition period a new mandatory requirement was established, such a change to the forest plan would trigger a major amendment.

The second circumstance which must also occur is that the proposed change to a mandatory standard or guideline would result in a significant change to the forest plan and those changes are predicted to affect resources over a large portion of the plan area during the remainder of the plan period. This is comparable to one of the circumstances currently defined in FMS 1922.52 for significant amendment.

If both of these circumstances occur, a major amendment would be triggered during the transition period. This amendment would be conducted in accordance with the procedures for major amendment in the new rule, however. It should be noted that many changes to current forest plan standards may not affect resources over a large portion of the plan area during the remainder of the plan period. For example, if the forest plan was scheduled to undergo revision soon, there might be few, if any, changes that could affect resources over a large portion of the plan area within a short period of time. Even though the new or modified standard might apply over the entire plan area, resources on-the-ground might not actually be affected if the standard was not going to be in place very long before revision would be initiated. Thus, some changes to standards might not meet the threshold of triggering a major amendment during this transition period.

The intent of this transition procedure is to begin shifting the emphasis away from changes in output levels and towards recognizing the important role of forest plan standards when determining if a change triggers a major amendment. At the same time, it is designed to recognize that the change in terminology between the existing rule and proposed rule makes it unrealistic to implement the new approach defined at § 219(b)(1)(i) immediately.

In addition to the requirements related to changing a standard, a major amendment would be triggered during the transition period if the chargeable timber volume which can be sold for a decade from a proclaimed National Forest were established that exceeded the long-term sustained yield capacity of the Forest, or if harvest of even-aged stands were permitted before culmination of mean annual increment. Both of these provisions are identical to the provisions of § 219.9(b)(1) (ii) and (iii). They are applicable during the transition period to ensure that the public involvement requirements of NFMA are met as required by the statute for changes of this nature.

Proposed paragraph (h) would address how the new rule would be applied when a significant amendment or revision is already in progress as indicated by issuance of a Notice of Intent. At the time of adoption of a final rule, one of two scenarios could occur. If a draft environmental impact statement (DEIS) has not yet been published, the new rule must be adopted. If a DEIS has been published, it is the Regional Forester's option to decide whether to continue under the previous planning rule or to apply the new rule. In those case where the new rule is adopted, paragraph (h) also provides direction so that the Regional Forester can avoid delaying ongoing processes.

Paragraph (h) is intended to promote prompt application of the new rule. However, it would be unnecessarily disruptive and expensive to impose a new regulation on ongoing significant amendment or revision efforts nearing completion. Similarly, paragraph (h) is intended to allow ongoing efforts which are subject to the new rule to proceed as smoothly as possible. It would be largely redundant, time-consuming, and confusing to the public to require various procedural steps in the processes for amendment or revision to be repeated or accomplished in accordance with the new rule when the effort has already proceeded past the

point where those steps are in a logical sequence.

Paragraph (i) of the proposed rule would provide for the withdrawal of regional guides within three years of adoption of the final rule. The reasons for eliminating regional guides were explained earlier in the discussion of proposed § 219.5. Paragraph (i) also would require that the Regional Guide for the Pacific Southwest Region (R–5) be maintained in accordance with the requirements of the existing rule until the remaining unfinished plans in that Region are approved. In all other Regions, regional guides would be withdrawn within 3 years from adoption of the final rule. The Pacific Southwest Region would need to maintain its regional guide in order to direct development of unfinished forest plans. The Pacific Southwest Regional Guide would be withdrawn within 3 years from approval of the last forest plan in Region 5. In addition, paragraph (i) would authorize the Chief of the Forest Service to extend any regional guide beyond the 3-year period in extenuating circumstances.

Paragraph (j) assures that forest plans address limitations on the size of openings (§ 219.13(g)) prior to withdrawal of the regional guide. The establishment of size limitations is a requirement of NFMA and is currently addressed in regional guides and the existing rule. This provision will assure that there is no gap in having such direction in place during the transition to the new rule.

The transition procedures of this proposed rule reflect current circumstances regarding the status of forest planning efforts nationwide and the nature of proposed changes to the existing rule. To the extent that these or other circumstances are different at the time the final rule is adopted, the agency may have to adopt different transitional procedures in order to assure the most practical, efficient, and timely transition possible.

Conforming Amendments

The administrative appeal process for forest plans is set out in a separate rule at 36 CFR part 217, and the administrative appeal process for project decisions is set out at 36 CFR part 215. Due to the nature of changes being proposed to 36 CFR part 219, amendments would need to be made to these appeal rules in order for them to conform to the changes proposed to part 219. First, the terms ''nonsignificant amendment'' and ''significant amendment'' would be replaced by the terms ''minor amendment'' and ''major amendment'' wherever they occur in parts 215 and 217. Second, § 217.3(b) would be removed to exclude regional guides from being subject to administrative appeal since these documents would not be retained under proposed revisions to part 219. Third, the heading of part 217 would be amended to remove reference to regional guides and read: Appeal of National Forest Land and Resource Management Plans. Finally, § 217.3(a)(1) and § 217.4 would be amended to exclude interim amendments from being subject to administrative appeal.

Conclusion

The Forest Service invites individuals, organizations, and public agencies and governments to comment on this proposed rule. To aid the analysis of comments, it would be helpful if reviewers would key their comments to specific proposed sections or topics. Respondents also should know that in analyzing and considering comments, the Forest Service will give more weight to substantive comments than to simple ''yes,'' ''no,'' or ''check off'' responses to form letter/questionnaire-type submissions.

Regulatory Impact

This proposed rule has been reviewed under Executive Order 12866 on Regulatory Planning and Review. The agency has determined that this proposed rule is a significant regulatory action subject to Office of Management and Budget review. However, this proposed rule does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq*).

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

Environmental Impact

This proposed rule would establish procedures for land and resource management planning for National Forest System lands. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule were adopted, (1) all state and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suite in court challenging its provisions.

List of Subjects

36 CFR Part 215

Administrative practice and procedure, and National forests.

36 CFR Part 217

Administrative practice and procedure, and National forests.

36 CFR Part 219

Environmental impact statements, Land and resource management planning, and National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend parts 215, 217, and 219 of Title 36 of the Code of Federal Regulations as follows:

PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

1. The authority citation for part 215 continues to read as follows:

Authority: 16 U.S.C. 472, 551; sec. 322, Pub. L. 102–381, 106 Stat. 1419 (16 U.S.C. 1612 note).

2. Amend §§ 215.1(a) and 215.3(c) by removing the term ''nonsignificant amendments'' and substituting in lieu thereof the term ''minor amendments''.

2a. Amend §§ 215.4(e) and 215.7(a) by removing the term ''nonsignificant amendment'' and adding the term ''minor amendment''.

3. Amend § 215.8(a)(1) by removing the term ''significant amendment'' and substituting in lieu thereof the term ''major amendment''.

PART 217—APPEAL OF NATIONAL FOREST LAND AND RESOURCE MANAGEMENT PLANS

4. Revise the heading for part 217 to read as set out above.

5. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 551, 472.

6. Revise § 217.3(a) to read as follows:

§ 217.3 Decisions subject to appeal.

(a) The decisions subject to appeal under this part are decisions to approve, amend through major amendment or minor amendment, or revise a National Forest Land and Resource Management plan, except when a decision to authorize a specific project or activity includes a minor amendment to the forest plan as described in 36 CFR 219.9(c)(5).

* * * * *

7. Amend § 217.4(a) by removing the term ''non-significant amendment'' and substituting in lieu thereof the term ''minor amendment''.

§§ 217.8 and 217.15 [Amended]

7a. Amend §§ 217.8(a)(2) and 217.15(a) by removing the term ''non-significant amendments'' and adding the term ''minor amendments''.

§ 217.10 [Amended]

8. Amend § 217.10(i) by removing the term ''significant amendment'' and substituting in lieu thereof the term ''major amendment''.

§ 217.15 [Amended]

8a. Amend § 217.15(a) by removing ''significant amendments'' and adding ''major amendments''.

9. Add paragraph (d) to § 217.4 to read as follows:

§ 217.4 Decisions not subject to appeal.

* * * * *

(d) Decisions to amend a forest plan by interim amendment.

10. Revise part 219 to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

Sec.

Subpart B—[Reserved]

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

Subpart A—National Forest System Land and Resource Management Planning

§ 219.1 Purpose and principles.

(a) This subpart describes the procedures for fulfilling the requirements for land and resource management planning as set forth in the Forest and Rangeland Renewable Resources Planning Act of 1974 (hereafter, ''RPA'') as amended by the National Forest Management Act of 1976 (hereafter, ''NFMA'') (16 U.S.C. 1604 et seq.) Specifically, the rules in this subpart are intended to:

(1) Describe the agency's framework for National Forest System resource decisionmaking;

(2) Incorporate principles of ecosystem management;

(3) Establish requirements for implementation, monitoring, evaluation, amendment, and revision of forest plans; and

(4) Articulate the relationship between resource decisionmaking and compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (hereafter ''NEPA'') and implementing NEPA procedures (see definition at § 219.2).

(b) The following principles guide National Forest System resource decisionmaking and management:

(1) The National Forest System is managed to provide sustainable ecosystems which yield multiple benefits to present and future generations.

(2) People are a part of ecosystems; meeting people's needs and desires within the capacities of natural systems is a primary role of resource decisionmaking.

(3) Ecosystems occur at many spatial scales and are dynamic in nature, creating a need for planning processes that are flexible in geographic scope and that consider the ecological changes that occur over time.

(4) Ecosystems cross land ownerships, jurisdictions, and administrative boundaries. Therefore, planning efforts for National Forest System lands should be coordinated with other landowners, other Federal agencies, and State, local, and tribal governments in a manner that respects private property rights and the jurisdictions of other government entities.

(5) Involving the public in National Forest System planning and decisionmaking on an ongoing, open, and equitable basis is essential.

(6) The scientific community, including Forest Service researchers, should play a vital role in gathering and analyzing information for resource decisionmaking.

(7) The National Forest System should be managed in a manner that optimizes net public benefits, considering both qualitative and quantitative criteria.

(8) The forest planning process should provide for efficient adjustment of forest plans in response to changing conditions and new information.

(9) NEPA procedures define the analysis process used for resource decisionmaking; such analysis should be commensurate with the scope and nature of the decisions being made.

(10) Knowledge of ecosystems will never be complete; therefore, uncertainty is inherent in resource decisionmaking. Nevertheless, decisionmaking must proceed using an adaptive management approach, which incorporates applicable science and the best available information.

§ 219.2 Definitions.

For purposes of this subpart, the following terms mean:

Allowable sale quantity. The maximum quantity of chargeable timber volume that may be sold within a decade from the plan area.

Catastrophic event. A sudden event causing widespread or intense destruction or devastation of resources, ecological conditions, or man-made features. Catastrophic events include natural phenomena such as wildfire, hurricanes, tornados, floods, or earthquakes as well as events caused by human actions such as large chemical or oil spills.

Category 1 candidate species. Taxa:

(1) For which the U.S. Fish and Wildlife Service (USFWS) has on file sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species;

(2) Which appear in a notice of review containing the names of the species considered to be candidates for listing under the Endangered Species Act, which is published in the Federal Register by the USFWS, in accordance with 50 CFR 424.15, and is available at the office of the Forest Supervisor or the Regional Forester (36 CFR 200.2); and

(3) For which the USFWS has not yet published proposed rules to list as

endangered or threatened species because such action is precluded at present by other listing activity.

Category 2 candidate species. Taxa:

(1) For which information in the possession of the U.S. Fish and Wildlife Service (USFWS) indicates that proposing to list them as endangered or threatened is possibly appropriate, but for which persuasive data on biological vulnerability and threat are not currently available to support publication of proposed rules; and

(2) Which appear in a notice of review containing the names of the species considered to be candidates for listing under the Endangered Species Act, which is published in the Federal Register by the USFWS, in accordance with 50 CFR 424.15, and is available at the office of the Forest Supervisor or the Regional Forester (36 CFR 200.2).

Chargeable timber volume. All volume included in the growth and yield projections used to calculate the allowable sale quantity.

Conservation agreement. A formal written document agreed to by the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service and another Federal agency, State, local, tribal government, or the private sector to achieve the conservation of a species through voluntary cooperation.

Culmination of mean annual increment. The age at which the average annual growth is greatest for a stand of trees, with growth usually expressed in terms of cubic foot measure and calculated to include regeneration harvest yields and removals from intermediate stand treatments.

Decision document. A Record of Decision, Decision Notice, or Decision Memo which is signed by the responsible official and which, in compliance with NEPA procedures, identifies the decision being made and the rationale for the decision.

Directive. Policy, practice, and procedure issued through the Forest Service Directive System to guide the work of agency employees.

Directive System. The administrative system composed of the Forest Service Manual and Handbooks by which internal agency policy, practice, and procedure are established, issued, and stored.

Ecosystem analysis. A broad term used to denote various interdisciplinary studies conducted to provide information on and enhance an understanding of the physical, biological, social, and/or economic aspects and interactions of an ecosystem.

Ecosystem management. A concept of natural resources management wherein National Forest activities are considered within the context of economic, ecological, and social interactions within a defined area or region over both short- and long-term.

Environmental assessment. A concise document prepared in compliance with NEPA procedures that serves to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or for making a finding of no significant impact (40 CFR 1508.9).

Environmental impact statement. A detailed document prepared in compliance with NEPA procedures when a Federal action will have a significant impact on the human environment (40 CFR 1508.11).

Even-aged stand. A distinguishable group of trees of essentially the same age. The difference in age among trees forming the main canopy level of the stand usually does not exceed 20 percent of the age of the stand at harvest rotation age.

Forest Supervisor. An individual responsible to the Regional Forester for management of one or more National Forests, National Grasslands, or other components of the National Forest System.

Forested land. Land not currently identified for non-forest use and of which at least 10 percent is occupied by forest trees or which formerly had such tree cover. Forest trees are those woody plants having a well developed stem and which are usually more than 12 feet in height at maturity.

Goal. A concise statement describing a desired end result and normally expressed in broad general terms.

Guideline. A description of a preferred or advisable course of action.

Infrastructure. The facilities, utilities, and transportation systems needed to meet public and administrative needs.

Long-term sustained-yield timber capacity. A projection of the maximum potential long-term average sale quantity representing the highest uniform wood yield that may be sustained in perpetuity consistent with the forest plan.

Management prescription. The set of forest plan goals, objectives, standards, and guidelines that are applicable to a particular part of the plan area, including both forest-wide direction as well as direction applicable only to that specific part of the plan area.

Multiple-use. As defined by the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528), multiple-use is the management of all the various renewable surface resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

NEPA documents. The terms used to refer to draft and final environmental impact statements, environmental assessments, findings of no significant impact, and notices of intent to publish an environmental impact statement (40 CFR 1508.10).

NEPA procedures. The term used to refer to the requirements of 40 CFR parts 1500 through 1508, as supplemented by Forest Service NEPA directives issued in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15, which implement the National Environmental Policy Act of 1969.

Objective. A statement describing measurable desired resource conditions, or ranges of conditions, intended to achieve forest plan goals.

Plan area. The geographically defined area of the National Forest System covered by a forest plan, consisting of only those lands and resources under National Forest System jurisdiction.

Plan period. The period of time between regularly scheduled revisions of a forest plan, normally 10 years but no longer than 15 years.

Previous planning rule. The land and resource management planning regulation, 36 CFR Part 219, adopted September 30, 1982 and amended on June 24, 1983, and September 7, 1983 (see 36 CFR Part 200-End edition, Revised July 1, 1994).

Project. A site-specific resources management activity or combination of activities designed to accomplish a distinct on-the-ground purpose or result.

Proposed action. A proposal made by the Forest Service to authorize, recommend, or implement an action to meet a specific purpose and need.

Regional Forester. The individual responsible to the Chief of the Forest Service for management of an administrative region of the National Forest System (36 CFR 200.2).

Resource conditions. The state of the physical and biological components of

the environment, including both natural features and human influences.

Responsible official. The Forest Service employee who has the delegated authority to make a specific decision.

RPA Assessment and Program. Documents required by Sections 3 and 4 of the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974 (16 U.S.C. 1631 *et seq.*). The RPA Assessment is prepared every 10 years and describes the potential of the nation's forests and rangelands to provide a sustained flow of goods and services. The RPA Program is prepared every five years to chart the long-term course of Forest Service management of the National Forest System, assistance to State and private forest landowners, and forest and range research.

Species or natural community ranking. A rating established and maintained by the Network of Natural Heritage Programs and Conservation Data Centers which reflects the biological imperilment status of a species or natural community. Rankings as used in this subpart are defined as follows:

(1) G1—Species or community critically imperiled globally because of extreme rarity or because of some factor(s) making it especially vulnerable to extinction; five or fewer occurrences, or less than 1,000 individuals, or very few acres remaining.

(2) G2—Species or community imperiled globally because of rarity or because of some factor(s) making it very vulnerable to extinction; six to twenty occurrences, or less than 3,000 individuals, or few acres remaining.

(3) G3—Species or community vulnerable throughout range globally and typically having 21 to 100 occurrences, or fewer than 10,000 individuals. May be very rare and local throughout its range or found locally (even abundantly at some of its locations) is a restricted range (e.g., a single western State, a physiographic region of the East).

(4) N1, N2, and N3—Same as G1, G2, and G3 respectively, except these listings refer to a national situation rather than global one.

(5) S1 and S2— Same as G1 and G2 respectively, except these listings refer to a State situation rather than global one.

(6) T1, T2, and T3—Same as G1, G2, and G3 respectively, except these refer to subspecies or recognized varieties that are listable entities under the Endangered Species Act.

Standard. A limitation on management activities that is within the authority and ability to the agency to meet or enforce.

Station Director. An individual who is responsible to the Chief of the Forest Service for administering research activities at an assigned Research Station (36 CFR 200.2).

Sustainability of ecosystems. A concept which reflects the capacity of a dynamic ecosystem to maintain its composition, function, and structure over time, thus maintaining the productivity of the land and a diversity of plant and animal communities.

Tribal governments. Federally recognized American Indian/Alaska Native tribal governments.

§ 219.3 Relationships with the public and government entities.

(a) Building and maintaining relationships with the public and other Federal agencies and State, local, and tribal governments is an essential and ongoing part of National Forest System planning and management. The responsible official shall strive to establish and maintain communication with interested parties in order to:

(1) Develop a shared understanding of the variety of needs, concerns, and values held by the public;

(2) Coordinate planning efforts with other Federal agencies and State, local, and tribal governments, with recognition of the distinct roles and jurisdictions of each;

(3) Improve the information base influencing decisions and to promote a shared understanding of the validity of this information;

(4) Strengthen the scientific basis for resource management decisions by involving members of the scientific community; and

(5) Resolve conflicts associated with resource decisionmaking.

(b) The Forest Supervisor shall maintain a list of individuals, organizations, scientists, and government agencies and officials who have indicated a desire to be informed about forest planning or project activities on the Forest. The Forest Supervisor shall periodically verify the continuing interest of parties on the list and provide notice to the general public of the opportunity to be included on the listing. The list should include the following:

(1) Representatives of other affected Federal agencies;

(2) The official or agency designated as a point of contact for the affected State(s) agencies, including, if applicable, the Commonwealth of Puerto Rico;

(3) Representatives of tribal governments;

(4) Representatives of county or municipal governments;

(5) Holders of permits, contracts, or other instruments providing for the occupancy and use of the plan area; and

(6) Any citizen or organization expressing a desire to be included.

(c) The Forest Supervisor shall ensure that records documenting the planning process and information used to amend, revise, or monitor and evaluate implementation of the forest plan are maintained and are available for public inspection at the Forest Supervisor's office during normal working hours. Information in the planning records is subject to the provisions of the Freedom of Information Act.

(d) Copies of the current forest plan and monitoring and evaluation strategy must be available for public inspection at each Forest Service office on the Forest, in the respective Regional Office, and at least one additional location, as determined by the Forest Supervisor, that offers convenient access to the public.

(e) When desired by the State or affected tribal governments, Regional Foresters should seek to establish a Memorandum of Understanding or other form of agreement with the Governor of each State in which National Forest System lands are located or with affected tribal governments to guide coordination of planning efforts.

(1) The following apply to any such Memorandum of Understanding or agreement;

(i) The document should describe how the State's or tribe's positions on topics related to planning will be established, communicated, and considered;

(ii) The document should address cooperation in forest plan implementation, monitoring, evaluation, ecosystem analysis, amendment, and revision;

(iii) The document may be executed by the Forest Supervisor rather than the Regional Forester when all National Forest System lands within the State are managed by one Forest Supervisor; and

(iv) The document may be jointly executed by the appropriate Regional Foresters when one State encompasses two or more Forest Service Regions.

(2) Nothing in this section precludes development of a Memorandum of Understanding with other Federal agencies or local governments.

(f) Procedures for public participation and government coordination must conform with NEPA requirements, the Federal Advisory Committee Act (5 U.S.C. appendix), and any other applicable laws, Executive orders, or regulations.

§ 219.4 Sustainability of ecosystems.

(a) *Goal.* The principal goal of managing the National Forest System is to maintain or restore the sustainability of ecosystems, thereby providing multiple benefits to present and future generations. The level and flow of benefits from National Forest System lands should be compatible with the restoration of deteriorated ecosystems and the maintenance of ecosystem sustainability over the long-term. The forest plan addresses this goal by:

(1) Providing for diversity of plant and animal communities and other conditions indicative of sustainable ecosystems. This is accomplished by establishing forest plan direction as specified in paragraphs (b) through (e) of this section. In establishing such forest plan direction, the likely contribution or role of lands outside the plan area should be considered.

(2) Providing for resource conditions which result in a flow of benefits to present and future generations. This is accomplished as specified at § 219.6(a), and through the establishment of forest plan goals, objectives, standards, and guidelines.

(b) *Role of forest plan.* The forest plan establishes goals and objectives describing desired conditions, indicative of sustainable ecosystems within the plan area and establishes standards and guidelines that direct how to achieve those conditions.

(1) *Scope.* Forest plan goals and/or objectives should describe the desired composition, function, and structure of ecosystems within the plan area at appropriate spatial scales.

(2) *Soil and water resources.* The forest plan must provide for the restoration, protection, and conservation of soil and water resources including, but not limited to, streams, streambanks, shorelines, lakes, wetlands, riparian areas, and floodplains. Where there are existing conditions harmful to soil and water quality, the forest plan should include standards and/or guidelines that provide for the restoration of soil and water resources to achieve desired resource conditions. Forest plans should also address the protection of current and future consumptive and nonconsumptive water uses, including instream flow needs.

(3) *Rare natural communities.* The forest plan should provide for maintaining or restoring the sustainability of those natural communities known to occur within the plan area that are identified by the Network of Natural Heritage Programs and Conservation Data Centers with rankings of G1, G2, G3, N1, N2, N3, S1, or S2 (§ 219.2).

(4) *Threatened and endangered species.* The forest plan must provide for the conservation of species listed as threatened and endangered, or proposed for listing, under the Endangered Species Act of 1973, as amended, (16 U.S.C. 1501 *et seq.*). Once species are listed or proposed for listing as threatened or endangered under the Endangered Species Act, management activities on National Forest System lands affecting the habitat of the listed species must be in compliance with the requirements of the Endangered Species Act.

Option I for Paragraph (b)(5)

(b)(5) *Sensitive species.* The forest plan must provide for the protection of habitat capability for sensitive species in order to preclude the need for listing these species as threatened or endangered under the Endangered Species Act or their extirpation from the plan area. For the purposes of this section, habitat capability refers to the quantity, quality, and distribution of habitat.

(i) *Identification.* Sensitive species are those plant and animal species, subspecies, populations, or stocks, including vertebrates, invertebrates, vascular plants, bryophytes, fungi, and lichens, which are known to occur or likely to occur on National Forest System lands and which are included in one of the following:

(A) The species is identified by the U.S. Fish and Wildlife Service as a Category 1 Candidate Species;

(B) The species is identified by the Network of Natural Heritage Programs and Conservation Data Centers with global species rankings of G1 (T1) or G2 (T2);

(C) The species is identified both by the U.S. Fish and Wildlife Service as a Category 2 Candidate Species and by the Network of Natural Heritage Programs and Conservation Data Centers with species rankings of G3 (T3), N1, N2, or N3.

(ii) *Process.* In considering whether or not new or modified forest plan direction is needed for sensitive species, the following must be documented:

(A) Sensitive species for the plan area and their habitat needs must be identified.

(B) The habitat needs of sensitive species and/or assemblages of sensitive species shall be compared to existing forest plan direction or, in the case of revision of a forest plan, the habitat needs shall be compared against the tentatively proposed revisions to forest plan direction.

(*1*) If a continuing downward trend in habitat capability is predicted to occur and predicted to result in the need for Federal listing of the species or if it is predicted that the sensitive species will be extirpated from the plan area, forest plan direction shall be modified to protect the habitat capability of the sensitive species in an attempt to preclude the need for Federal listing or extirpation from the plan ares.

(*2*) Where the Forest Service and the U.S. Fish and Wildlife Service or National Marine Fisheries Service have approved a conservation agreement for a sensitive species and relevant direction from that agreement is incorporated into the forest plan, the requirement to establish direction to protect the habitat capability of the sensitive species is met.

(*3*) To the extent that protective measures for one sensitive species conflict with the recovery of a threatened or endangered species, the needs of the threatened or endangered species shall take precedence.

(*4*) Management direction for sensitive species shall be established using the best information available, commensurate with the decision being made. Determinations of whether habitat needs of sensitive species are adequately met as well as determinations of the degree of protection needed are decisions that are inherently dependent on professional judgment.

(iii) *Responding to newly identified sensitive species.* The categories and rankings described at paragraphs (b)(5)(i) (A) through (C) of this section shall be reviewed annually as part of monitoring and evaluation to determine if there have been new additions subsequent to the last review. If a new addition has occurred, the habitat needs of the species shall be compared against forest plan direction to determine if a change in that direction is needed. The annual review of sensitive species categories and rankings does not remove the obligation to consider new information relevant to a project decision or, where appropriate, to analyze the effects of a proposed action on habitat capability needs of a sensitive species within the project area.

Option II for Paragraph (b)(5)

(5) *Species viability.* Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to ensure its continued existence is well distributed in the planning area. In order to ensure

that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area. The forest plan shall establish guidelines for the maintenance and improvement of habitat for management indicator species to the degree consistent with overall multiple-use goals of the forest plan. In order to do this, management planning for the fish and wildlife resource shall meet the requirements set forth in paragraphs (b)(5) (i) through (vi) of this section.

(i) In order to estimate the effects of each alternative on fish and wildlife populations, certain vertebrate and/or invertebrate species present in the area shall be identified and selected as management indicator species and the reasons for their selection will be stated. These species shall be selected because their population changes are believed to indicate the effects of management activities. In the selection of management indicator species, the following categories shall be represented where appropriate: Endangered and threatened plant and animal species identified on State and Federal lists for the plan area; species with special habitat needs that may be influenced significantly by planned management programs; species commonly hunted, fished, or trapped; non-game species of special interest; and additional plant or animal species selected because their population changes are believed to indicate the effects of management activities on other species of selected major biological communities or on water quality. On the basis of available scientific information, the interdisciplinary team shall estimate the effects of changes in vegetation type, timber age classes, community composition, rotation age, and year-long suitability of habitat related to mobility of management indicator species. Where appropriate, measures to mitigate adverse effects shall be prescribed.

(ii) Planning alternatives shall be stated and evaluated in terms of both amount and quality of habitat and of animal population trends of the management indicator species.

(iii) Biologists from State fish and wildlife agencies and other Federal agencies shall be consulted in order to coordinate planning for fish and wildlife, including opportunities for the reintroduction of extirpated species.

(iv) Access and dispersal problems, of hunting, fishing, and other visitor uses shall be considered.

(v) The effects of pest and fire management on fish and wildlife populations shall be considered.

(vi) Population trends of the management indicator species will be monitored and relationships to habitat changes determined. This monitoring will be done in cooperation with State fish and wildlife agencies, to the extent practicable.

(c) *Dynamic nature of ecosystems.* Ecosystems are dynamic. Therefore, sustaining an ecosystem does not imply maintaining static conditions. Disturbances to an ecosystem should be evaluated in the context of ecological processes and resilience.

(d) *Multiple spatial scales of ecosystems.* Numerous ecosystems exist at multiple spatial scales. In order to limit efforts to a practicable number and scope, the forest plan should address the ecosystems of most relevance to forest plan decisionmaking.

(e) *Uncertainty and adaptive management.* Understanding of the attributes of sustainable ecosystems and of the environmental effects of various management activities is subject to change as new information becomes available. Resource decisionmaking need not be halted because there is uncertainty or incomplete knowledge; rather, resource decisions should be made in a timely manner using the best information available commensurate with the decisions being made (40 CFR 1502.22). Monitoring and evaluation shall be used to assess the effects of resource decisions and to determine if there is a need to adapt resource management in light of new information. Project decisionmaking provides an incremental means for accomplishing the goals and objectives of the forest plan, thereby providing the opportunity to evaluate the effects of on-the-ground activities at the appropriate spatial scale as well as providing the opportunity to adapt project proposals as new information becomes available during the plan period.

§ 219.5 Framework for resource decisionmaking.

(a) *Staged resource decisonmaking.* National Forest System resource allocation and management decisions are made in two stages. The first stage is adoption of a forest plan, which allocates lands and resources to various uses or conditions by establishing management prescriptions for the land and resources within the plan area. The second stage is approval of project decisions. Both forest plan and project decisions are subject to the requirements of laws and regulations applicable to National Forest System lands and resources. In addition, direction to guide the management of lands and resources of the National Forest System is issued as needed through the Directive System (36 CFR 200.4). Pursuant to 40 CFR parts 1500–1508, agency directives are subject to NEPA procedures, and, depending on their nature and scope, directives also may be subject to the public notice and comment requirements of 36 CFR part 216.

(1) *Forest plans.* Forest plans do not compel the agency to plan for or undertake any projects; rather, they establish limitations on what actions may be authorized during project decisionmaking. Forest plan direction must not conflict with applicable laws or regulations. Additionally, forest plans should not conflict with applicable agency directives issued through the Directive System. Where there is a substantial conflict between a resource management directive and direction in a forest plan revision or amendment prepared pursuant to this subpart, the responsible official should identify the conflict and include in the decision document the rationale for the plan's departure from agency directives.

(i) *Plan area.* Each Regional Forester shall determine the area to be covered by each forest plan. Options include a separate plan for each National Forest or National Grassland, a plan that covers any combination of National Forests or other National Forest System lands within the responsibility of one Forest Supervisor, or a single plan encompassing one National Forest but which is administered by several Forest Supervisors.

(ii) *Simultaneous amendment or revision.* Forest plan goals, objectives, standards, and guidelines that are applicable to more than one plan area may be established through one decision document which simultaneously amends or revises multiple forest plans.

(2) *Project decisions.* Authorization of site-specific activities within a plan area occurs through project decisionmaking. Project decisionmaking must comply with NEPA procedures and must include a determination that the project is consistent with the forest plan (§ 219.11(a)). Project decisionmaking includes decisions on proposals received from outside the agency as well as those initiated by the agency.

(b) *Reconciling direction in forest plans with other resource direction or planning efforts*—(1) *Laws and regulations.* If, following issuance of new laws or regulations affecting National Forest System resource management, it is determined that the

direction in forest plans within the Region is in conflict with the new direction, the Regional Forester shall direct that affected plans be changed in accordance with the procedures of § 219.9 or § 219.10 of this subpart and shall specify the timing for doing so.

(2) *Agency directive.* (i) If resource management direction in a new agency directive appears to conflict with direction in forest plans, the directive issuing official shall indicate as part of the directive issuance whether affected forest plans are to be made consistent with the new directive and, if so, shall direct that affected plans be changed in accordance with the procedures of § 219.9 or § 219.10 of this subpart and shall specify the timing for doing so.

(ii) In addition to adjusting forest plans as required by paragraph (b)(2)(i) of this section, the Forest Supervisor, as part of monitoring and evaluation, should periodically review recent resource management directives to determine if the forest plan is in conflict with newly issued resource directives. If so, the Forest Supervisor shall either initiate a forest plan amendment to eliminate the conflict or give the Regional Forester written notice of why the forest plan should not be changed.

(3) *RPA Program.* Following adoption and issuance of each RPA Program, the Chief determines those elements of the Program that should be considered in forest plan implementation, monitoring, and evaluation and establishes such agency-wide processes or procedures as may be necessary to ensure consideration of these Program elements in forest plans.

(4) *Ecosystem analysis.* As part of monitoring and evaluation, the Forest Supervisor shall periodically review the results of any applicable ecosystem analyses that have been completed or updated after plan approval and determine if there is new information which would indicate a need to initiate forest plan amendment procedures.

§ 219.6 Forest plan direction.

(a) *Integrated resource management.* Forest plans provide for integration and coordination of all resources within the plan area on a multiple-use and sustained-yield basis. To this end, forest plan direction shall be established, as appropriate, to address management of soil, water, fish and wildlife habitat, grazing, timber, oil, gas, minerals, recreation, wilderness, cultural, historic, geologic, vegetative, air, visual, and other relevant resources. In addition, forest plans address management of infrastructure and land ownership and access patterns relative to the plan area to the extent appropriate.

(b) *Scope.* Forest plans allocate the land and resources of the plan area to various uses or conditions by establishing management prescriptions consisting of goals, objectives, standards, and guidelines. Goals, objectives, standards, and guidelines may be established to apply throughout a plan area (forest-wide direction) and/or they may be established for only a part of the plan area. The forest plan management prescription for any given site within the plan area is the aggregate of all forest-wide direction and any other direction that is applicable to only that specific part of the plan area. The forest plan must identify where goals, objectives, standards, and guidelines are applicable. Maps or similar information that delineate where goals, objectives, standards, and guidelines are applicable constitute forest plan direction.

(1) Projected levels of goods and services or projected levels of management activities do not constitute forest plan direction. Moreover, any projections of the rate at which objectives identified in the forest plan might be achieved are not forest plan direction (§ 219.11(d)).

(2) Forest plan direction should focus on resource management and resource conditions specific to the plan area, not on the procedural aspects of making future project decisions. Also, as a general rule, forest plans should not repeat other applicable direction established through the Directive System, regulation, Executive order, or law.

(3) The main body of the forest plan document is limited to forest plan direction. Background information or other accompanying material are not appropriate to the main body of the document but may be presented as part of a brief forest plan preface or in the appendices.

(c) *Goals.* Goals are concise statements describing a desired end result and are normally expressed in broad general terms. Forest plan goals serve as the link between broad agency goals set forth in law, Executive order, regulation, agency directives, and the RPA Program and specific desired resource conditions relevant to the plan area as defined by objectives. The forest plan does not specify a time period for achievement of goals. Additionally, forest plan goals are generally not expressed in quantitative terms; rather, evaluation of associated measurable objectives or monitoring indicators assesses whether goals are being achieved (§ 219.12(a)(1)(ii)).

(d) *Objectives.* Objectives are statements describing desired resource conditions, or ranges of conditions, intended to achieve forest plan goals. Objectives may describe the desired state of natural resource conditions, such as soils and vegetation; the desired state of resources resulting from human influences, such as infrastructure or historic sites; or how resources are to be perceived, such as visual quality or the nature of the wilderness visitor experience. An objective must be defined in a manner that permits measurement of whether the objective is being achieved. The forest plan does not specify a time period for achievement of objectives.

(e) *Standards.* Standards are limitations to be placed on management activities within the plan area to ensure compliance with applicable laws and regulations or to limit the discretion to be permitted during project decisionmaking. Standards are limited to those actions that are within the authority and ability of the agency to meet or enforce.

(1) Standards are the basis for determining whether a project is consistent with the forest plan as required by § 219.11(a).

(2) Project compliance with relevant standards is mandatory. A project that would vary from a relevant standard may not be authorized, unless the forest plan is amended to modify, remove, or waive application of the standard.

(f) *Guidelines.* Guidelines describe a preferred or advisable course of action. Variation of a project from a guideline does not trigger a forest plan amendment. Guidelines may be used for the following purposes:

(1) To describe a preferred or advisable method for conducting resource activities specific to the plan area; and

(2) To describe a preferred or advisable sequence or priority for implementing various types of projects, when such guidance is deemed useful in facilitating achievement of a forest plan goal.

(g) *Coordination of forest plan direction across plan areas.* The Regional Forester is responsible for coordinating direction in forest plans within the Region as well as with adjacent Regions to promote consistent approaches to resource management. In many cases, variation in direction is appropriate due to varying local circumstances; for example, differing resource conditions, public preferences, or socio-economic considerations. However, unless there is reasonable basis for such variations, the Regional Forester shall provide for consistency among forest plans within the Region, as well as consistency with those forest plans in other Regions whose plan areas

are physically adjacent to plan areas within the Region. At a minimum, the Regional Forester shall ensure that forest plans within the Region include the following:

(1) Consistent management prescriptions for adjacent National Forest System lands, including the use of consistent mapping scales, symbols, and other elements to facilitate review and comparison of the management prescriptions;

(2) Consistent management prescriptions for a specially designated area (§ 219.14) that crosses plan area boundaries, such as a national scenic trail extending through several National Forests;

(3) Consistent direction when findings of an ecosystem analysis or research used as a basis for that direction are applicable to more than one plan area, such as the establishment of a forest plan standard to meet the habitat needs of a threatened or endangered species that occurs on more than one plan area; and

(4) Consistent terminology and classification systems among or between forest plans.

§ 219.7 Ecosystem analysis.

(a) *Purpose and scope.* Ecosystem analysis is a broad term used to denote various interdisciplinary studies conducted to provide information on and enhance an understanding of the physical, biological, social, or economic aspects and interactions of an ecosystem. For example, an ecosystem assessment and landscape-level analysis are both forms of ecosystem analysis. Ecosystem analysis may be conducted at whatever scale is appropriate in order to provide the information desired. To the extent practicable, the area covered by an ecosystem analysis should generally be delineated based on ecological considerations, including social and economic factors, rather than on administrative or jurisdictional boundaries. Ecosystem analyses are conducted whenever deemed appropriate by the agency.

(b) *Relationship to resource decisionmaking.* An ecosystem analysis is distinct from resource decisionmaking and does not trigger NEPA analysis and disclosure. Findings resulting from ecosystem analysis are not resource decisions and cannot be used as a substitute for forest plan goals, objectives, standards, or guidelines. Ecosystem analysis may provide information that indicates a need to change forest plan direction; however, such changes would be evaluated and established through forest plan amendment or revision procedures. Ecosystem analysis also may be used to display various opportunities for achieving the goals and objectives already established by law, Executive order, regulation, agency directive, or the forest plan.

(c) *Results.* Results of ecosystem analysis vary depending on their scope and specific purpose. Results of ecosystem analysis may include, but are not limited to, the following:

(1) Identification of trends and historic conditions;

(2) Identification of anticipated effects if current management continues;

(3) Identification of resource conditions that would satisfy legal requirements;

(4) Identification of opportunities to improve monitoring and evaluation strategies;

(5) Identification of research needs and recommended priorities;

(6) Identification of opportunities and recommended priorities for project implementation in order to meet forest plan goals;

(7) Determination of resource capabilities;

(8) Compilation of a socio-economic overview or assessment; for example, assessments of pertinent social, demographic, and economic data, socioeconomic and cultural trends, or important relationships among physical, biological, economic, and social aspects of resource management;

(9) Compilation of information for use in monitoring and evaluation;

(10) Compilation of information for use in NEPA documents; and

(11) Compilation of updated inventory data.

§ 219.8 Interdisciplinary teams and information needs.

(a) *Interdisciplinary team.* An interdisciplinary team must be used to prepare amendments, revisions, and monitoring and evaluation strategies and reports and to conduct ecosystem analysis. The team may consist of whatever combination of Forest Service and other Federal government personnel is necessary to achieve an interdisciplinary approach.

(b) *Analysis and inventory.* Analytical efforts should be focused on obtaining and using the information needed for decisionmaking commensurate with the decisions being made. Each responsible official shall strive to obtain and keep updated inventory data appropriate to meet analytical needs for resource decisionmaking. In assessing the environmental, social, and economic factors relevant to decisionmaking, the responsible official shall consider the conclusions resulting from applicable quantitative analytical methods as well as nonquantifiable considerations.

(c) *Social and economic effects.* When amending or revising the forest plan, the responsible official shall consider the effects of each alternative on community stability, employment, or other indicators of social and economic change commensurate with the decision being made.

(d) *Research needs.* Each Forest Supervisor shall identify and inform the Regional Forester of research needed for decisionmaking including, but not limited to, the research needed to help resource managers ensure that management practices do not produce substantial or permanent impairment of the productivity of the land.

§ 219.9 Forest plan amendments.

(a) *Purpose and type.* Except as provided at § 219.9(e), amendment is the only method by which forest plan direction is changed between revisions. Only forest plan direction as described at § 219.6 is subject to amendment. Amendments are categorized as major, minor, or interim.

(b) *Major amendment.* (1) A major amendment is appropriate only under one of the following circumstances:

(i) The proposed change would modify, remove, or add a standard, or modify the geographic area to which a standard applies, except as provided at paragraphs (c)(4) and (c)(5) of this section or except when such a change is made by interim amendment;

(ii) The proposed change would allow the amount of chargeable timber volume which can be sold for a decade from a proclaimed National Forest within the plan area to exceed the long-term sustained-yield timber capacity of that proclaimed National Forest (§ 219.13(d)(1)(ii)); or

(iii) The proposed change would permit harvest of even-aged stands that have not reached culmination of mean annual increment of growth (§ 219.13(e)).

(2) The Regional Forester is the responsible official for major amendments.

(3) The public review and comment period on a proposed major amendment and associated NEPA documents is 90 calendar days. During this period, the Regional Forester shall take the following actions:

(i) Make the proposed amendment and associated NEPA documents available for public inspection at convenient locations in the vicinity of the lands covered by the plan;

(ii) Notify those on the list described at § 219.3(b) of the opportunity for public review and comment; and

(iii) Provide opportunities for open communication with the public and other government entities during the review of the proposed major amendment.

(4) Legal notice of adoption of a major amendment shall be provided in accordance with 36 CFR 217.5.

(5) A major amendment is not effective until the eighth calendar day following date of publication of the legal notice of the decision (36 CFR 217.10).

(c) *Minor amendment.* (1) Unless the authority is reserved by the Regional Forester, the Forest Supervisor is the responsible official for minor amendments.

(2)(i) For a proposed minor amendment for which an environmental assessment has been prepared, the Forest Supervisor shall publish notice of the proposed amendment and provide at least 30 calendar days for public review of and comment on the proposed amendment and environmental assessment. Such notice shall be published in newspapers of general circulation within or near the Forest.

(ii) In the event that a draft environmental impact statement has been prepared for a proposed minor amendment, public notice shall be provided in accordance with NEPA procedures. At least 45 calendar days must be provided for public review of and comment on the proposed amendment and draft environmental impact statement.

(3) Legal notice of decisions to adopt a minor amendment must be provided in accordance with 36 CFR 217.5. The effective date of minor amendments is governed by 36 CFR 217.10.

(4) A minor amendment shall be used to allocate newly acquired land to a management prescription, provided the prescription is consistent with the purposes for which the land was acquired.

(5) If the responsible official concludes that a proposed project should be implemented, but that the project would conflict with a forest plan standard, the project may be approved only if the forest plan standard is amended. If such an amendment is limited to apply to only the specific project and the circumstances described at paragraphs (b)(1) (ii) and (iii) of this section do not apply, then the change is a minor amendment. By contrast, a change to a forest plan standard that would apply to the specific project and to future projects or that applies to one project but meets the circumstances described at paragraphs (b)(1) (ii) and (iii) of this section would be a major amendment.

(i) The environmental effects of modifying or waiving application of the forest plan standard for a specific project must be disclosed in the NEPA documentation associated with the project decision.

(ii) A proposed minor amendment that applies only to a specific project and that is accompanied by an environmental assessment is subject to the notice and comment procedures of 36 CFR 215.5.

(iii) A proposed minor amendment that applies only to a specific project and is accompanied by an environmental impact statement is subject to notice and comment in accordance with NEPA procedures.

(iv) A decision to amend a forest plan for a specific project is subject to the notice and appeal procedures of 36 CFR part 215, and the time period between the decision and implementation is also governed by 36 CFR part 215.

(d) *Interim amendment.* (1) An interim amendment may be used only when a catastrophic event has occurred or when new information indicates there is a need to promptly change the forest plan in order to provide resource protection and it is unacceptable to delay the changes needed until procedures for major or minor amendment can be completed.

(2) Unless the authority is subsequently reserved by the Chief, the Regional Forester is the responsible official for interim amendments.

(3) The Regional Forester shall give notice of an interim amendment to those on the list described at § 219.3(b) and shall provide legal notice of the decision in a newspaper of general circulation. In addition, if the Chief is the responsible official, notice shall be published in the Federal Register. The notice must concisely summarize the following:

(i) The circumstances which warrant use of the interim amendment procedure;

(ii) The changes being made in the forest plan;

(iii) The anticipated consequences associated with the interim amendment;

(iv) The anticipated duration of the interim amendment, not to exceed two years;

(v) The changes being made to the monitoring and evaluation strategy in association with the interim amendment; and

(vi) The opportunity for public comment.

(4) An environmental impact statement is not required for an interim amendment.

(5) The effective date of an interim amendment is the eighth calendar day after legal notice of the decision is published in a newspaper of general circulation pursuant to § 219.9(d)(3) or, in the case where the Chief is the responsible official, in the Federal Register.

(6) A period of 45 calendar days must be provided for public comment beginning on the date of publication of legal notice of an interim amendment decision. On the basis of public comment, the responsible official may decide to modify the interim amendment through issuance of a new interim amendment or may decide that the interim amendment remains in effect without change. In either circumstance, the responsible official shall publish a notice of the decision and a brief summary of the rationale, and also provide it to those on the list described at § 219.3(b).

(7) The duration of an interim amendment may not exceed two years. If an approved amendment or revision has not superseded the interim direction within two years of the effective date of the interim amendment, then the responsible official may reissue the interim amendment or issue a modified interim amendment, subject to the notice and comment requirements of this section.

(8) An interim amendment may not be made through a decision document for a specific project.

(9) Pursuant to 36 CFR part 217, an interim amendment is not subject to administrative appeal.

(e) *Nondiscretionary changes.* If a change in applicable law or regulation occurs which conflicts with forest plan direction and the agency has no choice but to comply and no discretion in the manner in which to comply, the forest plan may be modified to reflect such changes without conducting amendment procedures. The Forest Supervisor shall give public notice of such changes through the annual monitoring and evaluation report (§ 219.12). Such nondiscretionary changes are not subject to NEPA procedures.

(f) *Other changes.* The following changes to the content of a forest plan may be made at any time, do not require amendment, and are not subject to NEPA procedures. However, such changes are to be identified and briefly described in the next annual monitoring and evaluation report.

(1) Changes to information that is not forest plan direction (§ 219.6), such as the information in forest plan appendices;

(2) Corrections to forest plan maps which delineate where a management prescription is applicable, provided such changes are the result of improved

information about the location of the on-the-ground conditions to which the prescription was described in the forest plan to apply;

(3) Corrections of typographical errors or other non-substantive changes.

§ 219.10 Forest plan revision.

(a) *Initiation.* Revision of a forest plan should occur about every 10 years, but no later than 15 years, from the date of approval of the original plan or the latest plan revision. Revision also must occur when the Regional Forester determines that conditions over most or all of the plan area have significantly changed from those in place when the forest plan was originally approved or last revised; for example, if a catastrophic event has substantially altered resource conditions over most or all of the planning area.

(b) *Responsible official.* The Regional Forester is the responsible official for forest plan revision.

(c) *Prerevision actions.*—(1) *Prerevision review of the forest plan.* Prior to initiating scoping pursuant to NEPA procedures, the entire forest plan must be reviewed, using the cumulative results of monitoring and evaluation. The purpose of the review is to identify changed conditions and/or other new information which appear to indicate a need to change direction in the current plan.

(2) *Communications strategy.* The Forest Supervisor shall formulate a communications strategy that describes how the public and government entities may participate in the prerevision review and revision of the forest plan on an ongoing basis.

(i) The Forest Supervisor shall meet, or designate a representative to meet, with interested representatives of other Federal agencies and State, local, and tribal governments to establish procedures for ongoing coordination and communication throughout the prerevision review and the revision processes. These procedures should be documented in the communications strategy.

(ii) The Forest Supervisor shall publish notice of the prerevision review process and the formulation of a communications strategy in both the Federal Register and newspapers of general circulation within or near the plan area. The notice must include an invitation to the public and representatives of government entities to express their ideas and suggestions on formulation of a communications strategy.

(iii) The Forest Supervisor shall also give notice of the prerevision review and formulation of the communications strategy to those on the list described at § 219.3(b).

(d) *Scoping.* Upon completion of the prerevision review, the Regional Forester shall initiate the forest plan revision process by publishing in the Federal Register a Notice of Intent to revise the forest plan and to prepare the associated draft environmental impact statement. The Regional Forester shall allow 60 calendar days for public comment. The purposes of the Notice of Intent are to notify the public of the forest plan revision process, the anticipated scope of the revision effort, and opportunities for the public to be involved in the revision process, and also to begin the scoping process required by NEPA procedures.

(1) In addition to the content requirements established by NEPA procedures, the following apply to a Notice of Intent to revise a forest plan:

(i) The statement of purpose and need for the proposed action identifies specific opportunities to better achieve agency goals, as set forth in law, Executive order, regulation, agency directives, and the RPA Program, through changes in forest plan direction;

(ii) The proposed action identifies the direction in the current forest plan which will be evaluated for change; and

(iii) Significant revision issues describe the topics of concern related to changing forest plan direction and are used to help focus revision analysis efforts on those concerns.

(2) At the time of publication of the Notice of Intent, the Forest Supervisor shall take the following additional actions to notify the public of the revision process:

(i) Notify those on the list described at § 219.3(b) of the revision effort and opportunities for involvement;

(ii) Distribute a press release on the revision effort to newspapers of general circulation within or near the Forest;

(iii) Publicize and conduct activities designed to foster ongoing participation by the public and government representatives in the revision process pursuant to the communications strategy formulated pursuant to paragraph (c)(2) of this section.

(3) The Regional Forester shall consider comments received in response to the Notice of Intent and determine if there is a need to adjust the scope of the revision effort.

(e) *Required elements.* The forest plan revision process requires the following evaluations or updates:

(1) A review of the identification of lands suited and not suited for timber production (§ 219.13(a));

(2) An evaluation of roadless areas for wilderness designation; (§ 219.14(b));

(3) In accordance with § 219.14(c), an evaluation of rivers for eligibility as wild, scenic, and recreation rivers; and

(4) An update of the information in the appendix to the forest plan which displays projected levels of goods and services and management activities for the next decade (§ 219.11(d)(1)).

(f) *Draft environmental impact statement.* A draft environmental impact statement must accompany a proposed revision of a forest plan.

(g) *Public notice and comment.* The Regional Forester shall give the public notice and opportunity to comment as follows:

(1) The draft environmental impact statement, proposed revised forest plan, and draft monitoring and evaluation strategy must be available for public comment for at least 90 calendar days. Copies will be made available for inspection at convenient locations in the vicinity of the lands covered by the plan, beginning on the date of publication of the notice of availability of the draft environmental impact statement in the Federal Register;

(2) The Forest Supervisor shall give notice to those on the list described at § 219.3(b) of the opportunity for public review and comment; and

(3) The Regional Forester shall either hold public meetings or, alternatively, conduct other activities to foster public participation in the review of the draft environmental impact statement, proposed revised forest plan, and draft monitoring and evaluation strategy.

(h) *Final environmental impact statement and revised forest plan.* Following public comment, the Regional Forester shall oversee preparation of a final environmental impact statement and revised forest plan. The final environmental impact statement and record of decision documenting the selected alternative and adoption of the revision shall be prepared and made public in accordance with NEPA procedures.

(i) *Approval.* In addition to the Federal Register publication of the notice of availability of the final environmental impact statement and record of decision pursuant to 40 CFR 1506.10, legal notice of the adoption of a revised forest plan shall be provided as required by 36 CFR 217.5. A revision becomes effective 30 calendar days after the date of the notice published in the Federal Register.

§ 219.11 Forest plan implementation.

(a) *Project consistency.* Project decisions must be consistent with the standards in a forest plan. Deviation of a project from compliance with a guideline is not inconsistent with the

forest plan. A determination of consistency of a project with the forest plan must be documented when the project is approved. If a proposed project is not consistent with a standard in the forest plan, the responsible official may, subject to valid existing rights, take only one of the following actions:

(1) Modify the proposal to make it consistent with the forest plan;

(2) Reject the proposal; or

(3) Amend the forest plan to permit the proposal.

(b) *Application of forest plan amendment or revision to existing authorizations or previously approved projects.* Permits, contracts, and other instruments issued or approved for the use and occupancy of National Forest System lands must be consistent with the forest plan in effect at the time of their issuance. Subject to valid existing rights, contracts, permits, and other instruments for occupancy and use that are inconsistent with a new forest plan amendment or revision must be revised as soon as practicable to be made consistent with the forest plan.

(c) *Implementation during amendment or revision process.* An approved forest plan, including all amendments as may be adopted, remains effective until a new amendment or a revision is approved.

(d) *Possible actions during the plan period.* (1) At the time of revision, an appendix to the forest plan shall be prepared displaying a prediction of the major goods and services which may be produced during the plan period, as well as a display of the management activities which may occur during the plan period.

(i) The display should predict a realistic range of goods and services and management activity levels reflecting, to the extent practicable and meaningful, some of the variables which are most likely to affect production or accomplishment of predicted levels.

(ii) The display may include a prediction of the rate of achieving forest plan objectives reflecting, to the extent practicable and meaningful, some of the variables most likely to affect achievement.

(iii) Such a display does not limit nor compel any action by the agency and does not constitute forest plan direction.

(2) At periodic intervals following adoption of a revised forest plan and for such time periods as is determined appropriate, the Forest Supervisor shall make available to the public an updated estimate of major goods and services and management activity levels that may be produced or occur. Development of these estimates does not require NEPA analysis.

§ 219.12 Monitoring and evaluation.

(a) *Monitoring and evaluation strategy.* The Forest Supervisor must conduct monitoring and evaluation efforts and, simultaneously with any revision of the forest plan, shall prepare a comprehensive monitoring and evaluation strategy to guide such efforts. This strategy is not forest plan direction, is not included in the forest plan, and does not require NEPA analysis. However, monitoring and evaluation activities are subject to NEPA procedures at the time of implementation.

(1) The monitoring and evaluation strategy provides instructions for the following:

(i) Assessing if projects are being implemented in accordance with the decision documents authorizing the projects;

(ii) Assessing, through the use of measurable indicators, if the activities being implemented are effective in achieving forest plan goals;

(iii) Conducting appropriate monitoring and evaluation efforts to occur within the plan area to help meet monitoring and evaluation needs at scales larger than the plan area;

(iv) Validating the assumptions upon which forest plan direction was established and verifying the accuracy of predicted effects;

(v) Prioritizing monitoring and evaluation efforts by identifying those monitoring and evaluation efforts that are of highest priority to conduct because they assess the effects of those management activities believed to have the greatest potential risk to the environment;

(vi) Collecting and compiling appropriate information to serve as reference points for future evaluations;

(vii) Determining if there is new information or a change in conditions which substantially affects the validity of the forest plan including, but not limited to:

(A) Laws, Executive orders, regulations, RPA Program updates, or agency directives issued subsequent to approval of the forest plan;

(B) Changes in biological, physical, social, or economic factors influencing the plan area;

(C) Findings resulting from applicable scientific research or experience;

(D) Findings resulting from ecosystem analysis;

(viii) Storing and disseminating information of use in the program development and budget formulation process, such as updated information on resource capabilities, project opportunities, activity costs, or economic trends;

(ix) Tracking the goods and services produced and management activities accomplished;

(x) Involving the public in monitoring and evaluation by identifying opportunities for the public to participate, when appropriate, in monitoring and evaluation efforts;

(xi) Identifying problems, and opportunities to resolve those problems, for use in determining whether there is a need to amend or revise the forest plan.

(2) The monitoring and evaluation strategy document should describe procedures and identify planned intervals for implementing and reporting monitoring and evaluation efforts. Because the type and intensity of monitoring and evaluation efforts can vary depending on the availability of funds, the monitoring and evaluation strategy should be realistic and practicable. Monitoring and evaluation efforts should be designed at the appropriate spatial scale and for appropriate timeframes.

(3) The Forest Supervisor shall give priority to implementing those monitoring and evaluation efforts that assess the effects of management activities having the greatest potential risk to the environment.

(b) *Notice and approval of monitoring and evaluation strategies.* (1) A monitoring and evaluation strategy must be made available for public review and comment at the same time as a proposed revised forest plan and in accordance with § 219.10(g).

(2) The Regional Forester is responsible for approving the monitoring and evaluation strategy in conjunction with approving the revised forest plan. The Regional Forester shall obtain concurrence of the applicable Station Director before approving a monitoring and evaluation strategy. A final revised forest plan cannot be approved before the associated monitoring and evaluation strategy is approved.

(c) *Updating monitoring and evaluation strategies.* (1) Updates may occur whenever deemed necessary. Circumstances which might trigger an update to the strategy include, but are not limited to, amendment of the forest plan; consideration of comment from the public or government entities in response to the annual monitoring and evaluation report; availability of new information; emergence of new opportunities to coordinate monitoring and evaluation with others; or

interdisciplinary team recommendations.

(2) The Forest Supervisor is responsible for updating the monitoring and evaluation strategy as needed. The Forest Supervisor shall obtain concurrences of the applicable Station Director before approving an update to a monitoring and evaluation strategy. Updating the monitoring and evaluation strategy does not trigger a forest plan amendment or NEPA analysis. A proposed update to a monitoring and evaluation strategy must be made available for public review and comment for 30 calendar days. Those on the list described at § 219.3(b) shall be notified of the opportunity for public review and comment.

(d) *Coordination of monitoring and evaluation efforts.* (1) Monitoring and evaluation efforts should be coordinated, to the extent feasible, with other Federal agencies, State, local, and tribal governments, interested private landowners, the scientific community, and other interested parties. The monitoring and evaluation strategy should include identification of information to be gathered by other entities.

(2) Monitoring and evaluation efforts should be coordinated across Forest Service administrative boundaries. The Regional Forester shall assure that monitoring and evaluation needs which extend beyond a plan area are addressed and coordinated.

(3) To the extent practicable, the applicable Station Director should provide for the involvement of Forest Service research personnel in the development and updating of monitoring and evaluation strategies, the implementation and evaluation of monitoring and evaluation tasks, and preparation of the annual monitoring and evaluation report.

(e) *Monitoring and evaluation report.* The Forest Supervisor shall prepare a concise monitoring and evaluation report annually. This report shall be transmitted to the Regional Forester and Station Director and be made available to interested individuals, organizations, government agencies, and public officials. The report should include, but is not limited to, the following:

(1) A summary of the results of monitoring and evaluation efforts;

(2) Identification of any changes needed in how the forest plan is being implemented;

(3) Identification of whether amendment or revision of the forest plan is needed;

(4) A brief description of any amendments which have been initiated or become effective since the previous report;

(5) A brief description of any updates made to the monitoring and evaluation strategy;

(6) A brief description of any nondiscretionary changes made to the forest plan pursuant to § 219.9(e);

(7) A brief description of changes made to information in the forest plan that does not constitute direction, such as changes to appendices (§ 219.9(f)).

(f) *Project implementation.* When monitoring and evaluation activities are essential to ensuring mitigation of possible environmental effects of a project, such activities must be identified in the project decision document. Moreover, in such case, that project may not be initiated unless there is a reasonable expectation that adequate funding will be available to conduct the monitoring and evaluation activities.

(g) *Initiating amendment or revision.* Nothing in this section shall be construed to preclude initiating a forest plan amendment or revision at any time the Forest Supervisor or Regional Forester deems necessary.

§ 219.13 Statutory timber management requirements.

(a) *Review of suitability determination.* (1) Lands identified as not suited for timber production must be reviewed at least every 10 years. Normally, this should occur as part of forest plan revision; however, if a 10-year period elapses prior to forest plan revision, then the review of unsuitable lands shall occur at the 10-year interval as well as later during forest plan revision. The time period for the 10-year review begins upon the effective date of the original forest plan, the effective date of any forest plan revision, or the effective date of any amendment which included a review of all unsuitable lands.

(2) Notwithstanding the 10-year review, all lands must be reviewed for their suitability for timber production at the time of forest plan revision.

(3) The identification of lands as suited or not suited for timber production may be changed at any time for forest plan amendment.

(b) *Lands not suited for timber production.* (1) Lands not suited for timber production must have a fixed location and should be identified on maps, either in the forest plan or the planning records, or otherwise described in a manner in which they can be readily recognized.

(2) Forest plan management prescriptions must be established to ensure the management of unsuited lands is consistent with the provisions of paragraphs (b)(3)(v)(B) and (b)(4) and (5) of this section.

(3) Lands are identified as not suited for timber production if any of the following conditions apply:

(i) The land has been withdrawn from timber harvest by an Act of Congress, the Secretary of Agriculture or the Chief of the Forest Service;

(ii) Timber harvest on these lands would violate statute, Executive order, or regulation;

(iii) The land does not meet the definition of forested land as set forth in § 219.2 of this subpart;

(iv) Technology is not available for conducting timber harvesting without irreversible damage to soil productivity or watershed conditions;

(v) There is no reasonable assurance that such lands can be adequately reforested within five years of final timber harvest. Adequate reforestation means that the cut area contains the minimum number, size, distribution, and species composition of regeneration as identified in the forest plan. Five years after final harvest means five years after clearcutting, after last overstory removal entry in shelterwood or seed tree cutting, or after selection cutting.

(A) Research and experience are the basis for determining whether the harvest and regeneration practices planned can be expected to result in adequate reforestation.

(B) The reforestation requirement of paragraph (b)(3)(v) of this section does not prohibit the harvesting of timber when openings are created for wildlife habitat improvement, vistas, recreation uses, or similar long-term purposes.

(4) Timber harvesting may occur on unsuitable lands only for salvage sales or sales necessitated to protect other multiple-use values.

(5) Lands not suited for timber production are to continue to be treated for reforestation purposes, particularly with regard to the protection of other multiple-use values.

(6) Identification of unsuitable lands should not vary among alternatives at the time of forest plan revision.

(c) *Lands suited for timber production.* Lands that are not identified as unsuitable for timber production shall be considered suited for timber production. However, forest plan standards may be established which prohibit or limit timber harvesting on suited lands. For example, such standards could be imposed on lands otherwise suited for timber production due to economic considerations or due to allocation of the land to uses not compatible with timber harvesting. Each forest plan must

include in the appendix a tabular summary displaying a listing of the number of acres of suitable lands where standards have been imposed which prohibit or limit timber harvesting and the number of acres where such prohibitions or limitations do not apply. This summary is provided as a convenient reference only and is not part of the suitability determination.

(d) *Allowable sale quantity.* The amount of chargeable timber volume which can be sold from a plan area for a decade cannot exceed the allowable sale quantity standard established for the plan area. Each forest plan which provides for a timber sale program must establish a standard setting the allowable sale quantity. The allowable sale quantity is a ceiling; it is not a future sale level projection or target and does not reflect all of the factors that may influence future sale levels.

(1) *Calculation procedures.* The allowable sale quantity is calculated as follows:

(i) *Land base.* The only lands on which the allowable sale quantity is based are those lands in the plan area suited for timber production and on which planned periodic entries for timber harvest are allowed over time. Only one allowable sale quantity can be established per plan area.

(ii) *Long-term sustained-yield timber capacity.* The amount of chargeable timber volume which can be sold for a decade from any proclaimed National Forest within the plan area may not exceed the long-term sustained-yield timber capacity of that proclaimed National Forest except as provided by paragraph (d)(1)(ii)(B) of this section or as necessary to meet overall multiple-use goals as established in the forest plan. Any change to the forest plan to permit a departure to meet overall multiple-use goals must be made by a major amendment or revision.

(A) The long-term sustained-yield timber capacity of a proclaimed National Forest is calculated using the same suited land base and forest plan standards as used for calculating the allowable sale quantity.

(B) In those cases where a proclaimed National Forest has less than two hundred thousand acres of lands suited for timber production, two or more proclaimed National Forests may be used for purposes of determining the long-term sustained-yield timber capacity.

(iii) *Non-declining flow.* When calculating a new allowable sale quantity, the new allowable sale quantity may either decline, remain constant, or increase relative to the current allowable sale quantity. The new allowable sale quantity must be established at a level that is predicted to be sustainable or capable of increasing during subsequent decades, with exceptions permitted only to meet overall multiple-use goals.

(iv) *Intensified management practices.* Whenever the allowable sale quantity is changed through amendment or revision, predicted yields that were dependent on implementation of intensified management practices must be decreased if such intensified practices have not been successfully implemented or funds have not been received to permit such practices to continue substantially as previously planned.

(2) *Chargeable timber volume.* Only the timber volume that has been included in the growth and yield projections used for the calculation of the allowable sale quantity is attributable to the allowable sale quantity when sold.

(3) *Noninterchangeable components.* The allowable sale quantity may be divided into noninterchangeable components. Limits on the sale of chargeable timber volume associated with each noninterchangeable component cannot be exceeded, and chargeable timber volume from one noninterchangeable component cannot be attributed to the volume limit associated with another noninterchangeable component. Where management prescriptions allow planned periodic entries for timber harvest over time into roadless areas, the portion of the allowable sale quantity derived from those roadless areas must be identified as a noninterchangeable component.

(4) *Exception to harvest limit.* Nothing in this section prohibits the salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack. If the volume from such harvests was included in the calculation of the allowable sale quantity, it may either be substituted for timber that would otherwise be sold under the plan or, if not feasible, sold over and above the allowable sale quantity.

(e) *Culmination of mean annual increment.* All even-aged stands scheduled to be harvested during the plan period must generally have reached culmination of mean annual increment of growth. This requirement does not apply to silvicultural practices such as thinning or other stand improvement measures; to salvage or sanitation harvesting of stands which are substantially damaged by fire, windthrow, or other catastrophes, or which are in imminent danger from insect or disease attacks; when uneven-aged methods are used; or to cutting for experimental and research purposes. In addition, exceptions to this requirement are permitted in the forest plan for the harvest of particular species of trees if overall multiple-use goals would be better attained. Any change to a forest plan to permit such exceptions must be made through a major amendment or at the time of revision. Cubic foot measure is used as the basis for calculating culmination of mean annual increment of growth unless the Chief directs otherwise.

(f) *Selection of cutting methods.* The determination of the appropriate cutting method is made at the project level. Clearcutting may be permitted only when it is determined to be the optimum method of timber cutting and the only practical method to accomplish one or more of the following purposes:

(1) Establishment, maintenance, or enhancement of habitat for threatened or endangered species;

(2) Enhancement of wildlife habitat or water yield values or to provide for recreation, scenic vistas, utility lines, road corridors, facility sites, reservoirs, fuel breaks, or similar developments;

(3) Rehabilitation of lands adversely impacted by events such as fires, windstorms, or insect or disease infestations;

(4) Preclusion or minimization of the occurrence of potentially adverse impacts of insect or disease infestations, windthrow, logging damage, or other factors affecting forest health;

(5) Establishment and growth of desired tree or other vegetative species that are shade intolerant;

(6) Rehabilitation of poorly stocked stands due to past management practices or natural events; and

(7) Research needs.

(g) *Maximum size of clearcuts.* To provide for those cases where clearcutting may be approved for a specific project, the forest plan must establish the maximum size of areas that could be clearcut in one harvest operation. These sizes do not apply to areas harvested by clearcutting as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm. Exceptions to the established limits also may be exceeded on a project basis after public notice and approval by the Regional Forester.

(h) *Blending of even-aged stands.* Blocks, patches, or strips for clearcutting, shelterwood cutting, seed tree cutting, and other methods designed to regenerate an even-aged stand of timber shall be shaped and

blended to the extent practicable with the natural terrain.

(i) *Protection of soil and water.* Forest plans must not permit timber harvesting where harvests are likely to seriously and adversely affect water conditions or fish habitat unless protection is provided from detrimental changes in water temperature, blockages of water courses, and deposits of sediment.

(j) *Displays of Timber Information.* The following information shall be displayed in one or more appendices to the forest plan:

(1) Acreage designated as lands unsuitable and suitable for timber production.

(2) Acreage of suitable lands subject to standards which prohibit or limit timber harvesting and the acreage where such prohibitions or limitations do not apply.

(3) the long-term sustained-yield timber capacity of each proclaimed National Forest either fully or partially within the plan area.

(4) The proportion of possible timber harvest methods forest-wide.

§ 219.14 Special designations.

(a) *Special designations.* Forest plan amendment or revision is the mechanism for the agency to allocate specific areas to prescriptions for special designations, or to recommend special designation by higher authorities. Special designations may include, but are not limited to, wilderness, research natural areas, geological areas, botanical areas, scenic by-ways, national scenic areas, national recreation areas, national natural landmarks, and wild, scenic, and recreation rivers.

(b) *Wilderness areas.* Unless Federal statute directs otherwise, all roadless, undeveloped areas shall be evaluated for wilderness designation during forest plan revision subject to the following limitations:

(1) West of the 100th meridian, areas must be at least 5,000 acres in size unless contiguous to existing units of the National Wilderness Preservation System or contiguous to areas endorsed by the Administration for wilderness designation.

(2) East of the 100th meridian, areas must be of sufficient size as to make practicable their preservation and use in an unimpaired condition.

(c) *Wild, scenic, and recreation rivers.* The eligibility of rivers for designation as wild, scenic, and recreation rivers shall be evaluated during forest plan revision if any of the following apply:

(1) Federal legislation requires evaluation; or

(2) A river eligibility evaluation has not been conducted using the criteria published in FSH 1909.12 in July, 1987.

(d) *Role of forest plans.* Where Acts designating special areas within the National Forest System require planning beyond that required for forest plans, the goals, objectives, standards, or guidelines in special area plans shall be incorporated into the forest plan as forest plan direction.

§ 219.15 Applicability and transition.

(a) The provisions of this subpart are applicable to all units of the National Forest System as defined by 16 U.S.C. 1609 including, but not limited to, the National Grasslands.

(b) In those circumstances where a forest plan has not been approved as of [*effective date of the final rule*], development and approval of the forest plan continue to be subject to the previous planning rule. After plan approval, the rules of this subpart apply.

(c) Forest plans adopted prior to [*effective date of the final rule*] remain in effect until amended or revised pursuant to this subpart.

(d) Prior to adoption of a revised forest plan prepared in accordance with the rules of this subpart, forest plans need not be amended in order to comply with the rules of this subpart.

(e) The displays required by § 219.11(d)(1) and (2) and § 219.13(j) need not be prepared prior to development of a revised forest plan prepared in accordance with the rules of this subpart.

(f) The requirement of § 219.12(e) applies starting the first full fiscal year after [*effective date of the final rule*].

(g) Until such time as forest plans are amended or revised to fully conform to the definitions and usage of ''standards'' and ''guidelines'' as described at § 219.6(e) and (f), the following apply:

(l) Consistency determinations (§ 219.11) shall be based on whether project decisions adhere to mandatory standards or guidelines in current plans; and

(2) An amendment shall be considered major when one of the following circumstances exist:

(i) One or more mandatory standards or guidelines in the current forest plan would be amended in such a manner that the amendment would result in significant change to the forest plan and that change is predicted to affect resources over a large portion of the plan area during the remainder of the plan period;

(ii) The forest plan would be amended in such a manner that the amount of chargeable timber volume which can be sold for a decade from a proclaimed National Forest in the plan area exceeds the long-term sustained-yield timber capacity of that proclaimed National Forest, except as provided at (§ 219.13(d)(1)(ii)(B)); or

(iii) Forest plan direction would be changed to permit harvest of even-aged stands that have not reached culmination of mean annual increment of growth (§ 219.13(e)), including when such a change is made to accommodate a project.

(h) If a Notice of Intent to prepare an environmental impact statement has been published for a significant amendment or revision of a forest plan prior to [*effective date of the final rule*], the following apply:

(1) If a draft environmental impact statement accompanying a proposed significant amendment has not been issued, the Regional Forester shall implement the rules of this subpart. In such case, a new Notice of Intent need not be issued; rather, the Regional Forester shall notify those on the list described at § 219.3(b) of any changes in the amendment process resulting from compliance with the rules of this subpart.

(2) If a draft environmental impact statement accompanying the proposed significant amendment has been issued, the Regional Forester may continue under the previous planning rule.

(3) If a draft environmental impact statement accompanying a proposed revision has not been issued, the Regional Forester shall implement the rules of this subpart. If a draft environmental impact statement accompanying the proposed revision has been issued, the Regional Forester may continue under the previous planning rule. If the Regional Forester continues under the rules of this subpart, a new Notice of Intent need not be issued, the scoping process need not be repeated, and the prerevision actions required at § 219.10(c) need not specifically occur. However, the Regional Forester must document other analyses or evaluations conducted as part of the revision process which served to review the entire forest plan and to determine that need to change forest plan direction. The Regional Forester shall notify those on the list described at § 219.3(b) of any changes in the process for revision resulting from compliance with the rules of this subpart.

(i) Except for the Pacific Southwest Region (36 CFR 200.2), regional guides prepared in accordance with the previous planning rule shall be withdrawn no later than three years from [*effective date of the final rule*], unless the Chief of the Forest Service determines that delay is warranted. The Regional Guide for the Pacific Southwest Region shall be maintained

until such time as all forest plans in the Region are approved. It shall then be withdrawn no later than three years from the date of approval of the last forest plan, unless the Chief of the Forest Service determines that delay is warranted.

(j) A forest plan must meet the requirement of § 219.13(g) prior to withdrawal of the regional guide for that plan area.

Subpart B—[Reserved]

Dated: April 4, 1995.

Jack Ward Thomas,

Chief.

[FR Doc. 95–8594 Filed 4–10–95; 8:45 am]

BILLING CODE 3410–11–M

Federal Register

Thursday
April 13, 1995

Part III

Department of Health and Human Services

Public Health Service

Bilingual/Bicultural Service Demonstration Projects in Minority Health; Availability of Funds and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health; Notice on Availability of Funds and Request for Applications for Bilingual/Bicultural Service Demonstration Projects in Minority Health

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health.

ACTION: Notice of availability of funds and request for applications for bilingual/bicultural service demonstration projects in minority health.

AUTHORITY: This program is authorized under section 1707(d)(1) of the Public Health Service Act, as amended in Public Law 101–527.

PURPOSE: To provide support to improve the ability of health care providers and other health care professionals to deliver linguistically and culturally competent health services to limited-English-proficient populations.

APPLICANT ELIGIBILITY: Eligible applicants are public and private nonprofit minority community-based organizations or health care facilities serving a targeted minority community.

ADDRESSES/CONTACTS: Applications must be prepared on Form PHS 5161–1 (Revised July 1992 and approved by OMB under Control Number 0937–0189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, (telephone 301/594–0758) or by Internet E-mail cwilliams@oash.ssw.dhhs.gov. Completed applications are to be submitted to the same address.

Technical assistance on the programmatic content for the Bilingual/Bicultural Grants may be obtained from Ms. Nina Darling or Ms. Rizalina Galicinao. They can be reached at the Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, (telephone 301/594–0769) or by Internet E-mail ndarling@oash.ssw.dhhs.gov or rgalicin@oash.ssw.dhhs.gov.

In addition, OMH Regional Minority Health Consultants (RMHCs) are available to provide technical assistance. A listing of the RMHCs and how they may be contacted is provided in the grant application kit. Applicants also can contact the OMH Resource Center (OMH/RC) at 1–800–444–6472 for health information and generic information on preparing grant applications.

DEADLINE: To receive consideration, grant applications must be received by the Grants Management Office by May 15, 1995. Applications will be considered as meeting the deadline if they are either:

(1) Received at the above address on or before the deadline date, or

(2) Sent to the above address on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications submitted by facsimile transmission (FAX) will *not* be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

AVAILABILITY OF FUNDS: It is anticipated that in Fiscal Year 1995, the Office of Minority Health will have approximately $1.3 million available to support approximately 13 grants of up to $100,000 each under this program. At least three grants focusing on HIV/AIDS as a health problem will be funded under this announcement.

PERIOD OF SUPPORT: Support may be requested for a total project period not to exceed 3 years. Non competing continuation awards will be made subject to satisfactory performance and availability of funds.

BACKGROUND: The Office of Minority Health is the unit of the U.S. Department of Health and Human Services that coordinates Federal efforts to improve the health status of racial and ethnic minority populations, including American Indians, Alaska Natives, Asian Americans, Pacific Islanders, African Americans and Hispanics/Latinos. With the passage of the Disadvantaged Minority Health Improvement Act (Pub. L. 101–527), the OMH was established in legislation and given a broad mandate to advance efforts to improve minority health including supporting research, demonstrations and evaluations of new and innovative programs that increase understanding of disease risk factors and support improvement in information dissemination, education, prevention and service delivery to minority communities. The OMH was also directed to develop appropriate planning, logistical support, and technical assistance related to increasing the capabilities of health care providers and other health care professionals to address cultural and linguistic barriers to effective health care service delivery, and to increase access to effective health care for limited-English-proficient minority populations [Pub. L. 101–527, section 1707(b)(7)].

Social, cultural and linguistic barriers on the part of both providers and clients significantly affect the receipt of needed health care. Among the many factors contributing to the poor health status of limited-English-proficient minorities are:

- Inadequate number of health care providers and other health care professionals skilled in culturally competent and linguistically appropriate delivery of services;
- Scarcity of trained interpreters at the community level;
- Deficiency of knowledge about appropriate mechanisms to address language barriers in health care settings;
- A lack of culturally appropriate community health prevention programs;
- Absence of effective partnerships between major mainstream provider organizations and limited-English-proficient minority communities;
- Low economic status;
- Lack of health insurance; and
- Organizational barriers.

This RFA specifically addresses the barriers that limited-English-proficient minority populations face when trying to access health services.

In the 1990 U.S. Census, language questions asked were (1) Whether respondents speak another language at home, (2) how well they speak English (for those who answered yes to the first question), and (3) which language they speak at home. The census data indicates that 31.8 million persons ages 5 and above (13.8 percent of the total U.S. population counted by the 1990 census) spoke another language at home. Of those, 17.9 million people reported that they speak English very well. Almost 2 million people (1.8 million) do not speak English at all. An additional 4.8 million people do not speak English well.

Large numbers of minorities in the United States are linguistically isolated—living in households in which no one 14 years old or over speaks English and no one who speaks a language other than English speaks English ''very well.'' The 1990 Census found 1,572,006 Asian and Pacific Islanders at least 5 years of age to be linguistically isolated. The percent of Asian and Pacific Islanders who are linguistically isolated varies by

subgroup—ranging from 9.7% among Filipinos to 59.8% among Hmong. Among Pacific Islanders, Tongans had the highest proportion of persons who were linguistically isolated (18.7%). More than four million Hispanics are linguistically isolated (4,548,677 or 23.8%). Central Americans (40.3%) and Dominicans (39.6%) are the most likely to be linguistically isolated. Among Blacks, 282,147 (0.9%) are linguistically isolated. Among American Indians, Alaska Natives, 77,802 (4%) are linguistically isolated.

Definitions

For purposes of this grant announcement, the following definitions are provided:

(1) Minority Populations—As defined by the Office of Management and Budget (OMB) Circular No. 15, include: Asisan/Pacific Islanders, Blacks, Hispanics, and American Indian/Alaska Native.

(2) Limited-English-Proficient Populations—individuals, as defined above (1), with a primary language other than English who must communicate in that language if the individual is to have an equal opportunity to participate effectively in and benefit from any aid, service or benefit provided by the health provider.

(3) Minority Community-Based Organization—a public or private non-profit community-based minority organization or a local affiliate of a national minority organization that has a governing board composed of 51% or more racial/ethnic minority members, has a significant number of minorities in key program positions, has an established record of service to a racial and ethnic minority community.

(4) Health Care Facilities—for purpose of this announcement, a health care facility is a public nonprofit facility that has an established record for providing a full range of health care services to a targeted racial and ethnic minority community. Facilities providing only screening and referral activities are not included in this definition. A health care facility may be a hospital, outpatient medical facility, community health center, migrant health care center, or a mental health center.

(5) Community—a defined geographical area in which persons live, work, and recreate, characterized by: (a) formal and informal communication channels; (b) formal and informal leadership structures for the purpose of maintaining order and improving conditions; and (c) its capacity to serve as a focal point for addressing societal needs, including health needs. A community should be an appropriate catchment area in which to address a population's social and health needs.

(6) Bilingual Direct Services—any activity that delivers person to person health care/health promotion services which is linguistically and culturally appropriate to limited-English-proficient clientele, including, for example, translation and interpreter services and health education course taught bilingually.

(7) Cultural Competency—a set of interpersonal skills that allow individuals to increase their understanding and appreciation of cultural differences and similarities within, among, and between groups. This requires a willingness and ability to draw on community-based values, traditions, and customs and to work with knowledgeable persons of and from the community in developing focused interventions, communications, and other supports. (Orlandi, Mario A., 1992)

Potential Projects/Activities

A broad range of approaches may be used to respond to this proposal. However, the projects should concentrate on activities to improve the ability of health care providers and other health care professionals to deliver linguistic and culturally competent health services to limited-English-proficient populations. A proposed program may include, but is not limited to:

- language and cultural competency training for health care professionals;
- bilingual health access or health promotion information in the native language of the target population(s);
- on-site interpretation services; and
- trainer development courses on cultural competency.

Organizational Linkages

Project goals should promote access to direct services for limited-English-proficient minority populations by providing continuity of support to clients for outreach, referral and treatment. Linkages must be established between minority community based organizations and appropriate health care facilities. The minority community-based organizations and the health care facilities must reach out and work with each other to ensure that limited-English-proficient persons are in receipt of appropriate health care services. Thus, the applicant, either the minority community-based organization or the health care facility must have an established linkage with the other organization prior to submitting an application.

Application Process

Applicants should pay particular attention to the general and supplemental instructions provided in the application kit to ensure that their applications are responsive to each of the concerns under the following headings:

Background

Provide a description of the problem to be addressed; clearly identify the scope of the problem including linguistic/cultural barriers; the limited-English-proficient minority target group(s) affected; health issues; and the pertinent geographic area/subarea. Provide documentation supporting the serving of at least 40 percent or more persons with limited-English proficiency.

Cite the capability and experience of the organization to provide linguistic and culturally competent health care services.

Goal(s) and Objective(s)

Clearly state the goal(s) of the project. Provide a list of specific, time-phased, measurable objective(s), including target dates.

Methodology

A project management plan must be included which delineates project activities specifying responsible parties, methods to be used, timelines, and anticipated outcomes. Project activities must be linked to goal(s) and objective(s). Indicate the organization's capability to collaborate with other health care providers and health care professionals to effectively reach the target population. Describe the linkage between the organization and the applicable minority community-based organization/health care facility.

Personnel/Management

Describe duties, reporting channels, requisite qualifications, and related experience of personnel who will be responsible for carrying out the project. Resumes and curriculum vitae of key personnel must be provided. Describe management capability and experience of proposed grantee organization.

Evaluation

Specify the approach and provide an example of data collection instruments that will be used to measure accomplishment of objectives; the evaluation should include both process and outcome measures. Provide a concise analysis of how the project will result in a sustained impact on reducing the problem of access to bilingual/bicultural health care services. Provide

information on how the project will be sustained beyond the funding period and the degree that the project can be replicated.

Budget

Budgets of up to $100,000 total direct and indirect costs per year may be requested to cover: The cost of personnel, consultants, support services, materials, and travel. The project budget must include travel for one project staff member to meet with the OMH Bilingual/Bicultural Program Director in Washington, D.C. Funds may not be used for construction, building alterations or renovations. Also, funds may not be used to purchase equipment except as may be acceptably justified in relation to conducting the project activities.

All budget requests must be fully justified in terms of the goals and objectives proposed and include a computational explanation of how costs were determined.

Review of Applications: Applications will be screened upon receipt. Those that are judged to be incomplete, nonresponsive to the announcement, or nonconforming will be returned without comment. Each organization may submit no more than one proposal under this announcement. If an organization submits more than one proposal, all will be deemed ineligible and returned without comment. Applications judged to be complete, conforming, and responsive will be reviewed for technical merit in accordance with PHS policies.

Applications will be evaluated by Federal and non-Federal reviewers chosen for their expertise in minority health and their understanding of the unique health problems and related issues confronted by limited-English-proficient racial and ethnic populations in the United States.

Applicants are advised to pay special attention to developing clearly defined goals and objectives for their projects, as well as providing well-developed study and evaluation designs for the measurement of project objectives. Both formative and summative evaluations will be required of the grantee, as well as analysis of how the project can be improved to reach the desired outcomes. Applicants should also pay specific attention to the program guidelines, and the general and supplemental instructions provided in the application kit.

Review Criteria: Applications will be reviewed and evaluated for evidence of consistency with the requirements of this announcement. Of specific importance will be the following criteria under the listed headings. (An indication of the quantitative weight appears in parentheses after each heading):

Background (25%)

- Clarity, specificity, depth and coherence of the described need(s) and problem(s) of the target-population(s) which includes linguistic/cultural barriers.
- Strength and specificity of the capability of the organization to provide linguistically and culturally competent health care services for the target population;
- Degree to which the organization is committed to linkage with the applicable minority community-base organization/health care facility;
- The validity of the documentation supporting the percentage of limited-English-proficient persons the project will serve;
- Extent and outcomes of past efforts/activities with the proposed target community; and
- Specificity of data on the intended target group.

Goals and Objectives (15%)

- Relevance of the proposed goals and objectives to this announcement and the OMH mission;
- Merit of the proposed objectives, including their measurability and relevance to the stated project goals, and soundness/attainability of the time frame specified; and
- Soundness/attainability of proposed impacts/results/products.

Methodology (25%)

- Strength of the work plan and specific activities proposed, including their scope and relevance to each of the stated objectives and projected outcomes;
- The degree to which the linguistic and cultural competence skills will provide the health care providers and health care professionals with the ability to increase outreach effectiveness to the target population(s);
- Evidence that the organization has the established linkages with appropriate health care facilities to provide continuity of support to clients for outreach, referral and treatment; and
- Clearly defined project timeline, Gantt Chart or Pert Chart is included as it relates to project planning, implementation, and program evaluation.

Personnel/Management (15%)

- Strength of proposed grantee organization's management capability;
- Adequacy of qualifications, experience, linguistic and cultural competence of proposed personnel;
- Evidence that the proposed staff can effectively outreach and work with the targeted community; and
- Evidence of clear lines of authority and accountability among proposed staff, volunteers, managers, and collaborators.

Evaluation (20%)

- The strength of the evaluation plan: includes formative and summative evaluation designs; the likelihood that the proposed objectives can be measured; and the linguistic and cultural competence of the project can be assessed;
- Clarity and specificity of proposed qualitative and quantitative measures of project accomplishments;
- Soundness of proposed data analysis and reporting methods;
- Evidence that a project can be replicated;
- Evidence that the proposed implementation plan and bring about the desired outcome(s); and
- If the proposed project provides direct services, likelihood that services will be sustained beyond the expiration of the 3 year funding period.

Budget/Financial Plan (0%)

The budget items will be commented on, but not rated by the review panel.

- Evidence that required budget items are consistent with stated goals and are appropriate to the level of effort required.

Award Criteria: Funding decisions will be determined by the Deputy Assistant Secretary of Minority Health, Office of Minority Health and will take under consideration: the recommendations/ratings of review panels as well as program balance which includes geographic and race/ethnicity distribution, and health problem areas having the greatest impact on minority health in terms of causes of death. Preference will be given to applicants who have received grants under the Bilingual/Bicultural Program.

Supplementary Information: This announcement for Fiscal Year 1995 Bilingual/Bicultural Service Demonstration Grants focuses on the six health problems identified by the Secretary's Task Force on Black and Minority Health as having the greatest impact on minority health in terms of causes of death: (1) Cancer; (2) cardiovascular disease and stroke; (3) chemical dependency; (4) diabetes; (5) homicides; and (6) infant mortality. Additional areas of concern under this announcement include HIV infection,

access to and financing of health care, health professions personnel development, data collection and analysis, and surveillance. Proposals should include strategies that will address these problems in a culturally competent and linguistically appropriate manner.

These health priorities also are addressed in the Health Objectives for the Nation, Healthy People 2000, which the Public Health Service (PHS) is committed to achieving. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202/783–3238).

State Reviews: E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications.

Applicants [other than federally-recognized Indian tribal governments] should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected State. All comments from a state office must be received within 60 days after the application deadline by the Office of Minority Health's Grants Management Officer. A list of addresses of the SPOCs is enclosed with the application kit material.

Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants: The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements: This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to state and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate state and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (a) A copy of the face page of the applications (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided, (3) a description of the coordination planned with the appropriate state or local health agencies.

The Catalog of Federal Domestic Assistance number is 93.105.

Dated: March 23, 1995.

Clay E. Simpson, Jr.,

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 95–9143 Filed 4–12–95; 8:45 am]

BILLING CODE 4160–17–M

Federal Register

Thursday
April 13, 1995

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Red Wolves in North Carolina and Tennessee; Revision of the Special Rule for Nonessential Experimental Populations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC03

Endangered and Threatened Wildlife and Plants; Revision of the Special Rule for Nonessential Experimental Populations of Red Wolves in North Carolina and Tennessee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service amends the special rule for the nonessential experimental populations of red wolves (*Canis rufus*) in North Carolina and Tennessee to; revise and clarify the incidental take provision; apply the incidental take provision to both reintroduced populations; revise the livestock owner take provision; apply the livestock owner take provisions to both reintroduced populations; add harassment and take provisions for red wolves on private property; revise and clarify the vaccination and recapture provision; and apply the same taking (including harassment) provisions to red wolves outside the experimental population area, except for reporting requirements.

EFFECTIVE DATE: April 13, 1995.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

Requests for the summary report on the 5-year experimental reintroduction at the Alligator River National Wildlife Refuge (Alligator River) should be sent to the Alligator River National Wildlife Refuge, P.O. Box 1969, Manteo, North Carolina 27954.

FOR FURTHER INFORMATION CONTACT: Mr. V. Gary Henry, Red Wolf Coordinator, at the above Asheville, North Carolina, address (Telephone 704/665–1195, Ext. 226).

SUPPLEMENTARY INFORMATION

Effective Date

The usual 30-day delay between date of publication of a final rule and its effective date may be waived for good cause, as provided by 50 CFR 424.18(b)(1) and the Administrative Procedure Act (5 U.S.C. 553(d)(3)). The Service finds that this period be waived for this rule as its immediate promulgation is necessary to avoid potential conflict between Federal provisions for the taking of red wolves on private property and corresponding State of North Carolina provisions that become effective on January 1, 1995.

Background

A proposed rule to introduce red wolves into Alligator River National Wildlife Refuge (Alligator River), Dare County, North Carolina, was published in the Federal Register July 24, 1986 (51 FR 26564). A final rule making a determination to implement the proposed action with some modifications was published November 19, 1986 (51 FR 41790). The red wolf population in Dare County and adjacent Tyrrell, Hyde, and Washington Counties was determined to be a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended (Act). A revision published November 4, 1991, added Beaufort County to the list of counties where the experimental population designation would apply (56 FR 56325). The status of the population was to be reevaluated within 5 years, and the process was to include public meetings.

A proposed rule to introduce red wolves into the Great Smoky Mountains National Park (Park), Haywood and Swain Counties, North Carolina; and Blount, Cocke, and Sevier Counties, Tennessee, was published in the Federal Register August 7, 1991 (56 FR 37513). A final rule making determination to implement the proposed action with some modifications was published November 4, 1991 (56 FR 56325). This population was also determined to be a nonessential experimental population according to section 10(j) of the Act. Graham, Jackson, and Madison Counties, North Carolina; and Monroe County, Tennessee, were also included in the experimental designation because of the close proximity of these counties to the Park boundary. The reintroduction potential of the Park was to be assessed after a 10- to 12-month experimental phase. A positive assessment would result in initiation of a permanent reintroduction attempt.

The red wolf is an endangered species that is currently found in the wild only as experimental populations on the Service's Alligator River and Pocosin Lakes National Wildlife Refuges and adjacent private lands in Dare, Hyde, Tyrrell, and Washington Counties, North Carolina; and in the Park in Swain County, North Carolina, and Blount and Sevier Counties, Tennessee; and as an endangered species in three small island propagation projects located on Bulls Island, South Carolina; Horn Island, Mississippi; and St. Vincent Island, Florida. These five carefully managed wild populations contain a total of approximately 60 animals. The remaining red wolves are located in 31 captive-breeding facilities in the United States. The captive population presently numbers approximately 180 animals.

Following are summaries of the results from the two experimental reintroductions. A more detailed summary for Alligator River is available (see **ADDRESSES** section) as Progress Report No. 6, entitled ''Reestablishment of Red Wolves in the Alligator River National Wildlife Refuge, North Carolina, 14 September 1987 to 30 September 1992.''

Alligator River 5-Year Summary

The 5-year experiment to reestablish a population of red wolves in Alligator River in northeastern North Carolina ended October 1, 1992.

From September 14, 1987, through September 30, 1992, 42 wolves (adults—10 males, 9 females; yearlings—1 female; pups—12 males, 10 females) were initially released on 15 occasions. Four releases were conducted in 1987, two in 1988, five in 1989, two in 1990, one in 1991, and one in 1992. As of September 30, 1992, there were at least 30 free-ranging wolves in northeastern North Carolina.

Animals were initially released as members of seven adult pairs, an adult and a yearling, an adult and a pup, five families, and one sibling pair. Adults are defined as animals 24 months or greater in age, yearlings are between 12 and 24 months of age, and pups are 12 months or less in age. Released adults ranged in age from 2.25 years to 7.33 years.

Wide-ranging movements that created management situations or led to the death of some animals soon after release were common. Of the 31 releases of adults and 22 releases of pups, 18 adults and 10 pups either had to be returned to captivity or died within 2 months. Length of acclimation, release area, location of resident wolves, and type of social group released all affected a wolf's probability of successfully establishing itself in the wild.

Of the 42 wolves released, 22 died; 7 were returned to captivity for management reasons; 11 were free-ranging through September 30, 1992; and the fates of 2 are unknown. Length of time in the wild varied from 16 days to 3.5 years.

Reintroduced wolves were killed by one of at least seven mortality factors. Vehicles (n = 8), intraspecific aggression

(n = 5), and drownings (n = 4) were the most significant sources of mortality. It is a measure of the program's success that all but two of the deaths were natural or accidental, not as a result of any irresponsible action by a private citizen.

A minimum of 22 wolves were born in the wild. These animals were members of eight litters produced by 11 adults (6 males, 5 females). Two litters were produced in 1988, at least one in 1990, four in 1991, and at least one in 1992. No pups were born in the wild during 1989 because there were no adult pairs together during the breeding season.

Only two wild-born wolves died, and the fate of one is unknown. As of September 30, 1992, wild-born wolves accounted for 63 percent of the known population (19 of 30).

Of the 11 adults that bred in the wild, 1 was wild-born and 10 were captive-born. Wild-born offspring are evidence that captive-born-and-reared adults can make the transition from captivity to life in the wild.

As expected, wild-born pups exhibited wide-ranging movements as they dispersed from natal home ranges. These animals, with the exception of one female, traveled up to 192 km before establishing new home ranges on private land south or west of Alligator River. One female was killed by a vehicle before she established a new home range. Dispersal age ranged between 7 and 22 months. The youngest dispersers were siblings that left their natal home range after their parents were returned to captivity. Likewise, another female dispersed at a young age after her mother was returned to captivity. It is likely that some or all of these pups would not have dispersed had their families remained intact.

Twenty-four of the released wolves were recaptured 63 times, and 17 of the wild-born wolves were recaptured 39 times. Most recaptures were necessary in order to meet program objectives (replace radio collars, place a specific wolf with a mate, translocate an animal to a suitable site, etc.). Every management problem was resolved without inflicting significant long-term damage to animals and with little or no inconvenience to residents of the area.

Captive breeding was an integral component of the reintroduction. Since 1986, 79 wolves have been held in captivity at Alligator River for varying periods of time. As of September 30, 1992, 10 wolves were in captivity. During the 5-year experiment, 20 captive adult pairs produced 34 pups. With access to 12 pens, Alligator River will continue to be an important component of the red wolf captive-breeding program.

By almost every measure, the reintroduction experiment was successful and generated benefits that extended beyond the immediate preservation of red wolves to positively affect local citizens and communities, larger conservation efforts, and other imperiled species. During the last 5 years, four important points surfaced:

1. Since every management problem was resolved without inflicting long-term damage to animals and with little inconvenience to residents of the area, it is evident that red wolves can be restored in a controlled manner.

2. Significant land-use restrictions were not necessary in order for red wolves to survive. Indeed, hunting and trapping regulations for Alligator River remained unchanged or were further relaxed during the experiment. Additionally, no restrictions were needed in order for red wolves to survive on private land.

3. Red wolves and sportsmen can coexist. Many hunters and trappers expressed support, while others actively contributed to the success of the experiment by reporting sightings of red wolves.

4. The reintroduction area, which encompasses about 250,000 acres (111,750 hectares), probably cannot support 30 red wolves for an extended period of time. Dispersal outside the reintroduction area by wild-born red wolves has occurred and will continue. Efforts will be made to work with private landowners to allow wolves on private property. In addition to dispersal, the future of the red wolf population is threatened by its smallness; many events (e.g., disease outbreaks) can cause extinction of small populations.

Increasing the size of the wolf population minimizes threats to its survival. The primary factor limiting population size is the size of the reintroduction area. A larger reintroduction area would provide habitat for dispersing wolves and provide the Service with opportunities to release additional wolves. Fortunately, the reintroduction area can easily be enlarged by adding to the project the 112,000-acre (45,327-hectare) Pocosin Lakes National Wildlife Refuge (Pocosin Lakes). Purchased in 1990 and located in Washington, Tyrrell, and Hyde Counties, North Carolina, Pocosin Lakes is ideal for probably 15 to 25 wolves because of its large size, remoteness, abundant prey populations, and proximity to Alligator River.

Meetings with the public and local governments were held to present the results of the first 5 years and to solicit input on a proposal to maintain the current population and expand the reintroduction westward to encompass Pocosin Lakes beginning in 1993. The seven public meetings were held in the communities of Engelhard, Manteo, Stumpy Point, East Lake, Columbia, Swanquarter, Washington, and Plymouth. Attendance at these meetings ranged from 7 to 90 people at each and totaled 146 at all locations. Meetings were also held with the county commissioners in Washington, Dare, Beaufort, Tyrrell, and Hyde Counties.

Reintroductions are generally supported by local, State, and Federal agencies; elected officials; and the general public, except for some private landowners and the county boards of commissioners in Hyde and Washington Counties, North Carolina. Most people who commented supported the restoration project, although some expressed concern about the effect of red wolves on activities on private land. The Service assured them that, because free-ranging wolves are legally classified as members of an experimental nonessential population, the wolves would not negatively impact legal activities on private or Federal land.

Some citizens used the meetings to express frustration about other matters involving the Service. No significant complaints were voiced specifically about the red wolf reintroduction experiment. However, Hyde and Washington Counties did pass resolutions opposing red wolf project expansion. These resolutions seemed to be based on anti-government sentiment and a fear of prohibitions on private land use.

After consideration of the results from the 5-year experimental reintroduction and public input received in public meetings and meetings with State and local governments and agencies, the Service determined that it would maintain the present populations at Alligator River and has expanded this population with reintroductions at Pocosin Lakes beginning in 1993. The reintroductions at Pocosin Lakes are within counties previously designated for the experimental population and require no changes in the existing rule.

Park 1-Year Summary

On November 12, 1991, the Service, in cooperation with the National Park Service (Park Service), experimentally released a single family group of red wolves into the Cades Cove area of the Park. This release was designed to assess the feasibility of eventually establishing a self-sustaining red wolf population on Park Service and

surrounding U.S. Forest Service property. The experimental period ended in late September 1992 with the capture of the remaining three members of the release group.

Specific technical objectives of the experimental release were to document and respond to movements and activities of the wolves in mountainous terrain and in the presence of high human activity, livestock interests, and an increasing coyote population. However, another objective was to establish an informative and cooperative relationship with the involved agencies and local citizens. Through continuous telemetric contact, direct and relayed sightings, and the dedicated efforts of project personnel, valuable information was gathered with respect to all of these categories; some problems were encountered as well.

Cades Cove is unique within the Park; it possesses a great diversity and abundance of prey species, making it highly attractive to a large predator. As a result, the average home range for the four released wolves was 15 km^2 (3,700 acres), scarcely larger than Cades Cove itself. As yet, an accurate prediction of red wolf home ranges for habitat typical of the other 99.3 percent of the Park cannot be made. Wolves made exploratory movements up to 16 km (10 miles) from the release site. Individuals strayed off Park property (less than 5 miles or less than 8 km) four times. Twice they were recaptured within several hours, and twice they returned of their own accord within 24 hours. The primary prey species taken by the wolves were deer, rabbit, ground-hog, and raccoon. Samples are currently being analyzed for percentages and seasonal variation.

Wolves were sighted on numerous occasions by visitors and project personnel throughout the experiment. This was somewhat expected in an area where prey species are extremely visible and comfortable with the intense attention of as many as 15,000 visitors daily. However, the two adult wolves, especially the male, repeatedly tolerated people at close distances. This was attributed to the amount of time (e.g., 6 years for the male) that the adults had spent in captivity. The male was eventually recaptured and removed from the experiment in late January 1992. The female tolerated human presence to a lesser degree, but she presented no problems and was allowed to roam free for the duration of the experimental period. The two female pups were often sighted crossing roads or, at a distance, hunting in pastures. They developed an increasing wariness to human activity as they spent more time in the wild. The behaviors of these wolves support the theory that younger wolves, with minimal exposure to human contact, make better release candidates.

The private land surrounding the Park and throughout the Southern Appalachians supports a variety of livestock interests. The perceived potential economic threat of a large predator is perhaps the single greatest political barrier to establishing a self-sustaining red wolf population in the Southern Appalachians. The documentation and management of the wolves' interaction with domestic livestock is likely to be a major factor in deciding whether to expand the project. Thus, a $25,000 depredation account was established to compensate livestock owners for losses.

Throughout the experiment, the adult male was responsible for taking one chicken and three domestic turkeys in two separate incidents. The remaining three wolves took one of five injured or missing newborn calves. One additional depredation attempt occurred but did not result in injury to the calf. Reimbursements for the chicken and the calf totaled $253. Offers to reimburse for the turkeys were declined by the owner.

Cades Cove supports a 300-head black angus cattle-breeding operation, leased to a private stock owner. During the 6-month calving season, the wolves and calving operation were intensely monitored. The wolves were located disjunct from five of six attempted depredations. Day and night (using night-vision equipment) visual observations revealed cooperative hunting by small groups of coyotes. Nightly spotlight observations by the stock owner revealed continuous coyote activity in calving pastures. Accurate records of lost calves prior to the experimental release of wolves were not kept. Estimates by the stock owner indicated approximately five to ten calves per year were lost to bears, coyotes, and other predators/scavengers.

Of significance is that all of the six depredation attempts during the experimental release involved calves less than 1 week old, and all the events occurred along wood lines away from the main herd of cattle. Project personnel began assisting the stock owner in moving newborn calves into the main herd, and no further depredations by coyotes or wolves occurred.

Prior to the red wolf release, the Service contracted the University of Tennessee to conduct a census of coyotes in the Park and to study interactions between resident coyotes and released wolves. Seven coyotes were outfitted with telemetry collars and were monitored for 18 months, or until they permanently left the study area. Only one coyote remained ''on the air'' in Cades Cove by the time the wolves were released. This collar expired 3 months later. Interaction data was then gathered by direct observation.

Initial information indicated aggressive behavior between the adult wolves and resident coyotes, with the wolves apparently dominating. After the removal of the adult male wolf, greater numbers determined the dominating species.

In preparation for the experimental release, project and Park personnel met with area business, citizenry, and natural resource organizations for comment on the proposal. Modifications to the release plans included the addition of a ''non-injurious harassment clause'' to the experimental rule package, prevention of reproduction in the wild, immediate recapture of wolves straying off Park property, and recapture of all wolves at the end of the experiment.

To facilitate information exchange, an information committee (composed of representatives from Federal and State wildlife resource agencies, Farm Bureau Federations, and conservation organizations) was established. The Heartland Series, a local television environmental program, produced a documentary entitled ''Front Runner,'' focusing on the reestablishment effort in the Southern Appalachians. The ''Front Runner'' video, a teacher's guide, and an activity poster were distributed free to all requesting educational institutions. The project gained national television exposure on ''Zoo Life with Jack Hanna,'' a weekly public education broadcast. Presentations and workshops were given at wildlife exhibitions and to a variety of groups from elementary to college students and to senior citizens. Other media contact included interviews with local and regional newspapers, popular magazines, free-lance writers, and television news teams.

During the final weeks of the experimental period, the Service reviewed and presented their findings to the Park Service and members of the information committee. The decision was made to proceed with a full reintroduction effort at a very conservative pace, with two releases in the fall of 1992.

On October 9, 1992, a family of six red wolves (two adults, four pups) were released into Cades Cove. To date, these wolves have shown restricted movements and food habits very similar to the experimental group. Within

several weeks after release, the adult pair had taken a large European wild hog—an exotic species in the Park.

On December 9, 1992, a second group of six wolves (two adults, four pups) was released from a remote backcountry site several miles east of Cades Cove. It is expected that these animals will be more difficult to track. However, they will provide needed information about the home range requirements of red wolves in habitat that is typical of the vast majority of the Park and surrounding Federal lands.

All released wolves will wear transmitters and will be monitored as closely as the experimental group. There are no scheduled plans to recapture these animals, except to replace aging transmitters in approximately 2 to 3 years.

The possibility of expanding the Park reintroduction to include adjacent national forest lands within the Nantahala and Pisgah National Forests in North Carolina, the Cherokee National Forest in Tennessee, and the Chattahoochee National Forest in Georgia will be evaluated over the next few years. This evaluation will include meetings with congressional representatives, State wildlife and agriculture agencies, Farm Bureau Federations, local agriculture and hunting interests, conservation organizations, county commissioners, and a variety of local organizations. A final decision will be made after public meetings in the local areas where reintroductions are proposed.

Special Rule Changes for Both Reintroductions

In the period since publication of the special rules for the experimental population introduced on Alligator River and the Park, published in the Federal Register on November 19, 1986 (51 FR 41796) and November 4, 1991 (56 FR 56333), it has become apparent that changes are needed in the rule for these populations. These changes will also provide consistency by treating both reintroductions the same.

The provision for taking red wolves incidental to lawful recreational activities (50 CFR 17.84(c)(4)(ii)) is revised and clarified by this final rule. Current policy at Alligator River applies this provision to all lawful activities, not just to recreational activities. For example, 11 wolves (includes 8 within the 5-year experimental release) have been killed by vehicles not involved in recreational pursuits, but certainly otherwise lawful. No problems have been encountered at Alligator River in the application of a more liberalized provision. Therefore, the Service deletes the word ''recreational.'' In addition, incidental take was defined at Alligator River as ''unavoidable, unintentional, and not resulting from negligent conduct lacking reasonable due care.'' This definition is changed for clarification and is included in the incidental take provision of the special rule.

The Service revised the rule for the Park reintroduction, based on input by the North Carolina Farm Bureau Federation which stated that livestock owners should be allowed to take red wolves engaged in livestock depredation. The Tennessee Citizens for Wilderness Planning supported the revision. The final rule permitted private livestock owners to harass red wolves actually engaged in the pursuit or killing of livestock on private lands. Such conflicts must be reported to the superintendent of the Park. Service or State officials will respond to these conflicts within 48 hours and attempt to live-capture the offending animals. If an early response by the Service or State officials results in a failure to capture offending animals, the livestock owner will be permitted to take the offending animal.

These provisions worked well in all five depredation incidents recorded the first year. Offending animals were recaptured, when necessary, and in at least two of the instances, private landowners did harass the animals away but did not take offending animals. Including the experimental release in 1991, there have been 17 incidents of animals moving out of the Park onto private lands. In three incidents, they returned on their own; in the other 14 incidents, they were recaptured. No indication of abuse of these provisions were encountered in these incidents. However, experience with offending animals has indicated potential problems.

It is highly objectionable to owners of livestock and pets to be unable to kill a predator that is engaged in killing their livestock or pets. This, in turn, leads to the erosion of public support for predator reintroductions, which is essential if this effort is to be successful. Also, there may be a time lapse before offending animals settle into a predictable pattern whereby they can be recaptured. During this time period, private landowners will not be allowed to take the animals themselves. The Service will respond to reported incidents within 48 hours. However, the existing special rule (§ 17.84(c)(4)(iv)) does not establish a definitive time when Service or State attempts to recapture the animal are deemed unsuccessful and the private landowner is then permitted to take the offending animals. This is a decision that must be made by the Service project leader or biologist in the field at the depredation location. Therefore, a rule revision provides that private landowners will be permitted to take offending animals upon written approval by the Service project leader or biologist on site of the depredation. This approval will be provided when the Service abandons attempts to capture the offending animal and will specify the authorized personnel (landowner and a limited number of his agents), the number of animals, and the time period (not to exceed 6 months). Also, private landowners will be allowed to take red wolves in the act of killing livestock or pets on private lands without the need for Service approval.

Experience at Alligator River and the Park indicates a need to extend the harassment and take provisions now in place for private livestock owners to include all private landowners. Wolves that come in close proximity to private residences may cause property damage by killing pets or removing and/or physically defacing small property items. In addition, private individuals may not want the animals on their property because they fear them or consider them a nuisance. Although currently not covered by such rule provisions, these stipulations have been implemented as reasonable law enforcement procedures. To date, there have been at least 15 incidents where animals on private property were harassed by private individuals. The special rule is revised to provide the legal basis for a provision now being implemented as a reasonable procedure.

Currently, there are at least 12 red wolves once present at Alligator River whose fate is unknown. Three of these wolves were observed but never captured. Transmitters malfunctioned on the other eight wolves. One animal, whose transmitter malfunctioned in December 1989, would now be 7 years old. The remaining 11 animals are 1 to 3 years of age, and contact with them was lost in 1991, 1992, or 1993. As wolves are great wanderers, it is possible that some of these five animals may have dispersed outside the experimental population boundaries (which could also happen with future animals). There is no possibility of such dispersing wolves mixing with populations of red wolves that have been classified as endangered, because the only existing red wolves in the wild are those introduced as experimental populations (and offspring) or those introduced (and offspring) onto isolated islands for propagation purposes. As a

result, animals dispersing outside the experimental population boundaries will not contribute to the conservation of the species.

As other resident wild canid populations are hunted and trapped, it is possible for a dispersing red wolf to be taken incidental to such lawful activities. Dispersing red wolves could also enter upon private property or attempt to kill livestock or pets. Providing greater protection for dispersing red wolves than that provided for red wolves within the experimental population boundaries would seriously erode the public support that is so essential for the success of reintroductions. Therefore, the special rule is revised to apply the same taking provisions to red wolves outside the experimental population boundaries as within, with one exception. This exception is that taking does not need to be reported to the refuge manager or Park superintendent. Such reporting will be encouraged to the degree possible, but it will not be required. It is impractical to inform the general population of such requirements outside the localized experimental population boundaries, and red wolves taken are not likely to be recognized as red wolves, even after such taking occurs and an animal is in hand.

The proposed rule for Alligator River provided for any person to take red wolves incidental to lawful recreational activities (51 FR 26564). Objections to this provision from the Defenders of Wildlife, the National Audubon Society, the Humane Society of the United States, and the National Wildlife Federation, based on lack of necessity and risk of misinterpretation, resulted in its deletion from the final rule. Instead, the enforcement policy of the Service was clarified in the preamble to the final rule to the effect that there would be no penalty for taking incidental to otherwise lawful activity providing the taking was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, and providing the taking was immediately reported to the refuge manager. Experience at Alligator River did detect a need for this provision and did not detect any misinterpretation of the policy by private citizens. Eleven red wolves were killed by vehicles; one wolf was killed in a trapping incident; and two were shot, one close to a private residence. The vehicle deaths were interpreted as incidental to lawful activity, which required little investigation. The trapping and shooting incidents were investigated and settlements were reached in two cases. In addition, the incidental take provision originally proposed and then deleted at Alligator River was included in the final rule for the Park. No taking of red wolves has occurred despite several instances of wolves visiting and having been seen on private lands. Therefore, this is additional evidence that the provision is not being misinterpreted by private individuals in order to indiscriminately take red wolves. As now promulgated for Alligator River, the incidental taking provision is ambiguous. The language used for defining incidental take under § 17.84(c)(4)(i) used the terms ''unavoidable'', ''unintentional,'' and ''lack of reasonable due care,'' which are subject to differing legal interpretations. Therefore, for this final rule the Service changes the provisions by stating that only intentional or willful take will be prosecuted on private lands. The final rule does not change the standard for lands owned or managed by Federal, State, or local government agencies.

The basic premise is that a red wolf that is incidentally taken in any type of legal activity on private lands will not be a violation of the special rule. However, a higher standard of conduct is expected on public lands, where the conservation of red wolves is an objective.

This incidental taking provision places trust in the public to be responsible citizens by obeying the special rule. The Service intends to revisit this issue to determine if excessive taking of red wolves is occurring because of the revised special rule.

Extensive review of the special rule during preparation of proposed and final revisions detected additional needs for clarification. The current special rule (§ 17.84(c)(10)) provides for the close monitoring of reintroduced populations, vaccination against diseases prior to release, and immediate recapture of wolves that need special care or that move off of Federal lands. Early in the project all animals were vaccinated because the entire population consisted of released animals. As the project progressed, released wolves and their progeny reproduced and expanded their range and population.

Obviously, vaccination cannot be implemented for wild wolves that have never been captured. Therefore, the special rule is clarified by revising the statement to the effect that all ''released or captured'' wolves will be vaccinated. At present, most wolves are vaccinated because the majority of wolves born in the wild are eventually captured. However, as populations continue to expand, the percentage of wolves that have not been captured will increase. Rule modifications also recognize that it may be impossible to capture some wolves. However, other provisions provide for the control of wolves that are causing conflicts but cannot be captured.

The intent of the special rule regarding the recapture of wolves leaving Federal lands was that it would be implemented only when such wolves caused conflicts and/or the landowner wanted the wolves removed. This intent is not clear. Red wolves had established themselves on private lands within 2 years (1989) of the first reintroduction releases, and several private landowners have agreed to allow the wolves to inhabit their property. Obviously, there is no need to remove wolves from private lands when the landowner has no problem with the wolves being there. Therefore, the special rule is modified to provide that all landowner requests to remove wolves from their property will be honored, but wolves that inhabit lands where the landowner agrees to allow them to reside will not be recaptured unless they cause a conflict.

Special Rule Changes for Alligator River

Experiences at Alligator River indicate that a need exists for application of the private landowner harassment and take provisions to this population as well. Twenty-seven incidents have been reported at Alligator River, some of which probably did not involve red wolves. The provisions could have been utilized in some of these incidents and may have altered the final outcome in a positive manner with regard to reducing adverse impacts and increasing public support. As these provisions have worked well in incidents in the Park population, with no difficulties encountered in their interpretation or application, this rule will extend these provisions to the Alligator River population.

The proposed rule called for the addition of Martin and Bertie Counties as a buffer zone. However, after further consideration, the Service has determined that this addition lacks sufficient justification and the counties are not being added to the designated reintroduction area (see Issue 7 in the following section).

Summary of Comments and Recommendations

In the November 24, 1993, proposed rule (58 FR 62086), all interested parties were requested to submit comments or recommendations that might contribute to the development of a final rule. Appropriate county, State, and Federal agencies; scientific, environmental, and

land use organizations; and other interested parties were notified and requested to submit questions or comments on the proposed rule. On December 6, 1993, the Service mailed copies of the proposed rule to 270 persons and organizations. A 30-day comment period was provided. Nine comments were received, including three from individuals, three from State agencies and organizations, and three from national agencies and organizations. Six of the nine respondents took the opportunity to comment on the reintroductions; there were three who supported the reintroductions and three who did not. The three responses supporting the reintroductions were from two individuals and one national organization. The three responses not supporting the reintroductions were from one State agency (North Carolina Department of Agriculture), one State organization (North Carolina Farm Bureau Federation), and one individual.

Comments received are presented below as a series of issues, with each being followed by the Service's response.

Issue 1: The North Carolina Department of Agriculture and the North Carolina Farm Bureau Federation specifically addressed their nonsupport with regard to the expansion of the Alligator River reintroduction to Pocosin Lakes. Also, the one individual voicing nonsupport was located in the expansion area.

Service Response: Pocosin Lakes did not exist in 1986 when regulations were finalized for the reintroduction of red wolves at Alligator River. The final rule stated that the project would be reevaluated after 5 years and such reevaluation would include public meetings. The result of the reevaluation, which included public meetings, was to expand the reintroduction project to Pocosin Lakes. This was a logical decision based on the success of the reintroduction to that point in time, the establishment of Pocosin Lakes as one of our national wildlife refuges which are mandated to conserve and recover endangered species, and the location of Pocosin Lakes within the existing experimental population boundaries established in the final rule of November 19, 1986 (51 FR 41790). The reintroductions per se have previously been through the rulemaking process and are outside the scope of this revision to the existing rule.

Issue 2: One individual was opposed, in general, to classifying endangered animals as nonessential experimental and, within this designation, relaxing protection for them. This individual favored more, not less, protection and wondered why the provisions would be extended to animals outside the experimental population areas and if the provisions would apply in the future to the island propagation sites.

Service Response: The provisions for classifying listed species as nonessential experimental were provided by 1982 amendments to the Act. These provisions were designed to resolve the dilemma of significant local opposition to translocation efforts due to concerns over the rigid protection and prohibitions surrounding listed species under the Act. The resolution was to provide new administrative flexibility for selectively applying the prohibitions of the Act to experimental populations. Final regulations establishing procedures for designation of experimental populations, determination of such populations as ''essential'' or ''nonessential,'' and promulgation of appropriate protective regulatory measures were published in the Federal Register on August 27, 1984 (49 FR 33885). These provisions were necessary to obtain public support for attempts to reintroduce red wolves and were, therefore, an essential ingredient in success at reestablishment of the species. Prior to these provisions, attempts to reintroduce red wolves and other endangered species, particularly predators, were routinely unsuccessful because of local opposition.

The reasons for extending the provisions of this rule to animals outside the experimental population boundaries are believed to be adequately explained in the Background section of this rule. These provisions do not apply to the island propagation projects, and the Service has no intention of declaring these animals nonessential experimental in the future.

Issue 3: Responses from the North Carolina Wildlife Resources Commission (Commission), North Carolina Department of Agriculture (Department), and North Carolina Farm Bureau Federation (Federation) addressed the reporting requirements. The Department and Federation believe that livestock owners should be allowed to take red wolves engaged in depredation without notifying the Service and awaiting recapture attempts. At the other extreme, the Humane Society of the United States (Society) wants no provision for private citizens to take red wolves for any purpose. The Commission recommended that ''immediately'' be defined as 5 business days, and the Commission and Federation recommended that ''immediately'' be deleted from the provision for taking outside the designated experimental population area. The Commission also pointed out that local residents are more familiar with and are more likely to call the local State wildlife enforcement officer through an available toll free number.

Service Response: The Service agrees to delete the word ''immediately'' from the provision for taking outside of the designated experimental population area because the intent was to delete reporting requirements altogether. In addition, the term ''immediately'' has been replaced by ''within 24 hours'' for areas within the experimental population areas. It is important to report taking and harassment incidents quickly so that Service personnel can respond right away in order to minimize conflicts and retrieve any carcasses for necropsy before such carcasses deteriorate to the degree that necropsy results are compromised. Five days, as recommended by the Commission, would not allow such a quick response. Telephone access is such that reporting incidents within 24 hours should pose no burden on the public.

Changes are made to allow private landowners to take wolves that are in the act of killing livestock or pets prior to reporting such incidents to the Service.

The Service contacted the Tennessee Wildlife Resources Agency to obtain approval to also list the local State wildlife enforcement officer in that State as a contact for meeting the reporting requirements. Such approval was received, and this change, as recommended by the Commission, has been made. The State enforcement officer will, in turn, notify the Park superintendent or refuge manager so that Service personnel can respond to such incidents.

Issue 4: The Commission, Society, Federation, and American Sheep Industry Association (Association) commented on the incidental taking provision. The Federation supported the inclusion of lawful activities, other than recreational, in the provision. The Commission recommended that ''incidental'' be defined as ''unavoidable, unintentional, *or* not resulting from negligent conduct, taking reasonable due care'' in order to prevent the prosecution of well-intentioned citizens who may kill a red wolf, believing it to be a coyote. The Society, on the other hand, believes that the broad definition will invite abuse. The Association was concerned about whether the provision would be applied to livestock owners outside the Park, as well as inside, and who would make the decision on negligent conduct.

Service Response: The Service found it necessary to change the language in this provision to clarify the intent and to remove any ambiguity. Experience during the past several years indicates that direct human-induced red wolf mortality is rare. The Service has therefore determined that it is appropriate to modify the language of the special rule to implement section 9 provisions for the red wolf by limiting the section 9 prohibition on private lands to cover intentional and willful taking only. Unlike the protection afforded all endangered and most threatened species, this provision will make the taking of a red wolf on private lands a specific intent crime. This provision will apply to all private landowners. The concept of a general intent violation (i.e. avoidable take or take through mistaken identity) that was present in the earlier rule is now used only on lands owned or managed by Federal, State, or local government agencies.

Issue 5: In addition to comments addressed under reporting requirements, the Association's comments indicated overall support for the provision but recommended that a maximum of 48 hours Service response time be included and that the biologist ''on site of the depredation'' give approval in a reasonable time period. The Commission recommended that approval be given within 5 days and that takings be reported to the Service project leader or biologist. The Federation also supported expanding the harassment provisions to private individuals around residences. However, the Department and the Federation felt that the take provisions did not go far enough in protecting the interests of livestock owners and thought that a time period should be specified for approval of livestock owners to ''take'' offending animals. As indicated in the comments on reporting requirements, the Society recommends that private citizens not be allowed to take red wolves for any reason and that other provisions in the rule are sufficient to protect private residences without allowing the taking of animals by private citizens. The Society also believes private citizens should have the responsibility to protect pets and private property from wildlife.

Service Response: The Service has revised the provision to allow private landowners to harass wolves in an opportunistic manner at any time on their property and to take such animals with Service approval if the Service's attempts to take the animals are unsuccessful. Notification would allow the Service to remove the offending animals, which are still valuable to the recovery objectives as breeding animals. If unsuccessful in removing the animals, the Service will permit the landowner to take action to remove any returning animals. The provision has also been revised to make it clear that the Service project leader or biologist on site of the depredation will provide approval to the private landowner and has indicated in the previous sections explaining the rule changes that such approval will be provided when the Service abandons attempts to capture the offending animal. A definite time period for such approval cannot be provided because of the variation in individual wolf behavior; e.g., one wolf may stay in the vicinity or return daily, while others may not return for days. The Service also adopts the 48-hour Service response time to reported incidents, as recommended and indicated in the previous sections explaining the rule changes. The Service project leader or biologist has been added as a contact for reporting any taking, although it was intended that reports to this individual would meet the provision as previously stated, because the Service project leader or biologist serves as the representative of the Park superintendent or refuge manager.

While the position of the Society regarding responsibility of private citizens to protect pets and property is reasonable with regard to naturally occurring wildlife species, programs to purposely reintroduce predators, such as the red wolf, must be accompanied by provisions to protect private property from the presence of such reintroduced animals if the landowner does not want them on his property. Such protection is necessary in order to obtain local public support, which is essential to success. Without such support, reintroductions are doomed, because the animals can be efficiently eliminated, as evidenced by past history.

Issue 6: The Federation did not understand the need to list the North Carolina counties as part of the historic range of the species and stated that it should be presented in the information section unless it is absolutely necessary to establish the nonessential experimental use population designation.

Service Response: The Service believes that it is helpful to establish experimental population boundaries for reintroduction efforts.

Issue 7: The Commission objected to the addition of any counties to the experimental population area because (1) it would increase the public's perception of ''government land-grabbing'' and (2) it is unnecessary since the provisions for red wolves within the designated experimental population area will also be applied to red wolves outside the designated experimental population area, except for reporting requirements.

The Association expressed concerns that as red wolves continue to disperse from ''core areas,'' the areas will increase in size and more private property will be brought under the experimental population designation. The Association also expressed concerns that the provision for allowing the ''take'' of red wolves under certain circumstances on property outside the buffer zone will eventually be removed.

Service Response: The proposed addition of Martin and Bertie Counties was to provide a buffer around the release area. Although red wolves would not be released in these counties, their proposed addition, for management purposes, was because of their close proximity. The Service would expend efforts within these counties to provide information on the project and would quickly respond and handle any problems caused by dispersing red wolves. Such rapid response would necessitate the reporting of such problems to the Service as soon as possible. Because the Service will be monitoring the animals and will be contacting individual landowners regarding the capture of dispersing animals, the more intensive broad-scale management within the counties may not be necessary. Therefore, the Service agrees to not designate additional counties for the experimental population area.

The Service has no intention of removing the ''take'' provisions on property outside the buffer zone. Reintroduced red wolves will continue to be managed as experimental populations until the recovery objective of 220 red wolves in the wild is met. At that time, the species would be delisted and managed as a resident species by the State.

National Environmental Policy Act

Environmental assessments were prepared under the authority of the National Environmental Policy Act of 1969 and are available for inspection by the public at the Service's Asheville Field Office (see **ADDRESSES** section). These assessments formed the basis for a decision that these actions are not major Federal actions which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (implemented at 40 CFR Parts 1500–1508). These minor rule changes do not require

revision of the environmental assessments.

Executive Order 12866, Paperwork Reduction Act, and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The Fish and Wildlife Service has determined that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). No private entities will be affected by this action. The rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Author

The principal author of this final rule is V. Gary Henry (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter 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.

2. Amend § 17.11(h) by revising the entries for red wolf to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS:							
*	*	*	* *		*		*
Wolf, red	*Canis rufus*	U.S.A. (SE U.S.A., west to central TX).	Entire, except where listed as Experimental Populations below	E	1, 248, 449, 579	NA	NA
do	do	do	U.S.A. (portions of NC and TN—see § 17.84(c)(9))	XN	248, 449, 579	NA	17.84(C)
*	*	*	* *		*		*

3. Section 17.84 is amended by revising paragraphs (c)(4), (c)(9)(i) and (c)(10) of the section to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(c) * * *

(4)(i) Any person may take red wolves found on private land in the areas defined in paragraphs (c)(9) (i) and (ii) of this section, *Provided* that such taking is not intentional or willful, or is in defense of that person's own life or the lives of others; and that such taking is reported within 24 hours to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(ii) Any person may take red wolves found on lands owned or managed by Federal, State, or local government agencies in the areas defined in paragraphs (c)(9) (i) and (ii) of this section, *Provided* that such taking is incidental to lawful activities, is unavoidable, unintentional, and not exhibiting a lack of reasonable due care, or is in defense of that person's own life or the lives of others, and that such taking is reported within 24 hours to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(iii) Any private landowner, or any other individual having his or her permission, may take red wolves found on his or her property in the areas defined in paragraphs (c)(9) (i) and (ii) of this section when the wolves are in the act of killing livestock or pets, *Provided* that freshly wounded or killed livestock or pets are evident and that all such taking shall be reported within 24 hours to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(iv) Any private landowner, or any other individual having his or her permission, may harass red wolves found on his or her property in the areas defined in paragraphs (c)(9) (i) and (ii) of this section, *Provided* that all such harassment is by methods that are not lethal or physically injurious to the red wolf and is reported within 24 hours to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer, as noted in paragraph (c)(6) of this section for investigation.

(v) Any private landowner may take red wolves found on his or her property in the areas defined in paragraphs (c)(9) (i) and (ii) of this section after efforts by project personnel to capture such animals have been abandoned, *Provided* that the Service project leader or biologist has approved such actions in writing and all such taking shall be reported within 24 hours to the Service project leader or biologist, the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(vi) The provisions of paragraphs (4) (i) through (v) of this section apply to red wolves found in areas outside the areas defined in paragraphs (c)(9) (i) and (ii) of this section, with the exception that reporting of taking or harassment to the refuge manager, Park superintendent, or State wildlife enforcement officer, while encouraged, is not required.

* * * * *

(9)(i) The Alligator River reintroduction site is within the historic range of the species in North Carolina, in Dare, Hyde, Tyrrell, and Washington Counties; because of its proximity and potential conservation value, Beaufort County is also included in the experimental population designation.

* * * * *

(10) The reintroduced populations will be monitored closely for the duration of the project, generally using radio telemetry as appropriate. All animals released or captured will be vaccinated against diseases prevalent in canids prior to release. Any animal that is determined to be in need of special care or that moves onto lands where the landowner requests their removal will be recaptured, if possible, by Service and/or Park Service and/or designated State wildlife agency personnel and will be given appropriate care. Such animals will be released back into the wild as soon as possible, unless physical or behavioral problems make it necessary to return the animals to a captive-breeding facility.

* * * * *

Dated: December 27, 1994

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–9291 Filed 4–12–95; 8:45 am]

BILLING CODE 4310–55–P

Reader Aids

Federal Register

Vol. 60, No. 71

Thursday, April 13, 1995

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Public inspection announcement line **523–5215**

Laws

Public Laws Update (numbers, dates, etc.) **523–6641**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual

523–5227

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, APRIL

16765–16978.....3
16979–17190.....4
17191–17432.....5
17433–17624.....6
17625–17980.....7
17981–18342.....10
18343–18538.....11
18539–18726.....12
18727–18948.....13

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6781.....17979
6782.....17981
6783.....18537
6784.....18707
6785.....18725

5 CFR

Ch. LII.....17625

Proposed Rules:
316.....17655

7 CFR

97.....17188
201.....16979
272.....17628
273.....17628
301.....18727
354.....17631
457.....16765
918.....17633
925.....16765
927.....17983
932.....18539
946.....17433
979.....16767
982.....16768
985.....16770, 17434
1050.....18343
1126.....17191
1131.....17192
1413.....17984
1427.....17984

Proposed Rules:
250.....18781
335.....18374
956.....17274
981.....17466

9 CFR

77.....18728
92.....17634
327.....18540

Proposed Rules:
391.....18551

10 CFR

2.....18344
436.....18326
600.....17985

Proposed Rules:
70.....18035
52 .....17902, 17924, 17947
170.....18882
171.....18882
430.....18782

11 CFR

100.....17193
104.....17193
113.....17193

12 CFR

3.....17986
208.....17436
215.....17635
226.....16771
400.....17625

Proposed Rules:
792.....18036

13 CFR

107.....17438

14 CFR

25.....17194
39 .....16780, 16782, 17438, 17440, 17987, 17988, 17990, 17991, 18540, 18729
71 .....17196, 17442, 18346
97.....17198, 17199

Proposed Rules:
39 .....16813, 16815, 16817, 17030, 17385, 17487, 17489, 18374, 18376
71 .....17284, 18038, 18552
91.....18700
135.....18700

15 CFR

771.....18731
779.....18731

16 CFR

1700.....17992

Proposed Rules:
248.....17032
409.....17491
436.....17656
460.....17492
1700.....17660

17 CFR

200.....17201
400.....18733
403.....18733
405.....18733
449.....18733, 18734

Proposed Rules:
239.....17172
270.....17172
274.....17172

18 CFR

284.....16979

Proposed Rules:
35.....17662
141.....17726
388.....17726

19 CFR

7.....18347

10.....18542
11.....18347
12.....18347
18.....18347
19.....18347
24.....18347
54.....18347
101.....18347
102.....18347
111.....18347
114.....18347
123.....18347
128.....18347
132.....18347
134.....18347
141.....18347
145.....18347
146.....18347
148.....18347
151.....18347
152.....18347
177.....18347
181.....18347
191.....18347

Proposed Rules:
Ch. I.....18783

20 CFR

404.....17443

Proposed Rules:
Ch. III.....17731

21 CFR

20.....16962
73.....18736
101.....17202
176.....18349
178.....18349, 18352, 18739
310.....17611
558.....18740
876.....17208
1310.....17636

Proposed Rules:
876.....17611

22 CFR

514.....16785

23 CFR

655.....18520

24 CFR

215.....17388
236.....17388
570.....17445
813.....17388
905.....17388, 18174
913.....17388
950.....18174
3500.....16985

Proposed Rules:
29.....17968

26 CFR

1.....17216, 18741, 18742
602.....18742

Proposed Rules:
1.....17286, 17731, 18377, 18378

27 CFR

55.....17446
72.....17446
178.....17446
179.....17446

Proposed Rules:
1Ch. I.....18783
53.....18039
55.....17494
72.....17494
178.....17494
179.....17494

28 CFR

0.....17456
2.....18353

Proposed Rules:
2.....18378, 18379
16.....18784

29 CFR

580.....17221

30 CFR

903.....18710
914.....16985, 17637
915.....17458
934.....18744
938.....16788

Proposed Rules:
Ch. 1.....18044
901.....18044
902.....17495
904.....17498
906.....17501
913.....17734
914.....17736
915.....17504
916.....17504
917.....17739
918.....17498
920.....18046
924.....18044
925.....17504
926.....17495
931.....17501
934.....17495
935.....17741, 18380
936.....17498
938.....18046
943.....17498
944.....17501
946.....17743
948.....18381
950.....17495

32 CFR

290.....18005
354.....18006
355.....18006
357.....18006
359.....18006
360.....18006
361.....18006
374.....18006

Proposed Rules:
63.....17507
247.....18049

33 CFR

3.....17222
117.....18006
154.....17134
155.....17134
162.....16793
165.....16793, 18008
334.....18543

Proposed Rules:
Ch. I.....17287
100.....18785
117.....18061
165.....16818, 16820, 16821, 18063, 18065, 18066, 18068
211.....18069
402.....18384

34 CFR

350.....17424
351.....17424
352.....17424
353.....17424
356.....17424

36 CFR

7.....17639
13.....18532

Proposed Rules:
215.....18886
217.....18886
219.....18886

37 CFR

1.....16920

38 CFR

2.....18354
3.....18354

39 CFR

20.....18009
265.....17224

Proposed Rules:
232.....17287

40 CFR

9.....17100, 18009
52.....16799, 16801, 16803, 16806, 16989, 16996, 17226, 17229, 17232, 18010, 18750
63.....18020, 18026
72.....17100, 18462
73.....17100
74.....17100
75.....17100
76.....18751
77.....17100
78.....17100
81.....16996
122.....17950
124.....17950
136.....17160
180.....18543, 18546, 18547
185.....18547
186.....18547
258.....17649
260.....17001
271.....18356, 18358, 18360,
300.....16808, 17004
372.....18361
720.....17005
721.....17005
723.....17005
763.....18364

Proposed Rules:
Ch. I.....17288
51.....17509
52.....16823, 16824, 16829, 17034, 17288, 17289, 17746, 18385
55.....17748, 18787
58.....17509
63.....16829, 16920, 18071, 18078
70.....17750, 18790
72.....18472
76.....18792
81.....17034, 17756
86.....17509
122.....17958
124.....17958
170.....18555
180.....18555, 18557, 18558, 18560, 18562
185.....18562
186.....18560, 18562
300.....18565
372.....16830
761.....17510
799.....18079

41 CFR

101–20.....17653

43 CFR

12.....17237

Proposed Rules:
426.....16922
427.....16922
3100.....18081

Public Land Orders:
7131.....18030
7132.....18777
7133.....18777
7137.....18778

44 CFR

64.....17005
65.....17007, 17009, 17011, 17012
67.....17013, 17020

Proposed Rules:
65.....17758
67.....17035, 17042

45 CFR

Proposed Rules:
2544.....17761

46 CFR

12.....17134
13.....17134
15.....17134
30.....17134
31.....17134
35.....17134
78.....17134
90.....17134
97.....17134
98.....17134
105.....17134
151.....17134
153.....17134
154.....17134
401.....18366
403.....18366
404.....18366

Proposed Rules:
Ch. I.....17287
Ch. II.....17763
67.....17290
90.....18793
97.....18793
148.....18793

47 CFR

2.....18778
73.....17023, 17253

Proposed Rules:
1.....17294
63.....17763

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 831/P.L. 104–7

To amend the Internal Revenue Code of 1986 to permanently extend the deduction for the health insurance costs of self-employed individuals, to repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission, and for other purposes. (Apr. 11, 1995; 109 Stat. 93; 4 pages)

Last List April 12, 1995