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Thursday
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Briefings on How To Use the Federal Register
For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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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: 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.

WHEN: September 12 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

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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
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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Sanctions

RIN 0563–AB10

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby amends its general administrative regulations relating to sanctions. The intended effect of this amendment is to set out the sanctions made available under the Federal Crop Insurance Act (the ''Act''), as amended by the Federal Crop Insurance Reform Act of 1994, with respect to civil fines and disqualification for willfully and intentionally providing false or inaccurate information and ineligibility to participate in any program administered under the Act as a result of the adoption of a material scheme or device to obtain benefits or indebtedness to FCIC or an insurance company.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, Regulatory and Procedural Development Staff, U.S. Department of Agriculture, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1999.

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

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), no information collection or record-keeping requirements are found in this rule.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The requirements and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. This action does not increase the paperwork burden on the insured producer or the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. This rule does not have retroactive effect and administrative appeals as established under 7 CFR part 400 subpart J or under regulations established under subtitle H of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354) must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, January 13, 1995, FCIC published a proposed rule in the **Federal Register** at 60 FR 3106 to amend, in accordance with the Federal Crop Insurance Reform Act of 1994, the General Administrative Regulations (7 CFR part 400). The proposed rule revised the penalty for giving false or inaccurate information and added a new section to provide that any participant in the program who knowingly adopts a material scheme or device should lose all benefits under the program.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments, data and opinions, but none were received. Therefore, the proposed rule as published on January 13, 1995, at 60 FR 3106 is hereby adopted as a final rule with minor change.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Claims, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

For the reasons set out in the preamble, subpart R, part 400 of chapter IV of title 7 of the Code of Federal Regulations is amended as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart R—Sanctions

1. The authority citation for 7 CFR part 400, subpart R, is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

2. Paragraph (a) of § 400.454 is revised to read as follows:

§ 400.454 Civil penalties.

(a) Any person who willfully and intentionally provides any materially false or inaccurate information to FCIC or to any approved insurance provider reinsured by FCIC with respect to an insurance plan or policy issued under the authority of the Federal Crop Insurance Act, as amended, (7 U.S.C. 1501 *et seq.*) may be subject to a civil fine of up to $10,000 and disqualification from participation in:

(1) The catastrophic risk protection plan of insurance and the noninsured crop disaster assistance program for a period not to exceed two (2) years; or

(2) Any plan of insurance providing protection in excess of that provided under the catastrophic risk protection plan of insurance for a period not to exceed ten (10) years.

* * * * *

3. A new § 400.458 is added to read as follows:

§ 400.458 Scheme or device.

(a) In addition to the penalties specified in this part, if a person has knowingly adopted a material scheme or device to obtain catastrophic risk protection, other plans of insurance coverage, or noninsured assistance benefits to which the person is not entitled, has evaded the provisions of the Federal Crop Insurance Act, or has acted with the purpose of evading the provisions of the Federal Crop Insurance Act, the person shall be ineligible to receive any and all benefits applicable to any crop year for which the scheme or device was adopted.

(b) A scheme or device may include, but is not limited to, creating or using another entity, or concealing or providing false information with respect to your interest in the policyholder, to evade:

(1) Suspension, debarment, or disqualification from participation in the program;

(2) The assignment of the nonstandard classification system; or

(3) Ineligibility for a delinquent debt owed to FCIC or the insurance company.

4. A new § 400.459 is added to read as follows:

§ 400.459 Indebtedness.

Any person who has provided materially false information or misrepresented any material fact in connection with any program administered under the Act, and is indebted to FCIC or an insurance company arising from such conduct, is ineligible to participate in any program administered under the Act until the debt has been paid in full.

Done in Washington, DC on July 12, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–17813 Filed 7–19–95; 8:45 am]

BILLING CODE 3410–08–P

Agricultural Marketing Service

7 CFR Parts 1150, 1160, 1200, 1205, 1207, 1208, 1209, 1210, 1211, 1212, 1220, 1230, 1240, 1250, 1280, and 1290

[FV–94–702FR]

Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Research and Promotion Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule will consolidate the petition procedures for all research and promotion programs that provide for petitions. This consolidation will eliminate duplication and will reduce costs.

EFFECTIVE DATE: August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456; telephone (202) 720–9915.

SUPPLEMENTARY INFORMATION: This action is authorized under the Floral Research and Consumer Information Act [7 U.S.C. 4301–4319]; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act [7 U.S.C 6801–6814]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4612]; the Lime Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 6201–6212]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001–6013]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627]; the Watermelon Research and Promotion Act, as amended [7 U.S.C. 4901–4916], the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718], the Cotton Research and Promotion Act [7 U.S.C. 2101–2118], the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819], the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311], the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111], the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4513], the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417], and the Wheat and Wheat Foods Research and Nutrition Education Act [7 U.S.C. 3401–3417].

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The acts named above provide that administrative proceedings must be exhausted before parties may file suit in court. A person subject to a research and promotion order or plan (hereinafter referred to as order) may file a petition with the Secretary of Agriculture (Secretary) stating that the order or any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and requesting a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The acts provide that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Impact Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Since this action is administrative in nature, the Administrator of AMS determined that this rule will have no economic impact on small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], the information collection requirements contained in the orders covered by the acts have been approved by OMB. This action will not impact any of the information collection requirements under the orders.

Background

When Congress authorizes a research and promotion program to be administered by the Department of

Agriculture (Department), the Department conducts the necessary rulemaking, and, if appropriate, a public hearing and a referendum before the program is implemented. One portion of the rulemaking relates to the provisions of the act which requires that a person covered by the program exhaust administrative remedies before filing suit in court. Under these administrative remedies, a person may file a petition with the Secretary to modify or be exempted from the relevant act.

In the past, separate rulemaking has been conducted for each order. As a result, each order has a subpart relating to petition procedures, and the subparts are nearly identical.

In order to promote administrative efficiency, the Department is deleting the individual subparts and creating a new subpart under Part 1200 to cover petition procedures for all of the research and promotion programs that provide for petitions which are administered by AMS. The new subpart will state that it covers all of the existing statutes for research, promotion, and consumer information acts which provide for petitions that are established as public law by Congress. It will be applicable for the Pecan Promotion and Research Act of 1990, the Wheat and Wheat Foods Research and Nutrition Education Act, and the Floral Research and Consumer Information Act if a program is implemented for those programs in the future. In addition, it will be applicable for the Sheep Promotion, Research, and Information Act of 1994 if an order is adopted. Also, it will be applicable for the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act.

The creation of the new subpart will eliminate the need for one rulemaking action (a proposed rule and a final rule) for each new program and thus reduce costs for the Department as well as for the research and promotion boards and councils which pay user fees to cover the Department's costs.

This rule removes Part 1290 in its entirety because there is no active program under the Floral Research and Consumer Information Act of 1981.

The provisions of the Administrative Procedure Act concerning notice and opportunity for comment on agency rulemaking [5 U.S.C. 553] do not apply to the promulgation of agency rules of practice. Accordingly, this action is made effective upon publication in the **Federal Register**. Furthermore, this final rule makes technical revisions to the existing rules of practice, which are uniform for all applicable research and promotion programs; the rules are already applicable to those programs that are newly specified in the rules because of the existing definition of the term ''Act''; no substantive rule or rule change is involved; and these procedures are patterned directly after existing procedures that are presently in use.

List of Subjects

7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

7 CFR Part 1160

Milk, Fluid milk products, Promotion.

7 CFR Part 1200

Administrative practice and procedure, Cotton, Cut Flowers, Cut Greens, Dairy, Eggs, Floral products, Fluid milk, Honey, Limes, Marketing agreements, Mushrooms, Pecans, Pork, Potatoes, Sheep, Soybeans, Watermelons, Wheat, Wheat foods.

7 CFR Part 1205

Advertising, Agricultural research, Cotton, Reporting and recordkeeping requirements.

7 CFR Part 1207

Advertising, Agricultural research, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Cut flowers, Cut greens, Promotion, Reporting and recordkeeping requirements.

7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Watermelons.

7 CFR Part 1211

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Pecans, Promotion, Reporting and recordkeeping requirements.

7 CFR Part 1212

Administrative practice and procedure, Advertising, Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 1220

Agricultural research, Reporting and recordkeeping requirements, Soybeans.

7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Meat and meat products, Reporting and recordkeeping requirements.

7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

7 CFR Part 1250

Administrative practice and procedures, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

7 CFR Part 1280

Administrative practice and procedures, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

7 CFR Part 1290

Administrative practice and procedure, Advertising, Agricultural research, Plants.

For the reasons set forth in the preamble, 7 CFR Parts 1150, 1160, 1200, 1205, 1207, 1208, 1209, 1210, 1211, 1212, 1220, 1230, 1240, 1250, 1280, and 1290 are amended to read as follows:

PART 1150—DAIRY PROMOTION PROGRAM

1. The authority citation for Part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4513.

2. In Part 1150, Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from an Order is removed.

PART 1160—FLUID MILK PROMOTION PROGRAM

3. The authority citation for Part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417.

4. In Part 1160, Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from an Order is removed.

PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND EDUCATION PROGRAMS

5. The authority citation for 7 CFR Part 1200 is revised to read as follows:

Authority: 7 U.S.C. 2111; 2620; 2713; 3409; 4313; 4509; 4609; 4814; 4909; 6008; 6106; 6206; 6306; 6410; 6807; and 7106.

6. Part 1200 is amended by adding a new subpart to read as follows:

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion, and Education Programs

Sec.

Authority: 7 U.S.C. 2111; 2620; 2713; 3409; 4313; 4509; 4609; 4814; 4909; 6008; 6106; 6206; 6306; 6410; 6807; and 7106.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs

§ 1200.50 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and *vice versa,* as the case may demand.

§ 1200.51 Definitions.

As used in this subpart, the terms as defined in the acts shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means Floral Research and Consumer Information Act [7 U.S.C. 4301–4319]; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act [7 U.S.C. 6801–6814]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4612]; the Lime Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 6201–6212]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001–6013]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627]; the Watermelon Research and Promotion Act, as amended [7 U.S.C. 4901–4916], the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718], the Cotton Research and Promotion Act [7 U.S.C. 2101–2118], the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819], the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311], the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111], the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4513], the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417], and the Wheat and Wheat Foods Research and Nutrition Education Act [7 U.S.C. 3401–3417].

(b) *Department* means the U.S. Department of Agriculture.

(c) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) *Judge* means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved.

(e) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Administrator's stead.

(f) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term *order* shall include plans issued under the Acts listed in paragraph (a) of this section.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order.

(h) *Proceeding* means a proceeding before the Secretary arising under section 1957 of the Act.

(i) *Hearing* means that part of the proceedings which involves the submission of evidence.

(j) *Party* includes the U.S. Department of Agriculture.

(k) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(l) *Decision* means the judge's initial decision and includes the judge's:

(1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof;

(2) Order; and

(3) Rulings on findings, conclusions and orders submitted by the parties; and

(m) *Petition* includes an amended petition.

§ 1200.52 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that such order or any provision of such order or any obligation imposed in connection with an order is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition in writing the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application of such terms or provisions, which are complained of;

(3) A full statement of the facts, avoiding a mere repetition of detailed evidence, upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Requests for the specific relief which the petitioner desires the Secretary to grant; and

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *A motion to dismiss a petition: filing, contents, and responses to a petition.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion of the petition, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds for objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition,

shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for the judge's consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the Order shall be governed by §§ 900.52(c)(2) through 900.71 of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders. However, each reference to *marketing order* in the title shall mean *order.*

PART 1205—COTTON RESEARCH AND PROMOTION

7. The authority citation for Part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

8. In Part 1205, Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Orders is removed.

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

9. The authority citation for Part 1207 continues to read as follows:

Authority: 7 U.S.C. 2611–2627.

10. In Part 1207, Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Plans is removed.

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

11. The authority citation for Part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112.

12. In Part 1209, Subpart D—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Mushroom Promotion, Research, and Consumer Information Order is removed.

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

13. The authority citation for Part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

14. In Part 1210, Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Watermelon Research and Promotion Plan is removed.

PART 1211—PECAN PROMOTION AND RESEARCH PLAN

15. The authority citation for Part 1211 continues to read as follows:

Authority: 7 U.S.C. 6001–6013.

16. In Part 1211, Subpart C—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Plan is removed and reserved.

PART 1212—LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

17. The authority citation for Part 1212 continues to read as follows:

Authority: 7 U.S.C. 6201–6212.

18. In Part 1212, Subpart C—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From an Order is removed.

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

19. The authority citation for Part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

20. In Part 1220, Subpart C—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Soybean Promotion and Research Order is removed.

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

21. The authority citation for Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

22. In Part 1230, Subpart C—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Pork Promotion, Research, and Consumer Information Order is removed.

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

23. The authority citation for Part 1240 continues to read as follows:

Authority: 7 U.S.C. 4601–4612.

24. In Part 1240, Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Honey Research, Promotion, and Consumer Information Order is removed.

PART 1250—EGG RESEARCH AND PROMOTION

25. The authority citation for Part 1250 continues to read as follows:

Authority: 7 U.S.C. 2701–2718.

26. In Part 1250, Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Orders is removed.

SUBPART 1290—[REMOVED]

27. Part 1290 is removed.

Dated: July 10, 1995.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 95–17325 Filed 7–19–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

8 CFR Parts 103, 244, and 299

[EOIR No. 107F; AG Order No. 1978–95]

RIN 1125–AA10

Executive Office for Immigration Review; Application for Suspension of Deportation, Form EOIR–40

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations to reflect the change in responsibility for the Form I–256A, Application for Suspension of Deportation, from the Immigration and Naturalization Service (Service) to the Executive Office for Immigration Review (EOIR). As a result of this change in responsibility, the form number for the Application for Suspension of Deportation has been changed from I–256A to EOIR–40. This final rule is necessary to ensure that the public uses the correct form when applying for suspension of deportation.

EFFECTIVE DATE: This final rule is effective July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: In recognition that an application for

suspension of deportation may currently be submitted solely during proceedings before the Immigration Court, the Service and EOIR agreed to transfer responsibility for handling this application form from the Service to EOIR. On May 13, 1994, the Office of Management and Budget approved a new Form EOIR–40, Application for Suspension of Deportation, to replace the previous Form I–256A, Application for Suspension of Deportation. This final rule amends the regulations to reflect the correct form number for the Application for Suspension of Deportation. This regulation is necessary to ensure that the public uses the correct form when applying for suspension of deportation.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is not necessary because this rule relates to rules of agency procedure and practice.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 244

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

2. In 8 CFR 103.7, paragraph (b)(1) is amended by removing the entry for ''Form I–256A'' and adding the entry for ''Form EOIR–40'' to the listing of forms, in proper alphanumerical sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form EOIR–40. For filing application for suspension of deportation under section 244 of the Act—$100.00. (A single fee of $100.00 will be charged whenever suspension of deportation applications are filed by two or more aliens in the same proceeding).

* * * * *

PART 244—SUSPENSION OF DEPORTATION AND VOLUNTARY DEPARTURE

3. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252; 8 CFR part 2.

4. Section 244.1 is amended in the last sentence by revising the reference to ''Form I–256A''; to read ''Form EOIR–40''.

PART 299—IMMIGRATION FORMS

5. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

6. Section 299.1 is amended by adding an entry for ''EOIR–40'' to the listing of forms, in proper alphanumerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* *	*	* *
EOIR–40	11–94	Application for Suspension of Deportation.
* *	*	* *

Dated: July 11, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–17653 Filed 7–19–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 95–004F]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees reflect the increased costs of providing these services primarily as a result of Federal salary increases allocated by Congress under the Federal Employees Pay Comparability Act of 1990.

EFFECTIVE DATE: July 23, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, (202) 720–3367.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide for mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments. Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products. The costs of mandatory inspection (excluding such services performed on holidays or on an overtime basis) are borne by FSIS.

In addition to mandatory inspection, FSIS provides a range of voluntary inspection services to operators of official meat and poultry establishments, importers, or exporters (9 CFR 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5). The costs of voluntary inspection are totally recoverable by the Federal Government. The fees charged are for overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services. These services are provided under the Agricultural Marketing Act of 1946, as amended (7

U.S.C. 1621 *et seq.*) to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

Each year the fees charged by FSIS for voluntary inspection services are reviewed and a cost analysis [1] is performed to determine whether they are adequate to recover the costs FSIS incurs in providing the services. Based on the projected Fiscal Year 1995 cost analysis, FSIS is increasing the fees for voluntary services.

The new rates are for base time, $31.92 per hour, per program employee; for overtime and holiday services, $32.96 per hour per program employee; and for laboratory services, $52.92 per hour, per program employee. These increased costs are attributable to the average FSIS national and locality pay raise of 3.2 percent for Federal employees effective January 1995; the increasing number of employees covered by the Federal Employees Retirement System and subject to the Federal Insurance Contributions Act tax; and increased health insurance costs.

On April 12, 1995, FSIS published a proposed rule in the **Federal Register** (60 FR 18551) to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments.

FSIS received one comment in response to the proposal. The comment was from a trade association which represents approximately 1,300 small to medium sized processing operations and strongly opposed any increase in the fees charged for overtime and holiday inspection, voluntary inspection, identification, certification and laboratory services to meat and poultry establishments.

FSIS considered the comment and reanalyzed the available data relating to costs of providing these services. FSIS maintains that the increased rates are necessary and reflect the cost of providing inspection services. The new rates reflect only an incremental increase in the costs currently borne by those entities electing to utilize overtime and holiday inspection services and certain other voluntary inspection services.

To recover these increased costs in an expeditious manner, the Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register**.

[1] The cost analysis is on file with the FSIS Docket Clerk. Copies may be requested free of charge from the FSIS Docket Clerk, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions, all applicable administrative procedures must be exhausted. Under the Federal Meat and Poultry Products Inspection Acts, the administrative procedures are set forth in 7 CFR Part 1.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The fees reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

List of Subjects in 9 CFR Part 391

Fees and charges, Meat inspection, Poultry products inspection.

Accordingly, Part 391 of the Federal meat and poultry products inspection regulations is amended as follows:

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES

1. The authority citation for Part 391 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622, and 1624; 21 U.S.C. 451 *et seq.*; 21 U.S.C. 601–695; 7 CFR 2.17(g) and (i), 2.55.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $31.92 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $32.96 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $52.92 per hour, per program employee.

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

Michael R. Taylor,

Administrator, Food Safety and Inspection Service.

[FR Doc. 95–17862 Filed 7–19–95; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 93–AWP–8]

Modification of Restricted Areas R–2303A and R–2303B, and Establishment of R–2303C, Fort Huachuca, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Restricted Areas R–2303A and R–2303B, and establishes R–2303C at Fort Huachuca, AZ. R–2303A is amended to exclude the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport from the restricted area and provide airspace for visual flight rules (VFR) access to the airport when R–2303A is in use. This action lowers the floor and ceiling and revises the lateral dimensions of R–2303B in order to accommodate unmanned aerial vehicle training profiles. R–2303B is further subdivided by redesignating the southeast corner of the existing area as a separate restricted area, R–2303C. Additionally this action reduces the published hours of operation for R–2303A and R–2303B. The purpose of these changes is to accommodate increased training requirements and to return unneeded special use airspace to the National Airspace System (NAS).

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION:

History

On July 21, 1994, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) to modify R–2303A and R–2303B and establish R–2303C, Fort Huachuca, AZ (59 FR 37188). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments are discussed below:

On June 15, 1995, the FAA published a supplemental notice of proposed rulemaking (SNPRM) (60 FR 31425) as a result of comments received expressing concern about the dimensions and navigability of the airport exclusionary zone and VFR corridor. The FAA received no comments in response to the SNPRM.

Supportive comments were received from the Southern Arizona Hang Gliding Association, with a recommendation to chart three areas of intensive hang gliding activities located in the vicinity of R–2303B. The FAA agrees with this recommendation and will initiate action to chart the hang gliding areas on the Phoenix Sectional Aeronautical Chart.

Concerns were raised relating to the dimensions and navigability of the VFR corridor and airport exclusionary zone. As a result of comments received in response to the NPRM, the FAA is increasing the ceiling of the airport exclusion and VFR access corridor at the Libby AAF/Sierra Vista Municipal Airport. R–2303A will be amended to exclude from the restricted area the airspace from the surface to 7,000 feet MSL, within a 3-nautical-mile radius of the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport. The airspace from the surface to 7,000 feet MSL within 1-nautical-mile either side of U.S. Highway 90 will also be excluded. This will provide VFR access to the airport when R–2303A is in use. Except for editorial changes, this amendment is the same as that proposed in the notices. Section 73.23 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations amends R–2303A to exclude from the restricted area the airspace from the surface to 7,000 feet MSL, within a 3-nautical-mile radius of the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport. The airspace from the surface to 7,000 feet MSL within 1-nautical-mile either side of U.S. Highway 90 is also excluded. This will provide VFR access to the airport when R–2303A is in use. R–2303B is amended by relocating the northern boundary 3 miles south of the existing position. This will better accommodate hang gliding activity that takes place just outside of the northwest corner of R–2303B. R–2303B is further amended by subdividing the southeastern section as a separate restricted area, R–2303C. The purpose of this subdivision is to accommodate hang gliding activities occurring just outside of the southeast corner of R–2303A. To achieve this, R–2303C retains a 15,000 feet MSL floor and the time of designation for that section is reduced from the current baseline of 9 hours per day, 6 days per week, to ''intermittent by NOTAM at least 24 hours in advance.'' In addition, this action lowers the floor of R–2303B from 15,000 feet MSL to 8,000 feet MSL excluding the airspace within R–2303A when activated, in order to accommodate unmanned aerial vehicle training profiles. The ceiling of R–2303B is lowered from Flight Level 450 (FL) to FL 300. The U.S. Army has determined that there is no longer a requirement for restricted airspace above FL 300, therefore, that airspace is being returned to the NAS system. Lastly, the times of designation for R–2303A and R–2303B are reduced from ''Monday–Saturday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance,'' to ''Monday–Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance.''

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

Environmental Review

The Department of the Army has completed an Environmental Assessment (EA) of this action resulting in a Finding of No Significant Impact (FONSI). The FAA has reviewed the EA, and adopts the EA/FONSI, as supplemented by the U. S. Army. The FAA concludes that this action will have no significant impact on the environment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.23 [Amended]

2. Section 73.23 is amended as follows:

R–2303A Fort Huachuca, AZ [Revised]

Boundaries. Beginning at lat. 31°40′40″N., long. 110°11′02″W.; to lat. 31°34′00″N., long. 110°08′32″W.; to lat. 31°34′00″N., long. 110°22′02″W.; to lat. 31°33′00″N., long. 110°23′02″W.; to lat. 31°29′00″N., long. 110°23′02″W.; to lat. 31°29′00″N., long. 110°41′32″W.; to lat. 31°34′00″N., long. 110°43′32″W.; to lat. 31°38′30″N., long. 110°42′02″W.; to lat. 31°38′30″N., long. 110°39′32″W.; to lat. 31°41′00″N., long. 110°33′32″W.; to lat. 31°41′00″N., long. 110°12′02″W.; to the point of beginning.

Altitudes. Surface to 15,000 feet MSL, excluding the airspace from the surface to 7,000 feet MSL within a 3-nautical-mile radius of the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport, AZ, and excluding the airspace from the surface to 7,000 feet MSL within 1-nautical-mile either side of U.S. Highway 90.

Time of designation. Monday-Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. U.S. Army Intelligence Center, Fort Huachuca, AZ.

R–2303B Fort Huachuca, AZ [Revised]

Boundaries. Beginning at lat. 31°45′00″N., long. 110°20′02″W.; to lat. 31°41′00″N., long. 110°12′02″W.; to lat. 31°40′40″N., long. 110°11′02″W.; to lat. 31°34′00″N., long. 110°08′32″W.; to lat. 31°34′00″N., long. 110°22′02″W.; to lat. 31°33′00″N., long. 110°23′02″W.; to lat. 31°29′00″N., long. 110°23′02″W.; to lat. 31°29′00″N., long. 110°25′02″W.; to lat. 31°24′00″N., long. 110°25′02″W.; to lat. 31°24′00″N., long. 110°45′02″W.; to lat. 31°45′00″N., long. 110°45′52″W.; to the point of beginning.

Altitudes. 8,000 feet MSL to FL 300, excluding that airspace within R–2303A when activated.

Time of designation. Monday-Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance.
Controlling agency. FAA, Albuquerque ARTCC.
Using agency. U.S. Army Intelligence Center, Fort Huachuca, AZ.

R–2303C Fort Huachuca, AZ [New]

Boundaries. Beginning at lat. 31°35′00″N., long. 110°00′02″W.; to lat. 31°24′00″N., long. 110°00′02″W.; to lat. 31°24′00″N., long. 110°25′02″W.; to lat. 31°29′00″N., long. 110°25′02″W.; to lat. 31°29′00″N., long. 110°23′02″W.; to lat. 31°33′00″N., long. 110°23′02″W.; to lat. 31°34′00″N., long. 110°22′02″W.; to lat. 31°34′00″N., long. 110°08′32″W.; to lat. 31°40′40″N., long. 110°11′02″W.; to the point of beginning.
Altitudes. 15,000 feet MSL to FL 300.
Time of designation. Intermittent by NOTAM at least 24 hours in advance.
Controlling agency. FAA, Albuquerque ARTCC.
Using agency. U.S. Army Intelligence Center, Fort Huachuca, AZ.

Issued in Washington, DC, on July 12, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–17903 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 73

[Airspace Docket No. 95–ASW–3]

Amendment of Restricted Areas R–6302B and R–6302E, Fort Hood; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action lowers the upper limit of Restricted Area R–6302B from 30,000 feet mean sea level (MSL) to 11,000 feet MSL, and reduces the horizontal size of Restricted Area R–6302E, located at Fort Hood, TX. These amendments are necessary in order to implement revised departure routes associated with the Dallas/Fort Worth Metroplex Plan.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Pete Magarelli, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations reduces the size of restricted airspace at Fort Hood, TX, by lowering the upper limit of Restricted Area R–6302B from 30,000 feet MSL to 11,000 feet MSL, and by reducing the lateral limits of Restricted Area R–6302E. This amendment is necessary to permit expansion of the departure route structure between Dallas/Fort Worth and Houston, TX, which will enhance the National Airspace System capacity under the Dallas/Fort Worth Metroplex Plan. This action returns formerly restricted airspace to public use, therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 73.63 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

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

Environmental Review

This action reduces the size of restricted airspace and is not subject to environmental assessments and procedures under FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.63 [Amended]

2. Section 73.63 is amended as follows:

R–6302B Fort Hood, TX [Amended]

By removing ''Designated Altitudes. Surface to 30,000 feet MSL.'' and substituting ''Designated Altitudes. Surface to 11,000 feet MSL.''

R–6203E Fort Hood, TX [Amended]

By removing the present boundaries and substituting the following:

Boundaries. Beginning at lat. 31°24′01″N., long. 97°48′01″W.; to lat. 31°23′01″N., long. 97°43′01″W.; to lat. 31°22′08″N., long. 97°41′56″W.; to lat. 31°21′01″N., long. 97°41′01″W.; to lat. 31°20′01″N., long. 97°41′01″W.; to lat. 31°14′01″N., long. 97°33′01″W.; to lat. 31°08′01″N., long. 97°39′01″W.; to lat. 31°10′01″N., long. 97°41′01″N.; to lat. 31°09′01″N., long. 97°43′31″W.; to lat. 31°09′01″N., long. 97°55′01″W.; to lat. 31°16′01″N., long. 97°54′01″W.; to lat. 31°19′01″N., long. 97°51′01″W.; to the point of beginning.

Issued in Washington, DC, on July 12, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–17901 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–13–P

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28278; Amdt. No. 1675]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register

on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 522(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 14, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective August 17, 1995*

El Dorado, AR, South Arkansas Regional at Goodwin Field, LOC RWY 22, Amdt 7, CANCELLED
El Dorado, AR, South Arkansas Regional at Goodwin Field, ILS RWY 22, Orig
Elkhart, IN, Elkhart Muni, VOR or GPS RWY 27, Amdt 14
Elkhart, IN, Elkhart Muni, VOR/DME or GPS RWY 35, Amdt 3
Muncie, IN, Delaware County-Johnson Field, NDB RWY 32, Amdt 12
Muncie, IN, Delaware County-Johnson Field, VOR or GPS RWY 32, Amdt 14
Muncie, IN, Delaware County-Johnson Field, VOR or GPS RWY 20, Amdt 13
Muncie, IN, Delaware County-Johnson Field, VOR or GPS RWY 14, Amdt 16
Muncie, IN, Delaware County-Johnson Field, ILS RWY 32, Amdt 9
Wadsworth, OH, Wadsworth Muni, VOR/DME–A, Orig
Wadsworth, OH, Wadsworth Muni, NDB or GPS RWY 2, Amdt 5
Winner, SD, Bob Wiley Field, VOR or GPS–A, Amdt 6

** * * Effective September 14, 1995*

Searcy, AR, Searcy Muni, GPS RWY 19, Orig
Alamosa, CO, San Luis Valley Regional-Bergman Field, GPS RWY 2, Orig
Telluride, CO, Telluride Regional, GPS RWY 9, Orig
Claxton, GA, Claxton-Evans County, NDB RWY 9, Orig

Bogalusa, LA, George R Carr Memorial Air Fld, GPS RWY 36, Orig
Ruston, LA, Ruston Rgnl, GPS RWY 18, Orig
Camdenton, MO, Camdenton Memorial, GPS RWY 33, Orig
Louisburg, NC, Franklin County, GPS RWY 4, Orig
Vermillion, SD, Harold Davidson Fld, NDB RWY 30, Amdt 1

* * * *Effective Upon Publication*

Lawrenceville, GA, Gwinnett County-Briscoe Field, ILS RWY 25, Amdt 1.

[FR Doc. 95–17900 Filed 7–19–95; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28279; Amdt. No. 1676]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on 14 July 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking

Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective Upon Publication

FDC date	State	City	Airport	FDC No.	SIAP
07/05/95	MO	Kansas City	Kansas City Intl	5/3163	ILS RWY 1L AMDT 12 ...
07/06/95	MO	Sedalia	Sedalia Memorial	5/3182	NDB RWY 36 AMDT 8 ...
07/07/95	MN	Bemidji	Bemidji-Beltrami County	5/3200	ILS RWY 31 AMDT 3A ...
07/07/95	WA	Spokane	Felts Field	5/3206	VOR OR GPS RWY 3L, AMDT 2 ...
07/07/95	WA	Spokane	Felts Field	5/3207	NDB RWY 3L, AMDT 1 ...
07/12/95	AR	El Dorado	South Arkansas Regional at Goodwin Field.	5/3325	VOR/DME OR GPS RWY 4 AMDT 9 ...
07/12/95	AR	El Dorado	South Arkansas Regional at Goodwin Field.	5/3326	VOR OR GPS RWY 22 AMDT 13 ...

[FR Doc. 95–17909 Filed 7–19–95; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 236

Guide for Avoiding Deceptive Use of Word ''Mill'' in the Textile Industry

AGENCY: Federal Trade Commission.

ACTION: Rescission of the guide for avoiding deceptive use of word ''Mill'' in the textile industry.

SUMMARY: The Federal Trade Commission (the ''Commission''), as part of its periodic review of all its guides and rules, announces that it has concluded a review of its Guide for Avoiding Deceptive Use of Word ''Mill'' in the Textile Industry (''Guide'' or ''Use of Word 'Mill' Guide''). The Commission has decided to rescind the Guide.

FOR FURTHER INFORMATION CONTACT: Ann M. Guler, Investigator, Federal Trade Commission, Los Angeles Regional Office, 11000 Wilshire Blvd., Suite 13209, Los Angeles, CA 90024, (310) 235–7890.

SUPPLEMENTARY INFORMATION:

I. Background

The Use of Word 'Mill' Guide was issued by the Commission in 1967.[1] The Guide states that the word ''mill'' should not be used in the corporate, business, or trade name of any person or concern handling textiles, unless the person or concern actually owns and operates or controls the manufacturing facility in which all textile materials sold under that name are produced. The Guide includes examples where use of the word ''mill'' has been found to be deceptive.

On April 15, 1994, the Commission published a Notice in the **Federal Register** soliciting comment on the Guide.[2] Specifically, the Commission solicited comments on the costs and benefits of the Guide and its regulatory and economic effect. The comment period closed June 14, 1994. The Commission received three comments in response to the Notice. They are discussed in Part II below.

II. Comments Received

The Commission received comments from three organizations: The American Textile Manufacturers Institute (ATMI), National Association of Hosiery Manufacturers (NAHM), and the Better Business Bureau of Nashville/Middle Tennessee, Inc. All of the commenters supported the continuation of the Guide in its present form. The ATMI and NAHM both stated that the Guide is beneficial to the textile manufacturing industry and to consumers because it prevents possible false claims by companies that may distribute but do not actually manufacture textile products. They further stated that the guide does not impose costs or burdens on industry or on consumers. The Better Business Bureau of Nashville/Middle Tennessee, Inc.'s comment asserted that the Guide is necessary ''to prevent misleading the public and unfair competition in the marketplace.''

The Nashville/Middle Tennessee BBB comment also raised the issue of other words used in trade names. The BBB recommended that the Commission restrict the use of words such as ''factory'' and ''manufacturer'' in corporate, business, or trade names ''unless the entity so named actually owns, operates or controls the manufacturing facility which produces all merchandise being advertised and/or sold under the name.''

III. Conclusion

The Commission has concluded its regulatory review of the Guide for Avoiding Deceptive Use of the Word ''Mill'' by rescinding the Guide. The Commission has no evidence of circumstances associated with the use of the word ''mill'' that would require special protection for consumers or guidance for industry, such as evidence that consumers currently believe that textile industry entities with the word ''mill'' in their names are engaged in the manufacture of textiles. Today, the word ''mill'' is commonly used in business names both within and outside the textile industry. For example, many shopping malls use the word ''mill'' or ''mills'' in their names. The word ''mill'' is also frequently used in the names of businesses, including retail stores or shopping malls, that occupy the building or site of a former textile mill. Additionally, the word ''mill'' is used in various enterprises outside of the textile

[1] Industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. 16 CFR 1.5.

[2] 59 FR 18005.

industry. For example, firms in the food production or food service industry may use the word ''mill'' because of its association with grinding grain into flour. These uses would not be covered by the Guide, because the businesses do not handle textiles. Other businesses may use the word ''mill'' in a creative name that has nothing to do with the original meanings of the word for textile manufacturing, grain processing, or any other form of materials processing. The Commission considers it unlikely that such uses of the word ''mill'' mislead consumers in any material way in their purchasing decisions or otherwise cause any consumer injury.

Given the many and varied uses of the term ''mill'' in today's lexicon, the Commission has concluded that the Guide is obsolete. If, in the future, certain uses of this term (or any other term) in business or trade names are determined to be materially misleading, the Commission can address such practices under Section 5 of the Federal Trade Commission Act.

List of Subjects in 16 CFR Part 236

Advertising, trade name, textiles, mill.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–17878 Filed 7–19–95; 8:45 am]

BILLING CODE 6750–01–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Rules of General Application

AGENCY: U.S. International Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission hereby amends its rules for Part 201 of the Commission's Rules of Practice and Procedure (the ''Commission's Rules''). The amended rules clarify those sections of the Commission's Rules dealing with the Freedom of Information Act (FOIA) and Privacy Act Officers' initial denial authority. The amended rules will also reflect the Inspector General's authority, under both the Inspector General Act of 1978, as amended, (the ''IG Act'') and under Section 552a(b) of the Privacy Act to disclose Privacy Act information to contractor personnel who function as federal employees.

EFFECTIVE DATE: In accordance with the 30-day advance publication requirement imposed by 5 U.S.C. § 553(d), the effective date of this rulemaking is August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Hilaire R. Henthorne, Esq., Counsel to the Inspector General, Office of Inspector General, U.S. International Trade Commission, telephone 202–205–2210. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: In 60 FR 26851, dated May 19, 1995, the Commission published a notice containing proposed amendments to Part 201 of the Commission's Rules. No comments were received concerning the proposed amendments. Thus, the substantive text of the final rule is identical to that of the proposed rule.

Statutory Authority

Section 335 of the Tariff Act of 1930 (19 U.S.C. § 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties. This amendment will bring the Commission's Rules into conformity with Section 6 of the IG Act (5 U.S.C. app. 3) and with Section 552a(b) of the Privacy Act of 1974, as amended (5 U.S.C. § 552a(b)).

Section 6 of the IG Act authorizes Inspectors General to ''enter into contracts and other arrangements for audits, studies, analyses, and other services with * * * private persons * * *.'' *See* 5 U.S.C. app. 3. When contractor personnel are employed to perform the authorized functions of an Office of Inspector General, and are, in the judgment of the Inspector General, performing such functions, they serve in the capacity of government employees. *See generally Coakley* v. *United States Dep't of Transportation*, No. 93–1420, slip op. at 3 (D.D.C. Apr. 7, 1994); and *Hulett* v. *Dep't of the Navy*, No. TH 85–310–C, slip op. at 3–4 (S.D. Ind. Oct. 26, 1987); *aff'd* 866 F.2d 432 (7th Cir. 1988) (table cite), *cert. denied*, 490 U.S. 1068 (1989). Section 552a(b) of the Privacy Act stipulates that Privacy Act disclosures are permissible when made to ''employees of the agency * * * who have a need for the record in the performance of their duties * * *.'' *See* 5 U.S.C. § 552a(b).

Section 552a(c) of the Privacy Act specifically exempts disclosure to government employees from the Privacy Act's recordkeeping requirement. Thus, this amendment to the Commission's Rules clarifies the three categories of disclosure that are exempt, under the Privacy Act, from the recordkeeping provisions: (1) disclosures made to officers and employees of the Commission who have a need for the information in the performance of their duties; (2) disclosures made to contractor personnel, pursuant to the IG Act or any other law, when such personnel are performing the functions of government employees; and (3) other contractor personnel who, in the judgment of the Director of Personnel, are acting as Commission employees.

Regulatory Analysis

Commission rules ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (5 U.S.C. § 551 *et seq.*) (APA). Under the APA, rulemaking entails the following steps: (1) publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. *See* 5 U.S.C. § 553. This final rule is the last step in that procedure.

The amendments to the Commission's Rules adopted in this notice do not meet the criteria described in section 3f of Executive Order (EO) 12866 (58 FR 51735, Oct. 4, 1993) and do not constitute a ''significant regulatory action'' for purposes of the EO. In accordance with the Regulatory Flexibility Act (5 U.S.C. § 601 note), the Commission hereby certifies pursuant to 5 U.S.C. § 605(b) that the final rule set forth in this notice is not likely to have a significant economic impact on a substantial number of small business entities. This conclusion is premised on the fact that this final rule merely conforms to existing IG Act and Privacy Act provisions. Thus, it is not expected to have any significant economic impact.

List of Subjects in 19 CFR Part 201

Administrative practice and procedure, Freedom of information, and Privacy.

For the reasons set out in the preamble, the U.S. International Trade Commission hereby amends 19 CFR part 201 as follows:

PART 201—RULES OF GENERAL APPLICATION

Subpart A—Miscellaneous

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the tariff Act of 1930 (19 U.S.C. 1335) and sec. 603 of the trade Act

of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. Section 201.2 is amended by redesignating paragraphs (b) through (i) as paragraphs (c) through (j) and by adding a new paragraph (b) as follows:

§ 201.2 Definitions.

* * * * *

(b) *Inspector General* means the Inspector General of the Commission;

* * * * *

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552

3. The authority citation for Subpart C continues to read as follows:

Authority: 19 U.S.C. 1335, 5 U.S.C. 552.

4. Paragraph (a) of § 201.18 is revised to read as follows:

§ 201.18 Denial of requests, appeals from denial.

(a) Written requests for inspection or copying of records shall be denied only by the Secretary or Acting Secretary, or, for records maintained by the Office of Inspector General, the Inspector General. Denials of written requests shall be in writing, shall specify the reason therefor, and shall advise the person requesting of the right to appeal to the Commission. Oral requests may be dealt with orally, but if the requester is dissatisfied he shall be asked to put the request in writing.

* * * * *

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

5. The authority citation for Subpart D continues to read as follows:

Authority: 5 U.S.C. 552a.

6. Paragraph (d) of § 201.24 is revised to read as follows:

§ 201.24 Procedures for requests pertaining to individual records in a records system.

* * * * *

(d) The Director of Personnel, or, the Inspector General, if such records are maintained by the Inspector General, shall ascertain whether the systems of records maintained by the Commission contain records pertaining to the individual, and whether access will be granted. Thereupon the Director of Personnel shall:

(1) Notify the individual whether or not the requested record is contained in any system of records maintained by the Commission; and

(2) Notify the individual of the procedures as prescribed in §§ 201.25 and 201.26 of this chapter by which the individual may gain access to those records maintained by the Commission which pertain to him or her. Access to the records will be provided within 30 days (excluding Saturdays, Sundays, and legal public holidays).

7. Paragraph (b) of § 201.28 is revised to read as follows:

§ 201.28 Request for correction or amendment of record.

* * * * *

(b) Not later than 10 days (Saturdays, Sundays and Federal legal public holidays excluded) after the date of receipt of a Privacy Act request for amendment of records, the Director of Personnel shall acknowledge such receipt in writing. Such a request for amendment will be granted or denied by the Director of Personnel or, for records maintained by the Inspector General, the Inspector General. If the request is granted, the Director of Personnel, or, the Inspector General, for records maintained by the Inspector General, shall promptly make any correction of any portion of the record which the individual believes is not accurate, relevant, timely, or complete. If, however, the request is denied, the Director of Personnel shall inform the individual of the refusal to amend the record in accordance with the individual's request and give the reason(s) for the refusal. In cases where the Director of Personnel or the Inspector General has refused to amend in accordance with an individual's request, he or she also shall advise the individual of the procedures under § 201.29 of this chapter for the individual to request a review of that refusal by the full Commission or by an officer designated by the Commission.

8. Section 201.29 is revised to read as follows:

§ 201.29 Commission review of request for correction or amendment to record.

(a) The individual who disagrees with the refusal of the Director of Personnel or the Inspector General to amend the record may request a review of the refusal by the Commission. All requests for review of refusals to amend records should be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act review request.

(b) Not later than 30 days (Saturdays, Sundays, and Federal legal public holidays excluded) from the date on which the Commission receives a request for review of the Director of Personnel's or the Inspector General's refusal to amend the record, the Commission shall complete such a review and make a final determination thereof unless, for good cause shown, the Commission extends the 30-day period.

(c) After the individual's request to amend his or her records has been reviewed by the Commission, if the Commission agrees with the Director of Personnel's or the Inspector General's refusal to amend the record in accordance with the individual's request, the Commission shall:

(1) Notify the individual in writing of the Commission's decision;

(2) Advise the individual that he or she has the right to file a concise statement of disagreement with the Commission which sets forth his or her reasons for disagreement with the refusal of the Commission to amend the records; and

(3) Notify the individual of his or her legal right to judicial review of the Commission's final determination.

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement, the Director of Personnel, or, for records maintained by the Inspector General, the Inspector General, shall clearly note any portion of the record which is disputed and shall provide copies of the statement and, if the Commission deems it appropriate, copies of a concise statement of the reasons of the Commission for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

9. Paragraph (b) of § 201.30 is revised to read as follows:

§ 201.30 Commission disclosure of record to person other than the individual to whom it pertains.

* * * * *

(b) Except for disclosures either to officers and employees of the Commission, or, to contractor employees who, in the Inspector General's or the Director of Personnel's judgment, are acting as federal employees, who have a need for the record in the performance of their duties, and any disclosure required by 5 U.S.C. 552, the Director of Personnel shall keep an accurate accounting of:

(1) The date, nature, and purpose of each disclosure of a record to any person or to another agency under paragraph (a) of this section; and

(2) the name or address of the person or agency to whom the disclosure is made.

* * * * *

By Order of the Commission:

Issued: July 13, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–17816 Filed 7–19–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR PART 955

[Docket No. FR–3614–N–02]

RIN 2577–AB40

Loan Guarantees for Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of extension of loan guarantees for Indian Housing Program.

SUMMARY: This notice extends, until the publication of a final rule, the period that the interim rule for the Loan Guarantees for Indian Housing Program will be in effect.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, room B–133, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–0032; (TDD) (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 955.125 of the Loan Guarantees for Indian Housing Program in 24 CFR was added to implement a Department-wide policy for the expiration of interim rules within a set period of time if they are not issued in final form before the end of the period. The rule provides that the expiration period may be extended by notice published in the **Federal Register**. Because the expiration date for the Loan Guarantees for Indian Housing Program interim rule is currently July 31, 1995, and a final rule is not expected before that date, this notice extends the expiration date until the effective date of a final rule, which is anticipated in the near future.

Accordingly, the time period during which the interim rule for the Loan Guarantees for Indian Housing Program at 24 CFR part 955 will be in effect is extended until the effective date of a final rule for the Program.

Dated: July 13, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–17811 Filed 7–19–95; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 90 and 91

[RINs 0790–AF61 and 0790–AF62]

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Office of the Assistant Secretary of Defense for Economic Security, DoD.

ACTION: Final rule.

SUMMARY: This rule amends DoD's Revitalizing Base Closure Communities and Community Assistance regulation, and promulgates guidance required by Title XXIX of the National Defense Authorization Act for Fiscal Year 1994, including those provisions required by Section 2903. This rule also establishes policy and procedures, assigns responsibilities, and delegates authority to implement the President's Program to Revitalize Base Closure Communities, July 2, 1993. This document does not include guidance on acquiring property for the cost of environmental cleanup (Section 2908) or on the substantial changes made in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. The changes stemming from this Act will be made in an accompanying rule, which will be open for public comment and which will be published by the Departments of Defense and Housing and Urban Development.

EFFECTIVE DATE: July 20, 1995.

ADDRESSES: Inquiries should be sent to the Office of the Assistant Secretary of Defense for Economic Security, Room 1D760, The Pentagon, Washington, DC 20301–3300; email: base__reuse@acq.osd.mil

FOR FURTHER INFORMATION CONTACT: Robert Hertzfeld, telephone (703) 695–1470; email: hertzfre@acq.osd.mil

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1994, the Office of the Secretary of Defense published an Interim Final Rule (59 FR 16123) that changed the process for disposing of real and personal property at closing and realigning military bases. Four outreach seminars (in Washington, DC, Chicago, Dallas, and San Francisco) and a public hearing (in Washington, D.C.) were held between April 28, 1994, and August 15, 1994, to explain the Interim Final Rule and foster public comments.

On October 26, 1994, the Office of the Secretary of Defense amended the Interim Final Rule (59 FR 53735). That amendment amended the previous guidance on ''jobs-centered property disposal'', clarified the procedures for applying for an economic development conveyance, and provided guidance for greater flexibility on the compensation to the federal government for real property conveyed under an economic development conveyance.

On October 25, 1994, the Congress enacted the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421). That Act exempts certain base closure property from the procedures contained in the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301) and creates a new process for the federal government and local communities affected by base closure to address the needs of the homeless. This publication does not provide guidance on the substantial changes made by Public Law 103–421, which will be addressed in a publication of the Departments of Defense and Housing and Urban Development.

Approach

This rule marks another step in the Department of Defense's effort to improve the base closure and reuse process. The rulemaking process was an open one, in which Department personnel sought advice from individuals and organizations involved in the reuse process at a public hearing, at outreach seminars, at conferences, and through written public comments.

In order to encourage the rapid disposal and reuse of base closure property, the Department has been working to improve its process towards one that:

- Is based, to the greatest extent possible, on a comprehensive, community-based planning process;
- Encourages formation of and reliance upon local reuse authorities;
- Is targeted towards community needs generated from the closure of the installation; and,
- Allows for common sense decisions by the implementors.

To achieve these goals, the Department developed regulations and policies around three key themes:

- *Consultation*. The Military Department and the Local Redevelopment Authority should be in

constant contact throughout the base closure and reuse process. Problems can be avoided through consultation.

• *Partnering.* The Military Departments and LRAs should work together honestly and with full disclosure. Their efforts should be coordinated to minimize duplicative efforts and avoid misunderstandings. Mutual goals can be achieved between parties that treat each other as partners, not adversaries.

• *Flexibility*. To maximize flexibility and allow for site-specific solutions, these regulations have been generally limited to those provisions required by law, as well as those that affect other federal agencies. Discretion has been left, where possible, for solutions that are most appropriate for a given installation.

These regulations reflect the Administration's effort to create a flexible process that works better and costs less. Regulations which are intended to cover all situations straight jacket federal employees and confuse the public. In order to maintain flexibility while providing guidance, the Office of the Secretary of Defense prepared a Base Reuse Implementation Manual for use by the Military Departments. The Manual, which provides greater detail about the issues addressed in this part, is available to Local Redevelopment Authorities and other interested parties. Copies will be available, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Overview of changes

• What has changed in the section on the identification of interests (''screening'') in real property?

• The timetables for federal screening have been clarified and shortened.

• The review criteria have been clearly articulated.

• What has changed in the leasing procedures?

• The differences between interim and long-term leases have been clarified.

• The term of interim leases have been clarified. These leases can now last for up to five years, including options to renew.

• A termination-at will clause is no longer required.

• If property is leased for less than fair market value and the lease permits the property to be sublet, the rents from the subleases must be applied to the protection, maintenance, repair, improvement, and costs related to the property.

• What has changed in the handling of personal property?

• The regulation has been revised to require the Military Departments to:

• Provide a comprehensive inventory list to the Local Redevelopment Authority.

• Consult with the Local Redevelopment Authority before establishing the deadlines for removing equipment from the closing base.

• Prohibit the transfer of ordinary fixtures unless not required for redevelopment.

• Permit the transfer of other personal property required for Military Department use when the LRA objects, only if the transfer is approved by an Assistant Secretary of the Military Department.

• Consult with the redevelopment authority before offering it a suitable substitute for property being removed.

• Two procedures for transfers of personal property not related to real property have been created.

• What has changed regarding Economic Development Conveyances?

• Valuation terms have been clarified.

• The requirement for an excess profits clause has been removed.

• What has changed in the section on maintenance, utilities, and services?

• DoD clarified the procedures for determining the initial levels of maintenance to encourage quick reuse and specified the time periods for which the Military Departments will sustain the initial levels of maintenance. The time periods are now greater than the legal minimums, and the Secretaries of the Military Departments may extend them (under specific circumstances).

Discussion of Public Comments and Changes

In response to the April 6, 1994, publication of the Interim Final Rule in the **Federal Register,** DoD received comments from 126 separate sources, consisting of redevelopment authorities and local governments, State and regional governments, public and private organizations, federal departments and agencies, members of Congress, and individuals. Almost half of these comments were addressed when the Interim Final Rule was amended (59 FR 53735, October 26, 1994). This amendment removed § 91.7(d), ''Jobs-Centered Property Disposal,'' and revised §§ 91.7(e), ''economic development conveyance,'' and 91.7(f), ''Profit Sharing.''

The response to the remainder of the comments is divided into sections corresponding to the regulation.

Identification of Interests in Real Property

The public comments regarding real property screening spanned two sections of the Interim Final Rule: real property screening and McKinney Act screening.

• *Federal agency priority*. Several federal entities suggested that DoD Components and federal agencies have an un-questioned right to property.

RESPONSE: DoD specified time tables and requirements that federal agencies must follow to claim base closure property under the priority accorded to them by the Federal Property and Administrative Services Act of 1949. If the agencies meet these strict requirements within the given time tables, their request will be considered prior to others. However, DoD remains committed to promoting economic recovery and rapid job creation in the communities adversely affected by base closures, while still ensuring that federal resources are available for other important public uses. To carry out those dual responsibilities, DoD must maintain the flexibility to determine the highest and best use for the property.

• *Fair Market Value.* Other federal agencies suggested waiving the requirement for federal agencies to pay fair market value for the property.

RESPONSE: DoD will continue to follow current federal policies (41 CFR 101–47.203–7(f)(2)) that require federal agencies to pay fair market value to DoD for its property, unless specifically granted an exemption by the Office of Management and Budget.

• *Timetables.* Many comments suggested clarifying timetables for federal screening and for submitting applications for the property to the Military Departments.

RESPONSE: DoD revised the rule in response to these requests.

• *Native American interests.* Several comments requested clarification regarding Native American tribes' participation in the screening process.

RESPONSE: Native American interests can be addressed at two points in the screening process. First, Native American tribes can submit expressions of interest to the Bureau of Indian Affairs (BIA), which is held to the same tight timetables and criteria as other federal agencies. Interested Native American tribes should contact BIA for information about its policy for expressions of interest. Alternatively, tribal governments may participate in the local comprehensive planning process and express their interests to the LRA. Tribes adversely affected by the base closure should be part of the LRA and should work within this process to see that their needs are addressed through a single, comprehensive plan.

• *Local control over the planning process.* Comments from non-federal

sources criticized the Interim Final Rule for not giving redevelopment authorities sufficient control over redevelopment and disposal planning. Their comments focused on the timing for the screening of property with federal agencies and homeless assistance providers and the need for coordination between applicants for property and redevelopment authorities.

RESPONSE: As part of DoD's response to the public comments, the Department worked with other federal agencies to assist the Congress in enacting the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. This law (Pub. L. 103–421) significantly altered the screening process. The changes stemming from this legislation will be implemented in a publication by the Departments of Defense and Housing and Urban Development.

Local Redevelopment Planning

The public comments regarding the local redevelopment plan section of the Interim Final Rule were primarily editorial, reflecting concern that this section of the regulation was unclear.

RESPONSE: DoD responded to those comments by clarifying the process in the section on economic development conveyances. DoD also published the ''Community Guide to Base Reuse,'' an Office of Economic Adjustment booklet that contains an overview of the reuse planning process. To obtain a copy, contact the Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–2884; (703) 604–6131; email: base__reuse@acq.osd.mil.

Leasing of Real Property

The public comments concerning the Interim Final Rule on the leasing of real property focused primarily on five areas:

- *Clarify the term of interim leases.*

RESPONSE: The Department responded to these concerns by specifying that a lease may be for up to five years, including options to renew, when it is entered into prior to completion of final disposal decisions under the National Environmental Policy Act (NEPA) process. DoD also specified that the term of a lease entered into after completion of the final disposal decisions under the NEPA process (a lease in furtherance of conveyance) may be longer than five years. In addition, the Military Departments have historically included a termination-at-will clause in lease documents that would allow the Military Department to terminate the lease if the property was ever needed for military purposes. This practice is no longer required.

- *Reconcile differing leasing practices* among the Military Departments. Comments in this area expressed the concern that the differing practices led to inconsistent and unequal treatment. Examples of inconsistencies cited included the lack of standard procedures, differing termination provisions, and inconsistent policies on obtaining insurance for the property.

RESPONSE: The Department of Defense responded to these concerns by developing a uniform policy for the Military Departments to follow. Thus, the DoD Base Reuse Implementation Manual, intended primarily for Service implementors, includes a sample lease application package, and a sample review checklist. Model lease provisions, which will generally be used by the Military Departments, are also included in this manual. DoD believes that these improvements will foster a more consistent approach and quicker response to lease applicants.

- *Clarify the consideration required for interim leases.*

RESPONSE: In response to the comments about consideration, DoD reiterated in the rule that property could be leased for less than fair market value if the Secretary of the Military Department determines that a public interest is served as a result of the lease and the fair market value of the lease is either unobtainable or not compatible with the public benefit that would be served.

- *Clarify the policy on subleasing.*

RESPONSE: DoD revised the rule to specify that if the property is leased for less than fair market value and the lease permits the property to be sublet, the rents from the subleases must be applied to the protection, maintenance, repair, improvement, and costs related to the property.

- *Improve the leasing process,* shortening the time it takes to conclude a lease agreement. Comments in this area suggested that DoD should expedite its environmental review process, establish deadlines for the Military Departments to respond to leasing requests, and delegate authority to grant interim leases to relatively low levels of authority within the Departments.

RESPONSE: DoD is convinced that all of the improvements mentioned above will improve and accelerate the leasing process. Additionally, DoD will continue to seek other ways to improve the process. For example, DoD continues to review its environmental review procedures to hasten that process while ensuring compliance with all pertinent laws and regulations. Also, DoD has created a tri-Service team to identify additional opportunities for improvement of the leasing process. In the meantime, the Military Departments will be encouraged to delegate leasing authority to the level that can best respond to local needs and still ensure compliance with statutory and regulatory requirements.

Personal Property

The public comments concerning the personal property section of the Interim Final Rule concentrated on six areas. Procedures for trading emission reduction credits are not addressed in this rule. A discussion on this subject is contained in the DoD Base Reuse Implementation Manual.

- *Provide the LRA with a complete inventory.* From the comments, DoD recognized that providing the redevelopment authority with an incomplete inventory list left the impression that the Military Departments were trying to hide property from the community.

RESPONSE: To counter that impression and promote trust and confidence between the Military Departments and Local Redevelopment Authorities, DoD revised the rule to require the Military Departments to provide a complete inventory list to the redevelopment authority.

- *Deadlines.* DoD recognized from the comments that the strict deadlines for removing equipment could leave the communities with the impression that Military Departments would be insensitive to the special needs of the community.

RESPONSE: DoD revised the rule to require the Military Departments to consult with the redevelopment authority before establishing deadlines for removing equipment from the closing base.

- *Redistribution.* Comments in this area criticized DoD for giving the Military Departments and the federal government priority for the personal property over the Local Redevelopment Authority, especially for those items that were not uniquely military. These submissions contended that if the communities needed the personal property for redevelopment purposes, they should have priority for it, since the Department's base closures created the need for redevelopment.

On the other hand, others contended that the Military Departments' authority to redistribute property had been unduly restricted. They asked that the Military Departments be given top priority for non-military items needed at another installation.

RESPONSE: DoD has struck a balance between these concerns. Personal property, except ordinary fixtures, required by the Military Department for the operation of transferring unit, function, component, weapon, or weapon systems may be removed upon approval of the base commander or higher authority. Other personal property, except ordinary fixtures, required by the Military Department for the operation of a unit, function, component, weapon, or weapon systems at another installation will be subject to consultation with the community. Where the community disputes a transfer, the approval by an Assistant Secretary of the Military Department will be required.

- *Substitutions.* Several comments criticized the provision that allowed the Military Departments to provide the redevelopment authority with substitute equipment instead of the actual item requested. They were concerned that the communities would get stuck with older, inferior equipment.

RESPONSE: DoD revised the rule to require the Military Departments and Defense Agencies to consult with the Local Redevelopment Authority before offering it a suitable substitute.

- *Complaints.* Some comments objected to the dispute resolution process. They suggested that DoD should establish another mechanism for resolving disputes—ideally one outside the purview of the agency that made the initial decision.

RESPONSE: While DoD struck the appeal provision from the rule, it will continue to direct the Military Departments to use the chain-of-command to address complaints.

- *Conveyances of personal property not related to real property.* The remainder of the comments expressed concern over the apparent lack of guidance for conveying personal property that is not associated with a real property transfer to the redevelopment authority. In particular, they wanted to know if a community could obtain individual items of personal property directly from the closing base, and, if so, how.

RESPONSE: DoD revised the rule to identify two procedures for conveying personal property (exclusive of real property) from a closing base to a Local Redevelopment Authority.

Maintenance, Utilities, and Services

The public comments concerning the levels of maintenance and repair section of the Interim Final Rule concentrated primarily on how the Military Departments would determine initial levels of maintenance and repair and how long they would maintain those levels, and expressed a concern that the Military Departments would abandon the property if it was not disposed of before the period of initial maintenance and repair lapsed.

RESPONSES:

- *General response:* DoD concluded that most of the public comments were based on misperceptions. For example, some feared that the levels of maintenance would be inadequate to preserve the property and that the Military Departments would discontinue maintaining the property after a specific date. To counter these misperceptions, DoD clarified the procedures for determining the initial levels of maintenance. DoD also encouraged the Military Departments to consult with the Local Redevelopment Authorities in making decisions on the initial levels of maintenance.
- *Duration of initial levels of maintenance.* The revised rule also identifies the time periods for which the Military Departments will sustain the initial levels of maintenance and repair. Not only may the Secretaries of the Military Departments extend the periods (under specific circumstances), but the time periods are now greater than those periods required by law.
- *Abandonment.* DoD specified in the rule that after the period of the initial levels of maintenance and repair lapses, the degree of maintenance and repair would revert to not less than those levels consistent with federal government standards for excess and surplus property. However, the levels of maintenance and repair may be lower than the initial levels.
- *Historic preservation.* Some submissions expressed concern that the regulation does not specifically require the Military Departments to consult with state historic preservation officers or the Advisory Council on Historic Preservation before determining the initial levels of maintenance and repair. DoD recognizes that Defense and federal regulations implementing Section 106 of the National Historic Preservation Act already require the Military Departments to consult with historic preservation activities about preserving historic property at closing military bases and so chose not to complicate the process by addressing the issue in this rule.

General Comments on April 6, 1994, Interim Final Rule

The general comments offered advice on implementing the Interim Final Rule, rather than the content of the Interim Final Rule. In response to these general comments, the Office of the Secretary of Defense prepared a Department of Defense Base Reuse Implementation Manual to provide greater detail and offer examples of how this rule will be implemented.

Response to public comments on Economic Development Conveyances

The Department received comments on the October 26, 1994, amendment to the Interim Final Rule (59 FR 53735). Many comments were supportive of the changes made, but did suggest some technical revisions. Other comments included:

- *Standardize terms.*

RESPONSE: The term ''present fair market value'' has been used throughout to avoid confusion.

- *Specify how much land should be applied for, and when.*

RESPONSE: Since the submissions did not provide a powerful justification for limiting the flexibility of implementors, the Department decided not to accept this recommendation.

- *Require arbitration if an agreement on compensation cannot be reached.*

RESPONSE: The statute requires the Military Department, rather than an arbitrator, to decide what compensation will be. In addition, DoD does not believe such a provision is necessary because it is committed to working with communities to assist them with economic redevelopment.

- *Change the definition of rural.*

RESPONSE: The Department did not feel it necessary to change the definition, because any community that shows a need for a discount can receive one under the new process. The possibility to receive property at no cost exists at urban and rural sites, if the property is determined not to have a positive present fair market value and/or if a 100% discount is determined to be necessary for job creation.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action. The final rule raises novel policy issues arising out of the President's priorities.

Regulatory Flexibility Act

It has been determined that this rule will not have a significant economic impact on substantial number of small entities. The primary effect of this rule will be to help base closure communities by reducing the burden of the government's property disposal process on them and to accelerate the economic recovery of the relatively small number of communities that will be affected by the closure or realignment of a military installation.

Paperwork Reduction Act

The rule is not subject to the Paperwork Reduction Act because it imposes no obligatory information requirements beyond internal Department of Defense use.

List of Subjects in 32 CFR Parts 90 and 91

Community development, Government employees, Military personnel, Surplus government property.

Accordingly, 32 CFR parts 90 and 91 are revised as follows:

PART 90—REVITALIZING BASE CLOSURE COMMUNITIES

Sec.
90.1 Purpose.
90.2 Applicability.
90.3 Definitions.
90.4 Policy.
90.5 Responsibilites.

Authority: 10 U.S.C. 2687 note.

§ 90.1 Purpose.

This part:

(a) Establishes policy and assigns responsibilities under the President's Five-Part Plan, ''A Program to Revitalize Base Closure Communities,'' July 2, 1993,[1] to speed the economic recovery of communities where military bases are slated to close.

(b) Implements 107 Stat. 1909, National Defense Authorization Act for Fiscal Year 1994, Title XXIX and The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421).

(c) Authorizes the publication of DoD 4165.66–M, ''Base Reuse Implementation Manual,'' in accordance with DoD 5025.1–M, ''DoD Directive System Procedures,'' August 1994.

§ 90.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD Components'').

§ 90.3 Definitions.

(a) *Closure.* All missions of the installation have ceased or have been relocated. All personnel positions (military, civilian and contractor) have either been eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves.

(b) *Relaignment.* Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as ''closed'' for purposes of this part.

§ 90.4 Policy.

It is DoD policy to:

(a) Help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases—more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly insuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation.

(b) This part does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Pub. L. 103–160, or Pub. L. 103–421.

§ 90.5 Responsibilities.

(a) The Under Secretary of Defense for Acquisition and Technology shall issue DoD Instructions as necessary, to further implement applicable public laws effecting base closure implementation, and shall monitor compliance with this part. All authorities of the Secretary of Defense in Public Law 103–421 (108 Stat. 4326 *et. seq.*); Public Law 103–160, Title XXIX (107 Stat. 1909 *et. seq.*); Public Law 101–510, Section 2905 (104 Stat. 1813 *et. seq.*); and Public Law 100–526, Section 204 (102 Stat. 2627 *et. seq.*), are hereby delegated to the Assistant Secretary of Defense for Economic Security and may be delegated further.

(b) The Heads of the DoD Components shall advise their personnel with responsibilities related to base closures of the policies set forth in this part.

PART 91—REVITALIZING BASE CLOSURE COMMUNITIES—BASE CLOSURE COMMUNITY ASSISTANCE

Sec.
91.1 Purpose.
91.2 Applicability.
91.3 Definitions.
91.4 Policy.
91.5 Responsibilities.
91.6 Delegations of authority.
91.7 Procedures.

Authority: 10 U.S.C. 2687 note.

§ 91.1 Purpose.

This part prescribes procedures to implement ''Revitalizing Base Closure Communities'' (32 CFR part 90), the President's five-part community reinvestment program, and real and personal property disposal to assist the economic recovery of communities impacted by base closures and realignments. The expeditious disposal of real and personal property will help communities get started with reuse early and is therefore critical to timely economic recovery.

§ 91.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the United Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD Components'').

§ 91.3 Definitions.

(a) *Base Closure Law.* The provisions of Title II of the Defense Authorization Amendments and Base Closure Realignment Act (Pub. L. 100–526, 102 Stat. 2623, 10 U.S.C. 2687 note), or the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C. 2687 note).

(b) *Closure.* All missions of the installation have ceased or have been relocated. All personnel positions (military, civilian, and contractor) have either been eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves.

(c) *Consultation.* Explaining and discussing an issue, considering objections, modifications, and alternatives; but without a requirement to reach agreement.

(d) *Date of approval.* The date on which the authority of Congress to disapprove Defense Base Closure and Realignment Commission recommendations for closures or realignments of installations expires

[1] Available from the Office of the Assistant Secretary of Defense, The Pentagon, Room 1D760, Washington, DC 20301–3300; email: ''base__reuse@acq.osd.mil''

under Title XXIX of 104 Stat. 1808, as amended.

(e) *Excess property.* Any property under the control of a Military Department that the Secretary concerned determines is not required for the needs of the Department of Defense.

(f) *Realignment.* Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as ''closed'' for this document.

(g) *Local Redevelopment Authority* (LRA). Any authority or instrumentality established by state or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

(h) *Rural.* An area outside a Metropolitan Statistical Area.

(i) *Surplus property.* Any excess property not required for the needs and the discharge of the responsibilities of federal agencies. Authority to make this determination, after screening with all federal agencies, rests with the Military Departments.

(j) *Communities in the Vicinity of the Installation.* The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.

(k) *Installation.* A base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers, and harbors projects, flood control, or other project not under the primary jurisdiction or control of the Department of Defense.

§ 91.4 Policy.

It is DoD policy to help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases—more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly ensuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation. This regulation does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Public Law 103–160, or Public Law 103–421.

§ 91.5 Responsibilities.

(a) The Assistant Secretary of Defense for Economic Security, after coordination with the General Counsel of the Department of Defense and other officials as appropriate, may issue such guidance and instructions through the publication of a manual or other such guidance as may be necessary to implement Laws, Directives and Instructions on the retention or disposal of real and personal property at closing or realigning bases.

(b) The Heads of the DoD Components shall ensure compliance with this part and guidance issued by the Assistant Secretary of Defense for Economic Security on revitalizing base closure communities.

§ 91.6 Delegations of authority.

(a) The authority provided by sections 202 and 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483 and 484) for the utilization and disposal of excess and surplus property at closing and realigning bases has been delegated by the Administrator, GSA, to the Secretary of Defense by delegations dated March 1, 1989; October 9, 1990; and, September 13, 1991.[2] Authority under these delegations has been previously delegated to the Secretaries of the Military Departments, who may delegate this authority further.

(b) Authorities delegated to the Assistant Secretary of Defense for Economic Security by § 90.5 of this chapter are hereby redelegated to the Secretaries of the Military Departments, unless otherwise provided within this part or other DoD directive, instruction, manual or regulation. These authorities may be delegated further.

§ 91.7 Procedures.

(a) Identification of interest in real property. (1) To speed the economy recovery of communities affected by closures and realignments, it is DoD policy to identify DoD and federal interests in real property at closing and realigning military bases as quickly as possible. The Military Department having responsibility for the closing or realigning base shall identify such interests. The Military Department will keep the Local Redevelopment Authority (LRA) informed of these interests. This section establishes a uniform process, with specified timelines, for identifying real property which is excess to the Military Department for use by other Departments of Defense (DoD) Components and other federal agencies, and for the disposal of surplus property for various purposes.

(2) Upon the President's submission of the recommendations for base closures and realignments to the Congress in accordance with the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510), the Military Department shall send out a notice of potential availability to the other DoD Components, and other federal agencies. The notice of potential availability is a public document and should be made available in a timely basis, upon request. Federal agencies are encouraged to review this list, and to evaluate whether they may have a requirement for the listed properties. The notice of potential availability should describe the property and buildings that may be available for transfer. Installations which wholly or in part are comprised of withdrawn and reserved public domain lands should implement paragraph (a)(12) of this section at the same time.

(3) Military Departments should consider LRA input in making determinations on the retention of property (size of cantonment area), if provided. Generally, determinations on the retention of property (or size of the cantonment area) should be completed prior to the date of approval of the closure or realignment.

(4) Within one week of the date of approval of the closure or realignment, the Military Department shall issue a formal notice of availability to other DoD Components and federal agencies covering closing and realigning installation buildings and property available for transfer to other DoD Components and federal agencies. Withdrawn public domain lands, which the Secretary of the Interior has determined are suitable for return to his jurisdiction, will not be included in the notice of availability.

(5) Within 30 days of date of the notice of availability, any DoD Component or federal agency is required to provide a written, firm expression of interest for buildings and property. An expression of interest must explain the

[2] Available from the Office of the Assistant Secretary of Defense (Economic Security), The Pentagon, Room 1D760, Washington, DC 20301–3300; e mail: base__ reuse@acq.osd.mil

intended use and the corresponding requirement for the buildings and property.

(6) Within 60 days of the date of the notice of availability, the DoD Component or federal agency expressing interest in buildings or property must submit an application for transfer of such property to the Military Department or federal agency.

(i) Within 90 days of the notice of availability, the FAA should survey the air traffic control and air navigation equipment at the installation to determine what is needed to support the air traffic control, surveillance, and communications functions supported by the Military Department, and to identify the facilities needed to support the National Airspace System. FAA requests for property to manage the National Airspace System will not be governed by paragraph (a)(9) of this section. Instead, such requests will be governed by the requirements of 41 CFR 101–47.308–2, to determine the transfer of property necessary for control of the airspace being relinquished by the Military Department.

(7) The Military Department will keep the LRA informed of the progress in identifying interests. At the same time, the LRA is encouraged to contact federal agencies which sponsor public benefit transfers for information and technical assistance. The Military Department will provide points of contact at the federal agencies to the LRA.

(8) Federal agencies and DoD Components are encouraged to discuss their plans and needs with the LRA, if an LRA exists. DoD Components and federal agencies are encouraged to notify the Military Department of the results of this non-binding consultation. The Military Departments, the Base Transition Coordinator, and the Office of Economic Adjustment Project Manager are available to help facilitate communication between the federal agencies, DoD Components, and the LRA.

(9) A request for property from a DoD Component or federal agency must contain the following information:

(i) A completed GSA Form 1334, Request for Transfer (for requests from other DoD Components a DD Form 1354 is required). This must be signed by the head of the Component of the Department or Agency requesting the property. If the authority to acquire property has been delegation, a copy of the delegation must accompany the form;

(ii) A statement from the head of the requesting Component or agency that the request does not establish a new program (i.e., one that has never been reflected in a previous budget submission or Congressional action);

(iii) A statement that the requesting Component or agency has reviewed its real property holdings and cannot satisfy this requirement with existing property. This review must include all property under the requester's accountability, including permits to other federal agencies and outleases to other organizations;

(iv) A statement that the requested property would provide greater long-term economic benefits than acquisition of a new facility or other property for the program;

(v) A statement that the program for which the property is requested has long-term viability;

(vi) A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of the requested property clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility;

(vii) A statement that the size of the property requested is consistent with the actual requirement;

(viii) A statement that fair market value reimbursement to the Military Department will be made within two years of the initial request for the property, unless this obligation is waived by the Office of Management and Budget and the Secretary of the Military Department or a public law specifically provides for a non-reimbursable transfer. However, requests from the Military Departments or DoD Components do not need an Office of Management and Budget waiver; and

(ix) A statement that the requesting DoD Component or federal agency agrees to accept the care and custody costs for the property on the date the property is available for transfer, as determined by the Military Department.

(10) The Military Department will make it decision on a request from a federal agency, Military Department, or DoD Component based upon the following factors, from the Federal Property Management Regulations (41 CFR 101–47.201–2):

(i) The paramount consideration shall be the validity and appropriateness of the requirement upon which the proposal is based;

(ii) The proposed federal use is consistent with the highest and best use of the property;

(iii) The requested transfer will not have an adverse impact on the transfer of any remaining portion of the base;

(iv) The proposed transfer will not establish a new program or substantially increase the level of an agency's existing programs;

(v) The application offers fair market value for the property, unless waived;

(vi) The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Military Department; and

(vii) The proposed transfer is in the best interest of the Government.

(11) When there are more than one acceptable applications for the same building or property, the Military Department responsible for the installation should first consider the needs of the military to carry out its mission. The Military Department should then consider the proposal's economic development and job creation potential and the LRA's comments, as well as the other factors in the determination of highest and best use.

(12) Closing or realigning installations may contain ''public domain lands'' which have been withdrawn by the Secretary of the Interior from operation of the public land laws and reserved for the Defense Department's use. Lands deemed suitable for return to the public domain are not real property governed by the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 472), and are not governed by the property management and disposal provisions of the Base Closure and Realignment Act of 1988 (Pub. L. 100–526) and Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510). Public domain lands are under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM) unless the Secretary of the Interior has withdrawn the lands and reserved them for another federal agency's use.

(i) The Military Department responsible for a closing or realigning installation will provide the BLM with the notice of potential availability, as well as information about which, if any, public domain lands will be affected by the installation's closing.

(ii) The BLM will review the notice of potential availability to determine if any installations contain withdrawn public domain lands. Before the date of approval of the closure or realignment, the BLM will review its land records to identify any withdrawn public domain lands at the closing installations. Any records discrepancies between the BLM and Military Departments should be resolved within this time period. The BLM will notify the Military Departments as to the final agreed upon withdrawn and reserved public domain lands at installations.

(iii) Upon agreement as to what withdrawn and reserved public domain lands are affected at closing installations, the BLM will initiate a screening of DOI agencies to determine if these lands are suitable for programs of the Secretary of the Interior.

(iv) Military Departments will transmit a Notice of Intent to Relinquish (see 43 CFR part 2372) to the BLM as soon as it is known that there is no DoD Component interest in reusing the public domain lands. The BLM will complete the suitability determination screening process within 30 days of receipt of the Military Department's Notice of Intent to Relinquish. If a DoD Component is approved to reuse the public domain lands, the BLM will be notified and BLM will determine if the current authority for military use of these lands needs to be modified/amended.

(v) If BLM determines the land is suitable for return, they shall notify the Military Department that the intent of the Secretary of the Interior is to accept the relinquishment of the Military Department.

(vi) If BLM determines the land is not suitable, the land should be disposed of pursuant to base closure law.

(13) The Military Department should make its surplus determination within 100 days of the issuance of the notice of availability, and shall inform the LRA of the determination. If requested by the LRA, the Military Department may postpone the surplus determination for a period of no more than six months after the date of approval of the closure of realignment.

(i) In unusual circumstances, extensions beyond six months can be granted by the Assistant Secretary of Defense of Economic Security.

(ii) Extensions of the surplus determination should be limited to the portions of the installation where there is an outstanding interest, and every effort should be made to make decisions on as much of the installation as possible, within the specified timeframes.

(14) Once the surplus determination has been made, the Military Department shall:

(i) Follow the procedures outlined in paragraph (b) of this section, if applicable.

(ii) Or, for installations approved for closure or realignment after October 25, 1994, and installations approved for closure or realignment prior to October 25, 1994, that have elected, prior to December 24, 1994, to come under the process outlined in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, follow the procedures outlined in paragraph (c) of this section.

(15) Following the surplus determination, but prior to the disposal of property, the Military Department may, at its discretion, withdraw the surplus determination and evaluate a federal agency's late request for excess property.

(i) Transfers under this paragraph shall be limited to special cases, as determined by the Secretary of the Military Department.

(ii) Requests shall be made to the Military Department, as specified under paragraphs (a)(8) and (a)(9) of this section, and the Military Department shall notify the LRA of such late request.

(iii) Comments received from the LRA and the time and effort invested by the LRA in the planning process should be considered when the Military Department is reviewing a late request.

(b) Homeless screening for properties not covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. (1) This section outlines the procedure created for the identification of real property to fulfill the needs of the homeless by section 2905(b)(6) of Pub. L. 101–510, as amended by Public Law 103–160 (referred to as the Pryor Amendment). It applies to BRAC 88, 91 and 93 bases if the LRA did not elect to be subject to the alternate homeless assistance screening procedure contained in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

(2) The Military Department shall sponsor a workshop or seminar in the communities which have closing or realigning bases, unless such a workshop or seminar has already been held. These workshops or seminars will be conducted prior to the **Federal Register** publication by HUD of available property to assist the homeless.

(i) Not later than the date upon which the determination of surplus is made, the Military Department shall complete any determinations or surveys necessary to determine whether any building is available to assist the homeless. The Military Department shall then submit the list of properties available to assist the homeless to HUD.

(ii) HUD shall make a determination of the suitability of each property to assist the homeless in accordance with the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11411, (the McKinney Act). Within 60 days from the date of receipt of the information from the Department of Defense, HUD shall publish a list of suitable properties that shall become available when the base closes or realigns.

(iii) The listing of properties in the **Federal Register** under this procedure shall contain the following statement. (The listing of 1988 base closure properties that will be reported to HUD shall refer to section 204(b)(6) of Public Law 100–526 instead of section 2905(b)(6) of Public Law 101–510):

> The properties contained in this listing are closing and realigning military installations. This report is being accomplished pursuant to section 2905(b)(6) of Public Law 101–510, as amended by Public Law 103–160. In accordance with section 2905(b)(6), this property is subject to a one-time publication under the McKinney Act after which property not provided to homeless assistance providers will not be published again unless there is no expression of interest submitted by the local redevelopment authority in the one-year period following the end of the McKinney screening process pursuant to this publication.

(3) Providers of assistance to the homeless shall then have 60 days in which to submit expressions of interest to HHS in any of the listed properties. If a provider indicates an interest in a listed property, it shall have an additional 90 days after submission of its written expression of interest to submit a formal application to HHS, a period which HHS can extend. HHS shall then have 25 days after receipt of a completed application to review and complete all actions on such applications.

(4) During this screening process (from 60 to 175 days following the **Federal Register** publication, as appropriate), disposal agencies shall take no final disposal action or allow reuse of property that HUD has determined suitable and that may become available for homeless assistance unless and until:

(i) No timely expressions of interest from providers are received by HHS;

(ii) No timely applications from providers expressing interest are received by HHS; or,

(iii) HHS rejects all applications received for a specific property.

(5) The Military Department should promptly inform the affected LRA, the Governor of the State, local governments, and agencies which support public benefit conveyances of the date the surplus property will be available for community reuse if:

(i) No provider expresses an interest to HHS in a property with the allotted 60 days;

(ii) There are expressions of interest by homeless assistance providers, but no application is received by HHS from such a provider within the subsequent

90-day application period (or within the longer application period if HHS has granted an extension); or

(iii) HHS rejects all applications for a specific property at any time during the 25 day HHS review period.

(6) The LRA shall have 1 year from the date of notification under paragraph (b)(5) of this section to submit a written expression of interest to incorporate the remainder of the property into a redevelopment plan.

(7) During the allotted 1-year period for the LRA to submit a written expression of interest for the property, surplus properties not already approved for homeless reuse shall not be available for homeless assistance. The surplus properties will also not be advertised by HUD as suitable during these 1-year periods. The surplus property may be available for interim leases consistent with paragraph (g) of this section.

(8) If the LRA does not express in writing its interest in a specific property during the allotted 1-year period or it notifies the Military Department it is not interested in the property, the disposal agency shall again notify HUD of the date of availability of the property for homeless assistance. HUD may then list the property in the **Federal Register** as suitable and available after the base closes following the procedures of the McKinney Act.

(c) *Reserved.* Additional regulations will be promulgated in a publication of the Departments of Defense and Housing and Urban Development to address state and local screening and approval of redevelopment plans for installations covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421).

(d) *Local Redevelopment Authority and the Redevelopment Plan.* (1) The LRA should have broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over the property. Generally, there will be one recognized LRA per installation.

(2) The LRA should focus primarily on developing a comprehensive redevelopment plan based upon local needs. The plan should recommend land uses based upon an exploration of feasible reuse alternatives. If applicable, the plan should consider notices of interest received under the provisions of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421). This section shall not be construed to require a plan that is enforceable under state and local land use laws, nor is it intended to create any exemption from such laws.

(3) The Military Department will develop a disposal plan and complete the appropriate environmental documentation no later than 12 months from receipt of the redevelopment plan. The local redevelopment plan will generally be used as the basis for the proposed action in conducting environmental analyses required by under the National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4332 *et seq.*). The disposal plan will specifically address the methods for disposal of property at the installation, including conveyances for homeless assistance, public benefit transfers, public sales, Economic Development Conveyances and other disposal methods.

(i) In the event there is no LRA recognized by DoD and/or if a redevelopment plan is not received from the LRA within 15 months from the determination of surplus under paragraph (a)(13) of this section, (unless an extension of time has been granted by the Assistant Secretary of Defense for Economic Security), the applicable Military Department shall proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

(e) Economic development conveyances. (1) Section 2903 of Public Law 103–160 gives the Secretary of Defense the authority to transfer property to local redevelopment authorities for consideration in cash or in kind, with or without initial payment, or with only partial payment at time of transfer, at or below the estimated present fair market value of the property. This authority creates an additional tool for local communities to help spur economic opportunity through a new real property conveyance method specifically designed for economic development, referred to as the ''Economic Development Conveyance'' (EDC).

(2) The EDC can only be used when other surplus federal property disposal authorities for the intended land use cannot be used to accomplish the necessary economic redevelopment.

(3) An LRA is the only entity able to receive property under an EDC.

(4) A properly completed application will be the basis for a decision on whether an LRA will be eligible for an EDC. An application should be submitted by the LRA after a Redevelopment Plan is adopted by the LRA. The Secretary of the Military Departments shall establish a reasonable time period for submission of the EDC application after consultation with the LRA. The Military Departments will review the applications and make a decision whether to make an EDC based on the criteria specified in paragraph (e)(7) of this section. The terms and conditions of the EDC will be negotiated between the Military Departments and the LRA. Bases in rural areas shall be conveyed with no consideration if they meet the standards in paragraph (f)(5) of this section.

(5) The application should explain why an EDC is necessary for economic redevelopment and job creation. In addition to the elements in paragraph (e)(5) of this section, after Military Department review of the application, additional information may be requested to allow for a better evaluation of the application. The application should also contain the following elements:

(i) A copy of the adopted redevelopment plan.

(ii) A project narrative including the following:

(*A*) A general description of property requested.

(*B*) A description of the intended uses.

(*C*) A description of the economic impact of closure or realignment on the local communities.

(*D*) A description of the financial condition of the community and the prospects for redevelopment of the property.

(*E*) A statement of how the EDC is consistent with the overall Redevelopment Plan.

(iii) A description of how the EDC will contribute to short- and long-term job creation and economic redevelopment of the base and community, including projected number, and type of new jobs it will assist in creating.

(iv) A business/operational plan for the EDC parcel, including such elements as:

(A) A development timetable, phasing schedule and cash flow analysis.

(B) A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over a fifteen-year period, the proposed consideration or payment to the Department of Defense, and the estimated present fair market value of the property.

(C) A cost estimate and justification for infrastructure and other investments needed for the development of the EDC parcel.

(D) Local investment and proposed financing strategies for the development.

(v) A statement describing why other authorities—such as public or negotiated sale and public benefit transfers for education, parks, public health, aviation, historic monuments,

prisons, and wildlife conservation—cannot be used to accomplish the economic development and job creation goals.

(vi) If a transfer is requested for less than the estimated present fair market value (''FMV''), with or without initial payment at the time of transfer, then a statement should be provided justifying the discount. The statement should include the amount and form of the proposed consideration, a payment schedule, the general terms and conditions for the conveyance, and projected date of conveyance.

(vii) A statement of the LRA's legal authority to acquire and dispose of the property.

(6) Upon receipt of an application for an EDC, the Secretary of the Military Department will determine whether an EDC is needed to spur economic development and job creation and examine whether the terms and conditions proposed are fair and reasonable. The Military Department may also consider information independent of the application, such as views of other federal agencies, appraisals, caretaker costs and other relevant material. The Military Department may propose and negotiate any alternative terms or conditions that it considers necessary.

(7) The following factors will be considered, as appropriate, in evaluating the application and the terms and conditions of the proposed transfer, including price, time of payment and other relevant methods of compensation to the federal government.

(i) Adverse economic impact of closure or realignment on the region and potential for economic recovery after an EDC.

(ii) Extent of short- and long-term job generation.

(iii) Consistency with overall Redevelopment Plan.

(iv) Financial feasibility of the development, including market analysis and need and extent of proposed infrastructure and other investments.

(v) Extent of state and local investment, level of risk incurred, and the LRA's ability to implement the plan.

(vi) Current local and regional real estate market conditions.

(vii) Incorporation of other federal agency interests and concerns, and applicability of, and conflicts with, other federal surplus property disposal authorities.

(viii) Relationship to the overall Military Department disposal plan for the installation.

(ix) Economic benefit to the federal government, including protection and maintenance cost savings and anticipated consideration from the transfer.

(x) Compliance with applicable federal, state, and local laws and regulations.

(8) Before making an EDC, the Military Department must prepare an estimate of the present fair market value of the property, which may be expressed as a range of values. The Military Department shall consult with the LRA on valuation assumptions, guidelines and on instructions given to the person(s) making the estimation of value. The Military Department is fully responsible for completion of the valuation. The Military Department, in preparing the estimate of present fair market value shall include, to the extent practicable, the uses identified in the local redevelopment plan.

(f) *Consideration for economic development conveyances.* (1) For conveyances made pursuant to § 91.7(e), *Economic development conveyances,* the Secretary of the Military Department will review the application for an EDC and negotiate the terms and conditions of each transaction with the LRA. The Military Departments will have the discretion and flexibility to enter into agreements that specify the form, amount, and payment schedule. The consideration may be at or below the estimated present fair market value, with or without initial payment, in cash or in-kind and paid over time.

(2) An EDC must be one of the two following types of agreements:

(i) Consideration within the estimated range of present fair market value, as determined by the Secretary of the Military Department.

(ii) Consideration below the estimated range of present fair market value, when proper justification is provided and when the Secretary of the Military Department determines that a discount is necessary for economic redevelopment and job creation.

(3) If the consideration under an EDC is within the range of value listed in paragraph (f)(2)(i) of this section, the amount paid in the future should take into account the time value of money and include repayment of interest. Any transaction that waives or delays interest payments will be considered as a transaction below the present fair market value under paragraph (f)(2)(ii) of this section, and as such must be justified as necessary for economic development and job creation.

(4) Additional provisions may be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon compensation, including such items as predetermined release prices, or other appropriate clauses designed to ensure payment and protect against fraudulent transactions.

(5) In a rural area, as defined by this rule, any EDC approved by the Secretary of the Military Department shall be made without consideration if the base closure will have a substantial adverse impact on the economy of the communities in the vicinity of the installation and on the prospect for their economic recovery.

(6) In those instances in which an EDC is made for consideration below the range of the estimated present fair market value of the property—or if the estimated present fair market value is expressed as a range of values, below the lowest value in that range—the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained. Additionally, the Military Departments must prepare a written statement explaining why other federal property transfer authorities could not be used to generate economic redevelopment and job creation.

(g) *Leasing of real property.* (1) Leasing of real property prior to the final disposition of closing and realigning bases may facilitate state and local economic adjustment efforts and encourage economic redevelopment.

(2) In addition to leasing property at fair market value, to assist local redevelopment efforts the Secretaries of the Military Departments may also lease real and personal property located at a military installation to be closed or realigned under a base closure law, pending final disposition, for less than fair market value if the Secretary concerned determines that:

(i) A public interest will be served as a result of the lease; and

(ii) The fair market value of the lease is unobtainable, or not compatible with such public benefit.

(3) Pending final disposition of an installation, the Military Departments may grant interim leases which are short-term leases that make no commitment for future use or ultimate disposal. When granting an interim lease, the Military Department will generally lease to the LRA but can lease property directly to other entities. If the interim lease is entered into prior to completion of the final disposal decisions under the National Environmental Policy Act (NEPA) process, the term may be for up to five years, including options to renew, and may contain restrictions on use. Leasing should not delay the final disposal of the property. After completion of the final disposal decisions, the term of the lease may be longer than five years.

(4) If the property is leased for less than fair market value to the LRA and the interim lease permits the property to be subleased, the interim lease shall provide that rents from the subleases will be applied by the lessee to the protection, maintenance, repair, improvement and costs related to the property at the installation consistent with 10 U.S.C. 2667.

(h) *Personal property.* (1) This section outlines procedures to allow transfer of personal property to the LRA for the effective implementation of a community reuse plan.

(2) Each Military Department and DoD Component, as appropriate, will take an inventory of the personal property, including its condition, within 6 months after the date of approval of closure or realignment. This inventory will be limited to the personal property located on the real property to be disposed of by the Military Department or DoD Component. The inventory will be taken in consultation with LRA officials. If there is no LRA, the Military Department will offer to provide a consultation for the local government in whose jurisdiction the installation is wholly located or for a local government agency or a state government agency designated for that purpose by the chief executive officer of the state. Based on these consultations, the base commander will determine the items or category of items that have the potential to enhance the reuse of the real property.

(3) Except for property subject to the exemptions in paragraph (h)(5) of this section, personal property with potential to enhance the reuse of the real estate shall remain at a base being closed or realigned until disposition is otherwise determined by the Military Department. This determination will be made no earlier than 90 days after the Military Department receives an adopted redevelopment plan or when notified by the LRA that there will be no redevelopment plan.

(4) National Guard property demonstrably identified as being purchased with state funds is not available for reuse planning or subject to transfer for redevelopment purposes, unless so identified by the state property officer. National Guard property purchased with federal funds is subject to inventory and may be made available for redevelopment planning purposes.

(5) Personal property may be removed upon approval of the base commander or higher authority, within and as prescribed by the Military Department, after the inventory required in paragraph (h)(2) of this section has been sent to the redevelopment authority, when:

(i) The property, other than ordinary fixtures, is required for the operation of a transferring unit, function, component, weapon, or weapons system;

(ii) The property is required for the operation of a unit, function, component, weapon, or weapon system at another installation within the Military Department, subject to the following conditions:

(*A*) Ordinary fixtures, including but not limited to such items as blackboards, sprinklers, lighting fixtures, and electrical and plumbing systems, shall not be removed under paragraph (h)(5)(ii) of this section; and,

(*B*) Other personal property may be removed under paragraph (h)(5)(ii) of this section only after the Military Department has consulted with the LRA and, with respect to disputed items, upon the approval of an Assistant Secretary of the Military Department.

(iii) The property is uniquely military in character and is likely to have no civilian use (other than use for its material content or as a source of commonly used components). This property consists of classified items; nuclear, biological, chemical items; weapons and munitions; museum property or items of significant historic value that are maintained or displayed on loan; and similar military items;

(iv) The property is not required for the reutilization or redevelopment of the installation (as jointly determined by the Military Department concerned and the redevelopment authority);

(v) The property is stored at the installation for distribution (including spare parts or stock items). This property includes materials or parts used in a manufacturing or repair function but does not include maintenance spares for equipment to be left in place;

(vi) The property meets known requirements of an authorized program of another federal department or agency that would have to purchase similar items, and the property is the subject of a written request received from the head of the other Department or Agency. If the authority to acquire personal property has been delegated, a copy of the delegation must accompany the request. In this context, *purchase* means the federal department or agency intends to obligate funds in the current quarter or next six fiscal quarters. The federal department or agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property;

(vii) The property belongs to nonappropriated fund instrumentalities (NAFI) and other non-Defense Department activities. Such property may be removed at the Military Departments' discretion because it does not belong to the Defense Department and, therefore, it may not be transferred to the redevelopment authority under this section. For NAFI property, separate arrangements for communities to purchase such property are possible and may be negotiated with the Military Department concerned; and,

(viii) The property is needed elsewhere in the national security interest of the United States as determined by the Secretary of the Military Department concerned. This authority may not be redelegated below the level of an Assistant Secretary. In exercising this authority, the Secretary may transfer the property to any entity of the Department of Defense or other federal agency.

(6) In addition to the exemptions in paragraph (h)(5) of this section, the Military Department or DoD Component is authorized to substitute an item similar to one requested by the redevelopment authority.

(7) Personal property not subject to the exemptions in paragraph (h)(5) of this section may be conveyed to the redevelopment authority as part of an economic development conveyance for the real property if the Military Department makes a finding that the personal property is necessary for the effective implementation of the redevelopment plan.

(8) Personal property may also be conveyed separately to the LRA under an economic development conveyance for personal property. This type of economic development conveyance can be made if the Military Department determines that the transfer is necessary for the effective implementation of a redevelopment plan with respect to the installation. Such determination shall be based on the LRA's timely application for the property, which should be submitted to the Military Department upon completion of the redevelopment plan. The application must include the LRA's agreement to accept the personal property after a reasonable period. The transfer will be subject to reasonable limitations and conditions on use.

(i) The Military Department will restrict the LRA's ability to acquire personal property at less than fair market value solely for the purpose of releasing or reselling it, unless the LRA will lease or sell the personal property to entities which will place it into productive use in accordance with the

redevelopment plan. The LRA must retain personal property conveyed under an EDC for less than fair market value for at least one year if it is valued at less than $5,000, or at least two years if valued at more than $5,000. Any proceeds from such leases or sales must be used to pay for protection, maintenance, repair or redevelopment of the installation. The LRA will be required to certify its compliance with the provisions of this section at the end of each fiscal year for no more than two years after transfer. The certification may be subject to random audits by the Government.

(9) Personal property that is not needed by the Military Department or a federal agency or conveyed to a redevelopment authority (or a state or local jurisdiction in lieu of a local redevelopment authority) will be transferred to the Defense Reutilization and Marketing Office for processing in accordance with 41 CFR parts 101–43 through 101–45, ''Federal Property Management Regulations,'' and DoD 4160.21–M.[3]

(10) Useful personal property determined to be surplus to the needs of the federal government by the Defense Reutilization and Marketing Office and not qualifying for transfer to the redevelopment authority under an economic conveyance may be donated to the community or redevelopment authority through the appropriate State Agency for Surplus Property (SASP). Personal property donated under this procedure must meet the usage and control requirements of the applicable SASP. Property subsequently not needed by the community or redevelopment authority shall be disposed of as required by its SASP.

(i) *Maintenace, utilities, and services.* (1) Facilities and equipment located on bases being closed are often important to the eventual reuse of the base. This section provides maintenance procedures to preserve and protect those facilities and items of equipment needed for reuse in an economical manner that facilitates based redevelopment.

(2) In order to ensure quick reuse, the Military Department, in consultation with the LRA, will establish initial levels of maintenance and repair needed to aid redevelopment and to protect the property for the time periods set forth below. Where agreement between the Military Department and the LRA cannot be reached, the Secretary of the Military Department will determine the required levels of maintenance and repair and its duration. In no case will these initial levels of maintenance:

(i) Exceed the standard of maintenance and repair in effect on the date of closure or realignment approval;

(ii) Be less than maintenance and repair required to be consistent with federal government standards for excess and surplus properties (i.e., 41 CFR 101–47.402 and 41 CFR 101–47.4913); or,

(iii) Require any property improvements, including construction, alteration, or demolition, except when the demolition is required for health, safety, or environmental purposes, or is economically justified in lieu of continued maintenance expenditures.

(3) The initial levels of maintenance and repair shall be tailored to the redevelopment plan, and shall include the following provisions:

(i) The facilities and equipment that are likely to be utilized in the near term will be maintained at levels that shall prevent undue deterioration and allow transfer to the LRA.

(ii) The scheduled closure or realignment date of the installation will not be delayed.

(4) The Military Department will not reduce the agreed upon initial maintenance and repair levels unless it establishes a new arrangement (e.g., termination of caretaking upon leasing of property) in consultation with the LRA.

(5) The Military Department will determine the length of time it will maintain the initial levels of maintenance and repair for each closing or realigning base. This determination will be based on factors such as the closure/realignment date and the timing of the completion of the National Environmental Policy Act (NEPA) documentation on the proposed disposal (such as a finding of no significant impact and disposal decision following an environmental assessment or the record of decision following an environmental impact statement).

(i) For a base that has not closed prior to the publication of this rule, and where the Military Department has completed the NEPA analysis on the proposed disposal before the operational closure of that base, the time period for the initial levels of maintenance and repair normally will extend no longer than one year after operational closure of the base.

(ii) For a base that has not closed prior to the publication of this rule, and where the base's operational closure precedes the completion of the NEPA analysis on the proposed disposal, the time period for the initial levels of maintenance and repair will normally extend no longer than one year after operational closure or 180 days after the Secretary of the Military Department approves the NEPA analysis.

(iii) For a based that closed prior to the publication of this rule, the time period for the existing levels of maintenance will normally extend no longer than one year from the date of the publication of this rule or six years after the date of approval of the closure or realignment (whichever comes first).

(6) The Military Department may extend the time period for the initial levels of maintenance and repair for property still under its control for an additional period, if the Secretary of the Military Department determines that the Local Redevelopment Authority is actively implementing its redevelopment plan, and such levels of maintenance are justified.

(7) Once the time period for the initial or extended levels of maintenance and repair elapses, the Military Department will reduce the levels of maintenance and repair to levels consistent with federal government standards for excess and surplus properties (i.e., 41 CFR 101–47.402 and 41 CFR 101–47.4913).

Dated: July 14, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–17737 Filed 7–19–95; 8:45 am]

BILLING CODE 5000–04–M

[3] Copies may be obtained from the Defense Logistics Agency, Attn: DLA–XPD, Alexandria, VA 22304–6100.

Department of the Air Force

32 CFR Part 855

RIN 0701–AA42

Civil Aircraft Use of United States Air Force Airfields

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force revised its regulations on civil aircraft use of United States Air Force airfields to reflect current policies and statutes. This revision establishes responsibilities and prescribes procedures for requesting and granting civil aircraft access to Air Force airfields.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Mrs. R. A. Young, HQ USAF/XOOBC, 1480 Air Force Pentagon, Room 5C966, Washington, DC 20330–1480, telephone 703 697–5967.

SUPPLEMENTARY INFORMATION: On March 22, 1995, the Department of the Air

Force published a proposed rule on civil aircraft use of United States Air Force airfields (60 FR 15086). No comments were received. Minor editorial changes were made by the Air Force for clarification.

The Department of the Air Force has determined that this rule is not a major rule because it will not have an annual adverse effect on the economy of $100 million or more. The Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations & Environment) has certified that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612 because this rule does not have a significant economic impact on small entities as defined by the Act, and does not impose any obligatory information requirements beyond internal Air Force use. This final rule revises and replaces Air Force Regulation (AFR) 55–20, Use of United States Air Force Installations By Other Than United States Department of Defense Aircraft, April 10, 1987.

List of Subjects in 32 CFR Part 855

Aircraft, Federal buildings and facilities.

Therefore, 32 CFR part 855 is revised to read as follows:

PART 855—CIVIL AIRCRAFT USE OF UNITED STATES AIR FORCE AIRFIELDS

Subpart A—General Provisions

Sec.

Subpart B—Civil Aircraft Landing Permits

Subpart C—Agreements for Civil Aircraft Use of Air Force Airfields

Authority: 49 U.S.C. 44502 and 47103.

Subpart A—General Provisions

§ 855.1 Policy.

The Air Force establishes and uses its airfields to support the scope and level of operations necessary to carry out missions worldwide. The Congress funds airfields in response to Air Force requirements, but also specifies that civil aviation access is a national priority to be accommodated when it does not jeopardize an installation's military utility. The Air Force engages in dialogue with the civil aviation community and the Federal Aviation Administration to ensure mutual understanding of long-term needs for the national air transportation system and programmed military force structure requirements. To implement the national policy and to respond to requests for access, the Air Force must have policies that balance such requests with military needs. Civil aircraft access to Air Force airfields on foreign territory requires host nation approval.

(a) The Air Force will manage two programs that are generally used to grant civil aircraft access to its airfields: civil aircraft landing permits and joint-use agreements. Other arrangements for access will be negotiated as required for specific purposes.

(1) Normally, landing permits will be issued only for civil aircraft operating in support of official Government business. Other types of use may be authorized if justified by exceptional circumstances. Access will be granted on an equitable basis.

(2) The Air Force will consider only proposals for joint use that do not compromise operations, security, readiness, safety, environment, and quality of life. Further, only proposals submitted by authorized local Government representatives eligible to sponsor a public airport will be given the comprehensive evaluation required to conclude a joint-use agreement.

(3) Any aircraft operator with an inflight emergency may land at any Air Force airfield without prior authorization. An inflight emergency is defined as a situation that makes continued flight hazardous.

(b) Air Force requirements will take precedence on Air Force airfields over all civil aircraft operations, whether they were previously authorized or not.

(c) Civil aircraft use of Air Force airfields in the United States will be subject to Federal laws and regulations. Civil aircraft use of Air Force airfields in foreign countries will be subject to US Federal laws and regulations that have extraterritorial effect and to applicable international agreements with the country in which the Air Force installation is located.

§ 855.2 Responsibilities.

(a) As the program manager for joint use, the Civil Aviation Branch, Bases and Units Division, Directorate of Operations (HQ USAF/XOOBC), ensures that all impacts have been considered and addressed before forwarding a joint-use proposal or agreement to the Deputy Assistant Secretary for Installations (SAF/MII), who holds decision authority. All decisions are subject to the environmental impact analysis process as directed by the Environmental Planning Division, Directorate of Environment (HQ USAF/CEVP), and the Deputy Assistant Secretary for Environment, Safety, and Occupational Health (SAF/MIQ). The Air Force Real Estate Agency (AFREA/MI) handles the leases for Air Force-owned land or facilities that may be included in an agreement for joint use.

(b) HQ USAF/XOOBC determines the level of decision authority for landing permits. It delegates decision authority for certain types of use to major commands and installation commanders.

(c) HQ USAF/XOOBC makes the decisions on all requests for exceptions or waivers to this part and related Air Force instructions. The decision process includes consultation with other affected functional area managers when required. Potential impacts on current and future Air Force policies and operations strongly influence such decisions.

(d) Major commands, direct reporting units, and field operating agencies may issue supplements to establish command-unique procedures permitted by and consistent with this part.

§ 855.3 Applicability.

This part applies to all regular United States Air Force (USAF), Air National Guard (ANG), and United States Air Force Reserve (USAFR) installations with airfields. This part also applies to civil aircraft use of Air Force ramps at

civil airports hosting USAF, ANG, and USAFR units.

Subpart B—Civil Aircraft Landing Permits

§ 855.4 Scope.

Air Force airfields are available for use by civil aircraft so far as such use does not interfere with military operations or jeopardize the military utility of the installation. Access will be granted on an equitable basis. Air Force requirements take precedence over authorized civil aircraft use. This part carries the force of US law, and exceptions are not authorized without prior approval from the Civil Aviation Branch, Bases and Units Division, Directorate of Operations, (HQ USAF/XOOBC), 1480 Air Force Pentagon, Washington DC 20330–1480. Proposed exceptions or waivers are evaluated as to current and future impact on Air Force policy and operations.

§ 855.5 Responsibilities and authorities.

(a) The Air Force:

(1) Determines whether civil aircraft use of Air Force airfields is compatible with current and planned military activities.

(2) Normally authorizes civil aircraft use of Air Force airfields only in support of official Government business. If exceptional circumstances warrant, use for other purposes may be authorized.

(3) Acts as clearing authority for civil aircraft use of Air Force airfields, subject to the laws and regulations of the US, or to applicable international agreements (e.g., status of forces agreements) with the country in which the Air Force installation is located.

(4) Reserves the right to suspend any operation that is inconsistent with national defense interests or deemed not in the best interests of the Air Force.

(5) Will terminate authority to use an Air Force airfield if the:

(i) User's liability insurance is canceled.

(ii) User lands for other than the approved purpose of use or is otherwise in violation of this part or clearances and directives hereunder.

(6) Will not authorize use of Air Force airfields:

(i) In competition with civil airports by providing services or facilities that are already available in the private sector.

Note: Use to conduct business with or for the US Government is not considered as competition with civil airports.

(ii) Solely for the convenience of passengers or aircraft operator.

(iii) Solely for transient aircraft servicing.

(iv) By civil aircraft that do not meet US Department of Transportation operating and airworthiness standards.

(v) That selectively promotes, benefits, or favors a specific commercial venture unless equitable consideration is available to all potential users in like circumstances.

(vi) For unsolicited proposals in procuring Government business or contracts.

(vii) Solely for customs-handling purposes.

(viii) When the air traffic control tower and base operations are closed or when a runway is restricted from use by all aircraft.

Note: Requests for waiver of this provision must address liability responsibility, emergency response, and security.

(7) Will not authorize civil aircraft use of Air Force ramps located on civil airfields.

Note: This section does not apply to use of aero club facilities located on Air Force land at civil airports, or civil aircraft chartered by US military departments and authorized use of terminal facilities and ground handling services on the Air Force ramp. Only the DD Form 2400, Civil Aircraft Certificate of Insurance, and DD Form 2402, Civil Aircraft Hold Harmless Agreement, are required for use of Air Force ramps on civil airfields.

(b) Civil aircraft operators must:

(1) Have an approved DD Form 2401, Civil Aircraft Landing Permit, before operating at Air Force airfields, except for emergency use and as indicated in paragraphs (d)(2) and (d)(2)(iii)(E) of this section, and , and § 855.13(b)(1)(ii).

(2) Ensure that pavement load-bearing capacity will support the aircraft to be operated at the Air Force airfield.

(3) Ensure that aircraft to be operated at Air Force airfields are equipped with an operating two-way radio capable of communicating with the air traffic control tower.

(4) Obtain final approval for landing from the installation commander or a designated representative (normally base operations) at least 24 hours prior to arrival.

(5) Not assume that the landing clearance granted by an air traffic control tower facility is a substitute for either the approved civil aircraft landing permit or approval from the installation commander or a designated representative (normally base operations).

(6) Obtain required diplomatic or overflight clearance before operating in foreign airspace.

(7) Pay applicable costs and fees.

(8) File a flight plan before departing the Air Force airfield.

(c) The installation commander or a designated representative:

(1) Exercises administrative and security control over both the aircraft and passengers while on the installation.

(2) May require civil users to delay, reschedule, or reroute aircraft arrivals or departures to preclude interference with military activities.

(3) Cooperates with customs, immigration, health, and other public authorities in connection with civil aircraft arrival and departure.

(d) Decision Authority: The authority to grant civil aircraft use of Air Force airfields is vested in:

(1) Directorate of Operations, Bases and Units Division, Civil Aviation Branch (HQ USAF/XOOBC). HQ USAF/XOOBC may act on any request for civil aircraft use of an Air Force airfield. Decision authority for the following will not be delegated below HQ USAF:

(i) Use of multiple Air Force airfields except as designated in paragraph (d)(2) of this section.

(ii) Those designated as 2 under Approval Authority in Table 1 to this part.

(iii) Any unusual or unique purpose of use not specifically addressed in this part.

(2) Major Command, Field Operating Agency, Direct Reporting Unit, or Installation Commander. With the exception of those uses specifically delegated to another decision authority, major commands (MAJCOMs), field operating agencies (FOAs), direct reporting units (DRUs) and installation commanders or designated representatives have the authority to approve or disapprove civil aircraft landing permit applications (DD Forms 2400, Civil Aircraft Certificate of Insurance; 2401; Civil Aircraft Landing Permit, and 2402, Civil Aircraft Hold Harmless Agreement) at airfields for which they hold oversight responsibilities. Additionally, for expeditious handling of short notice requests, they may grant requests for one-time, official Government business flights that are in the best interest of the US Government and do not violate other provisions of this part. As a minimum, for one-time flights authorized under this section, the aircraft owner or operator must provide the decision authority with insurance verification and a completed DD Form 2402 before the aircraft operates into the Air Force airfield. Air Force authority to approve civil aircraft use of Air Force airfields on foreign soil may be limited. Commanders outside the US must be familiar with base rights agreements or other international agreements that may

render inapplicable, in part or in whole, provisions of this part. Decision authority is delegated for specific purposes of use and or locations as follows:

(i) Commander, 611th Air Operations Group (AOG). The Commander, 611th AOG or a designated representative may approve commercial charters, on a case-by-case basis, at all Air Force airfields in Alaska, except Eielson and Elmendorf AFBs, if the purpose of the charter is to transport goods and or materials, such as an electric generator or construction materials for a community center, for the benefit of remote communities that do not have adequate civil airports.

(ii) Commander, Air Mobility Command (AMC). The Commander, AMC or a designated representative may approve permits that grant landing rights at Air Force airfields worldwide in support of AMC contracts.

(iii) US Defense Attache Office (USDAO). The USDAO, acting on behalf of HQ USAF/XOOBC, may grant a request for one-time landing rights at an Air Force airfield provided:

(A) The request is for official Government business of either the US or the country to which the USDAO is accredited.

(B) The Air Force airfield is located within the country to which the USDAO is accredited.

(C) Approval will not violate any agreement with the host country.

(D) The installation commander concurs.

(E) The USDAO has a properly completed DD Form 2402 on file and has verified that the insurance coverage meets the requirements of Table 2 to this part, before the aircraft operates into the Air Force airfield.

§ 855.6 Aircraft exempt from the requirement for a civil aircraft landing permit.

(a) Any aircraft owned by:

(1) Any other US Government agency.

(2) US Air Force aero clubs established as prescribed in AFI 34–117, Air Force Aero Club Program, and AFMAN 3–132, Air Force Aero Club Operations [1].

Note: This includes aircraft owned by individuals but leased by an Air Force aero club.

(3) Aero clubs of other US military services.

Note: This includes aircraft owned by individuals but leased by Army or Navy aero clubs.

(4) A US State, County, Municipality, or other political subdivision, when operating to support official business at any level of Government.

(b) Any civil aircraft under:

(1) Lease or contractual agreement for exclusive US Government use on a long-term basis and operated on official business by or for a US Government agency; for example, the Federal Aviation Administration (FAA), Department of the Interior, or Department of Energy.

Note: The Government must hold liability responsibility for all damages or injury associated with operation of the aircraft.

(2) Lease or contractual agreement to the Air Force for Air Force Civil Air Patrol (CAP) liaison purposes and operated by an Air Force CAP liaison officer on official Air Force business.

(3) CAP control for a specific mission directed by the Air Force.

(4) Coast Guard control for a specific mission directed by the Coast Guard.

Note: For identification purposes, the aircraft will be marked with a sticker near the port side door identifying it as a Coast Guard Auxiliary aircraft. The pilot will always be in uniform and normally have a copy of a Coast Guard Auxiliary Patrol Order. If the aircraft is operating under ''verbal orders of the commander,'' the pilot can provide the telephone number of the cognizant Coast Guard commander.

(5) Contractual agreement to any US, State, or local Government agency in support of operations involving safety of life or property as a result of a disaster.

(6) Government furnished property or bailment contract for use by a contractor, provided the Federal, State, or local Government has retained liability responsibilities.

(7) Civil aircraft transporting critically ill or injured individuals or transplant organs to or from an Air Force installation.

(8) Historic aircraft being delivered for Air Force museum exhibits under the provisions of AFI 84–103, Museum System.[2]

§ 855.7 Conditions for use of Air Force airfields.

The Air Force authorizes use of its airfields for a specific purpose by a named individual or company. The authorization cannot be transferred to a second or third party and does not extend to use for other purposes. An approved landing permit does not obligate the Air Force to provide supplies, equipment, or facilities other than the landing, taxiing, and parking areas. The aircraft crew and passengers are only authorized activities at the installation directly related to the purpose for which use is granted. All users are expected to submit their application (DD Forms 2400, 2401, and 2402) at least 30 days before intended use and, except for use as a weather alternate, CRAF alternate, or emergency landing site, must contact the appropriate installation commander or a designated representative for final landing approval at least 24 hours before arrival. Failure to comply with either time limit may result in denied landing rights.

§ 855.8 Application procedures.

To allow time for processing, the application (DD Forms 2400, 2401, and 2402) and a self-addressed, stamped envelope should be submitted at least 30 days before the date of the first intended landing. The verification required for each purpose of use must be included with the application. The name of the user must be the same on all forms. Original, hand scribed signatures, not facsimile elements, are required on all forms. Landing Permit Application Instructions are at attachment 3 to this part. The user is responsible for reviewing this part and accurately completing the forms before submitting them to the approving authority.

§ 855.9 Permit renewal.

When a landing permit expires, DD Forms 2401 and 2400 must be resubmitted for continued use of Air Force airfields.

Note: Corporations must resubmit the DD Form 2402 every five years.

§ 855.10 Purpose of use.

The purposes of use normally associated with civil aircraft operations at Air Force airfields are listed in Table 1. Requests for use for purposes other than those listed will be considered and may be approved if warranted by unique circumstances. A separate DD Form 2401 is required for each purpose of use. (Users can have multiple DD Forms 2401 that are covered by a single DD Form 2400 and DD Form 2402.)

§ 855.11 Insurance requirements.

Applicants must provide proof of third-party liability insurance on a DD Form 2400, with the amounts stated in US dollars. The policy number, effective date, and expiration date are required. The statement ''until canceled'' may be used in lieu of a specific expiration date. The geographic coverage must include the area where the Air Force airfield of proposed use is located. If several aircraft or aircraft types are included under the same policy, a

[1] Copies of the publications are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 855.6.

statement such as ''all aircraft owned,'' ''all aircraft owned and or operated,'' ''all non-owned aircraft,'' or ''all aircraft operated,'' may be used in lieu of aircraft registration numbers. To meet the insurance requirements, either split limit coverage for bodily injury (individuals outside the aircraft), property damage, and passengers, or a single limit coverage is required. The coverage will be at the expense of the user with an insurance company acceptable to the Air Force. Coverage must be current during the period the Air Force airfield will be used. The liability required is computed on the basis of aircraft maximum gross takeoff weight (MGTOW) and passenger or cargo configuration. Minimum coverage will not be less than the amount indicated in Table 2 to this part.

(a) Any insurance presented as a single limit of liability or a combination of primary and excess coverage will be an amount equal to or greater than the each accident minimums indicated in Table 2 to this part for bodily injury (individuals outside the aircraft), property damage, and passengers.

(b) The policy will specifically provide that:

(1) The insurer waives any right of subrogation it may have against the US by reason of any payment made under the policy for injury, death, or property damage that might arise, out of or in connection with the insured's use of any Air Force airfield.

(2) The insurance afforded by the policy applies to the liability assumed by the insured under DD Form 2402.

(3) If the insurer or the insured cancels or reduces the amount of insurance afforded under the listed policy before the expiration date indicated on DD Form 2400, the insurer will send written notice of policy cancellation or coverage reduction to the Air Force approving authority at least 30 days before the effective date of the cancellation or reduction. The policy must state that any cancellation or reduction will not be effective until at least 30 days after such notice is sent.

§ 855.12 Processing a permit application.

Upon receipt of an application (DD Forms 2400, 2401, and 2402) for use of an Air Force airfield, the decision authority:

(a) Determines the availability of the airfield and its capability to accommodate the purpose of use requested.

(b) Determines the validity of the request and ensures all entries on DD Forms 2400, 2401, and 2402 are in conformance with this part.

(c) Approves DD Form 2401 (with conditions or limitations noted) by completing all items in Section II—For Use by Approving Authority as follows:

(1) Period of Use (Block 7): The ''From'' date will be either the first day of approved use or the first day of insurance coverage. The ''From'' date cannot precede the first day of insurance coverage shown on the DD Form 2400. The ''Thru'' date is determined by the insurance expiration date and or the purpose of use. For example, the period of use for participants in an Air Force open house will be determined by both insurance coverage and open house dates. The permit would be issued only for the duration of the open house but must not precede or exceed the dates of insurance coverage. Many insurance policies terminate at noon on the expiration date. Therefore, if the insurance expiration is used to determine the permit expiration date, the landing permit will expire one day before the insurance expiration date shown on the DD Form 2400. If the insurance expiration date either exceeds 2 years or is indefinite (for example, ''until canceled''), the landing permit will expire 2 years from the issue date or first day of coverage.

(2) Frequency of Use (Block 8) is normally ''as required'' but may be more specific, such as ''one time.''

(3) Identification Number (Block 9): Installation commanders or a designated representative assign a permit number comprised of the last three letters of the installation's International Civil Aviation Organization identifier code, the last two digits of the calendar year, a number sequentially assigned, and the letter suffix that indicates the purpose of use (Table 1); for example, ADW 95–01C. MAJCOMs, FOAs, DRUs, and USDAOs use a three position organization abbreviation; such as AMC 95–02K.

(4) DD Form 2400 (Dated and Filed) (Block 11a): This block should contain the date from block 1 (Date Issued) on the DD Form 2400 and the identification of the unit or base where the form was approved; i.e., 30 March 1995, HQ USAF/XOOBC.

(5) DD Form 2402 (Dated and Filed) (Block 11b): This block should contain the date from block 4 (Date Signed) on the DD Form 2402 and the identification of the unit or base where the form was approved; i.e., 30 March 1995, HQ USAF/XOOBC.

(6) SA-ALC/SFR, 1014 Andrews Road, Building 1621, Kelly AFB TX 78241–5603 publishes the list of companies authorized to purchase Air Force fuel on credit. Block 12 should be marked ''yes'' only if the permit holder's name appears on the SA-ALC list.

(7) Landing Fees, Block 13, should be marked as indicated in Table 1 to this part.

(8) Permit Amendments: New entries or revisions to an approved DD Form 2401 may be made only by or with the consent of the approving authority.

(d) Provides the applicant with written disapproval if:

(1) Use will interfere with operations, security, or safety.

(2) Adequate civil facilities are collocated.

(3) Purpose of use is not official Government business and adequate civil facilities are available in the proximity of the requested Air Force airfield.

(4) Use will constitute competition with civil airports or air carriers.

(5) Applicant has not fully complied with this part.

(e) Distributes the approved DD Form 2401 before the first intended landing, when possible, as follows:

(1) Retains original.

(2) Returns two copies to the user.

(3) Provides a copy to HQ USAF/XOOBC.

Note: HQ USAF/XOOBC will provide a computer report of current landing permits to the MAJCOMs, FOAs, DRUs, and installations.

§ 855.13 Civil fly-ins.

(a) Civil aircraft operators may be invited to a specified Air Force airfield for:

(1) A base open house to perform or provide a static display.

(2) A flying safety seminar.

(b) Civil fly-in procedures:

(1) The installation commander or a designated representative:

(i) Requests approval from the MAJCOM, FOA, or DRU with an information copy to HQ USAF/XOOBC/XOOO and SAF/PAC.

(ii) Ensures that DD Form 2402 is completed by each user.

Note: DD Forms 2400 and 2401 are not required for fly-in participants if flying activity consists of a single landing and takeoff with no spectators other than flightline or other personnel required to support the aircraft operations.

(2) The MAJCOM, FOA, or DRU ensures HQ USAF/XOOBC/XOOO and SAF/PAC are advised of the approval or disapproval for the fly-in.

(3) Aerial performance by civil aircraft at an Air Force open house requires MAJCOM or FOA approval and an approved landing permit as specified in AFI 35–201, Community Relations [3]. Regardless of the aircraft's historic

[3] See footnote 1 to § 855.6.

military significance, DD Forms 2400, 2401, and 2402 must be submitted and approved before the performance. The permit can be approved at MAJCOM, FOA, DRU, or installation level. Use will be authorized only for the period of the event. Fly-in procedures do not apply to aircraft transporting passengers (revenue or non-revenue) for the purpose of attending the open house or demonstration flights associated with marketing a product.

§ 855.14 Unauthorized landings.

(a) *Unauthorized landing procedures.* The installation commander or a designated representative will identify an unauthorized landing as either an emergency landing, an inadvertent landing, or an intentional landing. An unauthorized landing may be designated as inadvertent or intentional whether or not the operator has knowledge of the provisions of this part, and whether or not the operator filed a flight plan identifying the installation as a destination. Aircraft must depart the installation as soon as practical. On all unauthorized landings, the installation commander or a designated representative:

(1) Informs the operator of Subpart B procedures and the requirement for notifying the Federal Aviation Administration (FAA) as specified in section 6 of the FAA Airman's Information Manual.

(2) Notifies the Federal Aviation Flight Standards District Office (FSDO) by telephone or telefax, followed by written notification using FAA Form 8020–9, 8020–11, or 8020–17, as appropriate. A copy of the written notification must be provided to HQ USAF/XOOBC.

(3) Ensures the operator completes a DD Form 2402, and collects applicable charges. (In some instances, it may be necessary to arrange to bill the user for the appropriate charges.) DD Form 2402 need not be completed for commercial carriers if it is known that the form is already on file at HQ USAF/XOOBC.

(4) In a foreign country, notifies the local US Defense Attache Office (USDAO) by telephone or telefax and, where applicable, the appropriate USDAO in the country of aircraft registry, followed by written notification with an information copy to HQ USAF/XOOBC and the civil aviation authority of the country or countries concerned.

(b) *Emergency landings.* Any aircraft operator who experiences an inflight emergency may land at any Air Force airfield without prior authorization (approved DD Form 2401 and 24 hours prior notice). An inflight emergency is defined as a situation that makes continued flight hazardous.

(1) The Air Force will use any method or means to clear an aircraft or wreckage from the runway to preclude interference with essential military operations after coordinating with the FSDO and National Transportation Safety Board. Removal efforts will minimize damage to the aircraft or wreckage; however, military or other operational factors may be overriding.

(2) An operator making an emergency landing:

(i) Is not charged a landing fee.

(ii) Pays all costs for labor, material, parts, use of equipment and tools, and so forth, to include, but not limited to:

(A) Spreading foam on the runway.

(B) Damage to runway, lighting, and navigation aids.

(C) Rescue, crash, and fire control services.

(D) Movement and storage of aircraft.

(E) Performance of minor maintenance.

(F) Fuel or oil (AFM 67–1, vol 1, part three, chapter 1, Air Force Stock Fund and DPSC Assigned Item Procedures [4]).

(c) Inadvertent unauthorized landings:

(1) The installation commander or a designated representative may determine a landing to be inadvertent if the aircraft operator:

(i) Landed due to flight disorientation.

(ii) Mistook the Air Force airfield for a civil airport.

(2) Normal landing fees must be charged and an unauthorized landing fee may be assessed to compensate the Government for the added time, effort, and risk involved in the inadvertent landing. Only the unauthorized landing fee may be waived by the installation commander or a designated representative if, after interviewing the pilot-in-command and appropriate Government personnel, it is determined that flying safety was not significantly impaired. The pilot-in-command may appeal the imposition of an unauthorized landing fee for an inadvertent landing to the MAJCOM, FOA, or DRU whose decision will be final. A subsequent inadvertent landing will be processed as an intentional unauthorized landing.

(d) *Intentional unauthorized landings.*

(1) The installation commander may categorize an unauthorized landing as intentional when there is unequivocal evidence that the pilot deliberately:

(i) Landed without an approved DD Form 2401 on board the aircraft.

(ii) Landed for a purpose not approved on the DD Form 2401.

(iii) Operated an aircraft not of a model or registration number on the approved DD Form 2401.

(iv) Did not request or obtain the required final approval from the installation commander or a designated representative at least 24 hours before aircraft arrival.

(v) Did not obtain landing clearance from the air traffic control tower.

(vi) Landed with an expired DD Form 2401.

(vii) Obtained landing authorization through fraudulent methods, or

(viii) Landed after having been denied a request to land from any Air Force authority, including the control tower.

(2) Normal landing fees and an unauthorized landing fee must be charged. Intentional unauthorized landings increase reporting, processing, and staffing costs; therefore, the unauthorized landing fee for paragraph (d)(1)(i) through (d)(1)(vi) of this section will be increased by 100 percent. The unauthorized landing fee will be increased 200 percent for paragraph (d)(1)(vii) and (d)(1)(viii) of this section.

(3) Intentional unauthorized landings may be prosecuted as a criminal trespass, especially if a debarment letter has been issued. Repeated intentional unauthorized landings prejudice the user's FAA operating authority and jeopardize future use of Air Force airfields.

§ 855.15 Detaining an aircraft.

(a) An installation commander in the United States, its territories, or its possessions may choose to detain an aircraft for an intentional unauthorized landing until:

(1) The unauthorized landing has been reported to the FAA, HQ USAF/XOOBC, and the appropriate US Attorney.

(2) All applicable charges have been paid.

(b) If the installation commander wishes to release the aircraft before the investigation is completed, he or she must obtain bond, promissory note, or other security for payment of the highest charge that may be assessed.

(c) The pilot and passengers will not be detained longer than is necessary for identification, although they may be permitted to remain in a lounge or other waiting area on the base at their request for such period as the installation commander may determine (normally not to exceed close of business hours at the home office of the entity owning the aircraft, if the operator does not own the aircraft). No person, solely due to an intentional unauthorized landing, will be detained involuntarily after identification is complete without

[4] See footnote 1 to § 855.6.

coordination from the appropriate US Attorney, the MAJCOM, FOA, or DRU, and HQ USAF/XOOBC.

§ 855.16 Parking and storage.

The time that an aircraft spends on an installation is at the discretion of the installation commander or a designated representative but should be linked to the purpose of use authorized. Parking and storage may be permitted on a nonexclusive, temporary, or intermittent basis, when compatible with military requirements. At those locations where there are Air Force aero clubs, parking and storage privileges may be permitted in the area designated for aero club use without regard for the purpose of use authorized, if consistent with aero club policies. Any such permission may be revoked upon notice, based on military needs and the installation commander's discretion.

§ 855.17 Fees for landing, parking, and storage.

(a) Landing, parking, and storage fees (Tables 3 and 4 to this part) are determined by aircraft maximum gross takeoff weight (MGTOW). All fees are normally due and collectable at the time of use of the Air Force airfield. DD Form 1131, Cash Collection Voucher, is used to deposit the fees with the base accounting and finance officer. In some instances, it may be necessary to bill the user for charges incurred.

(b) Landing fees are not charged when the aircraft is operating in support of official Government business or for any purpose, the cost of which is subject to reimbursement by the US Government. Parking and Storage Fees (Table 4 to this part) are charged if an aircraft must remain beyond the period necessary to conduct official Government business and for all non-official Government business operations.

§ 855.18 Aviation fuel and oil purchases.

When a user qualifies under the provisions of AFM 67–1, vol. 1, part three, chapter 1, Air Force Stock Fund and DPSC Assigned Item Procedures,[5] purchase of Air Force fuel and oil may be made on a cash or credit basis. An application for credit authority can be filed by submitting an Authorized Credit Letter to SA–ALC/SFRL, 1014 Andrews Road, Building 1621, Kelly AFB TX 78241–5603.

§ 855.19 Supply and service charges.

Supplies and services furnished to a user will be charged for as prescribed in AFM 67–1, volume 1, part one, chapter 10, section N, Basic Air Force Supply Procedures, and AFR 177–102, paragraph 28.24, Commercial Transactions at Base Level.[6] A personal check with appropriate identification, cashier's check, money order, or cash are acceptable means of payment. Charges for handling foreign military sales cargo are prescribed in AFR 170–3, Financial Management and Accounting for Security Assistance and International Programs.[7]

Subpart C—Agreements for Civil Aircraft Use of Air Force Airfields

§ 855.20 Joint-use agreements.

An agreement between the Air Force and a local Government agency is required before a community can establish a public airport on an Air Force airfield.

(a) Joint use of an Air Force airfield will be considered only if there will be no cost to the Air Force and no compromise of mission capability, security, readiness, safety, or quality of life. Further, only proposals submitted by authorized representatives of local Government agencies eligible to sponsor a public airport will be given the comprehensive evaluation required to conclude a joint use agreement. All reviewing levels will consider and evaluate such requests on an individual basis.

(b) Generally, the Air Force is willing to consider joint use at an airfield if it does not have pilot training, nuclear storage, or a primary mission that requires a high level of security. Civil operations must begin within 5 years of the effective date of an agreement. Operational considerations will be based on the premise that military aircraft will receive priority handling (except in emergencies), if traffic must be adjusted or resequenced. The Air Force normally will not consider personnel increases solely to support civil operations but, if accommodated, all costs must be fully reimbursed by the joint-use sponsor. The Air Force will not provide personnel to install, operate, maintain, alter, or relocate navigation equipment or aircraft arresting systems for the sole use of civil aviation. Changes in equipment or systems to support the civil operations must be funded by the joint-use sponsor. The Air Force must approve siting, design, and construction of the civil facilities.

§ 855.21 Procedures for sponsor.

To initiate consideration for joint use of an Air Force airfield, a formal proposal must be submitted to the installation commander by a local Government agency eligible to sponsor a public airport. The proposal must include:

(a) Type of operation.

(b) Type and number of aircraft to be located on or operating at the airfield.

(c) An estimate of the number of annual operations for the first 5 years.

§ 855.22 Air Force procedures.

(a) Upon receipt of a joint-use proposal, the installation commander, without precommitment or comment, will send the documents to the Air Force Representative (AFREP) at the Federal Aviation Administration (FAA) Regional Office within the geographical area where the installation is located. AFI 13–201, Air Force Airspace Management,[8] lists the AFREPs and their addresses. The installation commander must provide an information copy of the proposal to HQ USAF/XOOBC, 1480 Air Force Pentagon, Washington DC 20330–1480.

(b) The AFREP provides comments to the installation commander on airspace, air traffic control, and other related areas, and informs local FAA personnel of the proposal for joint use.

(c) The installation, the numbered Air Force, and the major command (MAJCOM) will then evaluate the proposal. The MAJCOM will send the comments and recommendations from all reviewing officials to HQ USAF/XOOBC.

(d) Factors considered in evaluating joint use include, but are not limited to:

(1) Impact on current and programmed military activities at the installation.

(2) Compatibility of proposed civil aviation operations with present and planned military operations.

(3) Compatibility of communications systems.

(4) Instrument capability of crew and aircraft.

(5) Runway and taxiway configuration. (Installations with single runways normally will not be considered for joint use.)

(6) Security. The possibility for sabotage, terrorism, and vandalism increases with joint use; therefore, joint use will not be considered:

(i) If military and civil aircraft would be collocated in hangars or on ramps.

(ii) If access to the civil aviation facilities would require routine transit through the base.

(7) Fire, crash, and rescue requirements.

(8) Availability of public airports to accommodate the current and future air

[5] See footnote 1 to § 855.6.

[6] See footnote 1 to § 855.6.

[7] See footnote 1 to § 855.6.

[8] See footnote 1 to § 855.6.

transportation needs of the community through construction or expansion.

(9) Availability of land for civil airport complex.

Note: The majority of land required for a terminal and other support facilities must be located outside the installation perimeter or at a site that will allow maximum separation of military and civil activities. If the community does not already own the needed land, it must be acquired at no expense to the Air Force. The Air Force may make real property that is not presently needed, but not excess, available by lease under 10 U.S.C 2667. An application for lease of Air Force real property must be processed through the chain of command to the Air Force Real Estate Agency, 172 Luke Avenue, Suite 104, Building 5683, Bolling AFB DC 20332–5113, as prescribed in AFI 32–9003, Granting Temporary Use of Air Force Real Property [9]. All real property outleases require payment of fair market consideration and normally are processed through the Corps of Engineers. The General Services Administration must be contacted regarding availability of excess or surplus Federal real property and an application submitted through FAA for an airport use public benefit transfer under 49 U.S.C. § 47151–47153.

(10) Sponsor's resources to pay a proportionate share of costs for runway operation and maintenance and other jointly used facilities or otherwise provide compensation that is of direct benefit to the Government.

(e) When the Air Force determines that joint use may be compatible with its defense mission, the environmental impact analysis process must be completed before a final decision can be made. The Air Force will act as lead agency for the preparation of the environmental analysis (32 CFR part 989, Environmental Impact Analysis Process). The local Government agency representatives, working in coordination with Air Force personnel at the installation and other concerned local or Federal officials, must identify the proposed action, develop conceptual alternatives, and provide planning, socioeconomic, and environmental information as specified by the appropriate MAJCOM and HQ USAF/CEVP. The information must be complete and accurate in order to serve as a basis for the preparation of the Air Force environmental documents. All costs associated with the environmental studies required to complete the environmental impact analysis process must be paid by the joint use sponsor. Information on environmental analysis requirements is available from HQ USAF/CEVP, 1260 Air Force Pentagon, Washington DC 20330–1260.

(f) HQ USAF/XOOBC can begin negotiating a joint-use agreement after the environmental impact analysis process is completed. The agreement must be concluded on behalf of the Air Force by SAF/MII as the approval authority for use of Air Force real property for periods exceeding 5 years. The joint-use agreement will state the extent to which the provisions of subpart B of this part, Civil Aircraft Landing Permits, apply to civil aircraft operations.

(1) Joint-use agreements are tailored to accommodate the needs of the community and minimize the impact on the defense mission. Although each agreement is unique, attachment 4 to this part provides basic terms that are frequently included in such agreements.

(2) Agreements for joint use at Air Force airfields on foreign soil are subject to the requirements of AFI 51–701, Negotiating, Concluding, Reporting, and Maintaining International Agreements [10].

(g) HQ USAF/XOOBC and SAF/MII approval is required to amend existing joint use agreements. The evaluation and decision processes followed in concluding an initial joint-use proposal must be used to amend existing joint-use agreements.

§ 855.23 Other agreements.

(a) Temporary use of Air Force runways occasionally is needed for extended periods when a local civil airport is unavailable or to accommodate special events or projects. Such use requires agreement between the Air Force and the local airport authority or other equivalent responsible entity.

(b) The local proponent and Air Force personnel should draft and submit an agreement to the MAJCOM Director for Operations, or equivalent level, for review and comment. The agreement must address all responsibilities for handling aircraft, cargo, and passengers, and hold the Air Force harmless of all liabilities. The agreement will not exceed 3 years. Although each agreement will be unique, attachment 5 of this part provides one example. The draft agreement, with all comments and recommendations, must be sent to HQ USAF/XOOBC for final approval.

TABLE 1.—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES

Purpose of use	Verification	Approval * authority	Fees
Contractor or subcontractor (A). A US or foreign contractor or subcontractor, operating corporate, personal, or leased aircraft in conjunction with fulfilling the terms of a government contract.	Current Government contract numbers; the Air Force airfields required for each contract; a brief description of the work to be performed; and the name, telephone number, and address of the government contracting officer must be provided on the DD Form 2401 or a continuation sheet.	1	No.
Note: Potential contractors may not land at Air Force airfields to pursue or present an unsolicited proposal for procurement of government business. One time authorization can be provided when an authorized US Government representative verifies that the potential contractor has been specifically invited for a sales presentation or to discuss their product.			
Demonstration (B). Aircraft, aircraft with components installed, or aircraft transporting components or equipment operating to demonstrate or display a product to US Government representatives who have procurement authority or certification responsibilities. (Authority granted under this paragraph does not include aerobatic demonstrations.).	Demonstration or display must be a contractual requirement or presented at the request of an authorized US Government representative. The name, address, and telephone number of the requesting government representative or contracting officer and contract number must be included on the DD Form 2401.	1	No.
Aerial performance (BB). Aircraft performing aerobatics and or fly-bys at Air Force airfields.	Approval of MAJCOM, FOA, or DRU and FAA as specified in AFI 35–201, *Community Relations*.	1	No.

[9] See footnote 1 to § 855.6.

[10] See footnote 1 to § 855.6.

TABLE 1.—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES—Continued

Purpose of use	Verification	Approval * authority	Fees
Active duty US military and other US uniformed service members with military identification cards (includes members of the US Public Health Service, Coast Guard, and National Oceanic and Atmospheric Administration) (C). Service members, operating their own aircraft, leased aircraft, or other available aircraft for official duty travel (temporary duty, permanent change of station, etc.) or for private, non revenue flights.	Social security number in block 1 on DD Form 2401	1	No.
Reserve Forces (D). Members of the US Reserve Forces (including Reserve Officer Training Corps and National Guard) operating their own aircraft, leased aircraft, or other available aircraft to fulfill their official duty commitment at the installation where their unit is assigned and other installations for temporary duty assignments.	Endorsement from member's commander that validates military status and requirement for use of Air Force airfields listed on the DD Form 2401. The endorsement may be included on the DD Form 2401 or provided separately by letter. When appropriate, travel orders must be on board the aircraft.	1	No.
Dependents of active duty US military personnel, other US uniformed service personnel, (CC), or US Reserve Forces personnel (DD). Dependents operating their own aircraft, leased aircraft, or other available aircraft in conjunction with activities related to entitlements as a dependent of a uniformed service member.	Identification card (DD Form 1173) number or social security number, identification card expiration date, and a letter of endorsement from sponsor.	1	No.
US Government civil service employees (E). Civilian employees of the US Government operating their own aircraft, leased aircraft, or other available aircraft for official Government business travel.	Supervisor's endorsement in block 4 of the DD Form 2401. Individual must have a copy of current travel orders or other official travel certification available for verification if requested by an airfield manager or a designated representative.	1	No.
Retired US military members and other retired US uniformed service members with a military identification card authorizing use of the commissary, base exchange, and or military medical facilities (G). Retired Service members, operating their own aircraft, leased aircraft, or other available aircraft in conjunction with activities related to retirement entitlements authorized by law or regulation.	Copy of retirement orders on file with the approving authority.	1	No.
Dependents of retired US military personnel and other retired US uniformed service personnel (GG). Dependents of retired Service members operating their own aircraft, leased aircraft, or other available aircraft in conjunction with activities related to entitlements authorized by law or regulation as a dependent of a retired Service member.	Identification card (DD Form 1173) number or social security number, identification card expiration date, sponsor's retirement orders, and letter of endorsement from sponsor.	1	No.
Civil Air Patrol (CAP) (H). CAP members operating personal or CAP aircraft for official CAP activities.	Endorsement of the application by HQ CAP-USAF/XOO, 105 South Hansell Street, Maxwell AFB AL 36112–6332.	1	No.
Aero club members (I). Individuals operating their own aircraft at the Air Force airfield where they hold active aero club membership.	Membership validation by the aero club manager on the DD Form 2401.	6	No.
Weather alternate (J). An Air Force airfield identified on a scheduled air carrier's flight plan as an alternate airport as prescribed by Federal Aviation Regulations (FARs) or equivalent foreign Government regulations. The airfield can only be used if weather conditions develop while the aircraft is in flight that preclude landing at the original destination. Aircraft may not be dispatched from the point of departure to an Air Force airfield designated as an approved weather alternate. *Note: Scheduled air carriers are defined at Attachment 1. Only those airfields identified on the list at Attachment 2 are available for use as weather alternates. Airfields cannot be used as alternates for non-scheduled operations. Passengers and cargo may not be offloaded, except with the approval of the installation commander when there is no other reasonable alternative. Boarding new passengers and or loading new cargo is not authorized.*	List of the destination civil airports for which the alternate will be used and certification of scheduled air carrier status, such as the US Department of Transportation Fitness Certificate.	1	Yes
Air Mobility Command (AMC) contractor charter (K). An air carrier transporting passengers or cargo under the terms of an AMC contract. (Landing permits for this purpose are processed by HQ AMC/DOKA, 402 Scott Drive, Unit 3A1, Scott AFB IL 62225–5302.).	International flights must have an AMC Form 8, Civil Aircraft Certificate, on board the aircraft. Domestic flights must have either a *Certificate of QUICK-TRANS* (Navy), a *Certificate of Courier Service Operations* (AMC), or a *Certificate of Intra-Alaska Operations* (AMC) on board the aircraft.	3	No.

TABLE 1.—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES—Continued

Purpose of use	Verification	Approval * authority	Fees
CRAF alternate (KK). An Air Force airfield used as an alternate airport by air carriers that have contracted to provide aircraft for the Civil Reserve Air Fleet (CRAF).	Participant in the CRAF program and authorized by contract.	2	Yes.
US Government contract or charter operator (L). An air carrier transporting passengers or cargo for a US Government department or agency other than US military departments.	The chartering agency and name, address, and telephone number of the Government official procuring the transportation must be listed in block 4 of the DD Form 2401. An official government document, such as an SF 1169, *US government Transportation Request,* must be on board the aircraft to substantiate that the flight is operating for a US Government department or agency.	1	No.
Contractor or subcontractor charter (M). Aircraft chartered by a US or foreign contractor or subcontractor to transport personnel or cargo in support of a current government contract.	The contractor or subcontractor must provide written validation to the decision authority that the charter operator will be operating on their behalf in fulfilling the terms of a government contract, to include current government contract numbers and contract titles or brief description of the work to be performed; the Air Force airfields required for use, and the name, telephone number, and address of the government contracting officer.	1	No.
DOD charter (N). Aircraft transporting passengers or cargo within the United States for the military departments to accommodate transportation requirements that do not exceed 90 days.	Military Air Transportation Agreement (MATA) approved by the Military Transportation Management Command (MTMC) (this includes survey and approval by HQ AMC/DOB, 402 Scott Drive, Suite 132, Scott AFB IL 62225–5363). An SF 1169 or SF 1103, *US Government Bill of Lading,* must be on board the aircraft to validate the operation is for the military departments as specified in AFJI 24–211, *Defense Traffic Management Regulation.* (Passenger charters arranged by the MTMC are assigned a commercial air movement (CAM) or civil air freight movement number each time a trip is awarded. Installations will normally be notified by message at least 24 hours before a pending CAM.)	1	No.
Media (F). Aircraft transporting representatives of the media for the purpose of gathering information about a US Government operation or event. (Except for the White House Press Corps, use will be considered on a case-by-case basis. For example, authorization is warranted if other forms of transportation preclude meeting a production deadline or such use is in the best interest of the US Government. DD Forms 2400 and 2402 should be on file with HQ USAF/XOOBC to ensure prompt telephone approval for validated requests.).	Except for White House Press Corps charters, concurrence of the installation commander, base operations officer, and public affairs officer.	2	Note 1.
Commercial aircraft certification testing required by the FARs that only involves use of normal flight facilities (P).	Application must cite the applicable FAR, describe the test, and include the name and telephone number of the FAA certification officer.	2	Yes.
Commercial development testing at Air Force flight test facilities (Q) as described in AFI 99–101, *Development Test & Evaluation.*	Statement of Capability Number or Cooperative Research and Development Agreement Number, and name and telephone number of the Air Force official who approved support of the test project.	1	Yes.
Commercial charter operations (R). Aircraft transporting passengers or cargo for hire for other than US military departments. *Note: Federal Aviation Administration (FAA) certification is required for airfields used by carriers certified under FAR, Part 121 (passenger aircraft that exceed 30 passenger seats). HQ USAF/XOOBC will request that FAA issue an airport operating certificate under FAR, Part 139, as necessary. Exceptions to the requirement for certification are Air Force airfields used for:* *a. Emergencies.* *b. Weather alternates.* *c. Air taxi operations under FAR, Part 135. Note: This is currently under review. Anticipate a change that will eliminate the air taxi exemption.* *d. Air carrier operations in support of contract flights exclusively for the US military departments.*	Unavailability of: a. a suitable civil airport, b. aircraft that could operate into the local civil airport, or c. other modes of transportation that would reasonably satisfy the transportation requirement.	5	Yes.
Commercial air crew training flights (S). Aircraft operated by commercial air carrier crews for the purpose of maintaining required proficiency.	Memorandum of Understanding approved by HQ USAF/XOOBC that establishes conditions and responsibilities in conducting the training flights.	2	Yes.

TABLE 1.—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES—Continued

Purpose of use	Verification	Approval * authority	Fees
Private, non revenue producing flights (T). Aircraft operating for a variety of reasons, such as transporting individuals to meet with Government representatives or participate in Government sponsored ceremonies and similar events. At specified locations, the purpose of use may be to gain access to collocated private sector facilities as authorized by lease, agreement, or contract.	The verification will vary with the purpose for use. For example, when use is requested in conjunction with events such as meetings or ceremonies, the applicant must provide the name and telephone number of the Government project officer.	4	Note 2.
Provisional airfield (U). An Air Force airfield used by civil aircraft when the local civil airport is temporarily unavailable, or by a commercial air carrier operating at a specific remote location to provide commercial air transportation for local military members under the provisions of a lease or other legal instrument.	Memorandum of Understanding, Letter of Agreement, or lease that establishes responsibilities and conditions for use.	2	Yes.
Foreign government charter (V). Aircraft chartered by a foreign government to transport passengers or cargo.	Application must include name and telephone number of the foreign government representative responsible for handling the charter arrangements.	2	Note 3.
Flights transporting foreign military sales (FMS) material (W). (Hazardous, oversized, or classified cargo only.)	FMS case number, requisition numbers, delivery term code and information as specified below: a. Description of cargo (nomenclature and or proper shipping name). The description of hazardous cargo must include the Department of Transportation exemption number, hazard class, number of pieces, and net explosive weight. b. Name, address, and telephone number of individual at Air Force base that is coordinating cargo handling and or other required terminal services. c. Cargo to be loaded or off loaded must be equipped with sufficient cargo pallets and or tiedown materials to facilitate handling. Compatible 463L pallets and nets will be exchanged on a one-for-one basis for serviceable units. Nonstandard pallets and nets cannot be exchanged; however, they will be used to buildup cargo loads after arrival of the aircraft. Aircraft arriving without sufficient cargo loading and tiedown devices must be floor loaded and the aircraft crew will be responsible for purchasing the necessary ropes, chains, and so forth. d. US Government FMS case management agency to which costs for services rendered are chargeable. e. Name, address, and telephone number of freight forwarder. f. Name, address, and telephone number of shipper.	2	Note 3.
Certified flight record attempts (X). Aircraft operating to establish a new aviation record.	Documentation that will validate National Aeronautic Association or Federation Aeronautique Internationale sanction of the record attempt.	2	Yes.
Political candidates (Y). (For security reasons only) Aircraft either owned or chartered explicitly for a Presidential or Vice Presidential candidate, including not more than one accompanying overflow aircraft for the candidate's staff and press corps. Candidate must be a Presidential or Vice Presidential candidate who is being furnished protection by the US Secret Service. Aircraft clearance is predicated on the Presidential or Vice Presidential candidate being aboard one of the aircraft (either on arrival or departure). Normal landing fees will be charged. To avoid conflict with US statutes and Air Force operational requirements, and to accommodate expeditious handling of aircraft and passengers, the installation commander will: a. Provide minimum official welcoming party. b. Not provide special facilities. c. Not permit political rallies or speeches on the installation. d. Not provide official transportation to unauthorized personnel, such as the press or local populace.	The Secret Service must confirm that use has been requested in support of its security responsibilities.	2	Yes.
Aircraft either owned or personally chartered for transportation of the President, Vice President, a past President of the United States, the head of any US Federal department or agency, or a member of the Congress (Z).	Use by other than the President or Vice President must be for official government business. All requests will be coordinated with the Office of Legislative Liaison (SAF/LL) as prescribed in AFI 90–401, *Air Force Relations with Congress*.	2	No.

*Approving Authority:

1=Can be approved at all levels.
2=HQ USAF/XOOBC.
3=HQ AMC/DOKA.
4=Except as specifically delegated in paragraphs 2.4.2 and 2.4.2.3, must be approved by HQ USAF/XOOBC.
5=Except as specifically delegated in paragraph 2.4.2.1, must be approved by HQ USAF/XOOBC.
6=Policy concerning private aircraft use of aero club facilities varies from base to base, primarily due to space limitations and military mission requirements. Therefore, applications for use of aero club facilities must be processed at base level.
Note 1: Landing fees *are charged* for White House Press Corps flights. Landing fees are not charged if the Air Force has invited media coverage of specific events.
Note 2: Landing fees *are charged if* flight is *not* operating in support of *official Government business.*
Note 3: Landing fees *are charged* unless US Government charters have reciprocal privileges in the foreign country.

TABLE 2.—AIRCRAFT LIABILITY COVERAGE REQUIREMENTS

Aircraft maximum gross takeoff weight (MGTOW)	Coverage for	Bodily injury	Property damage	Passenger
12,500 Pounds and Under	Each Person	$100,000		$100,000.
	Each Accident	300,000	100,000	100,000 multiplied by the number of passenger seats.
More than 12,500 Pounds	Each Person	100,000		100,000.
	Each Accident	1,000,000	1,000,000	100,000 multiplied by 75% multiplied by the number of passenger seats.

TABLE 3.—LANDING FEES

Aircraft Maximum Gross Takeoff Weight (MGTOW)	Normal fee	Unauthorized fee	Intentional fee	Minimum fee	United States, Territories, and Possessions	Overseas
	$1.50 per 1,000 lbs MGTOW or fraction thereof.			$20.00	X	
	$1.70 per 1,000 lbs MGTOW or fraction thereof.			25.00		X
Up to and including 12,500 lbs		$100.00			X	X
12,501 to 40,000 lbs		300.00			X	X
Over 40,000 lbs		600.00			X	X
			Increase unauthorized fee by 100% or 200%.		X	X

TABLE 4.— PARKING AND STORAGE FEES

Fee per aircraft for each 24-hour period or less	Minimum fee	Charge begins	Ramp	Hangar
$1.00 per 100,000 lbs MGTOW or fraction thereof	$20.00	6 hours after landing	X	
$2.00 per 100,000 lbs MGTOW or fraction thereof	20.00	Immediately		X

Attachment 1 to Part 855—Glossary of References, Abbreviations, Acronyms, and Terms

Section A—References

AFPD 10–10, Civil Aircraft Use of United States Air Force Airfields
AFI 10–1001, Civil Aircraft Landing Permits
AFI 13–201, Air Force Airspace Management
AFI 32–7061(32 CFR part 989), Environmental Impact Analysis Process
AFI 32–9003, Granting Temporary Use of Air Force Real Property
AFI 34–117, Air Force Aero Club Program
AFI 35–201, Community Relations
AFI 51–701, Negotiating, Concluding, Reporting, and Maintaining International Agreements
AFI 84–103, Museum System
AFI 90–401, Air Force Relations with Congress
AFI 99–101, Development Test and Evaluation
AFJI 24–211, Defense Traffic Management Regulation
AFM
67–1, vol 1, part 1, Basic Air Force Supply Procedures
AFM 67–1, vol 1, part 3, Air Force Stock Fund and DPSC Assigned Item Procedures
AFMAN 3–132, Air Force Aero Club Operations
AFR 170–3, Financial Management and Accounting for Security Assistance and International Programs
AFR 177–102, Commercial Transactions at Base Level
FAR, Part 121, Certification and Operation: Domestic, Flag, and Supplemental Air Carriers and Commercial Operations of Large Aircraft
FAR, Part 135, Air Taxi Operators and Commercial Operators of Small Aircraft
FAR, Part 139, Certification and Operations: Land Airports Serving Certain Air Carriers

Section B—Abbreviations and Acronyms

Abbreviations and acronyms	Definitions
AFI	Air Force Instruction.
AFJI	Air Force Joint Instruction.
AFM	Air Force Manual.
AFMAN	Air Force Manual.
AFPD	Air Force Policy Directive.
AFR	Air Force Regulation.
AFREP	Air Force Representative.
AMC	Air Mobility Command.
AOG	Air Operations Group.
CAM	Commercial Air Movement.
CAP	Civil Air Patrol.

Abbreviations and acronyms	Definitions
CRAF	Civil Reserve Air Fleet.
DPSC	Defense Personnel Support Center.
DRU	Direct Reporting Unit.
FAA	Federal Aviation Administration.
FAR	Federal Aviation Regulation.
FMS	Foreign Military Sales.
FOA	Field Operating Agency.
FSDO	Flight Standards District Office.
HQ AMC/DOKA	Headquarters Air Mobility Command, Contract Airlift, Directorate of Operations and Transportation.
HQ USAF/CEVP	Headquarters United States Air Force, Environmental Planning Division, Directorate of Environment.
HQ USAF/XOOBC	Headquarters United States Air Force, Civil Aviation, Bases and Units Division, Directorate of Operations.
HQ USAF/XOOO	Headquarters United States Air Force, Operations Group, Directorate of Operations.
MAJCOM	Major Command.
MATA	Military Air Transportation Agreement.
MGTOW	Maximum Gross Takeoff Weight.
MTMC	Military Traffic Management Command.
SAF/LL	Secretary of the Air Force, Office of Legislative Liaison.
SAF/MII	Secretary of the Air Force, Deputy Assistant Secretary of the Air Force (Installations).
SAF/PAC	Secretary of the Air Force, Office of Public Affairs, Directorate for Community Relations.
US	United States.
USDAO	United States Defense Attache Office.

Section C—Terms

Aircraft. Any contrivance now known or hereafter invented, used, or designated for navigation of or flight in navigable airspace as defined in the Federal Aviation Act.

Airfield. An area prepared for the accommodation (including any buildings, installations, and equipment), landing, and take-off of aircraft.

Authorized Credit Letter. A letter of agreement that qualified operators must file with the Air Force to purchase Air Force aviation fuel and oil on a credit basis under the provisions of AFM 67–1, vol 1, part three, chapter 1, Air Force Stock Fund and DPSC Assigned Item Procedures.

Civil Aircraft. Any United States or foreign-registered aircraft owned by non-Governmental entities, and foreign Government-owned aircraft that are operated for commercial purposes.

Civil Aviation. All civil aircraft of any national registry, including:

Commercial Aviation. Civil aircraft that transport passengers or cargo for hire.

General Aviation. Civil aircraft that do not transport passengers or cargo for hire.

Civil Reserve Air Fleet (CRAF). US registered aircraft, certificated under FAR Part 121, obligated by contract to provide aircraft and crews to the Department of Defense during contingencies or war.

DD Form 2400, Civil Aircraft Certificate of Insurance. A certificate that shows the amount of third-party liability insurance carried by the user and assures the United States Government of advance notice if changes in coverage occur.

DD Form 2401, Civil Aircraft Landing Permit. A license which, when validated by an Air Force approving authority, authorizes the civil aircraft owner or operator to use Air Force airfields.

DD Form 2402, Civil Aircraft Hold Harmless Agreement. An agreement, completed by the user, which releases the United States Government from all liabilities incurred in connection with civil aircraft use of Air Force airfields.

Government Aircraft. Aircraft owned, operated, or controlled for exclusive, long-term use by any department or agency of either the United States or a foreign Government; and aircraft owned by any United States State, County, Municipality or other political subdivision; or any aircraft for which a Government has the liability responsibility. In the context of this instruction, it includes foreign registered aircraft, which are normally commercially operated, that have been wholly chartered for use by foreign Government heads of State for official State visits.

Government Furnished or Bailed Aircraft. US Government-owned aircraft provided to a Government contractor for use in conjunction with a specific contractual requirement.

Installation Commander. The individual with ultimate responsibility for operating the airfield and for base operations (normally a wing or group commander), as determined by the MAJCOM.

Joint-Use Agreement. An agreement between the Air Force and a local Government agency that establishes a public airport on an Air Force airfield.

Loaned Aircraft. US Government-owned aircraft made available for use by another US Government agency. This does not include aircraft leased or loaned to non-Governmental entities. Such aircraft will be considered as civil aircraft for purposes of this instruction.

Military Aircraft. Aircraft used exclusively in the military services of the US or a foreign Government and bearing appropriate military and national markings or carrying appropriate identification.

Official Government Business. Activities that support or serve the needs of US Federal agencies located at or in the immediate vicinity of an Air Force installation, including nonappropriated fund entities. For elected or appointed Federal, State, and local officeholders, official business is activity performed in fulfilling duties as a public official.

Other Agreement. An agreement between the Air Force and a local Government agency for temporary use of an Air Force runway when a local civil airport is unavailable, or to accommodate a special event or project.

Scheduled Air Carrier. An air carrier that holds a scheduled air carrier certificate and provides scheduled service year round between two or more points.

Unauthorized Landing. A landing at an Air Force airfield by a civil aircraft without prior authority (approved DD Form 2401 and 24 hours prior notice).

User. The person, corporation, or other responsible entity operating civil aircraft at Air Force airfields.

Attachment 2 to Part 855—Weather Alternate List Air Force Airfields Designated for Weather Alternate Use by Scheduled Air Carriers

ALTUS AFB OK
ANDERSEN AFB GUAM
CANNON AFB NM
DOBBINS AFB GA
DYESS AFB TX
EARECKSON AFS AK *
EGLIN AFB FL
EIELSON AFB AK
ELLSWORTH AFB SD
ELMENDORF AFB AK
FAIRCHILD AFB WA
GRAND FORKS AFB ND
HILL AFB UT
HOWARD AFB PA
KADENA AB OKINAWA
KELLY AFB TX
KUNSAN AB KOREA
LANGLEY AFB VA
LAUGHLIN AFB TX
MALMSTROM AFB MT
McCHORD AFB WA
McCONNELL AFB KS
MINOT AFB ND
MT HOME AFB ID
NELLIS AFB NV
OFFUTT AFB NE
OSAN AB KOREA
PLANT 42, PALMDALE CA
TRAVIS AFB CA
TYNDALL AFB FL
YOKOTA AB JAPAN

Attachment 3 to Part 855—Landing Permit Application Instructions

A3.1. DD Form 2400, Civil Aircraft Certificate of Insurance: The insurance company or its authorized agent must complete and sign the DD Form 2400. Corrections to the form made using a different typewriter, pen, or whiteout must be initialed by the signatory. THE FORM CANNOT BE COMPLETED BY THE AIRCRAFT OWNER OR OPERATOR. Upon expiration, the DD Form 2400 must be resubmitted along with DD Form 2401 for continued use of Air Force airfields. The DD Form 2400 may be submitted to the decision authority by either the user or insurer. (Approved by the Office of Management and Budget under control number 0701–0050).

A3.1.1. Block 1, Date Issued. The date the DD Form 2400 is completed by the signatory.

A3.1.2. Block 2a and 2b, Insurer Name, Address. The name and address of the insurance company.

* Formerly Shemya AFB.

A3.1.3. Block 3a and 3b. Insured Name, Address. The name and address of the aircraft owner and or operator. (The name of the user must be the same on all the forms.)

A3.1.4. Block 4a, Policy Number(s). The policy number must be provided. Binder numbers or other assigned numbers will not be accepted in lieu of the policy number.

A3.1.5. Block 4b, Effective Date. The first day of current insurance coverage.

A3.1.6. Block 4c, Expiration Date. The last day of current insurance coverage. The DD Form 2400 is valid until one day before the insurance expiration date. A DD Form 2400 with the statement ''until canceled,'' in lieu of a specific expiration date, is valid for two years from the issue date.

A3.1.7. Block 5, Aircraft Liability Coverage. The amount of split limit coverage. All boxes in block 5 must be completed to specify the coverage for: each person (top line, left to right) outside the aircraft (bodily injury) and each passenger; and the total coverage per accident (second line, left to right) for: persons outside the aircraft (bodily injury), property damage, and passengers. IF BLOCK 5 IS USED, BLOCK 6 SHOULD NOT BE USED. All coverages must be stated in US dollars. ALL SEATS THAT CAN BE USED FOR PASSENGERS MUST BE INSURED. See Table 2 for required minimum coverage.

A3.1.8. Block 6, Single Limit. The maximum amount of coverage per accident. IF BLOCK 6 IS USED, BLOCK 5 SHOULD NOT BE USED. The minimum coverage required for a combined single limit is determined by adding the minimums specified in the ''each accident'' line of Table 2. All coverages must be stated in US dollars. ALL SEATS THAT CAN BE USED FOR PASSENGERS MUST BE INSURED.

A3.1.9. Block 7, Excess Liability. The amount of coverage which exceeds primary coverage. All coverages must be stated in US dollars.

A3.1.10. Block 8, Provisions of Amendments or Endorsements of Listed Policy(ies). Any modification of this block by the insurer or insured invalidates the DD Form 2400.

A3.1.11. Block 9a, Typed Name of Insurer's Authorized Representative. Individual must be an employee of the insurance company, an agent of the insurance company, or an employee of an insurance broker.

A3.1.12. Block 9b, Signature. The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

A3.1.13. Block 9c, Title. Self-explanatory.

A3.1.14. Block 9d, Telephone Number. Self-explanatory.

A3.1.15. THE REVERSE OF THE FORM MAY BE USED IF ADDITIONAL SPACE IS REQUIRED.

A3.2. DD Form 2401, Civil Aircraft Landing Permit. A separate DD Form 2401 must be submitted for each purpose of use (Table 1). (Approved by the Office of Management and Budget under control number 0701–0050).

A3.2.1. Block 1a. The name of the owner or operator. (The name of the user must be the same on all the forms.)

A3.2.2. Block 1b. This block should only be completed if the applicant is a subsidiary, division, etc, of another company.

A3.2.3. Block 1c. Business or home address, whichever is applicable, of applicant.

A3.2.4. Block 2. List the airfields where the aircraft will be operating. The statement ''Any US Air Force Installation Worldwide'' is acceptable for users performing AMC and White House Press Corps charters. ''All Air Force airfields in the CONUS'' is acceptable, if warranted by official Government business, for all users.

A3.2.5. Block 3. Self-explanatory. (Users will not necessarily be denied landing rights if pilots are not instrument rated and current.)

A3.2.6. Block 4. Provide a brief explanation of purpose for use. The purposes normally associated with use of Air Force airfields are listed in Table 1. If use for other purposes is requested, it may be approved if warranted by unique circumstances. (The verification specified for each purpose of use must be included with the application.)

A3.2.7. Block 5. EXCEPT AS NOTED FOR BLOCK 5C, ALL ITEMS MUST BE COMPLETED.

A3.2.8. Block 5a and Block 5b. Self-explanatory.

A3.2.9. Block 5c. If the DD Form 2400, Certificate of Insurance, indicates coverage for ''any aircraft of the listed model owned and or operated,'' the same statement can be used in block 5c in lieu of specific registration numbers.

A3.2.10. Block 5d. The capacity provided must reflect only the number of crew required to operate the aircraft. The remaining seats are considered passenger seats.

A3.2.11. Block 5e. Self-explanatory.

A3.2.12. Block 5d. A two-way radio is required. Landing rights will not necessarily be denied for lack of strobe lights, a transponder, or IFR capabilities.

A3.2.13. Block 6a. Self-explanatory.

A3.2.14. Block 6b. If the applicant is an individual, this block should not be completed.

A3.2.15. Block 6c. This block should contain a daytime telephone number.

A3.2.16. Block 6d. The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

A3.2.17. Block 6e. Self-explanatory.

A3.2.18. THE REVERSE OF THE FORM MAY BE USED IF ADDITIONAL SPACE IS REQUIRED.

BLOCKS 7A THROUGH 14C ARE NOT COMPLETED BY THE APPLICANT.

A3.2.19. Blocks 7a and 7b. The expiration date of a permit is determined by the insurance expiration date or the purpose of use. For example, the dates of an air show will determine the expiration date of a permit approved for participation in the air show. If the insurance expiration is used to determine the permit expiration date, the landing permit will expire one day before the insurance expiration date shown on the DD Form 2400, or 2 years from the date the permit is issued when the insurance expiration date either exceeds 2 years or is indefinite (for example, ''until canceled'').

A3.2.20. APPROVED PERMITS CANNOT BE CHANGED WITHOUT THE CONSENT OF THE APPROVING AUTHORITY.

A3.2.21. DD FORMS 2400 AND 2401 MUST BE RESUBMITTED TO RENEW A LANDING PERMIT. (Corporations must resubmit the DD Form 2402 every five years.)

A3.3. DD Form 2402, Civil Aircraft Hold Harmless Agreement. A form submitted and accepted by an approving authority for an individual remains valid and need not be resubmitted to the same approving authority, unless canceled for cause. Forms submitted by companies, organizations, associations, etc, must be resubmitted at least every five years. (Approved by the Office of Management and Budget under control number 0701–0050).

A3.3.1. Block 2a(1). This block should contain the user's name if the applicant is a company. If the hold harmless agreement is intended to cover other entities of a parent company, their names must also be included in this block.

A3.3.2. Block 2a(2). This block should contain the user's address if the applicant is a company.

A3.3.3. Block 2b(1). This block should contain the name of the individual applying for a landing permit or the name of a corporate officer that is authorized to legally bind the corporation from litigation against the Air Force.

A3.3.4. Block 2b(2). This block should contain the address of the individual applying for a landing permit. A company address is only required if it is different from the address in block 2a(2).

A3.3.5. Block 2b(3). The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

A3.3.6. Block 2b(4). This block should only be completed when the applicant is a company, organization, association, etc.

A3.3.7. Block 3a(1). If the applicant is a company, organization, association, etc, the form must be completed and signed by the corporate secretary or a second corporate officer (other than the officer executing DD Form 2402) to certify the signature of the first officer. As necessary, the US Air Force also may require that the form be authenticated by an appropriately designated third official.

A3.3.8. Block 3a(2). The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

A3.3.9. Block 3a(3). Self-explanatory.

A3.3.10. Block 4. Self-explanatory.

Attachment 4 to Part 855—Sample Joint-Use Agreement

Joint-Use Agreement Between an Airport Sponsor and the United States Air Force

This Joint Use Agreement is made and entered into this _____ day of _____ 19____, by and between the Secretary of the Air Force, for and on behalf of the United States of America (''Air Force'') and an airport sponsor (''Sponsor'') a public body eligible to sponsor a public airport.

WHEREAS, the Air Force owns and operates the runways and associated flight facilities (collectively ''flying facilities'') located at Warbucks Air Force Base, USA (''WAFB''); and

WHEREAS, Sponsor desires to use the flying facilities at WAFB to permit operations by general aviation aircraft and commercial air carriers (scheduled and nonscheduled) jointly with military aircraft; and

WHEREAS, the Air Force considers that this Agreement will be in the public interest, and is agreeable to joint use of the flying facilities at WAFB; and

WHEREAS, this Agreement neither addresses nor commits any Air Force real property or other facilities that may be required for exclusive use by Sponsor to support either present or future civil aviation operations and activities in connection with joint use; and

WHEREAS, the real property and other facilities needed to support civil aviation operations are either already available to or will be diligently pursued by Sponsor;

NOW, THEREFORE, it is agreed:

1. Joint Use

a. The Air Force hereby authorizes Sponsor to permit aircraft equipped with two-way radios capable of communicating with the WAFB Control Tower to use the flying facilities at WAFB, subject to the terms and conditions set forth in this Agreement and those Federal Aviation Regulations (FAR) applicable to civil aircraft operations. Civil aircraft operations are limited to 20,000 per calendar year. An operation is a landing or a takeoff. Civil aircraft using the flying facilities of WAFB on official Government business as provided in Air Force Instruction (AFI) 10–1001, Civil Aircraft Landing Permits, are not subject to this Agreement.

b. Aircraft using the flying facilities of WAFB under the authority granted to Sponsor by this Agreement shall be entitled to use those for landings, takeoffs, and movement of aircraft and will normally park only in the area made available to Sponsor and designated by them for that purpose.

c. Government aircraft taking off and landing at WAFB will have priority over all civil aircraft at all times.

d. All ground and air movements of civil aircraft using the flying facilities of WAFB under this Agreement, and movements of all other vehicles across Air Force taxiways, will be controlled by the WAFB Control Tower. Civil aircraft activity will coincide with the WAFB Control Tower hours of operation. Any additional hours of the WAFB Control Tower or other essential airfield management, or operational requirements beyond those needed by the Air Force, shall be arranged and funded (or reimbursed) by Sponsor. These charges, if any, shall be in addition to the annual charge in paragraph 2 and payable not less frequently than quarterly.

e. No civil aircraft may use the flying facilities for training.

f. Air Force-owned airfield pavements made available for use under this Agreement shall be for use on an ''as is, where is'' basis. The Air Force will be responsible for snow removal only as required for Government mission accomplishment.

g. Dust or any other erosion or nuisance that is created by, or arises out of, activities or operations by civil aircraft authorized use of the flying facilities under this Agreement will be corrected by Sponsor at no expense to the Air Force, using standard engineering methods and procedures.

h. All phases of planning and construction of new runways and primary taxiways on Sponsor property must be coordinated with the WAFB Base Civil Engineer. Those intended to be jointly used by Air Force aircraft will be designed to support the type of military aircraft assigned to or commonly transient through WAFB.

i. Coordination with the WAFB Base Civil Engineer is required for planning and construction of new structures or exterior alteration of existing structures that are owned or leased by Sponsor.

j. Sponsor shall comply with the procedural and substantive requirements established by the Air Force, and Federal, State, interstate, and local laws, for the flying facilities of WAFB and any runway and flight facilities on Sponsor property with respect to the control of air and water pollution; noise; hazardous and solid waste management and disposal; and hazardous materials management.

k. Sponsor shall implement civil aircraft noise mitigation plans and controls at no expense to and as directed by the Air Force, pursuant to the requirements of the WAFB Air Installation Compatible Use Zone (AICUZ) study; the FAA Part 150 study; and environmental impact statements and environmental assessments, including supplements, applicable to aircraft operations at WAFB.

l. Sponsor shall comply, at no expense to the Air Force, with all applicable FAA security measures and procedures as described in the Airport Security Program for WAFB.

m. Sponsor shall not post any notices or erect any billboards or signs, nor authorize the posting of any notices or the erection of any billboards or signs at the airfield of any nature whatsoever, other than identification signs attached to buildings, without prior written approval from the WAFB Base Civil Engineer.

n. Sponsor shall neither transfer nor assign this Agreement without the prior written consent of the Air Force.

2. Payment

a. For the purpose of reimbursing the Air Force for Sponsor's share of the cost of maintaining and operating the flying facilities of WAFB as provided in this Agreement, Sponsor shall pay, with respect to civil aircraft authorized to use those facilities under this Agreement, the sum of (specify sum) annually. Payment shall be made quarterly, in equal installments.

b. All payments due pursuant to this Agreement shall be payable to the order of the Treasurer of the United States of America, and shall be made to the Accounting and Finance Officer, WAFB, within thirty (30) days after each quarter. Quarters are deemed to end on December 31, March 31, June 30, and September 30. Payment shall be made promptly when due, without any deduction or setoff. Interest at the rate prescribed by the Secretary of the Treasury of the United States shall be due and payable on any payment required to be made under this Agreement that is not paid within ten (10) days after the date on which such payment is due and end on the day payment is received by the Air Force.

3. Services

Sponsor shall be responsible for providing services, maintenance, and emergency repairs for civil aircraft authorized to use the flying facilities of WAFB under this Agreement at no cost to the Air Force. If Air Force assistance is required to repair an aircraft, Sponsor shall reimburse the Air Force for all expenses of such services. Any required reimbursement shall be paid not less frequently than quarterly. These charges are in addition to the annual charge specified in paragraph 2.

4. Fire Protection and Crash Rescue

a. The Air Force maintains the level of fire fighting, crash, and rescue capability required to support the military mission at WAFB. The Air Force agrees to respond to fire, crash, and rescue emergencies involving civil aircraft outside the hangars or other structures within the limits of its existing capabilities, equipment, and available personnel, only at the request of Sponsor, and subject to subparagraphs b, c, and d below. Air Force fire fighting, crash, and rescue equipment and personnel shall not be routinely located in the airfield movement area during nonemergency landings by civil aircraft.

b. Sponsor shall be responsible for installing, operating, and maintaining, at no cost to the Air Force, the equipment and safety devices required for all aspects of handling and support for aircraft on the ground as specified in the FARs and National Fire Protection Association procedures and standards.

c. Sponsor agrees to release, acquit, and forever discharge the Air Force, its officers, agents, and employees from all liability arising out of or connected with the use of or failure to supply in individual cases, Air Force fire fighting and or crash and rescue equipment or personnel for fire control and crash and rescue activities pursuant to this Agreement. Sponsor further agrees to indemnify, defend, and hold harmless the Air Force, its officers, agents, and employees against any and all claims, of whatever description, arising out of or connected with such use of, or failure to supply Air Force fire fighting and or crash and rescue equipment or personnel.

d. Sponsor will reimburse the Air Force for expenses incurred by the Air Force for fire fighting and or crash and rescue materials expended in connection with providing such service to civil aircraft. The Air Force may, at its option, with concurrence of the National Transportation Safety Board, remove crashed civil aircraft from Air Force-owned pavements or property and shall follow existing Air Force directives and or instructions in recovering the cost of such removal.

e. Failure to comply with the above conditions upon reasonable notice to cure or termination of this Agreement under the

provisions of paragraph 7 may result in termination of fire protection and crash and rescue response by the Air Force.

f. The Air Force commitment to assist Sponsor with fire protection shall continue only so long as a fire fighting and crash and rescue organization is authorized for military operations at WAFB. The Air Force shall have no obligation to maintain or provide a fire fighting, and crash and rescue organization or fire fighting and crash and rescue equipment; or to provide any increase in fire fighting and crash and rescue equipment or personnel; or to conduct training or inspections for purposes of assisting Sponsor with fire protection.

5. Liability and Insurance

a. Sponsor will assume all risk of loss and or damage to property or injury to or death of persons by reason of civil aviation use of the flying facilities of WAFB under this Agreement, including, but not limited to, risks connected with the provision of services or goods by the Air Force to Sponsor or to any user under this Agreement. Sponsor further agrees to indemnify and hold harmless the Air Force against, and to defend at Sponsor expense, all claims for loss, damage, injury, or death sustained by any individual or corporation or other entity and arising out of the use of the flying facilities of WAFB and or the provision of services or goods by the Air Force to Sponsor or to any user, whether the claims be based in whole, or in part, on the negligence or fault of the Air Force or its contractors or any of their officers, agents, and employees, or based on any concept of strict or absolute liability, or otherwise.

b. Sponsor will carry a policy of liability and indemnity insurance satisfactory to the Air Force, naming the United States of America as an additional insured party, to protect the Government against any of the aforesaid losses and or liability, in the sum of not less than (specify sum) bodily injury and property damage combined for any one accident. Sponsor shall provide the Air Force with a certificate of insurance evidencing such coverage. A new certificate must be provided on the occasion of policy renewal or change in coverage. All policies shall provide that: (1) No cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt of notice of such cancellation, reduction, or change by the installation commander at WAFB, (2) any losses shall be payable notwithstanding any act or failure to act or negligence of Sponsor or the Air Force or any other person, and (3) the insurer shall have no right of subrogation against the United States.

6. Term of Agreement

This Agreement shall become effective immediately and shall remain in force and effect for a term of 25 years, unless otherwise renegotiated or terminated under the provisions of paragraph 7, but in no event shall the Agreement survive the termination or expiration of Sponsor's right to use, by license, lease, or transfer of ownership, of the land areas used in connection with joint use of the flying facilities of WAFB.

7. Renegotiation and Termination

a. If significant change in circumstances or conditions relevant to this Agreement should occur, the Air Force and Sponsor may enter into negotiations to revise the provisions of this Agreement, including financial and insurance provisions, upon sixty (60) days written notice to the other party. Any such revision or modification of this Agreement shall require the written mutual agreement and signatures of both parties. Unless such agreement is reached, the existing agreement shall continue in full force and effect, subject to termination or suspension under this section.

b. Notwithstanding any other provision of this Agreement, the Air Force may terminate this Agreement: (1) At any time by the Secretary of the Air Force, giving ninety (90) days written notice to Sponsor, provided that the Secretary of the Air Force determines, in writing, that paramount military necessity requires that joint use be terminated, or (2) at any time during any national emergency, present or future, declared by the President or the Congress of the United States, or (3) in the event that Sponsor ceases operation of the civil activities at WAFB for a period of one (1) year, or (4) in the event Sponsor violates any of the terms and conditions of this Agreement and continues and persists therein for thirty (30) days after written notification to cure such violation. In addition to the above rights, the Air Force may at any time suspend this agreement if violations of its terms and conditions by Sponsor create a significant danger to safety, public health, or the environment at WAFB.

c. The failure of either the Air Force or Sponsor to insist, in any one or more instances, upon the strict performance of any of the terms, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of the right to the future performance of any such terms, conditions, or provisions. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by such party.

8. Notices

a. No notice, order, direction, determination, requirement, consent, or approval under this Agreement shall be of any effect unless it is in writing and addressed as provided herein.

b. Written communication to Sponsor shall be delivered or mailed to Sponsor addressed: The Sponsor, 9000 Airport Blvd, USA.

c. Written communication to the Air Force shall be delivered or mailed to the Air Force addressed: Commander, WAFB, USA.

9. Other Agreements not Affected

This Agreement does not affect the WAFB-Sponsor Fire Mutual Aid Agreement.

IN WITNESS WHEREOF, the respective duly authorized representatives of the parties hereto have executed this Agreement on the date set forth below opposite their respective signatures.

UNITED STATES AIR FORCE
Date: _____
By: _____
Deputy Assistant Secretary of the Air Force (Installations)
Date: _____
By: _____
Sponsor Representative

Attachment 5 to Part 855—Sample Temporary Agreement

Letter of Agreement for Temporary Civil Aircraft Operations at Warbucks AFB, USA

This letter of agreement establishes policies, responsibilities, and procedures for commercial air carrier operations at Warbucks AFB, USA, (WAFB) for the period (date) through (date) Military requirements will take precedence over civil aircraft operations. Should a conflict arise between air carrier and Air Force operational procedures, Air Force procedures will apply.

Authorized Users

The following air carriers are authorized use, provided they have a civil aircraft landing permit approved at HQ USAF/XOOBC for such use:

Flyaway Airlines
Recreation Airlines
Economy Airlines
PacAir Transport

Schedules

The Bunker International Airport (BIA) manager or air carrier station managers will ensure that the WAFB Airfield Manager is provided current airline schedules during the approved period of use. Every effort will be made to avoid disruption of the air carriers' schedules; however, it is understood that the installation commander will suspend or change flight plans when required to preclude interference with military activities or operations.

Passenger and Luggage Handling

The BIA terminal will be used for passenger loading and unloading. Security checks will be performed at the terminal before loading passengers on buses. Luggage on arriving aircraft will be directly offloaded onto vehicles and delivered to the BIA terminal. Each arriving and departing bus or vehicle caravan will be accompanied by a credentialed representative of the airline or BIA to ensure its integrity enroute. Buses or vehicles transporting passengers to board an aircraft will not depart WAFB until the passengers are airborne. Unless an emergency exists, arriving passengers will not deplane until the buses are available for transportation to the BIA terminal. All checked luggage will be picked up at BIA and delivered directly to the departing aircraft. Buses will proceed directly to the aircraft at WAFB alert ramp. Luggage on arriving aircraft will be directly offloaded onto a vehicle parked on the WAFB alert ramp. WAFB will be notified, in advance, if a local funeral home requires access for pickup or delivery of deceased persons.

Aircraft Handling and Ground Support Equipment

Air Force-owned fuel will not be provided. The air carriers will provide their own ground support equipment. Refueling equipment from BIA will be prepositioned at WAFB on the alert ramp. The Air Force shall not be responsible for any damage or loss to such equipment, and BIA expressly assumes all risks of any such loss or damage and

agrees to indemnify and hold the United States harmless against any such damage or loss. No routine aircraft maintenance will be accomplished at WAFB. Emergency repairs and or maintenance are only authorized to avoid extended parking and storage of civil aircraft at WAFB.

Customs and Security

The installation commander will exercise administrative and security control over both the aircraft and passengers on WAFB. Customs officials will be transported to and from the base by air carrier representatives. The installation commander will cooperate with customer, health, and other public officials to expedite arrival and departure of the aircraft. Air carrier representatives will notify the WAFB Airfield Manager, in advance, of armed security or law enforcement officers arriving or departing on a flight. BIA officials and air carrier representatives must provide the WAFB Airfield Manager a list of employees, contractors, and vehicles requiring flightline access. Temporary passes will be issued to authorized individuals and vehicles.

Fire, Crash, and Rescue Services

BIA will provide technical information and training for WAFB Fire Department personnel prior to (date) . Fire, Crash, and Rescue Services will be provided in an emergency, but fire trucks will not routinely park on the flightline for aircraft arrivals and departures. BIA will reimburse WAFB for all such services.

Liability and Indemnification

The Air Force shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use of WAFB by BIA under this Agreement, or for damages to the property of BIA or injuries to the person of BIA's officers, agents, servants, employees, or invitees. BIA agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident to the use of WAFB under this Agreement and expressly waives any and all claims against the United States for any such loss, damage, personal injury, or death caused by or occurring as a consequence of such use. BIA further agrees to indemnify, save, and hold the United States, its officers, agents, and employees harmless from and against all claims, demands, or actions, liabilities, judgments, costs, and attorneys fees, arising out of, claimed on account of, or in any manner predicated upon personal injury, death or property damage resulting from, related to, caused by, or arising out of the use of WAFB under this Agreement.

Fees

Landing and parking fees will be charged in accordance with to AFI 10–1001, Civil Aircraft Landing Permits. Charges will be made in accordance with the appropriate Air Force Instructions for any services or supplies required from WAFB. The WAFB Airfield Manager will be responsible for consolidating all charges which will be billed to BIA not later than (date) by the Accounting and Finance Office.

IN WITNESS WHEREOF, the respective duly authorized representatives of the parties hereto have executed this Agreement on the date set forth below opposite their respective signatures.

BIA Representative (Name and Title)
DATE

WAFB Representative (Name and Title)
DATE

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–17834 Filed 7–19–95; 8:45 am]
BILLING CODE 3910–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–94–117]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Albemarle and Chesapeake Railroad Company, the Coast Guard is changing the regulations that govern the operation of the drawbridge across the Albemarle and Chesapeake Canal, Atlantic Intracoastal Waterway, mile 13.9, at Chesapeake, Virginia, by leaving the draw in the open position except for the passage of trains. This change to these regulations is, to the extent practical and feasible, intended to relieve the bridgeowners of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information.

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and CDR C.A. Abel, Project Counsel, Fifth Coast Guard District Legal Office.

Regulatory History

On March 13, 1995, the Coast Guard published a Notice of Proposed Rulemaking entitled Atlantic Intracoastal Waterway, Chesapeake, Virginia, in the **Federal Register** (60 FR 13395). The comment period ended May 12, 1995. The Coast Guard did not receive any comments on the Notice of Proposed Rulemaking. On April 5, 1995, the Coast Guard issued Public Notice 5–850 requesting comments on the Notice of Proposed Rulemaking. The comment period ended May 12, 1995. No comments were received. A public hearing was not requested and one was not held.

Background and Purpose

The Albemarle and Chesapeake Railroad Company has requested that the regulations for the drawbridge across the Albemarle and Chesapeake Canal, Atlantic Intracoastal Waterway, mile 13.9, in Chesapeake, Virginia, be changed to leave the bridge in the open position, except when a train is passing over it and for maintenance. Since the bridge would be left in the open position, a bridge tender would only be available to close the bridge for a train crossing, and, after the train cleared, to reopen the bridge to navigation.

Currently, the bridge opens on demand. This final rule will require the bridge to remain in the open position except for the passage of trains and during maintenance. A bridgetender will be available to reopen the bridge after trains have cleared the bridge and after completion of any maintenance work.

In developing this schedule, the Coast Guard considered all views, and believes this final rule will not unduly restrict commercial and recreational traffic, since the bridge will be left in the open position, except for the passage of trains.

Regulatory Evaluation

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this final rule

will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632); Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule 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 rule under the principals and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e(32)(2) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g) section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.997, paragraph (g) is redesignated as (h) and a new paragraph (g) is added to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(g) The draw of the Albemarle & Chesapeake Railroad bridge, mile 13.9, in Chesapeake, Virginia, shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed, a bridgetender shall be present to reopen the draw after the train has cleared the bridge.

* * * * *

Dated: June 15, 1995.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 95–17872 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD05–94–103]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting as final the interim rule published in the **Federal Register** on December 30, 1994, changing the regulations governing the drawbridge across the Southern Branch of the Elizabeth River, Atlantic Intracoastal Waterway, mile 5.8, at Chesapeake, Virginia, by limiting bridge openings during the morning and evening rush hours. This rule will allow commercial cargo vessels, tugs, and tugs with tows passage through the bridge during morning and evening rush hours, provided a 2-hour advance notice is given to the Gilmerton Bridge. This rule also includes a provision that allows public vessels of the United States, vessels in distress, commercial vessels carrying liquefied flammable gas or other harmful substances, and commercial or public vessels assisting in an emergency situation passage through the bridge at any time. All other commercial and recreational vessel traffic will be denied draw openings during the morning and evening rush hours. This new rule is intended to provide regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge while providing for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and CDR Christopher A. Abel, Project Counsel, Fifth Coast Guard District Legal Office.

Regulatory History

On December 30, 1994, the Coast Guard published an interim final rule with request for comments entitled Atlantic Intracoastal Waterway, Chesapeake, Virginia, in the **Federal Register** (59 FR 67630). The comment period ended March 30, 1995. The Coast Guard received no comments on the interim final rule. The Commander, Fifth Coast Guard District, also published the interim rule as a public notice on January 13, 1995, with the comment period ending March 30, 1995, and no comments were received as a result of this notice. A public hearing was not requested and one was not held.

Background and Purpose

The City of Chesapeake, Virginia, requested that the regulations for the operation of the drawbridge across the Southern Branch of the Elizabeth River, Atlantic Intracoastal Waterway, mile 5.8, at Chesapeake, Virginia, be changed by limiting bridge openings during the morning and evening rush hours, from 6:30 a.m. to 8 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays, year-round. This will help reduce highway traffic congestion problems, and respond to public safety and welfare concerns associated with frequent bridge openings caused by recreational boat traffic. This also will help reduce the wear and tear that is already apparent on the bridge's mechanical machinery. Prior to the publication of the interim rule in the **Federal Register**, the drawbridge operated by opening on demand.

In addition to restricting bridge openings during the morning and evening rush hours, commercial cargo vessels, tugs and tugs with tows will be allowed passage through the bridge during the hours of restriction provided a 2-hour advance notice is given to the Gilmerton Bridge. Public vessels of the United States, vessels in distress, commercial vessels carrying liquefied flammable gas or other harmful substances, and commercial or public vessels assisting in an emergency situation will be able to pass through the bridge at any time.

Further explanation of the interests considered was provided in the

preamble to the Interim Final Rule. The Coast Guard has not received any complaints from the boating community on the new operating schedule of the Gilmerton drawbridge.

Regulatory Evaluation

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. 'Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities.

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist have been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Accordingly, the interim rule amending 33 CFR part 117 which was published at 59 FR 67630 on December 30, 1994, is adopted as a final rule without change.

Dated: June 15, 1995.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 95–17873 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI42–03–7123; FRL–5260–7]

Determination of Attainment of Ozone Standard by Grand Rapids and Muskegon, Michigan; Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On June 2, 1995 the USEPA published a direct final and proposed rulemaking determining that the Grand Rapids (Kent and Ottawa Counties) and Muskegon (Muskegon County), Michigan moderate ozone nonattainment areas were attaining the ozone National Ambient Air Quality Standard (NAAQS). Based on this determination, the USEPA also determined that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of part D of Title 1 of the Clean Air Act (Act) are not applicable to the areas so long as the areas continue to attain the ozone NAAQS. The 30-day comment period concluded on July 3, 1995. During this comment period, the USEPA received two comment letters in response to the June 2, 1995 rulemaking. This final rule summarizes all comments and USEPA's responses, and finalizes the USEPA's determination that these areas have attained the ozone standard and that certain reasonable further progress and attainment demonstration requirements as well as other related requirements of part D of the Act are not applicable to these areas as long as these areas continue to attain the ozone NAAQS.

EFFECTIVE DATE: This action will be effective July 20, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for inspection at the following address: (It is recommended that you telephone Jacqueline Nwia at (312) 886–6081 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Regulation Development Section (AT–18J), Air Toxics and Radiation Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6081.

SUPPLEMENTARY INFORMATION:

I. Background Information

On June 2, 1995, the USEPA published a direct final rulemaking (60 FR 28729) determining that the Grand Rapids and Muskegon moderate ozone nonattainment areas have attained the NAAQS for ozone. In that rulemaking, the USEPA determined that the Grand Rapids and Muskegon ozone nonattainment areas have attained the ozone standard and that the requirements of section 182(b)(1) concerning the submission of a 15 percent reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to these areas so long as the areas do not violate the ozone standard. In addition, the USEPA determined that the sanctions clocks started on January 21, 1994, for these areas for failure to submit the section 182(b)(1) reasonable further progress requirements and section 172(c)(9) contingency measures would

be stopped since the deficiencies on which they are based no longer exist.

At the same time that the USEPA published the direct final rule, a separate notice of proposed rulemaking was published in the **Federal Register** (60 FR 28773). This proposed rulemaking specified that USEPA would withdraw the direct final rule if adverse or critical comments were filed on the rulemaking. The USEPA received two letters containing adverse comments regarding the direct final rule within 30 days of publication of the proposed rule and withdrew the direct final rule on July 19, 1995.

The specific rationale and air quality analysis the USEPA used to determine that the Grand Rapids and Muskegon ozone nonattainment areas have attained the ozone NAAQS and are not required to submit SIP revisions for reasonable further progress, attainment demonstration and related requires are explained in the direct final rule and will not be restated here.

This final rule contained in this **Federal Register** addresses the comments which were received during the public comment period and announces USEPA's final action regarding these determinations.

II. Public Comments and USEPA Responses

Two letters were received in response to the June 2, 1995 direct final rulemaking. One was a joint letter from the Citizens Commission for Clean Air in the Lake Michigan Basin (Citizens Commission) and the American Lung Association of Michigan (American Lung) and the other from the New York State Department of Environmental Conservation (NYSDEC). The following discussion summarizes and responds to the comments received.

Citizens Commission and American Lung Comment

The commentor states that the rulemaking is an abuse of Agency discretion and violates sections 172(c)(9), 175A(c) and 182(b)(1) of the Act. The commentor believes that USEPA's action disregards Congress' stated purposes of Title I, section 101(b)(1), that it ''protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.''

USEPA Response

The USEPA does not believe that the rulemaking violates any section of the Clean Air Act. The USEPA believes that since the areas have attained the ozone standard, they have achieved the stated purpose of the section 182(b)(1) reasonable further progress and attainment demonstration requirements as well as the section 172(c)(9) contingency measure requirement. The rationale for that interpretation is explained in the May 10, 1995 memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, and in the notice regarding Muskegon and Grand Rapids published on June 2, 1995 (60 FR 28729). The commentors have not offered any persuasive reasoning for USEPA to depart from the rationale spelled out in those documents.

The USEPA also does not agree with the commentors contention that this action violates section 175A(c) which provides that the requirements of part D remain in force and effect for an area until such time as it is redesignated. Section 175A(c) does not establish any additional substantive requirements; rather, it ensures that the requirements that do apply by virtue of other Act provisions continue to apply until an area is redesignated. If, however, an Act provision does not apply to an area or does not require that the particular area in question submit a SIP revision, section 175A(c) does not somehow add to the requirements with which the area must comply. In this instance, USEPA is interpreting the underlying substantive requirements at issue so as not to apply to areas for so long as they continue to attain the standard. This does not violate section 175A(c); it is an interpretation of the substance of other provisions of the Act, a matter that is not affected by section 175A(c). Other requirements that do not depend on whether the area has attained the standard, such as VOC RACT requirements, continue to apply, however, and section 175A(c) ensures that they continue to apply until the area is redesignated.

Furthermore, the USEPA disagrees with the commentors' contention that its action disregards the stated purpose of Title I, section 101(b)(1). The areas have attained the primary ozone standard, a standard designed to protect public health with an adequate margin of safety (see Act section 109(b)(1)). USEPA's action does not relax any of the requirements that have led to the attainment of the standard. Rather, its action has the effect of suspending additional requirements, above and beyond those that have resulted in attainment of the health-based standard.

Citizens Commission and American Lung Comment

The commentor states that suspending reasonable further progress, attainment demonstration, and other Part D SIP requirements based on air quality data is particularly inappropriate when air quality data is distorted by unusually favorable meteorology. These areas benefited from unusually favorable meteorology during the 1992–1994 period. The commentor cites National Weather Service data which indicates that the 30 year average for days with maximum temperatures equal to or greater than 90° Fahrenheit is 10 per year. The commentor also presents the data that shows that between 1992 and 1994, the area benefited from unusually mild summer temperatures with number of days equal to or greater than 90° of 2, 7, and 5. The commentor further notes that the September 4, 1992 memorandum from John Calcagni, entitled *Procedures for Processing Requests to Redesignate Areas to Attainment* considers unusually favorable meteorology and suggests that it would not qualify as an air quality improvement due to permanent and enforceable emission reductions.

USEPA Response

The test of unusual meteorology may be applied in the context of a redesignation to demonstrate satisfaction of the section 107(d)(3)(E)(iii) requirement to demonstrate that the improvement in air quality is a result of permanent and enforceable emission reductions rather than unusually favorable meteorology. The June 2, 1995 rulemaking is not a redesignation and therefore, the test of improvement in air quality resulting from permanent and enforceable emission reductions rather than unusually favorable meteorology is not required in this rulemaking. Michigan has submitted a redesignation request to the USEPA which is currently undergoing USEPA's review and rulemaking process. USEPA notes, however, that permanent and enforceable emission reductions have in fact occurred in the Muskegon and Grand Rapids areas subsequent to their designation as nonattainment areas due to the imposition of control measures such as VOC RACT rules, fleet turnover to vehicles meeting more stringent federal motor vehicle standards and Federal low Reid vapor pressure gasoline regulations. Furthermore, other requirements of part D of Title I (such as VOC RACT requirements) must continue to apply at least until an area is redesignated to attainment, which cannot occur unless USEPA determines that the improvement in air quality is due to permanent and enforceable reductions. In any event, as the

determination made by USEPA that the reasonable further progress and related requirements do not apply is linked with the areas' continued attainment of the standard, the areas would need to adopt additional control measures in the event a violation occurred.

Citizens Commission and American Lung Comment

The commentor notes that the action is not based on statutory authority or case law but rationale presented in a May 10, 1995 memorandum from John Seitz, Director, of the Office of Air Quality Planning and Standards.

USEPA Response

As discussed in the May 10, 1995 memorandum from John Seitz entitled *Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard* and June 2, 1995 rulemaking action, the USEPA believes that it is reasonable to interpret the language of the pertinent statutory provisions so as not to require a submission of the section 182(b)(1) reasonable further progress plan and attainment demonstration and section 172(c)(9) contingency measures from an area that is attaining the standard for so long as the area continues to attain the standard because the purpose of reasonable further progress, as stated explicitly in section 171(1)of the Act is to ensure attainment by the applicable attainment date. Once an area has attained the standard, the stated purpose of the reasonable further progress requirement will have already been fulfilled. As explained in detail in those documents, this interpretation is based on the language of the pertinent statutory provisions. The commentor has not provided any rationale to persuade the USEPA that its interpretation is not reasonable.

Citizens Commission and American Lung Comment

The commentor states that suspension of reasonable further progress requirements based on a demonstration that the area is not momentarily violating the ozone standard does not ensure attainment of the standard in the future.

USEPA Response

This action is not intended to ensure maintenance of the ozone standard. In fact, suspension of these requirements is only valid so long as the area continues to attain the ozone standard. If the area violates the standard, the requirements of sections 182(b)(1) and 172(c)(9) would have to be addressed since the basis for the determination that they do not apply would no longer exist. Maintenance plans, a required element of a redesignation request, must ensure maintenance of the standard for a period of 10 years following an area's redesignation to attainment. See section 107(d)(3)(E)(iv)) and section 175A of the Act. Michigan has submitted a redesignation request to the USEPA which is currently undergoing USEPA's review and rulemaking process. USEPA also notes that this action does not relieve any existing control measures, which are the measures that have brought about attainment.

Citizens Commission and American Lung Comment

The commentor suggests that suspension of the attainment demonstration requirements relieves the USEPA from addressing available modeling that shows that urbanized areas in the Lake Michigan Basic area contribute to ozone formation and transport. In addition, the commentor contends that the nonattainment areas can use modeling results to avoid implementing control measures required by the Act when modeling in fact shows continued violations of the NAAQS. Specifically, the commentor notes that modeling being conducted by the Lake Michigan Air Directors Consortium (LADCO) shows that emissions originating in western Michigan are contributing to exceedances of the ozone standard elsewhere in the Lake Michigan Basin. Modeling submitted to the USEPA for June 20–21, 1991 (Episode 4), confirms that emissions from western Michigan contributed to exceedances of the ozone NAAQS. The commentor claims that western Michigan contributes to elevated ozone concentrations in Michigan City, Indiana which recently recorded three exceedances of the ozone standard within the last two years (June 16, 15 and 18, 1995). This commentor believes that this rule will likely necessitate USEPA to redesignate Michigan City, Indiana, an attainment area, to nonattainment.

USEPA Response

At the outset, USEPA notes that the issue of transported emissions is not relevant to this rulemaking action. The purpose of the requirements of section 182(b)(1) concerning reasonable further progress and attainment demonstrations and the contingency measure requirements of section 172(c)(9) as they apply to Grand Rapids and Muskegon is not to address emissions from those two areas that may cause or contribute to air quality problems in areas downwind of Grand Rapids and Muskegon. The purpose of those requirements as they apply to Grand Rapids and Muskegon is to achieve attainment of the standard in those two areas. The issue of transported emissions is dealt with by other provisions of the Act, provisions that are not the subject of this rulemaking action. USEPA has authority, and the state has an obligation, under section 110(a)(2)(A) (in the case of intrastate areas) and section 110(a)(2)(D) (in the case of interstate areas), to address transported emissions from upwind areas that significantly contribute to air quality problems in downwind areas. The determination being made in this rulemaking is that, as Grand Rapids and Muskegon have attained the ozone standard, certain additional Act requirements whose purpose is to achieve attainment in the area concerned do not apply to them for so long as they continue to attain the standard. That determination does not mean that those areas might not have to achieve additional reductions pursuant to other provisions of the Act if it is determined in the future that such reductions are necessary to deal with transport from the Muskegon and Grand Rapids areas to downwind areas.

The commentors' contention that nonattainment areas in the region can use modeling results to avoid implementation of control measures required by the Act when modeling shows continued violations of the ozone standard is unclear, and not relevant to this action.

The USEPA acknowledges that the Lake Michigan States of Michigan, Wisconsin, Illinois and Indiana are conducting urban airshed modeling (UAM) which is being coordinated by LADCO. The modeling will be used for purposes of demonstrating attainment throughout the Lake Michigan region. Preliminary modeling results indicate that the Grand Rapids and Muskegon areas are recipients of transported ozone and that the areas may contribute to ozone concentrations in downwind areas. The modeling, however, is not complete and is being further refined. The USEPA recognizes the importance of the modeling effort and subsequent results. The USEPA would like to note that the Lake Michigan States are participating in the Phase I/Phase II analysis as provided for within the March 2, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, entitled *Ozone Attainment Demonstrations.* Phase II of the analysis would assess the need for regional control strategies and refine the

local control strategies. Phase II would also provide the States and USEPA the opportunity to determine appropriate regional strategies to resolve transport issues including any impacts the Grand Rapids and Muskegon areas may have on ozone concentrations in their downwind areas. The USEPA has the authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the Act to ensure that the required and necessary reductions are achieved in the Grand Rapids and Muskegon areas should subsequent modeling become available, such as the modeling that will be available through completion of the Phase II analysis, or any other subsequent modeling data.

The possible impact of ozone and ozone precursor emissions originating from Grand Rapids and Muskegon on elevated ozone concentrations recently recorded in Michigan City, Indiana, is not relevant to this rulemaking. As discussed above, ozone transport will be addressed at the conclusion of the Phase II modeling efforts currently under way in the Lake Michigan area. For clarification, the 1995 ozone monitoring data cited by the commentor has not been quality assured and is subject to change. The USEPA is aware that preliminary data from the Michigan City, Indiana monitor shows exceedances of the ozone standard on June 15 and June 18, 1995. However, the USEPA is unaware of an ozone exceedance in Michigan City on June 16, 1995. USEPA does not expect this rulemaking to have an impact on the likelihood of Michigan City's being designated to nonattainment.

Citizens Commission and American Lung Comment

The commentor asserts that suspending adoption, submittal and approval of contingency measures under section 172(c)(9) presages a maintenance plan lacking similar contingency measures in the context of a redesignation.

USEPA Response

The rulemaking specifically suspends the contingency measure requirements of section 172(c)(9) which are intended to ensure reasonable further progress and attainment by an applicable attainment date (57 FR 13564; and September 4, 1992 Calcagni memorandum). The rulemaking, however, does not suspend or dismiss the contingency measures required by section 107(d)(3)(E)(iv) and 175A(d) whose purpose is to assure that future violations of the standard will be promptly corrected after an area has been redesignated to attainment. Michigan has submitted a redesignation request to the USEPA which is currently undergoing USEPA's review and rulemaking process. It should be noted that the request does contain a maintenance plan with contingency measures including an enhanced motor vehicle inspection and maintenance program, Stage II gasoline vapor recovery, and Reid Vapor Pressure reductions to 7.8 psi. That maintenance plan will have to satisfy the requirements of sections 107(d)(3)(E)(iv) and 175A(d) in order for it and the redesignation request to be approved.

Citizens Commission and American Lung Comment

The commentor notes that the irony of the rulemaking is emphasized by the ozone levels observed throughout the Lake Michigan basin in June 1995. The commentor cites ozone values at monitors in Muskegon, Holland and Ludington, Michigan.

USEPA Response

This action is premised on the determination that both the Grand Rapids and Muskegon areas have attained the ozone standard during the period 1992–1994. As explained in the June 2, 1995 rulemaking, these determinations are contingent on the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected areas. No violations in the affected areas have occurred as of this time. If a violation of the ozone NAAQS is monitored in the Grand Rapids and Muskegon areas (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS), USEPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

NYSDEC Comment

The NYSDEC objects to the rulemaking because it exempts the area from certain requirements of Title I of the Act and fails to establish any limit on emission growth of ozone precursors. The commentor states that downwind areas such as New York State need reductions in incoming ozone precursor concentrations during ozone episodes. The commentor is opposed to actions that would provide relief to such areas until it is demonstrated/determined that emissions from this area have ''no significant impact'' on ozone levels in New York and other downwind Northeast states.

USEPA Response

The determination that certain Title I requirements, namely section 182(b)(1) reasonable further progress and attainment demonstration requirements, and section 172(c)(9) contingency measure requirements, do not apply is based on ambient air quality data demonstrating that the area has attained the standard. This rulemaking is merely a determination that the aforementioned Title I requirements are not applicable so long as the affected areas continue to attain the ozone standard. While the rulemaking does not establish any limit on emission growth of ozone precursors, the USEPA does not believe that this determination will cause emissions of ozone precursors to grow since it is not relaxing control measures currently being implemented in the areas. Furthermore, USEPA does not believe it necessary to establish a limit on the growth of ozone precursors in this rulemaking since USEPA's determination that the areas need not make certain submissions is contingent on the areas' continued attainment of the ozone NAAQS. As noted earlier, if a violation occurs the area would have to address the requirements of sections 182(b)(1) and 172(c)(9).

With respect to the commentor's opposition to such actions until it is demonstrated that emissions from this area have ''no significant impact'' on ozone levels in New York and other downwind Northeast states, the USEPA would note that such a process is underway within the Lake Michigan area. The Lake Michigan States of Michigan, Wisconsin, Illinois and Indiana are conducting UAM which is being coordinated by LADCO. The modeling will be used for purposes of demonstrating attainment throughout the Lake Michigan region. Moreover, the Lake Michigan States are participating in the Phase I/Phase II analysis as provided for within the March 2, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, entitled Ozone Attainment Demonstrations. Phase II of the analysis would assess the need for regional control strategies and refine the local control strategies. Phase II would also provide the States and USEPA the opportunity to determine appropriate regional strategies to resolve transport issues including any impacts the Grand Rapids and Muskegon areas may have on ozone concentrations in their downwind areas. As discussed above, the control of transported emissions is not the purpose of the Act requirements at issue in this rulemaking but is the subject of other Act provisions. The

USEPA has the authority under section 110(a)(2)(D) of the Act to ensure that the required and necessary reductions are achieved in the Grand Rapids and Muskegon areas should subsequent modeling become available, such as the modeling that will be available through completion of the Phase II analysis, or any other subsequent modeling data. This determination, therefore, does not preclude the area from future imposition of additional control measures to achieve additional emission reductions.

NYSDEC Comment

NYSDEC also request additional time to perform a detailed review and analysis of the issues related to this proposed determination and requests a copy of the analysis that supports this action.

USEPA Response

The public was afforded 30 days to comment on this rulemaking action. The USEPA does not believe that any extension of time is necessary as an adequate comment period has already been provided.

III. Final Rulemaking Action

The USEPA is making a final determination that the Grand Rapids and Muskegon ozone nonattainment areas have attained the ozone standard and continue to attain the standard at this time. As a consequence of this determination, the requirements of section 182(b)(1) concerning the submission of the 15 percent reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard.

The USEPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. When and if a violation of the ozone NAAQS is monitored in the Grand Rapids or Muskegon nonattainment areas (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS), the USEPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determination that these areas have attained the NAAQS and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and contingency measure requirement of section 172(c)(9) do not presently apply. These are no longer requirements within the meaning of 40 CFR 52.31(c)(1). Consequently, the sanctions clocks started by USEPA on January 21, 1994, for failure to submit SIP revisions required by the provisions of the Act, are hereby stopped.

The USEPA finds that there is good cause for this action to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of this action, which is a determination that certain Act requirements do not apply for so long as the areas continue to attain the standard. The immediate effective date for this action is authorized under both 5 U.S.C. § 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and § 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this notice does not impose any new requirements, I certify that it does not have a significant impact on small entities affected.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rulemaking that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Under section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements.

The USEPA has determined that today's final action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 307(b)(1) of the Act, petitions for judicial review of this final action determining that the Grand Rapids and Muskegon ozone nonattainment areas have attained the NAAQS for ozone and that certain reasonable further progress and attainment demonstration requirements of sections 182(b)(1) and 172(c)(9) no longer apply must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: July 12, 1995.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q

Subpart X—Michigan

2. Section 52.1174 is amended by adding new paragraph (k) to read as follows:

§ 52.1174 Control Strategy: Ozone.

* * * * *

(k) Determination—USEPA is determining that, as of July 20, 1995, the

Grand Rapids and Muskegon ozone nonattainment areas have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the areas for so long as the areas do not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in either the Grand Rapids or Muskegon ozone nonattainment area, the determination shall no longer apply for the area that experiences the violation.

[FR Doc. 95–17763 Filed 7–19–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–15]

Radio Broadcasting Services; Pago Pago, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Monday, June 19, 1995 (60 FR 32917) concerning radio broadcasting services in Pago Pago, American Samoa.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need of Correction

As published, the final regulation document contains an error in the closing date.

Correction of Publication

Accordingly, the publication on June 26, 1995 of the final regulations, which were the subject of FR Doc. 95–15477 is corrected as follows:

On page 32917, in the second column, in the **DATES** section, the closing date for filing applications should be September 5, 1995 in lieu of September 4, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–17727 Filed 7–20–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–111; RM–8519]

Radio Broadcasting Services; Ingalls, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Monday, June 19, 1995 (60 FR 32917) concerning radio broadcasting services in Ingalls, KS.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need of Correction

As published, the final regulation document contains an error in the closing date.

Correction of Publication

Accordingly, the publication on June 26, 1995 of the final regulations, which were the subject of FR Doc. 95–15478 is corrected as follows:

On page 32917, in the third column, in the **DATES** section, the closing date for filing applications should be September 5, 1995 in lieu of September 4, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–17728 Filed 7–20–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–271]

Organization and Delegation of Powers and Duties; Delegations of Authority to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority from the Administrator of General Services for the enforcement of laws and protection of persons and property at the United States Merchant Marine Academy located in Kings Point, New York. This amendment revises language in subparagraph 1.66(q) to reflect current delegation of authority.

EFFECTIVE DATE: This rule becomes effective July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Chief, Division of Management and Organization, Maritime Administration, MAR–318, Room 7225, 400 Seventh Street, SW., Washington, DC, 20590, (202) 366–2811 or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION: The Maritime Administration (MARAD) has been delegated authority for law enforcement and protection of persons and property at the U.S. Merchant Marine Academy (USMMA) since 1967, when the Secretary of Commerce redelegated to MARAD authority delegated by the Administrator of General Services. At that time, MARAD was assigned to the Department of Commerce (DOC). In 1981, Public Law 97–31 transferred MARAD to the Department of Transportation. Section 9(a) of that act provided ''(a) All orders, determinations, rules, regulations, permits, grants, contracts, agreements, certificates, licenses, and privileges—(1) Which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act to the Secretary of Transportation or the Department of Transportation, and (2) which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of Transportation, or other authorized official, a court of competent jurisdiction, or by operation of law.'' Thus, the delegation by GSA and redelegation to MARAD continued in effect, through the Secretary of Transportation, until such time as it was amended or revoked by subsequent action. The Secretary of Transportation redelegated the authority to MARAD (49 CFR 1.66(q), 46 FR 47460, 9/28/81, effective 8/6/81), based on Public Law 97–31. On March 15, 1995, DOC requested the General Services Administration to revise DOC's delegation to reflect a number of changes, including the fact that the USMMA was no longer a responsibility of DOC. Accordingly, MARAD requested GSA to formalize the delegation of authority to the Secretary

of Transportation. The GSA's delegation to the Secretary of Transportation was accomplished on May 8, 1995, and is the basis for this amendment to update the current delegation and date. The delegated authority may be accomplished through appointment of uniformed personnel as special police, establishment of rules and regulations governing conduct on the affected property, and execution of agreements with other Federal, State, or local authorities. The delegation shall remain in effect through May 1, 2000. Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub.L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.66 is amended by revising the text of paragraph (q), to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(q) Exercise the authority vested in the Administrator of General Services by the Act of June 1, 1948, Pub. L. 80–566, 62 Stat. 281, 40 U.S.C. 318–318c and the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377, and delegated by the Administrator of General Services on May 8, 1995, relating to the enforcement of laws for the protection of property and persons at the United States Merchant Marine Academy, located in Kings Point, New York. This may be accomplished through appointment of uniformed personnel as special police, establishment of rules and regulations governing conduct on the affected property, and execution of agreements with other Federal, State, or local authorities. This delegation shall remain in effect through May 1, 2000;

* * * * *

Issued at Washington, DC this 12th day of July, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–17911 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 60, No. 139
Thursday July 20, 1995

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1138

[DA–95–20]

Milk in the New Mexico-West Texas Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal that would continue the suspension of certain segments of the pool plant and producer milk definitions of the New Mexico-West Texas order for a two-year period. Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a majority of the producers who supply milk to the market, has requested continuation of the suspension. The cooperative asserts that continuation of the suspension is necessary to insure that dairy farmers who have historically supplied the New Mexico-West Texas order will continue to have their milk priced under the order without incurring costly and inefficient movements of milk.

DATES: Comments are due no later than August 21, 1995.

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

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

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

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provisions of the order regulating the handling of milk in the New Mexico-West Texas marketing area is being considered for the months of October 1, 1995, through September 30, 1997:

1. In § 1138.7, paragraph (a)(1), the words ''including producer milk diverted from the plant,'';

2. In § 1138.7, paragraph (c), the words ''35 percent or more of the producer''; and

3. In § 1138.13(d), paragraphs (1), (2), and (5).

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 30th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would continue the current suspension of segments of the pool plant and producer milk definitions under the New Mexico-West Texas order. The provisions that are suspended limit the pooling of diverted milk. The proposed suspension would be in effect from October 1995 through September 1997. The current suspension will expire September 30, 1995.

The proposed suspension would continue the suspension of the following:

1. The requirement that milk diverted to a nonpool plant be considered a receipt at the distributing plant from which it was diverted;

2. The requirement that a cooperative must deliver at least 35 percent of its milk to pool distributing plants in order to pool a plant that the cooperative operates which is located in the marketing area and is neither a distributing plant nor a supply plant;

3. The requirement that a producer must deliver one day's production to a pool plant during the months of September through January to be eligible to be diverted to a nonpool plant;

4. The provision that limits a cooperative's diversions to nonpool plants to an amount equal to the milk it caused to be delivered to, and physically received at, pool plants during the month; and

5. The provision that excludes from the pool milk diverted from a pool plant to the extent that it would cause the plant to lose its status as a pool plant.

The continuation of the current suspension was requested by Associated Milk Producers, Inc., a cooperative association that represents a substantial

number of dairy farmers who supply the New Mexico-West Texas market. The cooperative stated that marketing conditions have not changed since the provisions were suspended in 1993, and therefore should be continued until restructuring of the order can be achieved through the formal rulemaking process.

The cooperative states that the continuation of the current suspension is necessary to insure that dairy farmers who have historically supplied the New Mexico-West Texas market will continue to have their milk priced under this order. In addition, they maintain that the suspension would continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

Accordingly, it may be appropriate to suspend the aforesaid provisions from October 1, 1995, through September 30, 1997.

List of Subjects in 7 CFR Part 1138

Milk marketing orders.

The authority citation for 7 CFR Part 1138 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: July 14, 1995.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 95–17861 Filed 7–19–95; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, and 51

RIN 3150–AE96

Decommissioning of Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations on the decommissioning procedures that lead to the termination of an operating license for nuclear power reactors and release of the property. The proposed amendments would clarify ambiguities in the current rule and codify practices which have been used for other licensees on a case-by-case basis. Some proposed amendments have also been made for purposes of clarification and procedural simplification for non-power reactors.

DATES: The comment period expires October 18, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

For information on submitting comments electronically, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dr. Carl Feldman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)-415–6194, Anthony W. Markley, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)-415–1169, or Bradley W. Jones, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1628.

SUPPLEMENTARY INFORMATION:

Electronic Access

Comments may be submitted electronically, in either ASCII text or Word Perfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communication software packages, or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Use ANSI or VT–100 terminal emulation. The NRC rulemaking subsystems can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–3339; Telnet via Internet: fedworld.gov (192.239.92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using the ''Home Page'': www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the NRC's toll free number to contact FedWorld, then the NRC subsystem will be accessed from the main FedWorld menu by selecting ''F—Regulatory, Government Administration and State Systems'' or by entering the command ''/go nrc'' at a FedWorld command line. At the next menu select ''A—Regulatory Information Mall,'' and then select ''A—U.S. Nuclear Regulatory Commission'' at the next menu. If you access NRC from FedWorld's ''Regulatory, Government Administration'' menu, then you may return to FedWorld by selecting the ''Return to FedWorld'' option from the ''NRC Main Menu.'' However, if you access NRC at FedWorld by using NRC's toll-free number, then you will have full access to all NRC systems, but you will not have access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

I. Background

When the decommissioning regulations were published and adopted on June 27, 1988 (53 FR 24018), it was assumed that the majority of nuclear power reactor licensees would decommission at the end of the operating license. Since that time a number of licensees have shut down prematurely without previously having submitted a decommissioning plan. In addition, these licensees have requested exemptions from certain operating requirements because, without fuel present in the reactor, they are no longer needed. Each of these cases has been handled individually without clearly defined generic requirements.

The Commission is proposing to amend the decommissioning regulations in 10 CFR Parts 2, 50, and 51 to clarify ambiguities in the current regulations and to codify procedures and terminology that have been used in a number of specific cases. The Commission believes that the proposed amendments would enhance efficiency and uniformity in the decommissioning process for nuclear power reactors. The proposed amendments would allow for greater public participation in the decommissioning process and furnish the licensed community and the public a better understanding of the process as the operating personnel at a nuclear power reactor facility undergo the transition from an operating organization to a decommissioning organization. This rulemaking would address the process which begins with a licensee's decision to permanently cease operations at the facility and concludes with the Commission's approval of license termination. These rule revisions would reduce regulatory burden while providing greater flexibility for implementing decommissioning activities. This would result in resource savings through a more efficient and uniform regulatory process.

The conceptual approach the Commission has chosen divides power reactor decommissioning activities into phases I, II, and III. Phase I commences with the effective date of permanent cessation of operations and deals with those licensee activities that the licensee undertakes before placing the power reactor in a storage mode. Phase II deals with licensee activities during the storage period, and Phase III deals with the activities the licensee undertakes to terminate the license. The implementation of this approach comprises the following aspects. During Phase I, certifications would be provided to the NRC that the licensee has permanently ceased operations and permanently removed all fuel from the reactor vessel. At this time, the licensee would be prohibited by regulation from operating the reactor. The proposed rule would also make changes to Part 50 requirements to reflect the non-operating status of the facility during the decommissioning process. The licensing fee would also be substantially reduced because the license would not meet the definition of an ''operating license'' as defined in 10 CFR 171.5. Based on these proposed regulatory changes a power reactor licensee would no longer need to obtain a possession only license amendment (POLA) to obtain regulatory relief when permanently shut down, as currently must be done. However, for non-power reactor licensees, a POLA would still be issued.

Although no major decommissioning activities, as defined in 10 CFR 50.2, would be allowed initially, limited licensee decommissioning trust funds would be made available for planning purposes and early activities. The remaining decommissioning funds would be made available after submittal to the NRC of the licensee's detailed decommissioning cost estimate. Before undertaking major decommissioning activities, the licensee would be required to provide the NRC with a post-shutdown decommissioning activities report (PSDAR) that provides a schedule of planned decommissioning activities, an estimate of the decommissioning costs expected to be incurred, and a discussion of environmental impacts of decommissioning. The NRC, within a 90 day period, would inform the public of the licensee's intent to decommission, make the PSDAR available for public comment, and hold a public meeting in the vicinity of the site to describe the planned activities and hear additional public comments. The public meeting will normally be held at least 30 days before the 90 day period of time ends. This process will allow closer NRC oversight and better public knowledge of these activities.

After this 90 day period of time, the licensee could begin major decommissioning (i.e., dismantlement) activities as allowed under the current 10 CFR 50.59, unless the NRC interposes an objection. Additional criteria would be added to § 50.59 specifically pertinent to decommissioning activities. Further, should the licensee make any significant changes to the PSDAR activities and schedules, which NRC anticipates may occur as a result of such factors as utilization of new decommissioning technology or access to low-level waste facilities, the licensee would be required to give NRC prior notice before implementing those changes.

After an optional period of storage (Phase II), Phase III would be initiated when the licensee's application to terminate the license and license termination plan were received by the NRC. At this time, a supplemental environmental report would also be required if there were the possibility of significant environmental impacts not previously covered in other environmental impact statements. The Commission would notice receipt of this information and provide opportunity for a hearing, under Subpart L of 10 CFR 2.1201, on the license termination plan.[1] The Commission would also hold a public meeting in the vicinity of the site, in a similar manner to the one held for the PSDAR. Once the licensee had completed implementation of the termination plan and the Commission had verified that the licensee had satisfactorily implemented the termination plan then, as in the existing rule, the Commission would terminate the license. Any Subpart L hearing for the license termination plan amendment must be completed prior to license termination.

Three aspects of these proposed regulatory changes that can affect both power and non-power reactor facilities are addressed in the proposed rule for purposes of clarification. The first provides that environmental requirements for conditional release situations be explicitly considered (10 CFR 51), based on the proposed decommissioning residual radioactivity criteria rule (59 FR 43200 August 22, 1994). The second clarifies that a license that has expired is not terminated until the Commission terminates it and further clarifies what conditions prevail under such circumstances. The third clarifies that existing technical specifications for reactors that are not authorized to operate will remain effective until removed or modified by license amendment.

Additionally, an aspect of these proposed regulatory changes that affects non-power reactor facilities is addressed in the proposed rule for purposes of procedural simplification. The requirement in the current rule that preliminary decommissioning plans be submitted five years prior to permanent shutdown or license expiration has been changed to 2 years to take more realistic account of the planning time periods necessary for non-power reactor facilities.

Finally, also for purposes of procedural simplification, an aspect of these proposed regulatory changes that affects both power and non-power reactor facilities is that the approved decommissioning plan for the non-power reactor facilities or the approved license termination plan for the power reactor facilities be made part of the FSAR. This affords the licensee flexibility in making certain changes to these plans without a formalized

[1] The Subpart L process will be used and the 10 CFR 50 license will be terminated only if spent fuel has been removed from the 10 CFR Part 50 licensed site to another authorized facility. If spent fuel remains on the Part 50 site at the time of license termination plan submittal, the Subpart G process will be used.

amendment process which would otherwise be necessary.

On August 22, 1994 (59 FR 43200), the NRC published a proposed rule on radiological criteria for decommissioning for comment. Section 20.1406(b) of the proposed rule would require that a Site Specific Advisory Board (SSAB) be convened in cases where a licensee proposes to request restricted release of the site. On December 6–8, 1994, a workshop on this issue was held in Washington, DC. The objective of the workshop was to conduct a discussion among affected interests on the implementation of the SSAB requirement. The current rule is not primarily intended to address the comments on the radiological criteria rule for decommissioning. However, the staff was cognizant of the comments made in that workshop and the language contained in this proposed rule does address the concern for early public information and participation raised in that forum. The staff will more directly address the workshop comments in the development of the final rule on the radiological criteria for decommissioning. If finalization of the radiological criteria rule requires any modifications to the current proposed rule, those modifications will be made as part of the radiological criteria rule development process.

II. Existing Regulatory Framework and Need for the Amendments

The Commission has examined the present regulatory framework for decommissioning, largely contained within 10 CFR 50.82, with additional requirements in 10 CFR 50.75, 51.53, and 51.95, as well as the 10 CFR 50 technical requirements, to ascertain the appropriate regulatory path to take that would ameliorate current licensing concerns without compromising health and safety.

The current rule requires a licensee to submit a preliminary decommissioning plan 5 years before permanent cessation of operations, with a site-specific cost estimate, and an adjustment of financial assurance funds. A detailed decommissioning plan must be submitted to the NRC within 2 years after permanent cessation of operations. At that time, a supplemental environmental report must also be submitted to the NRC describing any substantive environmental impacts that are anticipated but not already covered in other environmental impacts documents. The detailed decommissioning plan contains an updated site-specific cost estimate with decommissioning funds adjusted in an external trust to make up for any shortfall. Currently, prior to approval of the decommissioning plan by the Commission, no decommissioning trust funds can be used (although case-specific exceptions have been made). Finally, aside from the licensee voluntarily informing the public about decommissioning activities, very limited public input or participation is formally required in the current rules. However, public meetings and informal hearings have been held for plants undergoing decommissioning for case-specific situations.

The proposed rule would preserve the substantive elements of the current regulations, provide for greater public participation in the decommissioning process, and allow the licensee to perform decommissioning activities provided certain constraints are met. The proposed rule would make the decommissioning process more responsive to current licensing needs and improve the process in the areas of understandability, efficiency, and uniformity.

During the Phase I process, proposed § 50.82(a) provides that, within 2 years of permanently ceasing operations, a post-shutdown decommissioning activities report (PSDAR) must be submitted to the NRC. The PSDAR would include a description of the licensee's planned decommissioning activities and a schedule for their accomplishment, an estimate of expected costs, and a discussion addressing whether or not the environmental impacts associated with site-specific decommissioning activities will be bounded by existing environmental impact statements. Upon receipt of the PSDAR, the NRC will announce in the **Federal Register** receipt of the report, make the PSDAR available for public comment, and announce the location and time of a public meeting to be held in the vicinity of the reactor facility site to discuss the licensee's plans.[2] Section 50.82(a) further states that after the NRC receives certification of permanent removal of the fuel from the reactor vessel and 90 days after the NRC receives the PSDAR, the licensee may begin to perform major decommissioning activities if the activities meet the requirements in § 50.59. This would generally occur 30 days after the public meeting.

The provisions of § 50.59 presently allow the licensee to make changes to the facility during operation without express NRC approval if these changes meet the conditions listed in § 50.59, and the licensee prepares and maintains a written safety evaluation that provides the basis for their determination that the planned changes meet the criteria specified in the regulation. The NRC inspects these evaluations periodically to ensure that the licensee is complying with the regulation. To ensure that licensees adequately address the unique circumstances associated with decommissioning activities, the Commission is proposing to include additional criteria for the use of § 50.59 during decommissioning. The criteria would apply to both power and non-power reactors, although non-power reactor licensees could not perform major decommissioning activities until they had an approved decommissioning plan—as in the current rule. The Commission proposes that in using the § 50.59 process for post-shutdown activities the licensee must meet the following criteria which provide that the proposed activities must not: (1) Foreclose release of the site for possible unrestricted use, (2) significantly increase decommissioning costs, (3) cause any significant environmental impact not previously reviewed, or (4) violate the terms of the licensee's existing license. To undertake any activity that would not meet these criteria, the licensee must submit a license amendment request, as is currently the requirement under § 50.59(c).

The Commission proposes to codify the position embodied in the draft policy statement ''Use of Decommissioning Trust Funds Before Decommissioning Plan Approval'' (59 FR 5216; February 3, 1994) that the licensee should be allowed to use decommissioning trust funds subject to certain criteria. The criteria presented in the draft policy statement have been modified in the proposed rule in response to public comments. The Commission recognizes the need for the licensee to provide adequate financial assurance to complete decommissioning at any time during operation, up to and including the termination of license, and is proposing criteria, along with criteria that specify when and how much of these trust funds can be used, to ensure that licensees maintain adequate funds to complete decommissioning. In accordance with the current rule, the Commission proposes to retain, under § 50.75(f), the requirement for site-specific cost estimates 5 years before and within 2 years after the licensee's declaration of permanent cessation of operations. (For non-power reactors, the Commission

[2] There is nothing that prevents a licensee from developing and submitting the PSDAR and the NRC from holding the public meeting prior to the permanent cessation of operations.

proposes to require, under § 50.75(f), that a preliminary decommissioning plan be submitted 2 years rather than the current 5 years before permanent cessation of operations because this is a more realistic timing requirement for non-power reactors.) Once the NRC has received the licensee's certification of permanent cessation of operations, decommissioning trust funds could be used by the licensee. However, the withdrawal of funds would be subject to the following criteria: (1) The withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in § 50.2; (2) The expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the licensee's reactor in a safe storage condition if unforeseen conditions or expenses arise and; (3) The withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

The proposed rule would permit, under § 50.82(a)(7), that 3 percent of the generic decommissioning cost amount, specified in § 50.75, could be used by the licensee initially for decommissioning planning. Following the 90-day waiting period after the NRC has received the licensee's PSDAR and upon certification of permanent removal of fuel from the reactor vessel, an additional 20 percent could be used to commence major decommissioning activities. Finally, the proposed rule would require a site-specific cost analysis to be submitted to the NRC prior to the licensee being permitted to use any funding in excess of 23 percent of the generic cost estimate, and, in any case, within 2 years of permanent cessation of operations.

After an optional period of storage (Phase II of the decommissioning process), § 50.82(a)(8) of the proposed rule would require the licensee to complete decommissioning by submitting an application to terminate the license along with a license termination plan. This would initiate Phase III of the decommissioning process. This process is similar to the requirements in the current rule for a power reactor licensee that has permanently ceased operations and decides to go into a storage mode. The current rule allows a less detailed decommissioning plan initially, with the more detailed plan nearer to the completion of decommissioning because more accurate planning can be accomplished. The termination plan would contain similar elements for consideration as the current rule requires. In particular, the proposed rule would require that the termination plan contain a site characterization, a description of remaining dismantlement activities (if any), plans for site remediation, detailed plans for the final radiation survey, a description of the end use of the site (if restricted), an updated site-specific analysis of remaining decommissioning costs, and a supplement to the environmental report, as required by § 51.53, that describes any new information or significant environmental change associated with the licensee's proposed decommissioning activities.

The NRC would notice receipt of the license termination plan as a license amendment, conduct a public meeting in the vicinity of the site, and provide opportunity for a 10 CFR part 2, subpart L, hearing, as specified in § 2.1201(a)(3), if the spent fuel had been removed from the 10 CFR part 50 licensed site and transferred to an authorized facility. Otherwise, there would be opportunity for a 10 CFR part 2, subpart G, hearing, as provided for in the current rules. The license could not be terminated if fuel were located on the site covered by the 10 CFR part 50 license. The Subpart L hearing is appropriate for the nature of a permanently shutdown facility where the spent fuel has been removed from the 10 CFR part 50 site and transferred to an authorized facility, since the defueled site is analogous to materials licensees that typically use Subpart L hearings for license amendments. Appropriate conforming amendments have been proposed for 10 CFR 2.1205 and 50.91 to reflect the application of subpart L hearings to 10 CFR part 50 license amendments following removal of the fuel from the 10 CFR part 50 licensed site and transfer to an authorized facility. Section 50.82(a)(9) would specify that the Commission would approve the termination plan and the plan would become part of the FSAR. (Similarly, for non-power reactors, the decommissioning plan would become part of the FSAR or equivalent.) As in the current rule, the licensee would then execute the plan and, after this was accomplished and verified by the NRC, the Commission would terminate the license.

In order to clear up various ambiguities in the current rule regarding power reactors, definitions of permanent cessation of operations, permanent removal of fuel from the reactor vessel, major decommissioning activity, major radioactive components and certified fuel handler, would be codified in § 50.2. Because a licensee could choose to undertake major decommissioning activities at the reactor facility 90-days after the NRC receives the PSDAR, it is important to define what ''major decommissioning activity'' means. The definition chosen is, for a nuclear power reactor, any activity that results in permanent removal of major radioactive components, permanently modifies the structure of the containment, or results in dismantling components for shipment containing greater than class C waste. Accordingly, ''major radioactive components'' would be defined for a nuclear power reactor to comprise the reactor vessel and internals, steam generators, pressurizers, large bore reactor coolant system piping, and other large components that are radioactive.

Written communication requirements for licensee permanent cessation of operations and permanent removal of fuel from the reactor vessel would be specified in §§ 50.4(b) (8) and (9). The licensee would be required to state the date on which operations will cease, or have ceased, in its certification of permanent cessation of operations. The licensee, in its certification regarding permanent removal of fuel from the reactor vessel, would state the date on which the fuel assemblies were removed and their disposition.

Because of previous case-specific requests the NRC has received from licenses for exemptions from operating requirements in recognition of the permanent shutdown of the facility and permanent removal of fuel from the reactor vessel, the Commission has undertaken an analysis to determine the appropriateness of applying certain 10 CFR part 50 requirements during the post-shutdown period of the facility. The results of a portion of that study are presented in Section III of this rule.

This proposed rulemaking primarily addresses power reactor facilities because, unlike non-power reactor facilities, a delay of up to 60 years between the time of permanent cessation of operations and license termination can occur. Such a situation, especially under circumstances of premature closure, requires special regulatory consideration to deal with licensee decommissioning activities in a timely, efficient, and uniform manner. However, there are three aspects of these proposed regulatory changes that can affect both power and non-power reactor facilities. These aspects are addressed in the proposed rule for purposes of clarification. The proposed rule includes requirements for conditional release situations, as discussed in the proposed decommissioning residual radioactivity

criteria rule (59 FR 43200; August, 22, 1994). Proposed § 51.53(b) (and correspondingly, under proposed § 51.95 for NRC staff requirements) states that environmental considerations of the decommissioning activities must be explicitly considered during the licensee's request for decommissioning plan or license termination plan approval. Proposed § 50.51(b) states that a license that has expired is not terminated until the Commission notifies the licensee in writing that the license is terminated. The proposed requirement further states that during any period of continued effectiveness beyond the licensee's stated expiration date, the licensee: (1) Is prohibited from operating the production or utilization facility; (2) Must limit activities to actions necessary to decommission and decontaminate the facility, or actions necessary to maintain the facility, including the storage, control and maintenance of the spent fuel in a safe condition and; (3) Must conduct activities in accordance with all other restrictions applicable to the facility in NRC regulations and provisions of the specific part 50 license for the facility. This provision is consistent with NRC requirements for other licensees and avoids any gaps in the licensing of regulated facilities. This same rationale applies to both power and non-power reactors. Accordingly, this clarification would also pertain to non-power reactors. Finally, proposed § 50.36(c)(6) and (e) clarify that for reactors that are not authorized to operate, existing technical specifications will remain effective until removed or modified by license amendment.

III. Clarification of Applicability of 10 CFR Part 50 to Permanently Shutdown Nuclear Power Plants

Once a decision has been made to permanently cease operations of a nuclear power reactor, the proposed rule would require that the licensee must notify the NRC, by certification, that the nuclear power reactor has ceased operations and that fuel has been permanently removed from the reactor vessel. Then, by NRC regulation, the licensee's authority to operate the reactor or to maintain or place fuel in the reactor would be removed, as specified in proposed § 50.82(a). This non-operating status would provide a basis to remove regulatory requirements that are no longer necessary to protect the public health and safety.

Licensees have historically pursued relief from these requirements by means of obtaining license amendments and exemptions. This process has placed significant resource burdens on both licensees and the Commission. After a nuclear power reactor is permanently shutdown and awaiting or undergoing decommissioning, certain regulations, which are based on power operation, are no longer necessary. Other regulations may have limited applicability but require modification to appropriately address the concerns associated with the permanently shut down condition. The Commission proposes to amend a number of the regulations contained in 10 CFR part 50 to clarify their applicability to permanently shutdown nuclear power reactors.

The following paragraphs discuss technical requirements that have been determined to have limited or no applicability and require clarification or modification of their applicability to permanently shutdown nuclear power reactors. Once the technical review is completed, future rulemaking may be forthcoming to address the applicability of additional technical requirements to non-operating reactors.

A. Technical Specifications

The requirements for technical specifications are found in 10 CFR 50.36. The applicability of 10 CFR 50.36 to the operational phase of a nuclear reactor is clearly understood. However, the existing regulation has caused uncertainty as to its applicability to the permanently shutdown and decommissioning phase of a nuclear power reactor. The Commission is proposing to amend 10 CFR 50.36 to clearly indicate that the controls, limits, and requirements established by the technical specifications are a continuing part of the license in the permanently shutdown and decommissioning phase of a nuclear reactor. The Commission recognizes that technical specifications pertinent to the operational phase will need to be revised and amended to reflect plant conditions and safety concerns associated with permanent cessation of operations and permanent removal of the fuel from the reactor vessel. Existing technical specifications will remain effective until removed or modified by license amendment.

B. Technical Specifications for Effluents

Effluent technical specifications are found in 10 CFR 50.36a and Appendix I. The applicability of 10 CFR 50.36a and Appendix I to the operational phase of a nuclear power plant is clearly understood. However, the existing regulation has caused uncertainty as to its applicability to the permanently shutdown and decommissioning phase of a nuclear power plant. The Commission is proposing to amend 10 CFR 50.36a and Appendix I to clearly indicate that the controls, limits, and requirements for controlling radiological effluents are also required during the permanently shut down and decommissioning phase of a nuclear power plant.

C. Environmental Conditions

Requirements associated with environmental conditions are found in 10 CFR 50.36b. The applicability of 10 CFR 50.36b to the operational phase of a nuclear power plant is clearly understood. However, the existing regulation has caused uncertainty as to its applicability to the permanently shutdown and decommissioning phase of a nuclear power plant. The Commission is proposing to amend 10 CFR 50.36b to clearly indicate that conditions to protect the environment remain a part of the license and are required during the permanently shutdown and decommissioning phase of a nuclear power plant.

D. Combustible Gas Control

The combustible gas control requirements are found in 10 CFR 50.44. These requirements were instituted to improve hydrogen management in light water reactor (LWR) facilities and to provide specific design and other requirements to mitigate the consequences of accidents resulting in a degraded core. The requirements focus on the capability for measuring hydrogen concentration, ensuring a mixed atmosphere, and controlling combustible gas mixtures following a loss of coolant accident (LOCA). The concern for hydrogen generation during a LOCA does not exist with the permanently shutdown power reactor. A nuclear power plant that has permanently ceased operations and permanently removed all of its fuel outside of primary containment no longer presents challenges to the reactor pressure vessel and primary containment from accident-generated combustible gases, and such concerns are no longer an issue. Therefore, the Commission is proposing to amend the requirements in 10 CFR 50.44 to indicate its nonapplicability to this situation.

E. Emergency Core Cooling Systems (ECCS) Acceptance Criteria

The acceptance criteria for ECCS for LWRs are found in 10 CFR 50.46 and in Appendix K. These regulations require that the ECCS be designed to provide for long term cooling by limiting post LOCA peak cladding temperature, clad oxidation, and hydrogen generation to specified values. Without fuel in the vessel, ECCS systems are not required

because a design basis LOCA could not occur. Therefore, the Commission is proposing to amend 10 CFR 50.46 and Appendix K to indicate their nonapplicability to a nuclear power reactor facility that has permanently ceased operations and has permanently removed fuel from the reactor vessel.

F. Fire Protection

Section 50.48 does not address fire protection for power reactor facilities that have permanently ceased operations and permanently removed fuel from the reactor vessel. However, the facility still remains radioactively contaminated and may (and most likely will) maintain fuel at the facility. Section 50.48(f) has been added to the proposed amendments to require licensees that have permanently ceased operations to maintain a fire protection program. The proposed rule permits the licensee to make changes to the fire protection program without NRC approval if these changes do not reduce the effectiveness of fire protection for facilities, systems and equipment which could result in a radiological hazard, taking into account the decommissioning plant conditions and activities.

G. Environmental Qualification

The regulations for equipment qualification (EQ) are found in 10 CFR 50.49. The regulations cover that portion of equipment important to safety commonly referred to as ''safety related.'' Safety related structures, systems, and components (SSCs) are those that are relied upon to remain functional during and following design basis events to ensure: (1) The integrity of the reactor coolant pressure boundary, (2) the capability to shut down the reactor and maintain it in a safe condition, and (3) the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the guidelines of 10 CFR Part 100. Design basis events are defined as conditions of normal operation of the reactor, including anticipated operational occurrences, design basis accidents, external events, and natural phenomena, for which the plant must be designed to ensure the functions (1) through (3).

The EQ rule is clearly limited to electrical equipment that must function during design basis events. In response to comments on the final rule, (48 FR 2729, January 21, 1983), the Commission noted that the EQ rule does not cover the electric equipment located in a mild environment. With permanent cessation of operations and permanent removal of fuel from the reactor vessel, the harsh environment associated with LOCA accidents can no longer occur. Therefore, the Commission is proposing to amend 10 CFR 50.49 to indicate its nonapplicability to a nuclear power reactor facility licensed under these conditions.

H. Containment Leakage Testing

In 10 CFR 50.54, paragraph (o) requires that primary containments for water cooled reactors be subject to the requirements of 10 CFR Part 50, Appendix J. This appendix requires periodic testing to verify the leak-tight integrity of the primary containment and those systems and components that penetrate the containment. The primary containment of an operating reactor is one of several fission product barriers designed to protect the public health and safety in the event of a design basis accident such as a LOCA. Once a nuclear power reactor permanently ceases operations, the fuel is removed from the reactor vessel and placed in the spent fuel pool or an independent spent fuel storage installation (ISFSI). After the fuel has been removed from the reactor vessel, a LOCA can no longer occur. Therefore, leakage testing of the containment is no longer necessary. As a result, the Commission is proposing to amend 10 CFR 50.54(o) to indicate its nonapplicability to a nuclear power reactor facility that has permanently ceased operations and has permanently removed fuel from the reactor vessel.

I. Emergency Actions

In 10 CFR 50.54(x) a licensee is allowed to take reasonable actions that may depart from a license condition or technical specification in an emergency. This is permitted when action is immediately needed to protect the public health and safety and no actions consistent with license conditions and technical specifications that can provide adequate or equivalent protection are immediately apparent.

These regulations serve to ensure that emergency action decisions necessary to protect the public health and safety are made by an individual who has both the requisite knowledge and plant experience. The licensed senior operator at an operating nuclear power reactor has the requisite knowledge and experience to evaluate plant conditions and make these judgments.

The Commission is proposing to amend 10 CFR 50.54(y) to permit a certified fuel handler at nuclear power reactors that have permanently ceased operations and permanently removed fuel from the reactor vessel, subject to the requirements of § 50.82(a) and consistent with the proposed definition of ''Certified Fuel Handler'' specified in § 50.2, to make these evaluations and judgments. A nuclear power reactor that has permanently ceased operations and no longer has fuel in the reactor vessel does not require a licensed individual to monitor core conditions. A certified fuel handler at a permanently shutdown and defueled nuclear power reactor undergoing decommissioning is an individual who has the requisite knowledge and experience to evaluate plant conditions and make these judgements.

J. Fracture Prevention Measures

The regulations in 10 CFR 50.60, 50.61, and Appendices G and H specify the requirements for fracture toughness and material surveillance programs for the reactor coolant pressure boundary of LWRs. The intent of these regulations is to maintain reactor coolant pressure boundary integrity by assuring adequate margins of safety during any condition of normal operation, including anticipated operational occurrences.

After the fuel has been removed from the reactor vessel, accidents and transients that affect the integrity of the reactor coolant pressure boundary can no longer occur. The measures required by these regulations are no longer necessary. Therefore, the Commission is proposing to amend 10 CFR 50.60 and 50.61 to indicate their nonapplicability to a nuclear power reactor facility that has permanently ceased operations and has permanently removed fuel from the reactor vessel.

K. Anticipated Transient Without Scram Requirements

The purpose of 10 CFR 50.62 is to require improvements in the design and operation of LWRs to reduce the likelihood of reactor protection system (RPS) failure following anticipated operational occurrences. This regulation also requires improvements in the capability to mitigate the consequences of an anticipated transient without scram (ATWS) event.

Although the ATWS event can be a significant contributor to operating plant risk, it is not relevant to nuclear power plants that have permanently ceased operations and have permanently removed fuel from the reactor since the RPS is no longer needed. Therefore, the Commission is proposing to amend 10 CFR 50.62 to indicate its nonapplicability to a nuclear power reactor facility that has permanently ceased operations and permanently removed fuel from the reactor vessel.

L. Monitoring the Effectiveness of Maintenance

The applicability of 10 CFR 50.65 to the operational phase of a nuclear power plant is well understood. However, to eliminate any uncertainty as to its applicability to the permanently shutdown and decommissioning phase of a nuclear power plant, the Commission is proposing to amend 10 CFR 50.65 to clearly indicate that the licensee must monitor the performance or condition of all structures, systems, and components associated with the storage, control, and maintenance of spent fuel in a safe condition during the permanently shutdown and decommissioning phase of a nuclear power plant subject to the requirements of § 50.82(a).

M. Maintenance of Records and the Making of Reports

The requirements for licensees to periodically update the Final Safety Analysis Report (FSAR) are contained in 10 CFR 50.71. The regulation requires that ''persons licensed to operate a nuclear power reactor'' update the facility FSAR annually or after each refueling outage with intervals not to exceed 24 months. In order to ensure that applicable sections of facility FSARs continue to be updated, the Commission is proposing to amend this regulation to make it applicable to licensees that have permanently ceased operations, pursuant to § 50.82(a)(1). The Commission is also proposing that the decommissioning plan for non-power reactors be made a part of the facility FSAR or equivalent. These changes will permit licensees to update their FSARs and decommissioning planning documents without prior NRC approval.

IV. Criminal Penalties Provisions

The existing provisions of 10 CFR 50.82 are treated as nonsubstantive and are not subject to criminal enforcement. Under the Commission's proposed amendments to 10 CFR 50.82, licensees would be required to take certain actions which the Commission believes are essential in initiating the decommissioning process; e.g., certifying to permanent cessation of operations and permanent removal of fuel from the reactor vessel, and submitting a PSDAR. Thus, the Commission believes that the amended provisions of 10 CFR 50.82 should be considered as substantive and issued under sections 161b, 161i, or 161o of the Atomic Energy Act of 1954, as amended. Accordingly, the Commission is proposing to amend 10 CFR 50.111(b) to remove the exemption for § 50.82 from the criminal penalty provisions.

Finding of No Significant Environmental Impact Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The proposed rule would clarify current decommissioning requirements for nuclear power reactors in 10 CFR Part 50, and set forth a more efficient, uniform, and understandable process. The Commission has already analyzed the major environmental impacts associated with decommissioning in the Generic Environmental Impact Statement (GEIS), NUREG–0586, August 1988, published in conjunction with the Commission's final decommissioning rule (53 FR 24018, June 27, 1988). The NRC has sent a copy of the Environmental Assessment and this proposed rule to every State Liaison Officer and requested their comments on the Environmental Assessment. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection and photocopying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Carl Feldman, U.S. NRC, Washinton DC 20555, (301) 415–6194.

Paperwork Reduction Act Statement

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

Because the rule will relax existing information collection requirements, the public burden for this collection of information is expected to be reduced by 12,202 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for further reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis of this proposed regulation. The analysis qualitatively examines the costs and benefits of the alternatives considered by the NRC. The draft regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555. Single copies of the analysis may be obtained from Dr. Carl Feldman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6194.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule would impose requirements for timely decommissioning of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of small entities as given in the Regulatory Flexibility Act or the Small Business Size Standards promulgated in regulations issued by the Small Business Administration (13 U.S.C. Part 121).

Backfit Analysis

The Commission is proposing not to apply the backfit rule, 10 CFR 50.109, to these proposed amendments, and therefore, a backfit analysis has not been prepared for this rule. The scope of the backfit provision in 10 CFR 50.109 is limited to construction and operation of reactors. These proposed amendments would only apply to reactors which have permanently ceased operations and, as such, would not constitute backfits under 10 CFR 50.109.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information,

Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

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

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 2, 50, and 51.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Section 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under Sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et. seq.).

2. In § 2.1201, paragraph (a)(3) is added to read as follows:

§ 2.1201 Scope of subpart.

(a) * * *

(3) The amendment of a part 50 license following permanent removal of fuel from the site to an authorized facility for licensees that have previously made declarations related to permanent cessation of operations and permanent removal of fuel from the reactor in accordance with § 50.82(a)(1). Subpart L hearings for the license termination plan amendment, if conducted, must be completed prior to license termination.

* * * * *

3. In § 2.1203 paragraph (e) is revised to read as follows:

§ 2.1203 Docket; filing; service.

* * * * *

(e) A request for a hearing or petition for leave to intervene must be served in accordance with § 2.712 and § 2.1205 (f) and (k). All other documents issued by the presiding officer or the Commission or offered for filing are served in accordance with § 2.712.

4. In § 2.1205, paragraphs (c) through (n) are redesignated as paragraphs (d) through (o), a new paragraph (c) is added, and newly designated paragraphs (d) introductory text, (d)(1), (d)(2) introductory text, (e)(2), (e)(4), (h) introductory text, (i), (j) introductory text, (k) introductory text, (k)(3), (l)(1) introductory text, and (l)(2) are revised to read as follows:

§ 2.1205 Request for a hearing; petition for leave to intervene.

* * * * *

(c) For amendments of part 50 licenses under § 2.1201(a)(3), a notice of receipt of the application, with reference to the opportunity for a hearing under the procedures set forth in this subpart, must be published in the **Federal Register** at least 30 days prior to issuance of the requested amendment by the Commission.

(d) A person, other than an applicant, shall file a request for a hearing within—

(1) Thirty (30) days of the agency's publication in the **Federal Register** of a notice, which must include a reference to the opportunity for a hearing under the procedures set forth in this subpart, referring to either the receipt of an application, or the granting of an application, in whole or in part, requesting a licensing action. With respect to an amendment described in § 2.1201(a)(3), the Commission, prior to issuance of the requested amendment, will follow the procedures in § 50.91 and § 50.92(c) to the extent necessary to make a determination on whether the amendment involves a significant hazards consideration. If the Commission finds there are significant hazards considerations involved in the requested amendment, the amendment will not be issued until any hearings under this paragraph are completed.

(2) If a **Federal Register** notice is not published in accordance with paragraph (d)(1), the earliest of—

* * * * *

(e) * * *

(2) How the interests may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in paragraph (h) of this section;

* * * * *

(4) The circumstances establishing the request for a hearing is timely in accordance with paragraph (d) of this section.

* * * * *

(h) In ruling on a request for a hearing filed under paragraph (d) of this section, the presiding officer shall determine that the specified areas of concern are germane to the subject matter of the proceeding and that the petition is timely. The presiding officer also shall determine that the requestor meets the judicial standards for standing and shall consider, among other factors—

* * * * *

(i) If a hearing request filed under paragraph (c) of this section is granted, the applicant and the NRC staff shall be parties to the proceeding. If a hearing request filed under paragraph (d) of this section is granted, the requestor shall be a party to the proceeding along with the applicant and the NRC staff, if the staff chooses or is ordered to participate as a party in accordance with § 2.1213.

(j) If a request for hearing is granted and a notice of the kind described in paragraph (d)(1) of this section previously has not been published in the **Federal Register**, a notice of hearing must be published in the **Federal Register** stating—

* * * * *

(k) Any petition for leave to intervene must be filed within thirty (30) days of the date of publication of the notice of

hearing. The petition must set forth the information required under paragraph (e) of this section.

* * * * *

(3) Thereafter, the petition for leave to intervene must be ruled upon by the presiding officer, taking into account the matters set forth in paragraph (h) of this section.

* * * * *

(l) (1) A request for a hearing or a petition for leave to intervene found by the presiding officer to be untimely under paragraph (d) or (k) of this section will be entertained only upon determination by the Commission or the presiding officer that the requestor or petitioner has established that—

* * * * *

(2) If the request for a hearing on the petition for leave to intervene is found to be untimely and the requestor or petitioner fails to establish that it otherwise should be entertained on the paragraph (l)(1) of this section, the request or petition will be treated as a petition under § 2.206 and referred for appropriate disposition.

* * * * *

5. In § 2.1211, paragraph (b) is revised to read as follows:

§ 2.1211 Participation by a person not a party.

* * * * *

(b) Within thirty days of an order granting a request for a hearing made under § 2.1205 (c) and (d) or, in instances when it is published, within thirty days of notice of hearing issued under § 2.1205(j), the representative of the interested State, county, municipality, or an agency thereof, may request an opportunity to participate in a proceeding under this subpart. The request for an opportunity to participate must state with reasonable specificity the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding. Upon receipt of a request that is filed in accordance with these time limits and that specifies the requestor's areas of concern, the presiding officer shall afford the representative a reasonable opportunity to make written and oral presentations in accordance with §§ 2.1233 and 2.1235, without requiring the representative to take a position with respect to the issues. Participants under this paragraph may notice an appeal of an initial decision in accordance with § 2.1253 with respect to any issue on which they participate.

6. Section 2.1213 is revised to read as follows:

§ 2.1213 Role of the NRC staff.

If a hearing request is filed under § 2.1205(c), the NRC staff shall be a party to the proceeding. If a hearing request is filed under § 2.1205(d), within ten (10) days of the designation of a presiding officer pursuant to § 2.1207 the NRC staff shall notify the presiding officer whether or not the staff desires to participate as a party to the adjudication. In addition, upon a determination by the presiding officer that the resolution of any issue in the proceeding would be aided materially by the staff's participation in the proceeding as a party, the presiding officer may order or permit the NRC staff to participate as a party with respect to that particular issue.

7. In § 2.1233, paragraph (c) is revised to read as follows:

§ 2.1233 Written presentations; written questions.

* * * * *

(c) In a hearing initiated under § 2.1205(d), the initial written presentation of a party that requested a hearing or petitioned for leave to intervene must describe in detail any deficiency or omission in the license application, with references to any particular section or portion of the application considered deficient, give a detailed statement of reasons why any particular sections or portion is deficient or why an omission is material, and describe in detail what relief is sought with respect to each deficiency or omission.

* * * * *

8. Section 2.1263, is revised to read as follows:

§ 2.1263 Stays of NRC staff licensing actions or of decisions of a presiding officer or the Commission pending hearing or review.

Applications for a stay of any decision or action of the Commission, a presiding officer, or any action by the NRC staff in issuing a license in accordance with § 2.1205(m) are governed by § 2.788, except that any request for a stay of staff licensing action pending completion of an adjudication under this subpart must be filed at the time a request for a hearing or petition to intervene is filed or within ten (10) days of the staff's action, whichever is later. A request for a stay of a staff licensing action must be filed with the adjudicatory decision maker before which the licensing proceeding is pending.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

9. The authority citation for part 50 continues to read as follows:

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

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102 Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

10. In § 50.2, the terms ''Certified fuel handler,'' ''Major decommissioning activity,'' ''Major radioactive components,'' ''Permanent cessation of operations,'' and ''Permanent fuel removal'' are added to read as follows:

§ 50.2 Definitions.

* * * * *

Certified fuel handler means, for a nuclear power reactor, a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission.

* * * * *

Major decommissioning activity means, for a nuclear power reactor, any activity that results in permanent removal of major radioactive components, permanently modifies the structure of the containment, or results in dismantling components for shipment containing greater than class C waste in accordance with § 61.55 of this chapter.

Major radioactive components means, for a nuclear power reactor, the reactor vessel and internals, steam generators, pressurizers, large bore reactor coolant system piping, and other large components that are radioactive.

* * * * *

Permanent cessation of operation(s) means, for a nuclear power reactor, a certification by a licensee to the NRC that it has permanently ceased or will permanently cease reactor operation(s), or a final legally effective order to permanently cease operation(s) has come into effect.

Permanent fuel removal means, for a nuclear power reactor, a certification by the licensee to the NRC that it has permanently removed all fuel assemblies from the reactor vessel.

* * * * *

11. In § 50.4, paragraphs (b)(8) and (b)(9) are added to read as follows:

§ 50.4 Written communications.

* * * * *

(b) * * *

(8) *Certification of permanent cessation of operations.* The licensee's certification of permanent cessation of operations, pursuant to § 50.82(a)(1), must state the date on which operations have ceased or will cease, and the signed and notarized original must be submitted to: The Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555.

(9) *Certification of Permanent Fuel Removal.* The licensee's certification of permanent fuel removal, pursuant to § 50.82(a)(1), must state the date on which the fuel was removed from the reactor vessel and the disposition of the fuel, and the signed and notarized original must be submitted to: The Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555.

* * * * *

12. In § 50.36, paragraphs (c)(6) and (c)(7) are redesignated as (c)(7) and (c)(8) and new paragraphs (c)(6) and (e) are added to read as follows:

* * * * *

§ 50.36 Technical specifications.

* * * * *

(c) * * *

(6) *Decommissioning.* This paragraph applies only to nuclear power reactors that have submitted the certifications required by § 50.82(a)(1) and to non-power reactors which are not authorized to operate. Technical specifications involving safety limits, limiting safety system settings, and limiting control system settings; limiting conditions for operation; surveillance requirements; design features; and administrative controls will be developed on a case-by-case basis.

* * * * *

(e) The provisions of this section apply to each nuclear reactor licensee whose authority to operate the reactor has been removed by license amendment, order, or regulation.

13. Section 50.36a is revised to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

(a) In order to keep releases of radioactive materials to unrestricted areas during normal conditions, including expected occurrences, as low as reasonably achievable, each licensee of a nuclear power reactor will include technical specifications that, in addition to requiring compliance with applicable provisions of § 20.1301 of this chapter, require that:

(1) Operating procedures developed pursuant to § 50.34a(c) for the control of effluents be established and followed and that equipment installed in the radioactive waste system, pursuant to § 50.34(a), be maintained and used. The licensee shall retain the operating procedures in effect as a record until the Commission terminates the license and shall retain each superseded revision of the procedures for three years from the date it was superseded.

(2) Each licensee shall submit a report to the Commission annually that specifies the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous 12 months, including any other information as may be required by the Commission to estimate maximum potential annual radiation doses to the public resulting from effluent releases. The report must be submitted as specified in § 50.4, and the time between submission of the reports must be no longer than 12 months. If quantities of radioactive materials released during the reporting period are significantly above design objectives, the report must cover this specifically. On the basis of these reports and any additional information the Commission may obtain from the licensee or others, the Commission may require the licensee to take action as the Commission deems appropriate.

(b) In establishing and implementing the operating procedures described in paragraph (a) of this section, the licensee shall be guided by the following considerations: Experience with the design, construction, and operation of nuclear power reactors indicates that compliance with the technical specifications described in this section will keep average annual releases of radioactive material in effluents and their resultant committed effective dose equivalents at small percentages of the dose limits specified in § 20.1301 and in the license. At the same time, the licensee is permitted the flexibility of operation, compatible with considerations of health and safety, to assure that the public is provided a dependable source of power even under unusual conditions which may temporarily result in releases higher than such small percentages, but still within the limits specified in § 20.1301 of this chapter and in the license. It is expected that in using this flexibility under unusual conditions, the licensee will exert its best efforts to keep levels of radioactive material in effluents as low as is reasonably achievable. The guides set out in Appendix I to this part provide numerical guidance on limiting conditions for operation for light-water cooled nuclear power reactors to meet the requirement that radioactive materials in effluents released to unrestricted areas be kept as low as is reasonably achievable.

14. Section 50.36b is revised to read as follows:

§ 50.36b Environmental conditions.

Each license authorizing operation of a production or utilization facility, and each licensee for a reactor facility for which the certification of permanent cessation of operations required under § 50.82(a)(1) has been submitted, which is of a type described in § 50.21(b)(2) or (3) or § 50.22 or is a testing facility may include conditions to protect the environment to be set out in an attachment to the license which is incorporated in and made a part of the license. These conditions will be derived from information contained in the environmental report and the supplement to the environmental report submitted pursuant to §§ 51.50 and 51.53 of this chapter as analyzed and evaluated in the NRC record of decision, and will identify the obligations of the licensee in the environmental area, including, as appropriate, requirements for reporting and keeping records of environmental data, and any conditions and monitoring requirement for the protection of the nonaquatic environment.

15. In § 50.44, the introductory text of paragraph (a) is revised to read as follows:

§ 50.44 Standards for combustible gas control system in light-water-cooled power reactors.

(a) Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, other than a reactor facility for which the certifications required under § 50.82(a)(1) have been submitted, must, as provided in paragraphs (b) through (d) of this section, include means for control of hydrogen gas that may be generated,

following a postulated loss-of-coolant accident (LOCA) by—-

* * * * *

16. In § 50.46, paragraph (a)(1)(i) is revised to read as follows:

§ 50.46 Acceptance criteria for emergency core cooling systems for light water nuclear power reactors.

(a)(1)(i) Each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding, other than a reactor facility for which the certifications required under § 50.82(a)(1) have been submitted, must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated loss-of-coolant accidents of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated loss-of-coolant accidents are calculated. Except as provided in paragraph (a)(1)(ii) of this section, the evaluation model must include sufficient supporting justification to show that the analytical technique realistically describes the behavior of the reactor system during a loss-of-coolant accident. Comparisons to applicable experimental data must be made and uncertainties in the analysis method and inputs must be identified and assessed so that the uncertainty in the calculated results can be estimated. This uncertainty must be accounted for, so that, when the calculated ECCS cooling performance is compared to the criteria set forth in paragraph (b) of this section, there is a high level of probability that the criteria would not be exceeded. Appendix K to this part, Part II Required Documentation, sets forth the documentation requirements for each evaluation model.

* * * * *

17. In § 50.48, paragraph (f) is added to read as follows:

§ 50.48 Fire protection.

* * * * *

(f) Licensees that have submitted the certifications required under § 50.82(a)(1) shall maintain a fire protection program to address the potential for fires which could cause the release or spread of radioactive materials (i.e., which could result in a radiological hazard).

(1) The objectives of the fire protection program are to:

(i) Reasonably prevent such fires from occurring;

(ii) Rapidly detect, control, and extinguish those fires which do occur and which could result in a radiological hazard; and

(iii) Ensure that the risk of fire-induced radiological hazards to the public, environment and plant personnel is minimized.

(2) The fire protection program must be assessed by the licensee on a regular basis and revised as appropriate throughout the various stages of facility decommissioning.

(3) The licensee may make changes to the fire protection program without NRC approval if these changes do not reduce the effectiveness of fire protection for facilities, systems and equipment which could result in a radiological hazard, taking into account the decommissioning plant conditions and activities.

18. In § 50.49, paragraph (a) is revised to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

(a) Each holder of or an applicant for a license for a nuclear power plant, other than a reactor facility for which the certifications required under § 50.82(a)(1) have been submitted, shall establish a program for qualifying the electric equipment defined in paragraph (b) of this section.

* * * * *

19. In § 50.51, the section heading is revised, the existing paragraph is designated paragraph (a), and paragraph (b) is added to read as follows:

* * * * *

§ 50.51 Continuation of license.

* * * * *

(b) Each license will continue in effect beyond the expiration date, if necessary, with respect to possession of the production or utilization facility, until the Commission notifies the licensee in writing that the license is terminated. During any period of continued effectiveness of a license beyond the license's stated expiration date, except for a license which is in timely renewal status under § 2.109 of this chapter, the licensee is prohibited from operating the production or utilization facility and shall—

(1) Take actions necessary to decommission and decontaminate the facility and continue to maintain the facility, including the storage, control and maintenance of the spent fuel, in a safe condition, and

(2) Conduct activities in accordance with all other restrictions applicable to the facility in accordance with the NRC regulations and the provisions of the specific part 50 license for the facility.

* * * * *

20. In § 50.54, paragraphs (o) and (y) are revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(o) Primary reactor containments for water cooled power reactors, other than reactor facilities for which the certifications required under § 50.82(a)(1) have been submitted, shall be subject to the requirements set forth in Appendix J to this part.

* * * * *

(y) Licensee action permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator, or, at a nuclear power reactor for which the certifications required under § 50.82(a)(1) have been submitted, by either a licensed senior operator or a certified fuel handler, prior to taking the action.

* * * * *

21. In § 50.59, paragraphs (d), (e), and (f) are added to read as follows:

§ 50.59 Changes, tests and experiments.

* * * * *

(d) All the provisions of this section shall apply to each nuclear power reactor licensee that has submitted the certification of permanent cessation of operations required under § 50.82(a)(1).

(e) (1) A nuclear power reactor licensee that has submitted the certification of permanent cessation of operations required under § 50.82(a)(1) may conduct activities with regard to the facility, subject to the limitations described in paragraph (a) of this section, provided the changes would not:

(i) Foreclose the release of the site for possible unrestricted use,

(ii) Significantly increase decommissioning costs,

(iii) Cause any significant environmental impact not previously reviewed, or

(iv) Violate the terms of the licensee's existing license.

(2) For changes not meeting any of the criteria in this paragraph or paragraph (a) of this section, the licensee shall submit an application for amendment pursuant to § 50.90.

(f) The provisions of paragraphs (a) through (c) of this section apply to each non-power reactor licensee whose license no longer authorizes operation of the reactor.

22. In § 50.60, paragraph (a) is revised to read as follows:

§ 50.60 Acceptance criteria for fracture prevention measures for light-water nuclear power reactors for normal operation.

(a) Except as provided in paragraph (b) of this section, all light water nuclear power reactors, other than reactor facilities for which the certifications required under § 50.82(a)(1) have been submitted, must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary set forth in Appendices G and H to this part.

* * * * *

23. In § 50.61, paragraph (b)(1) is revised to read as follows:

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

* * * * *

(b) *Requirements.* (1) For each pressurized water nuclear power reactor for which an operating license has been issued, other than a reactor facility for which the certifications required under § 50.82(a)(1) have been submitted, the licensee shall submit projected values of RT_{PTS} for reactor vessel beltline materials by giving values for the time of submittal, the expiration date of the operating license, the projected expiration date if a change in the operating license has been requested, and the projected expiration date of a renewal term if a request for license renewal has been submitted. The assessment must use the calculative procedures given in paragraph (b)(2) of this section. The assessment must specify the bases for the projection, including the assumptions regarding core loading patterns. The submittal must list the copper and nickel contents, and the fluency values used in the calculation for each beltline material. If these quantities differ from those submitted in response to the original PTS rule and accepted by the NRC, justification must be provided. If the value of RT_{PTS} for any material in the beltline is projected to exceed the PTS screening criteria before the expiration date of the operating license or the proposed expiration date if a change in the license has been requested, or the end of a renewal term if a request for license renewal has been submitted, this assessment must have been submitted by December 16, 1991. Otherwise, this assessment must be submitted with the next update of the pressure-temperature limits, or the next reactor vessel material surveillance report, or 5 years from [the effective date of the final rule], whichever comes first. These submittals must be updated whenever there is a significant change in projected values of RT_{PTS}, or upon a request for a change in the expiration date for operation of the facility.

* * * * *

24. In § 50.62, paragraph (a) is revised to read as follows:

§ 50.62 Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants.

(a) *Applicability.* The requirements of this section apply to all commercial light-water-cooled nuclear power plants, other than reactor facilities for which the certifications required under § 50.82(a)(1) have been submitted.

* * * * *

25. In § 50.65, paragraph (a)(1) is revised to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

(a)(1) Each holder of a license to operate a nuclear power plant under §§ 50.21(b) or 50.22 shall monitor the performance or condition of structures, systems, or components, against licensee-established goals, in a manner sufficient to provide reasonable assurance that such structures, systems, and components, as defined in paragraph (b) of this section, are capable of fulfilling their intended functions. Such goals shall be established commensurate with safety and, where practical, take into account industry-wide operating experience. When the performance or condition of a structure, system, or component does not meet established goals, appropriate corrective action shall be taken. For a nuclear power plant for which the licensee has submitted the certifications specified in § 50.82(a)(1), this section shall apply to the extent that the licensee shall monitor the performance or condition of all structures, systems, or components associated with the storage, control, and maintenance of spent fuel in a safe condition, in a manner sufficient to provide reasonable assurance that such structures, systems, and components are capable of fulfilling their intended functions.

* * * * *

26. In § 50.71, paragraph (f) is added to read as follows:

§ 50.71 Maintenance of records, making of reports.

* * * * *

(f) The provisions of this section shall apply to nuclear power reactor licensees that have submitted the certification of permanent cessation of operations required under § 50.82(a)(1). The applicable provisions of this section shall also apply to non-power reactor licensees that are no longer authorized to operate.

27. In § 50.75, paragraph (f) is revised to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(f) (1) Each power reactor licensee shall at or about 5 years prior to the projected end of operations submit a preliminary decommissioning cost estimate which includes an up-to-date assessment of the major factors that could affect the cost to decommission.

(2) Each non-power reactor licensee shall at or about 2 years prior to the projected end of operations submit a preliminary decommissioning plan containing a cost estimate for decommissioning and an up-to-date assessment of the major factors that could affect planning for decommissioning. Factors to be considered in submitting this information include—

(i) The decommissioning alternative anticipated to be used. The requirements of § 50.82(b)(4)(i) must be considered at this time;

(ii) Major technical actions necessary to carry out decommissioning safely;

(iii) The current situation with regard to disposal of high-level and low-level radioactive waste;

(iv) Residual radioactivity criteria;

(v) Other site specific factors which could affect decommissioning planning and cost.

(3) If necessary, the cost estimate shall, for power and non-power reactors, also include plans for adjusting levels of funds assured for decommissioning to demonstrate that a reasonable level of assurance will be provided that funds will be available when needed to cover the cost of decommissioning.

* * * * *

28. Section 50.82 is revised to read as follows:

§ 50.82 Termination of license.

The following provisions apply to licensees who do not have an NRC approved decommissioning plan on the effective date of the final rule and may be used, at the licensee's option, by licensees who possess an NRC approved decommissioning plan on the effective date of the final rule.

(a) For power reactor licensees—

(1)(i) When a licensee has determined to permanently cease operations the licensee shall, within 30 days, submit a written certification to the NRC, consistent with the requirements of § 50.4(b)(8) and;

(ii) Once fuel has been permanently removed from the reactor vessel, submit

a written certification to the NRC, consistent with the requirements of § 50.4(b)(9).

(2) Upon docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, or when a final legally effective order to permanently cease operations has come into effect, the part 50 license no longer authorizes operation of the reactor or emplacement of fuel into the reactor vessel.

(3) Decommissioning will be completed within 60 years of permanent cessation of operations. Completion of decommissioning beyond 60 years will be approved by the Commission only when necessary to protect public health and safety. Factors that will be considered in evaluating an alternative which provides for completion of decommissioning beyond 60 years of permanent cessation of operations include unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning, including presence of other nuclear facilities at the site.

(4)(i) Prior to or within two years following permanent cessation of operations, the licensee shall submit a post-shutdown decommissioning activities report (PSDAR) which shall include a description of the planned decommissioning activities along with a schedule for their accomplishment, an estimate of expected costs, and a discussion as to whether the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements.

(ii) The NRC shall notice receipt of the PSDAR and make the PSDAR available for public comment. The NRC shall also schedule a public meeting in the vicinity of the licensee's facility upon receipt of the PSDAR. The NRC shall publish a notice in the **Federal Register** and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, announcing the date, time and location of the meeting, along with a brief description of the purpose of the meeting.

(5) Licensees may not perform any major decommissioning activities, as defined in § 50.2, until 90 days after the NRC has received the licensee's PSDAR submittal and until certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel, as required under § 50.82(a)(1), have been submitted.

(6) In taking actions permitted under § 50.59 following submittal of the PSDAR, the licensee shall notify the NRC, in writing, before performing any decommissioning activity inconsistent with, or making any significant schedule change from, those actions and schedules described in the PSDAR.

(7)(i) Decommissioning trust funds may be used by licensees provided:

(A) The withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in § 50.2;

(B) The expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise and;

(C) The withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

(ii) Initially, 3 percent of the generic amount specified in § 50.75 may be used for decommissioning planning. For licensees that have submitted the certifications required under § 50.82(a)(1) and commencing 90 days after the NRC has received the PSDAR, an additional 20 percent may be used. A site-specific decommissioning cost estimate must be submitted to the NRC prior to the licensee being permitted to use any funding in excess of these amounts.

(iii) Within 2 years following permanent cessation of operations, if not already submitted, the licensee shall submit a site-specific decommissioning cost estimate.

(iv) For decommissioning activities that delay completion of decommissioning by including a period of storage or surveillance, the licensee shall provide a means of adjusting cost estimates and associated funding levels over the storage or surveillance period.

(8) For licensees that have submitted a certification in accordance with § 50.82(a)(1), the application for termination of license must be accompanied or preceded by a license termination plan to be submitted for NRC approval.

(i) The license termination plan must be a supplement to the FSAR or equivalent and must be submitted at least 2 years prior to the termination of license date.

(ii) The license termination plan must include—

(A) A site characterization;

(B) A description of remaining dismantlement activities;

(C) Plans for site remediation;

(D) Detailed plans for the final radiation survey;

(E) A description of the end use of the site, if restricted;

(F) An updated site-specific analysis of remaining decommissioning costs; and

(G) A supplement to the environmental report, pursuant to § 51.53, describing any new information or significant environmental change associated with the licensee's proposed termination activities.

(iii) The NRC shall notice receipt of the license termination plan and make the license termination plan available for public comment. The NRC shall also schedule a public meeting in the vicinity of the licensee's facility upon receipt of the license termination plan. The NRC shall publish a notice in the **Federal Register** and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, announcing the date, time and location of the meeting, along with a brief description of the purpose of the meeting.

(9) If the license termination plan demonstrates that the remainder of decommissioning activities will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve the plan, by amendment, subject to such conditions and limitations as it deems appropriate and necessary and authorize implementation of the license termination plan.

(10) The Commission will terminate the license if it determines that—

(i) The remaining dismantlement has been performed in accordance with the approved license termination plan, and

(ii) The terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release.

(b) For non-power reactor licensees—

(1) A licensee that permanently ceases operations must make application for license termination within 2 years following permanent cessation of operations, and in no case later than 1 year prior to expiration of the operating license. Each application for termination of a license must be accompanied or preceded by a proposed decommissioning plan. The contents of the decommissioning plan are specified in paragraph (b)(4) of this section.

(2) For decommissioning plans in which the major dismantlement activities are delayed by first placing the facility in storage, planning for these

delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of these activities.

(3) For decommissioning plans that delay completion of decommissioning by including a period of storage or surveillance, the licensee shall provide that—

(i) Funds needed to complete decommissioning be placed into an account segregated from the licensee's assets and outside the licensee's administrative control during the storage or surveillance period, or a surety method or fund statement of intent be maintained in accordance with the criteria of § 50.75(e), and

(ii) Means be included for adjusting cost estimates and associated funding levels over the storage or surveillance period.

(4) The proposed decommissioning plan must include—

(i) The choice of the alternative for decommissioning with a description of activities involved. An alternative is acceptable if it provides for completion of decommissioning without significant delay. Consideration will be given to an alternative which provides for delayed completion of decommissioning only when necessary to protect the public health and safety. Factors to be considered in evaluating an alternative which provides for delayed completion of decommissioning include unavailability of waste disposal capacity and other site specific factors affecting the licensee's capability to carry out decommissioning, including presence of other nuclear facilities at the site.

(ii) A description of the controls and limits on procedures and equipment to protect occupational and public health and safety;

(iii) A description of the planned final radiation survey;

(iv) An updated cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning; and

(v) A description of technical specifications, quality assurance provisions and physical security plan provisions in place during decommissioning.

(5) If the decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve, by amendment, the plan subject to such conditions and limitations as it deems appropriate and necessary. The approved decommissioning plan will be a supplement to the Safety Analysis report or equivalent.

(6) The Commission will terminate the license if it determines that—

(i) The decommissioning has been performed in accordance with the approved decommissioning plan, and

(ii) The terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release.

(c) For a facility that has permanently ceased operation before the expiration of its license, the collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each licensee.

29. In § 50.91, the introductory text is revised to read as follows:

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures for an application requesting an amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility, except for amendments subject to hearings governed by §§ 2.1201 through 2.1263 of this chapter. For amendments subject to §§ 2.1201 through 2.1263 of this chapter, the following procedures will apply only to the extent specifically referenced in § 2.1205 (c) and (d) of this chapter:

* * * * *

30. In § 50.111, paragraph (b) is revised to read as follows:

§ 50.111 Criminal penalties.

* * * * *

(b) The regulations in part 50 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 50.1, 50.2, 50.3, 50.4, 50.8, 50.11, 50.12, 50.13, 50.20, 50.21, 50.22, 50.23, 50.30, 50.31, 50.32, 50.33, 50.34a, 50.35, 50.36b, 50.37, 50.38, 50.39, 50.40, 50.41, 50.42, 50.43, 50.45, 50.50, 50.51, 50.52, 50.53, 50.56, 50.57, 50.58, 50.81, 50.90, 50.91, 50.92, 50.100, 50.101, 50.102, 50.103, 50.109, 50.110, and 50.111.

31. Appendix I of Part 50 is amended by revising Section (I), the introductory text of Section (IV), and Section (IV)(C) to read as follows:

Appendix I—Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion "As Low As Is Reasonably Achievable" for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents

Section I. *Introduction.* Section 50.34a provides that an application for a permit to construct a nuclear power reactor shall include a description of the preliminary design of equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal conditions, including expected occurrences. In the case of an application filed on or after January 2, 1971, the application must also identify the design objectives, and the means to be employed, for keeping levels of radioactive material in effluents to unrestricted areas as low as practicable.

Section 50.36a contains provisions designed to assure that releases of radioactive material from nuclear power reactors to unrestricted areas during normal conditions, including expected occurrences, are kept as low as practicable.

* * * * *

SEC. IV. *Guides on technical specifications for limiting conditions for operation for light-water-cooled nuclear power reactors licensed under 10 CFR Part 50.* The guides on limiting conditions for operation for light-water-cooled nuclear power reactors set forth below may be used by an applicant for a license to operate a light-water-cooled nuclear power reactor or a licensee who has submitted a certification of permanent cessation of operations under § 50.82(a)(1) as guidance in developing technical specifications under § 50.36a(a) to keep levels of radioactive materials in effluents to unrestricted areas as low as is reasonably achievable.

Section 50.36a(b) provides that licensees shall be guided by certain considerations in establishing and implementing operating procedures specified in technical specifications that take into account the need for operating flexibility and at the same time assure that the licensee will exert his best effort to keep levels of radioactive material in effluents as low as is reasonably achievable. The guidance set forth below provides additional and more specific guidance to licensees in this respect.

Through the use of the guides set forth in this Section it is expected that the annual release of radioactive material in effluents from light-water-cooled nuclear power reactors can generally be maintained within the levels set forth as numerical guides for design objectives in Section II.

At the same time, the licensee is permitted the flexibility of operations, compatible with considerations of health and safety, to assure that the public is provided a dependable source of power even under unusual conditions which may temporarily result in releases higher than numerical guides for design objectives but still within levels that assure that the average population exposure is equivalent to small fractions of doses from natural background radiation. It is expected that in using this operational flexibility under unusual conditions, the licensee will exert his best efforts to keep levels of

radioactive material in effluents within the numerical guides for design objectives.

* * * * *

C. If the data developed in the surveillance and monitoring program described in paragraph B of Section III or from other monitoring programs show that the relationship between the quantities of radioactive material released in liquid and gaseous effluents and the dose to individuals in unrestricted areas is significantly different from that assumed in the calculations used to determine design objectives pursuant to Sections II and III, the Commission may modify the quantities in the technical specifications defining the limiting conditions in a license to operate a light-water-cooled nuclear power reactor or a license whose holder has submitted a certification of permanent cessation of operations under § 50.82(a)(1).

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

32. The authority cite is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

33. In § 51.53, paragraph (b) is revised to read as follows:

§ 51.53 Supplement to environmental report.

* * * * *

(b) *Post operating license stage.* Each applicant for a license amendment authorizing decommissioning activities for a production or utilization facility either for unrestricted use or based on continuing use restrictions applicable to the site; and each applicant for a license amendment approving a license termination plan or decommissioning plan under § 50.82 of this chapter either for unrestricted use or based on continuing use restrictions applicable to the site; and each applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled ''Supplement to Applicant's Environmental Report—Post Operating License Stage,'' which will update ''Applicants Environmental Report—Operating License Stage,'' as appropriate, to reflect any new information or significant environmental change associated with the applicants proposed decommissioning activities or with the applicants proposed activities with respect to the planned storage of spent fuel. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), the applicant shall only address the environmental impact of spent fuel storage for the term of the license applied for. The ''Supplement to Applicant's Environmental Report—Post Operating License Stage'' may incorporate by reference any information contained in ''Applicant's Environmental Report—Construction Permit Stage,'' ''Supplement to Applicant's Environmental Report—Operating License Stage,'' final environmental impact statement, supplement to final environmental statement of records of decision previously prepared in connection with the construction permit of the operating license.

34. In § 51.95, paragraph (b) is revised to read as follows:

§ 51.95 Supplement to final environmental impact statement.

(b) Post operating license stage. In connection with the amendment of an operating license authorizing decommissioning activities at a production or utilization facility covered by § 51.20, either for unrestricted use or based on continuing use restrictions applicable to the site, or with the issuance, amendment or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor, the NRC staff will prepare a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, which will update the prior environmental review. The supplement or assessment may incorporate by reference any information contained in the final environmental impact statement, the supplement to the final environmental impact statement—operating license stage, or in the records of decision prepared in connection with the construction permit or the operating license for that facility. The supplement will include a request for comments as provided in § 51.73. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, will address the environmental impacts of spent fuel storage only for the term of the license, license amendment or license renewal applied for.

Dated at Rockville, Maryland, this 13th day of July, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–17718 Filed 7–19–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–801]

Energy Conservation Program for Consumer Products: Proposed Rulemaking Regarding Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Proposed Rulemaking and Public Hearing.

SUMMARY: The purpose of this notice of proposed rulemaking (NOPR) is to provide interested persons an opportunity to comment on this proposal amending the energy conservation standards for refrigerators, refrigerator-freezers, and freezers, and to invite interested persons to participate in the appliance energy conservation standards rulemaking process.

DATES: Written comments on the proposed rule must be received by the Department by October 3, 1995. The Department requests 10 copies of the written comments and, if possible, a computer disk.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on September 12 and 13, 1995. Requests to speak at

the hearing must be received by the Department by 4 p.m., August 25, 1995. Ten copies of statements to be given at the public hearing must be received by the Department by 4 p.m., September 1, 1995.

The hearing will begin at 9:30 a.m., on September 12 and 13, 1995, and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585. The length of each presentation is limited to 20 minutes.

ADDRESSES: Written comments, oral statements, requests to speak at the hearing and requests for speaker lists are to be submitted to: Refrigerator Rulemaking (Docket No. EE–RM–93–801), U.S. Department of Energy, Office of Codes and Standards, Appliance Division, EE–431, 1000 Independence Avenue, SW., Rm 1J–018, Washington, DC 20585, (202) 586–7574.

Copies of the *Technical Support Document: Energy Efficiency Standards for Consumer Products: Refrigerators, Refrigerator-Freezers, and Freezers* (TSD) may be obtained from: U.S. Department of Energy, Office of Codes and Standards, Appliance Division, EE–431, 1000 Independence Avenue, S.W., Rm 1J–018, Washington, D.C. 20585. (202) 586–9127.

Copies of the TSD, transcript of the public hearing and public comments received may be read at the DOE 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 a.m. and 4 p.m., Monday through Friday, except Federal holidays. For more information concerning public participation in this rulemaking proceeding see Section VI, ''Public Comment Procedures,'' of this NOPR.

FOR FURTHER INFORMATION CONTACT:

Edward O. Pollock Jr., 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) 586–5778.

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:

I. Introduction

A. *Authority*

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, by the National Appliance Energy Conservation Act (NAECA), Pub. L. 100–12, by the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100–357, and by the Energy Policy Act of 1992, Pub. L. 102–486,[1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program are called ''covered products.'' The residential covered products are: Refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners

[1] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988 and the Energy Policy Act of 1992, is referred to in this notice as the ''Act.'' Part B of Title III is codified at 42 U.S.C. 6291 et seq. Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to in this notice as the National Energy Conservation Policy Act.

and central air-conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; and pool heaters. The Act specifies that other consumer products may be classified as covered products by the Secretary of Energy. To date, the Secretary has not so classified any additional products.

DOE published a final rule amending standards established by NAECA for refrigerators, refrigerator-freezers, and freezers (refrigerator products) on November 17, 1989 (hereinafter, referred to as the 1989 Final Rule). 54 FR 47916. The Act directs DOE to review the 1989 Final Rule for possible amendment and to issue final rules based on that review no later than November 17, 1994.

B. *Background*

As directed by the Act, DOE published an Advance Notice of Proposed Rulemaking (hereinafter referred to as the 1993 Advance Notice) proposing standards for refrigerator products, as well as other products, on September 8, 1993. 58 FR 47326. The 1993 Advance Notice presented the product classes that DOE planned to analyze, and provided a detailed discussion of the analytical methodology and models that the Department expected to use in doing the analysis to support this rulemaking. The Department invited comments and data on the accuracy and feasibility of the planned methodology and encouraged interested persons to recommend improvements or alternatives to the approach taken by DOE. The original comment period on the 1993 Advance Notice was extended to February 7, 1994, in response to a request from the Gas Appliance Manufacturers Association (GAMA), the Air-Conditioning and Refrigeration Institute (ARI), and the Association of Home Appliance Manufacturers (AHAM). 58 FR 59418 (November 9, 1993).

This NOPR addresses only the refrigerator products covered by the 1993 Advance Notice. The 1989 Final Rule divided the refrigerator products into 10 classes based on various characteristics (e.g., freezer location). This NOPR proposes new classes for eight different compact refrigerator configurations and 18 new classes for those refrigerator products which are free of HCFCs. A complete list of the proposed classes and the proposed standards for each class is found in the table at the end of this NOPR.

The comments to the 1993 Advance Notice are addressed in Section III below. The last comment to be received was the ''Joint Comments of the Association of Home Appliance Manufacturers, the Natural Resources Defense Council, the American Council for an Energy Efficient Economy, the New York State Energy Office, the California Energy Commission, Pacific Gas and Electric, and Southern California Edison Relating to Energy Conservation Standards for Refrigerator/Freezers.'' (Hereinafter referred to as the ''Joint Comments.'')[2] This group of refrigerator manufacturers, electric utilities, and energy conservation advocates, acting on its own initiative, negotiated intensively for 2 years to develop a common recommendation for an energy conservation standard that meets the NAECA requirements for refrigerators, refrigerator-freezers and freezers. Although DOE neither organized nor was a member of the group, DOE responded to group requests to send DOE staff observers to some meetings and to make available its contractors to perform data processing. Without prior commitment to accept the negotiated conclusions, the Department has been receptive to this group effort to reach agreement among representatives of industry, consumers and environmentalists. The resulting joint comments have been very valuable to the Department's review of this issue. The Joint Comments contains important data and analyses for the Department to consider, and realistic recommendations.

II. General Discussion

A. Technological Feasibility

1. General. For those products and classes of products discussed in today's NOPR, DOE believes that the efficiency levels analyzed, while not necessarily being realized in current production, are technologically possible. The technological feasibility of the design options is addressed in the product-specific discussion. The criteria used by the Department for evaluating design options for technological feasibility are that the design options are already in use by the industry, or that research has progressed to the likely development of a prototype.

a. Maximum Technologically Feasible Levels. The Act requires the Department, in considering any new or amended standard, to consider the standard that is ''designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.'' EPCA, section 325(o)(2)(A), 42 U.S.C. 6295(o)(2)(A). Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible design option (''max tech'') was identified. The max tech level is one that can be achieved by the addition of energy conserving design options to the baseline units.[3] DOE believes that in identifying the max tech level a unit can be assembled, but not necessarily manufactured, by the effective date of the amended standards. The ability to manufacture is considered under the economic justification analysis. For example, in the 1989 Final Rule, DOE concluded that evacuated panels for refrigerators were a technically feasible design option because refrigerators had been produced on a limited scale with this technology. However, DOE concluded that this technology was not economically justified because the chemical industry probably could not provide sufficient quantities of the necessary raw materials by the effective date of the standard.

The max tech levels were derived by adding energy-conserving engineering design options for each of the respective classes in order of decreasing consumer payback. A brief discussion of the max tech level for each class analyzed is found in the ''Analysis'' section of this NOPR. A complete discussion of each max tech level, and the design options included in each, is found in the Engineering Analysis. (See TSD, Chapter 3.)

B. Economic Justification

The Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified. EPCA, section 325(o)(2)(B)(i), 42 U.S.C. 6295(o)(2)(B)(i).

1. Economic Impact on Manufacturers and Consumers. The engineering analysis identified options for improvement in efficiency along with the associated costs to manufacturers for each class of product. For each design option, these costs constitute the increased per-unit cost to manufacturers to achieve the indicated energy efficiency levels. Manufacturer, wholesaler, and retailer markups will result in a consumer purchase price higher than the manufacturer cost.

To assess the likely impacts of standards on manufacturers, and to determine the effects of standards on different-sized firms, the Department used a computer model that simulates

[2] The Department considered the Joint Comments to supersede earlier comments by the listed parties regarding issues subsequently discussed in the Joint Comments.

[3] The baseline unit is the most commonly used combination of engineering design options which are found in appliances that meet the existing standards.

hypothetical firms in the industry under consideration. This model, the Manufacturer Analysis Model (MAM), is explained in the TSD. (See TSD, Appendix C.) The Manufacturer Analysis Model consists of version 1.2, dated March 1, 1993, of the Government Regulatory Impact Model (GRIM) which has been integrated into the earlier Lawrence Berkeley Laboratory (LBL) Manufacturer Impact Model (LBL–MIM). The GRIM model was developed by Arthur D. Little Consulting Company (ADL) under contract to AHAM, GAMA, and ARI. It provides a broad array of outputs, including shipments, price, revenue, net income, and short- and long-run returns on equity. An ''Output Table'' lists values for all these outputs in the base case and in each of the standards cases under consideration. It also gives a range for each of these estimates. The base case represents the forecasts of outputs without new or amended standards. A ''Sensitivity Chart'' (TSD, Appendix C) shows how returns on equity would be affected by a change in any one of the nine control variables of the model.

For consumers, measures of economic impact are the changes in purchase price and annual energy expense. The purchase price and energy expense, i.e., life-cycle cost, of each standard level are presented in Chapter 4 of the TSD. Under section 325 of EPCA, the life-cycle cost analysis is a separate factor to be considered in determining economic justification.

2. Life-cycle Costs. One measure of the effect of proposed standards on consumers is the change in operating expense and purchase price resulting from the new standards. For the average consumer, this is quantified by the difference in the life-cycle costs between the base and standards cases for the refrigerator classes analyzed. The life-cycle cost is the sum of the purchase price and the operating expense, including installation and maintenance expenditures, discounted over the lifetime of the appliance.

The life-cycle cost was calculated for the range of efficiencies in the Engineering Analysis for each class in the year standards are imposed, using a real consumer discount rate of 6 percent. The purchase price is based on the factory costs in the Engineering Analysis and includes a factory markup plus a distributor and retailer markup. Energy price forecasts are taken from the 1994 *Annual Energy Outlook* of the Energy Information Administration. (DOE/EIA–0383(94)). In the analysis for the final rule, energy price forecasts included in the most recent *Annual Energy Outlook* will be used. Appliance usage inputs are taken from the relevant test procedures.

3. Energy Savings. The Act requires DOE to consider the total projected energy savings that result from revised standards. The Department used the LBL Residential Energy Model (LBL–REM) results in its consideration of total projected savings. The savings for refrigerators, refrigerator-freezers and freezers are provided in the ''Analysis'' section of this NOPR, *supra*.

a. Determination of Savings. The Department forecasts energy consumption by using the LBL–REM, which forecasts energy consumption over the period of analysis for candidate standards and the base case. The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standard and the base case.

The Lawrence Berkeley Laboratory Residential Energy Model was used by DOE in previous standards rulemakings. (See TSD, Appendix B for a detailed discussion of the LBL–REM.) The LBL–REM contains algorithms to project average efficiencies, usage behavior, and market shares for each product. Long-term market share elasticities have been assumed with respect to equipment price, operating expense, and income. The effects of standards are expected to be lower operating expense and increased equipment price. The percentage changes in these quantities and the elasticities are used to determine changes in sales volumes resulting from standards. Higher equipment prices will decrease, and lower operating expenses will increase sales volumes. The net result depends on the standard level selected and its associated equipment prices and operating expenses.

The Lawrence Berkeley Laboratory Residential Energy Model is used to project energy use over the relevant periods for refrigerator products with and without amended standards. The Department estimated the projected energy savings during the period 1998–2030[4], by comparing the energy consumption projections at alternative standard levels against the projections at current standards which is the base case. The energy saved is expressed in quads, i.e., quadrillions of British thermal units (Btu), and exajoules (EJ). With respect to electricity, the savings are quads of source or primary energy, which is the energy necessary to generate and transmit electricity. From data that remain rather constant over the years, the amount of electrical energy consumed at the site is less than one-third of the amount of source energy required to generate and transmit the electrical energy to the site.[5]

The Lawrence Berkeley Laboratory Residential Energy Model projections are dependent on many assumptions. Among the most important are the responsiveness of household appliance purchasers to changes in residential energy prices and consumer income, future energy prices, future levels of housing construction, and options that exist for improving the energy efficiency of appliances.

b. Significance of Savings. Under section 325(o)(3)(B) of the Act, 42 U.S.C. 6295(o)(3)(B), the Department is prohibited from adopting a standard for a product if that standard would not result in ''significant conservation of energy.'' While the term ''significant'' is not defined in the Act, the U.S. Court of Appeals concluded that Congress intended the word ''significant'' to mean ''non-trivial.'' *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985).

4. Lessening of Utility or Performance of Products. In establishing classes of products and design options, the Department tried to eliminate any degradation of utility or performance in the products under consideration in this rulemaking. That is, to the extent that comments or research showed that a product included a utility or performance-related feature that affected energy efficiency, a separate class with a different efficiency standard was created for that product. In this way, the Department attempted to minimize any lessening of utility or performance resulting from amended standards.

5. Impact of Lessening of Competition. The Act directs the Department to consider any lessening of competition that is likely to result from the standards. It further directs the Attorney General to gauge the impact, if any, of any lessening of competition.

To assist the Attorney General in making such a determination, the Department studied the affected appliance industries to determine their

[4] The Lawrence Berkeley Laboratory Residential Energy Model was programmed to analyze a single standard level or alternate standard levels over the entire period. That is, the fact that a standard might be revised during subsequent rulemakings was not considered by the model. The Department believes that it is not possible to predict what result such reviews may have, and therefore it would be speculative to model any particular result. Therefore, for purposes of this rulemaking, each standard level that was analyzed was projected to have been in place from the time of implementation to the year 2030.

[5] Energy Information Administration, *Electric Power Annual 1987*, Tables 25 and 82, DOE/EIA–0348(87), 1987.

existing concentrations, levels of competitiveness, and financial performances. This information will be sent to the Attorney General. (See TSD, Chapter 6.) The Department also will give the Attorney General copies of this NOPR and the TSD for review.

6. Need of the Nation to Conserve Energy. The estimated energy security and environmental effects from each standard level for each class is reported under this factor in the Product Specific Discussion (Section IV. B. 6) of this NOPR.

7. Other Factors. This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant.

Each efficiency level was evaluated according to the economic justification factors specified in the Act to determine economic justification. The Department rejected energy conservation standards for which the burdens outweighed the benefits (e.g., savings in operating costs were outweighed by significant increases in first costs and substantially adverse effects on manufacturers' returns on equity).

C. Rebuttable Presumption

Section 325(o)(2)(B)(iii) of EPCA, 42 U.S.C. 6925 (o)(2)(B)(iii), states:

> If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than 3 years, then it is presumed that such standard is economically justified.[6] This presumption of economic justification can be rebutted upon a proper showing.

III. Discussion of Comments

The Department received 49 written comments in response to the 1993 Advance Notice.[7] This section addresses the general analytical issues raised by the comments, and then addresses the product-specific issues.

A. *General Analytical Comments*

1. Discount Rates. The proposals of the Department concerning the appropriate discount rates to use in the analysis of the standards drew more comments than any other issue.

In view of the apparent differences in the cost of financing, average rate of return on investments and the time value of money among various categories of consumers, and between consumers, manufacturers and society as a whole, the Department proposed to use different discount rates for the consumer life-cycle cost analysis, the manufacturer impact analysis, and net national benefits calculation, with sensitivity analyses designed to describe the range of impact.

Based on the comments received, the Department has made some modifications in this proposal, but has retained the specification of different discount rates for different types of impact analyses and the use of sensitivity analyses.

a. Consumer Discount Rate. In the 1989 Final Rule, DOE used a 7 percent discount rate, based on the range of real financing rates experienced by consumers. At the time, rates ranged from less than 1 percent to slightly more than 15 percent. DOE selected 7 percent because it was near the midpoint of the potential consumer discount rates.

In its comments on the Advance Notice of Proposed Rulemaking on Energy Conservation Standards for Nine Products (55 FR 39624, 39631, September 28, 1990), Whirlpool Corporation (Whirlpool) offered estimates of the percentages of appliance purchasers that used different types of financing: 40 percent of retail purchasers pay in cash; 35 percent use credit cards; 25 percent use retailer loans. These figures excluded new home construction, which accounts for approximately 25 percent of Whirlpool's total sales. (Whirlpool, No. 31 at 1–2).

These percentage shares were used to weight the different real finance rates experienced by consumers: Just over 3 percent for appliances purchased as part of a new home (whose finance rate is a tax-deductible mortgage interest rate), to slightly less than 1 percent for cash purchases, to more than 15 percent for credit card purchases. As a result, the weighted-average, real finance rate experienced by consumers was estimated to be 6 percent. In the 1993 Advance Notice to this proposed rulemaking, the Department stated that it believed that the average consumer rate was between 4 and 10 percent and that it intended to perform sensitivity analyses using this range. DOE specifically solicited comments on a range of issues concerning consumer discount rates: Including the usefulness of the Whirlpool data, the methods used to finance retail purchases, the possible use of data on rates of return required by consumers, the possible use of data on the implicit discount rates revealed by consumer purchasing decisions, and the extent to which the special requirements of low-income consumers should be taken into account.

The American Council for an Energy Efficient Economy (ACEEE) supported this weighted-average approach using the Whirlpool data. However, ACEEE and the Natural Resources Defense Council (NRDC) both stated that consumer discount rates based upon how appliances are actually purchased may represent constrained choices or choices of convenience; for example, consumers who pay off credit card balances early, or default on their payments, are not counted correctly. (ACEEE, No. 50 at 1, 2 and NRDC, No. 18 at 24).

The American Council for an Energy Efficient Economy also stated that higher discount rates should not be used for low-income households. Low-income households are particularly prone to market failures (e.g., many low-income households live in rental housing where landlords purchase the refrigerator-freezers, and tenants pay the operating costs) but receive benefits equal to those for all other households from higher standards. (ACEEE, No. 50 at 1, 2).

The Edison Electric Institute (EEI) argued that implicit discount rates estimated through an examination of actual consumer purchases of appliances and related consumer equipment is the most appropriate basis for the consumer discount rate used under this program. (EEI, No. 35 at 4). On the other hand, NRDC and ACEEE supported the Department proposal not to use implicit discount rates in the analysis of the cost-effectiveness of potential minimum efficiency standards. (ACEEE, No. 50 at 1,2, and NRDC, No. 8 at 24).

DOE has further investigated various indicators of the opportunity costs that consumers purchasing appliances might experience. For example, the average real rate of return on residential property during the 1980s varied

[6] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures. Therefore, the consumer is assumed to be an ''average'' consumer as defined by the DOE test procedures. Consumers that use the products less than the test procedure assumes will experience a longer payback while those that use them more than the test procedure assumes will have a shorter payback.

[7] Comments on the ANOPR have been assigned docket numbers and have been numbered consecutively.

between 3.6 and 4.5 percent annually. The annual real rate of return (nonfinancial) on corporate stocks during this period varied from 5.9 to 8.8 percent, but was generally less than this for nearly all other forms of investment readily available to consumers. DOE believes such opportunity costs are relevant indicators of the appropriate discount rates for consumers with significant personal savings or investments.

For consumers with little or no personal savings, DOE believes that the costs of credit-card financing and the willingness of consumers to forego current consumption in favor of future savings should be taken into account. According to the data derived from a 1992 Survey of Consumer Finances performed by the National Opinion Research Center for the Federal Reserve Bank, 30 percent of all U.S. households have less than $500 in savings, checking and money market accounts, or have no such account. Also, according to the survey, 13 percent of all U.S. households have a net worth of less than $1000. These two survey results suggest that many households may be forced, because of their financial circumstances, to finance any increased appliance costs resulting from efficiency standards through credit cards or other high interest sources of financing, or by reducing (or postponing) their current consumption of goods and services. Limited empirical research [8] suggests that low-income households exhibit higher-than-average discount rates (i.e., required rates of return or time values of money) across all of their time-sensitive decisions, including (but not limited to) their appliance purchases. Real credit-card financing rates remain above 10 percent for most consumers.

The Department continues to believe that appropriately weighted, real financing rates are a useful indicator of consumer discount rates, although it recognizes that there are considerable limitations to the data concerning consumer financing provided by Whirlpool.

Regarding implicit discount rates, various studies have shown that they range from as low as 3 percent to as high as 100 percent (or more) for certain appliances. However, because implicit discount rates are based on actual consumer purchase behavior, they also reflect the extent to which there are market failures, such as inadequate information, conflicting owner/renter incentives, and second party (builder/contractor) purchases that inhibit consumers from making energy efficiency investments they would otherwise consider to be worthwhile. One major reason Federal appliance efficiency standards were originally established was to overcome these market failures regarding investment in energy efficiency.

For these reasons, DOE does not believe unadjusted (i.e., not corrected for potential biases) discount rates derived from actual consumer behavior should be used in evaluating the economic impact of proposed standards on consumers. DOE believes the intent of the legislation that established the appliance standards program is to achieve energy savings which are being foregone because of market failures that hinder or discourage consumer investments in energy efficiency. This conclusion is supported by the findings of the District Court in *Natural Resources Defense Council* v. *Herrington*, 768 F. 2d 1355, 1406–07 (D.C. Cir. 1985), where the court stated that ''the entire point of a mandatory program was to change consumer behavior'' and ''the fact that consumers demand short payback periods was itself a major cause of the market failure that Congress hoped to correct.''

Based on the comments received and the further investigation of issues raised in the Notice of Proposed Rulemaking on Energy Conservation Standards for Eight Products (59 FR 10464, 10532, March 4, 1994), the Department has concluded that a 6 percent discount rate is an appropriate mid-range estimate of the ranges of real financing rates, opportunity costs and time values of money experienced or exhibited by residential consumers. However, because of the considerable variability among different categories of consumers, the Department intends to place increased emphasis on assessing the sensitivity of the life-cycle cost analyses to the use of low (2 percent) and high (15 percent) discount rates.

b. Manufacturer Discount Rate. The real discount rate used to assess the impacts of the proposed refrigerator standards on manufacturers is 12 percent. It is the discount rate used to calculate the net present value of the series of estimated net cash flows expected to be experienced by industry, as calculated by the GRIM module of the MAM.

The Manufacturer Analysis Model also uses a ''market discount rate'' for forecasting the impact of standards on future appliance sales, as distinct from the 12 percent rate used to calculate industry net present values. This implicit market rate is a higher rate derived from empirical analysis of historical efficiency choice decisions, and is used as an indicator of the extent to which consumers implicitly value operating costs compared with first costs.

c. Social Discount Rate. In identifying a discount rate that is appropriate for use in calculating benefits to the Nation as a whole, the Department considered the opportunity costs of devoting more economic resources to the production and purchase of more energy-efficient appliances and fewer national resources to other types of investment. Since differentiating among specific classes of consumers or businesses is not necessary, the Department considered a broad measure of the average rates of return earned by economic investment throughout the U.S. to be an appropriate basis for the social discount rate.

Using this approach, the Office of Management and Budget (OMB) prepared a *Background on OMB's Discount Rate Guidance* in November of 1992, containing an analysis of the average annual real rate of return earned on investments made since 1960 in nonfinancial corporations, noncorporate farm and nonfarm proprietorships, and owner-occupied housing in the U.S. The results of this analysis showed that since 1980, the annual real rate of return for these categories of investments averaged slightly more than 7 percent, ranging from a low of about 4 percent for owner-occupied housing (which represented about 43 percent of total capital assets in 1991 of about $15 trillion) to a high of about 9 percent on noncorporate farm and nonfarm capital (which represented about 23 percent of the total). Between 1960 and 1980, the average real rate of return on capital was higher, averaging about 8.5 percent in the 1970s and about 11.2 percent in the 1960s. Because of this analysis, OMB chose to designate 7 percent as the social discount rate specified in revisions to OMB Circular A–94 issued on November 10, 1992, 57 FR 53519.

Because the Department believes the methods and data used by OMB to develop this guidance are appropriate bases for a social discount rate, the 1993 Advance Notice to this proposed rule said that it was the intent of the Department to use 7 percent as the discount rate in the calculation of the net national benefits and costs of the proposed standards.

The New York State Energy Office (NYSEO) stated that the average rate of 7 percent for the societal perspective is too high and suggested an average rate of 3 to 4 percent real, based upon current 30-year U.S. Treasury bond interest rates. (NYSEO, No. 26 at 17–19).

[8] Train, Kenneth, Discount Rates in Consumers' Energy-Related Decisions: A Review of the Literature; Energy, December 1985.

The Natural Resources Defense Council stated that, in principle, societal discount rates should be lower than consumer discount rates, but that it cannot quantify the difference. It also stated real discount rates should be based upon long-term (hundred-year) averages, which are in the range of 0 to 5 percent. (NRDC, No. 18 at 11).

Because the proposed appliance efficiency standards will primarily affect private, rather than public, investment, the Department continues to believe that using the average real rate of return on private investment as the basis for the social discount rate is most appropriate. If the primary impact of the standards were on Federal or other public expenditures, DOE agrees that real interest rates on long term government securities would likely be a better basis.

The Department disagrees with the contention that the average social discount rate should necessarily be lower than the average consumer discount rates, although it agrees that social rates are often lower than those experienced by many consumers and businesses. The increased risk faced by individual consumers or businesses is one reason many believe social discount rates should be lower. The Department believes that taking into account such variation in risk in determining the appropriate social, consumer, or other discount rate is inappropriate.

For these reasons, DOE proposes to continue to use a 7 percent social discount rate in national net present value calculations. The Department has performed sensitivity analyses at 4 and 10 percent and finds that while the social discount rate used has a significant impact on the estimated national net present value, there are only small differences in the national net present value for each of the trial standard levels being considered at any one of the three social discount rates evaluated.

2. Appliance Lifetimes. Three comments discussed product lifetimes. Maytag stated that the lifetime for refrigerator products should be 15 years, based on a National Family Opinion survey of first owners carried out by AHAM. (Maytag, Transcript at 328). AHAM provided a survey showing that lifetimes of refrigerator products at replacement are shorter than previously assumed by the Department. (AHAM, No. 17 at 32). NRDC believes that savings should be estimated throughout the lifetime of the appliance, not over the period that the first owner keeps the appliance. (NRDC, No. 18 at 40).

The Act provides that the savings should be estimated throughout the average lifetime of the appliance, not the time the first owner keeps the appliance. EPCA, section 325(o)(2)(B)(i)(II), 42 U.S.C. 6295(o)(2)(B)(i)(II). The Department decided to retain the 19-year baseline for refrigerators and refrigerator-freezers, based on its study of saturations and purchases of new household refrigerators and refrigerator-freezers. The 19-year lifetime of refrigerator-freezers is consistent with observed purchases in the marketplace since 1980. For compacts, the Department is using the industry-supplied value of 11 years since no other data are available.

3. Methodology.

a. Lawrence Berkeley Laboratory Residential Energy Model. The Association of Home Appliance Manufacturers criticized the LBL–REM as theoretical and based upon obsolete (1970s) data. It further stated no model does an adequate job of forecasting the price-volume effects leading to a payback analysis. In particular, AHAM commented that demand in the current LBL–REM refrigerator products equations does not appear to drop fast enough with increasing prices to meet the test of real world experience and therefore LBL–REM should not be used to compute demand functions. It commented that more accurate results are generated by recent empirical data rather than by theories about the effects of regulations on demand. (AHAM, No. 17 at 22).

The Department believes that individual manufacturers observe greater price sensitivity because they are analyzing shifts among manufacturers, rather than a response of the entire market (total national sales) to a market-wide price change due to standards. The forecasting methodology used in LBL–REM has been validated by comparison with historical shipments over the 1981–1993 time period.

b. Lawrence Berkeley Laboratory Manufacturer Impact Model/ Government Regulatory Impact Model. Most of the comments recommended that the Department adopt the GRIM cash-flow model. A comparison of GRIM and LBL–MIM, using LBL–MIM price and quantity data, has been conducted by DOE, and the results show that differences between these two models are small enough to be inconsequential in almost all cases. GRIM has been incorporated into LBL–MIM to calculate the impact of standards on industry net present values.

Arthur D. Little, Inc. submitted comments for three major industry trade associations: AHAM, ARI, and GAMA. Arthur D. Little, Inc. stated ''there is no generally acceptable approach for forecasting annual shipments and prices of products using quantitative models.'' Further, ADL said that forecasting the annual shipments and prices of products is a difficult task, but there are basic principles for addressing the issue. (ADL, No. 19 at 3).

In order to be useful, models analyzing industry impacts must forecast shipments and prices. While ADL may not consider any of these approaches generally acceptable, DOE is in favor of using a quantitative method rather than a subjective approach.

c. Demand Functions. Arthur D. Little, Inc. commented that the Department analyses use demand functions limited to consumer demand as a function of price, payback period, and consumer income, while omitting nonfinancial considerations (such as utility to consumers). (ADL, No. 19 at 3).

The Department assumes there is no difference in consumer utility between the various design options used to meet different trial standards levels. This is intentional because the Act does not allow the setting of a standard that diminishes consumer utility. EPCA, section 325(o)(2)(B)(i)(IV), 42 U.S.C. 6295(o)(2)(B)(i)(IV). It is an issue analyzed and initially determined by the engineering analysis before its consideration as part of a standard level. This issue is further addressed in the discussion of the various design options considered found later in this NOPR.

d. Data Sources. Arthur D. Little, Inc. commented that the empirical data relating to price and consumer demand (i.e., price elasticities of demand) were estimated in the 1970s, before ''major changes in the actual marketplace'' and, therefore, are not reliable. (ADL, No. 19 at 4). The Association of Home Appliance Manufacturers stated that DOE should develop an acceptable approach to demand elasticity because ''neither LBL–REM nor LBL–MIM are acceptable as predictors of volume and price elasticities.'' (AHAM, No. 17 at 35).

The Lawrence Berkeley Laboratory Residential Energy Model is not a source of volume or price elasticity. The elasticities used in the LBL–MIM were originally estimated by the LBL–REM based on data and results estimated in the 1970s by Oak Ridge National Laboratory (ORNL).[9] They have been subsequently revised based on historical shipments or other relevant information where available. DOE agrees that it

[9] The original Oak Ridge National Laboratory data is documented in *Consumer Products Efficiency Standards Economic Analysis Document,* U.S. Department of Energy, DOE/CE–0029, March 1982.

would be useful to have updated data for estimating elasticities and any other information which explains major changes in the marketplace. DOE notes that GRIM does not use such elasticities. The Department encourages AHAM, ADL, or other parties to provide evidence about whether the elasticities used in the analysis are reasonable, and how they may obtain more accurate elasticities.

4. Cost Pass-Through. Several comments, including ADL, AHAM, Amana Corporation (Amana), and General Electric Appliances (GEA), raise issues regarding cost pass-through and the relationship between cost and price. According to ADL, manufacturers have not passed through a significant portion of their costs as evidenced by the Consumer and Producer Price Indices, which show that prices have risen by less than the increase in costs. This means that firms have reduced operating costs rather than increase costs to consumers. Therefore any model that assumes or concludes that firms can pass on costs with any reasonable probability is ''not acceptable and inconsistent with observed behavior.'' (ADL, No. 19 at 4–5).

The Gas Appliance Manufacturers Association stated that DOE should not assume that all equipment cost increases can be passed through to the consumer, partly as a result of the option of deferring purchases and repairing existing equipment. (GAMA. No. 28 at 3).

The Association of Home Appliance Manufacturers noted that historically the price of appliances has risen much more slowly than the price of some production inputs. They concluded that this observation shows an inability of firms to pass on cost increases. (AHAM, No. 17 at 6).

The relevant issue regarding cost pass-through is how appliance prices have risen relative to the increased costs of all manufacturer inputs. A more plausible explanation of why passing on their costs has been increasingly difficult for firms is because of the rise of monopsony power on the purchasing side of the market as AHAM has noted in earlier comments.[10] The growth of large and sophisticated ''power'' retailers that have significant and increasing power in the marketplace has resulted in increased downward price pressure on manufacturers.

5. Small Firms. Several commenters stated that DOE needs to be concerned about the impacts of standards on small manufacturers. General Electric Appliances wrote that an analysis using an ''average'' firm may not show the impacts of standards on small firms or on industry concentration. (GEA, No. 39 at 21).

PVI Industries commented that ''a smaller company, with lower volume, may be affected very differently from a larger, higher volume producer. In particular, the smaller company can probably implement significant design changes more quickly and at much lower cost because of lower volume production and less automation. Therefore, the GRIM model may not suitably reflect the financial impact of a change across the broad spectrum of appliance manufacturers.'' (PVI Industries, No. 43 at 1).

The Department is interested in the impact of standards on the different types of firms in the industry. The Department is aware that the compact refrigerator industry has cost functions that are much different than the full-size product manufacturers, and partly for this reason, DOE is proposing less stringent standards for compact refrigerator products than for full-sized refrigerator products.

6. Multiple Standards. Three comments, from AHAM, Amana, and GEA, raised the issue of the cumulative costs of multiple regulations. (AHAM, No. 17 at 7, Amana, No. 21 at 2, and GEA, No. 39 at 3). They stated that the Department needs to consider and analyze the cumulative costs of multiple regulations on industry. Some of these costs include chlorofluorocarbon (CFC) phaseout, successive efficiency standards, and demands on human and financial resources. General Electric Appliances suggested the use of the GRIM because it includes a module that analyzes the cumulative effects of multiple regulations. (GEA, No. 39 at 21–2).

The Department has considered the impact of costs due to regulations concerning the phaseout of CFC and HCFC materials. The Manufacturer Analysis Model is designed to analyze the impact of standards on industry profitability for an individual appliance. To date, this has involved treating each manufacturer of a subject product as a separate company. Recognizing, however, that many manufacturers produce more than one appliance type subject to appliance standards and the companies have limited resources, the Department is presently seeking approaches to account for the cumulative effects on a multi-product company of the appliance conservation standards that it promulgates, and requests comments in this regard. Such an analysis will require both a manageable analytical method and relevant cost data.

7. External Costs and Benefits. A number of comments on the ANOPR urged the Department to consider external costs and benefits in its economic analyses of the efficiency standards proposed in this NOPR. (ACEEE, No. 50 at 2; Gas Research Institute (GRI), No.10 in Appendix H at 6; NRDC, No. 18 at 28; Pacific Gas and Electric, No. 22 at 2; NYSEO, No. 26 at 7; NWPPC, No. 30 at 4; AGA, No. 32 at 3). However, several other commenters argued against the inclusion of externalities in the economic analysis. (Tampa Electric Co. (TECo.), No. 3 at 3; Cleveland Electric Illuminating Co., No. 7 at 1; ARI, No. 31 at 6; Electricity Consumers Resource Council (ELCON), No. 33 at Attachment 1; EEI, No. 35 at 2; GAMA, No. 27 at 24; National Rural Electric Cooperative Association (NRECA), No. 42 at 2, 3).

The Department recognizes that the inclusion of monetized externality cost estimates in the evaluation of standards is a complex and controversial question. In a Supplemental Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Three Types of Consumer Products, (59 FR 51140, October 7, 1994), the Department solicited public comment on whether a sound analytical basis exists for estimating the monetary value of environmental and energy security externalities. Because the Department has yet to identify a sound analytical basis for estimating the monetary value of environmental or energy security externalities, it is not proposing to use such estimated monetary values in this rulemaking. However, as in previous efficiency standards rulemakings, the Department has estimated the likely effects of the proposed standards on certain categories of emissions and on oil use, and has considered these effects in reaching a decision about whether the benefits of the proposed standards exceed their burdens.

8. Manufacturability. General Electric Appliances believes that the Department needs to incorporate an evaluation of manufacturability as an essential aspect of the technical feasibility determination. (GEA, No. 39 at 13). Maytag proposed that the Department recognize that manufacturability and technological feasibility are inextricably

[10] See Written Comments of the AHAM to the DOE on Energy Conservation Program for Consumer Products: ANOPR on Energy Conservation Standards for Room Air Conditioners and Kitchen Ranges and Ovens, Docket No. CE–RM–90–201, dated December 12, 1990, by the AHAM, pp. 67–68; and Statement of the AHAM to the DOE on the NOPR on Energy Efficiency Standards for Dishwashers, Clothes Washers, and Clothes Dryers, CE–RM–88–101, also by AHAM, dated October 10, 1989.

linked, that a new operating definition of max tech should be developed, and that the process should consider patent restrictions, toxicity, functional viability, verifiability, and reliability. (Maytag, Transcript at 317–19).

The Department believes that the max tech level should reflect a product that is capable of being assembled, but not necessarily mass produced, by the effective date of the amended standards. (This issue is discussed in more detail in the section on Maximum Technologically Feasible Levels, II.A.2.)

B. *Product-Specific Comments*

1. Classes.

a. Compacts. The current energy efficiency standards specify standards for seven classes of refrigerators and refrigerator-freezers and three classes of freezers. The classes are based on various characteristics of the products such as type of defrost, location of the freezer and whether the unit has through-the-door features. No consideration was given to dividing the refrigerator products in different classes based on size. The Joint Comments proposed establishing separate classes for compact refrigerator products which would include all products less than 7.75 cubic feet (Federal Trade Commission (FTC)/AHAM rated volume) and 36 inches or less in height. The marketplace and industry recognize products meeting these criteria as a separate niche with special engineering and investment constraints. Much smaller, privately-held, family-owned, single-product companies are typical in this market. Economies of scale for these companies are much different from those of the full-size product manufacturers. Also, there are far fewer design options available to improve the performance of the compact refrigerator products. (Joint Comments, No. 49 at 15).

The Department has decided to adopt additional classes for compact refrigerator products because they have added consumer utility (ability to fit in small spaces), and because there are fewer energy conservation design options available for compacts. The additional compact classes are Nos. 11–18 in the ''Product Classes and Effective Dates'' Table found at the end of this NOPR.

b. HCFC-Free. The Joint Comments also proposed additional classes for HCFC-free refrigerator products, both full-size and compact. The Joint Comments stated that treatment of HCFCs becomes a significant issue in the design of these standards because implementation of the new energy standards will occur less than five years before regulations promulgated by the Environmental Protection Agency (EPA), making HCFC–141b unavailable, become effective January 1, 2003. There is also concern that the date for phaseout of HCFC–141b may be moved up. Current data from Europe, Japan, and the U.S., provided by the Joint Comments, support approximately a 10 percent energy penalty in the shift from HCFC–141b to proposed hydrofluorocarbon and hydrocarbon substitutes. New technologies may be developed to reduce or eliminate the energy penalty, but it is impossible to forecast with certainty whether they will be commercially available by 2003. The Joint Comments proposed that new classes be established for any product employing non-ozone-depleting foam blowing agent which EPA approves under the Safe Alternatives Program of the Clean Air Act, or which uses blends or mixtures of less than 10 percent HCFC. (Joint Comments, No. 49 at 21).

The Environmental Protection Agency stated that, given the lack of a technology equal or better than HCFC–141b in terms of energy and ozone-depletion, EPA does not plan to phase out HCFC–141b any earlier than 2003. (EPA, No. 34 at 9). The Environmental Protection Agency also submitted a report entitled, ''Zero Ozone Depleting Blowing Agents for Use in Polyurethane-based Foam Insulations,'' which found that the high density, molded foam produced with the fluorinated ether, E245, has a thermal conductivity similar to that of CFC–11. (EPA, No. 34, Appendix 8 at 4). The report also states that the major problem with E245 is that it is not commercially available, and toxicity tests must still be conducted. (EPA, No. 34 at Appendix 8, p. 7).

The Department has considered all the viewpoints expressed concerning the impact of HCFC–141b phaseout on this rulemaking. The thermal conductivity of HCFC–141b product substitutes that may become available in the future is difficult to project. The following summarizes what is presently known about four potential substitutes:

- HFC–356 foam has a thermal conductivity of 0.126 Btu-in/hr-ft^2-°F (18.2mW/m-K), which is about 4 percent higher than the 0.121 Btu-in/hr-ft^2-°F (17.4 mW/m-K) conductivity of foams using CFC–11 [11]. HFC–356 has the advantage of being less aggressive toward liner materials than CFC–11. Toxicity testing is incomplete.
- The fluorinated ether E245 is nonflammable and may serve as a near drop-in replacement for CFC–11 and HCFC–141b. Foams using E245 as a blowing agent have been reported to have a thermal conductivity at 32°F (0°C) of 0.126 Btu-in/hr-ft^2-°F (25mW/m-K) [12]. It is not commercially available and will need to undergo toxicity testing.
- Cyclopentane has about a 10 percent higher thermal conductivity than CFC–11 blown foam. The conductivity could be lowered by about 5 percent with the addition of small amounts of perfluoralcanes (PFAs) [13]. Although pentanes are being used in Europe, the flammability of cyclopentane concerns U.S. manufacturers.
- HFC–365 and a blend of H–365 and HFC–134a have been tested as blowing agents and found to produce foams with similar thermal conductivities to CFC–11 [14]. As has occurred for HCFC–141b, DOE expects that the thermal conductivities of these new foams will improve as more experience is gained with their use in different formulations. In the analyses for these proposed standards, it was assumed that the thermal conductivity remained constant at 1993 values.

Based on the uncertainty of the availability of HCFC–141b replacements with equivalent thermal properties, the Department has decided to develop new product classes for products that do not use HCFC–141b or other HCFCs in the foam insulation.

2. Design Options. In the 1993 Advance Notice the Department requested comments on 30 design options it proposed evaluating for potential improvement of the refrigerator products. The comments received on each design option are discussed below. (Through the process of providing technical support for the informal negotiations of the Joint Comments parties, the Department was able to gain a better understanding of the issues relating to use of each of the design options considered. This has greatly improved the Department's ability to estimate the efficiency

[11] E. Ball and W. Lamberts. ''HFC–356, a Zero Ozone Depletion Potential (ODP) Blowing Agent Candidate for North American Appliance Foam Formulations,'' Proceedings of Polyurethanes World Congress 1993, Vancouver, Canada, October 1993, pp. 10–13.

[12] E. Blevins et al., ''Zero Ozone Depleting Blowing Agents for Use in Polyurethane Based Foam Insulations.'' EPA, No. 34, Appendix 8.

[13] U. Wenning. ''Hydrocarbons as PU Blowing Agents in Domestic Appliances'', Proceedings of 1993 International CFC and Halon Alternatives Conference,'' Washington, DC, 1993, pp 317–325.

[14] J. Murphy et al., ''HFC–365 as a Zero ODP Blowing Agent for Foams,'' Proceedings of 1993 International CFC and Halon Conference, Washington, DC, October, 1993, pp 346–355.

improvements that will result from incorporation of the design options.)

Increased Cabinet Insulation Thickness. Increasing the wall thickness has been identified as the option providing the greatest energy savings. According to the industry participants as stated in the Joint Comments, an increase in external dimensions on refrigerator-freezers of as little as a ½ inch can eliminate as much as 20 to 30 percent of a marketplace available for that particular product. If the external dimensions are maintained and the wall thickness increase is made to the inside of a cabinet, the interior volume of the cabinet is reduced. Smaller capacity products carry a lower price with less margin. The smaller volume cabinet will also have to meet a more restrictive energy standard. Finally, this design may sacrifice important utility of the product in violation of the mandates of NAECA. (Joint Comments, No. 49 at 7).

The non-industry participants in the Joint Comments agreed with industry position that the max tech level based on increasing both wall and door thickness by 1 inch—a 2-044h increase in side-to-side dimensions of the refrigerator—would have a significant impact on some products, because there are not sufficient alternative design options available to manufacturers should they find it necessary not to produce products with larger exterior dimensions (products that could not fit through doors in existing buildings if enlarged). (Joint Comments, No. 49 at 10).

The Joint Comments state that increased wall and door thickness has a more severe impact on compact refrigerators than it does on full-size products. Marketing of compacts does not allow for an increase in wall thickness since most products are designed for niche applications with no room for expansion of the cabinet size. Any increase in wall thickness would compromise the utility of the product by decreasing the usable interior volume for a product that already has limited applications in the marketplace. A similar problem applies to insulation increases in top and bottom panels; this space constraint is recognized in the new definition of the compact class as limited to models below 36 inches in height. (Joint Comments, No. 49 at 16).

Sub-Zero stated pursuant to its definition of built-in compact refrigerators, the available depth is restricted to 24 inches and the width to 24, 30, 36 or 48 inches. (Sub-Zero, No. 37 at 2). U-Line stated that the consumer uses of undercounter refrigerators and freezers will not permit increased exterior cabinet dimensions; exterior cabinet dimensions cannot exceed 24 inches in depth and width and 34 inches in height. Shipping costs would increase $3 per unit for a 1 inch increase in cabinet width. Decreasing internal volume would reduce consumer utility and require retooling. (U-Line, No. 11 at 1, 2).

The Joint Comments also state that the impact of increased wall thickness is as much a concern for household freezers as it is for household refrigerator-freezers. One basic problem is getting the larger, thicker-walled unit through doorways and stairwells. Another problem is that because the freezer market is declining, introduction of designs which are unacceptable to some consumers is even more troublesome. The Joint Comments state that increased wall and door thicknesses are not options that can be used to increase energy performance for household freezers. One freezer manufacturer presented information regarding how it had been forced to reduce its wall thickness by one-half inch to improve the marketability of the product. (Joint Comments, No. 49 at 18).

The Environmental Protection Agency has conducted a market survey that indicated consumers strongly preferred the double-insulated, or thick-walled, refrigerator when they are presented with economic information and labeling which highlights the environmental benefits. (EPA, No.34 at 9–10).

The Department agrees that there are problems associated with increasing the wall thickness for some classes of refrigerator products. If the increase is external, some of the larger models will not be able to pass through doorways or fit into the space found in many kitchens. The Department also recognizes that if the external dimensions are not changed, an increase of only one-half inch in wall thickness will decrease the internal volume of a typical refrigerator by about 10 percent. The Department has considered these factors in determining the proposed standards. However, the Department has determined that in some cases increases of less than one inch in the insulation thickness is acceptable.

Improved Foam Insulation for Cabinet or Door. Whirlpool stated that the CFC–11 blown foam that it has used typically has had a k-factor of approximately 0.125 Btu-in/hr-ft^2 °F, and it generally has been made with about 12 percent CFC–11 in the foam. The company said it was possible to improve the k-factor by increasing the amount of CFC–11, reducing cell size and increasing density, which required an increase in cost and in investment in some new equipment. However, none of the available replacements for CFC–11 has characteristics that match those of CFC–11. (Whirlpool, No. 36 at 4).

Sub-Zero stated it uses a froth-foam system that typically has higher k-values than high-pressure systems, but it would require a very large capital expenditure for the company to switch to a high-pressure system. Sub-Zero also commented that there is a lesser chance of incorporating micro-cell insulation with a froth system. (Sub-Zero, No. 37 at 4). U-Line stated that most exotic foam technologies (such as micro-cell) require high-pressure impingement foaming equipment; it uses froth-foaming equipment which would be expensive to replace with high-pressure systems. (U-Line, No. 11 at 2). General Electric Appliances stated that insulation efficiency suffers from replacement of CFC–11 foam by HCFC–141b foam, and that for it to switch from HCFC-blown foams is feasible, but such a transition would result in foams with poorer insulation value. (GEA, No. 39 at 4).

The Department did not find any experimental data to support this option. The Department does not believe that any technology that would improve the insulation properties of HCFC–141b blown foams beyond that of the present CFC–11 blown foam would be available in time to be considered in this rulemaking. Therefore, improvements in foam insulation were not considered in this analysis.

Evacuated Insulation Panels. The Joint Comments, commenting on vacuum panels, stated: ''Vacuum panel technologies have progressed since the last refrigerator rulemaking. The appliance industry probably will introduce limited vacuum panel designs over the next five to ten years. Issues of concern are manufacturability, availability, reliability and in-product performance. It is still too early in the development of this technology to apply it as a reliable design option in the production of a 1998 compliant product. Several major issues remain unresolved.

''• Vacuum panels must be used in concert with foam insulation (polyurethane foam is the mechanical support for the cabinet).

''• Wire harnesses, drain tubes, shelf anchors, etc., are [placed] between the cabinet shell and inner liner making 100 percent coverage of vacuum panels impossible. Fifty to sixty percent is about maximum and for freezers would be even less.

''• Vacuum panels are 6 to 10 times heavier than foam. Panels in doors may compromise Underwriters Laboratories (UL) tip-over requirements. The shipping weight of a typical cabinet

with vacuum panels would increase by about 50 pounds.

''• Polyurethane foam averages about 15 cents per board foot. Powder-filled panels are $2.50 to $3.50 per board foot and fiber-filled panels range from $5.00 to $7.50 per board foot. An average refrigerator-freezer has about 114 board feet of surface area, of which approximately 35 board feet would be vacuum panels.

''• Worldwide production capability for all types of vacuum panels is between 3 to 5 million board feet per year. Full implementation of vacuum panels in the U.S. alone would require more than 400 million board feet of panels.

''• Product-life performance characteristics (15 to 20 years) are being observed, but industry continues to work toward a vacuum panel product that maintains reliability over the life of the refrigerator.'' (Joint Comments, No. 49 at 7–8).

The Environmental Protection Agency sponsored a study to estimate the cost of producing vacuum panels at a new plant designed to produce enough vacuum insulation panels for 300,000 refrigerator-freezers per year. It determined that the variable cost for a 21 cubic foot refrigerator-freezer is about $1.40 per board foot, and the investment cost is about $0.55 per board foot. (EPA, No. 34, Appendix 5 at 54–58). After feasibility is established and funding is obtained, it would take about 2 ½ years to begin production. (EPA, No. 34, Appendix 5 at 56–59). The energy savings estimated by simulation analyses averaged about 16 percent for top-mounted refrigerator-freezers. (EPA, No. 34, Appendix 5 at 73).

Based on the information cited above, the Department has concluded that production capability will be insufficient in 1998 for vacuum panel insulation to be considered as a design option for all classes of refrigerator products. However, the Department believes that for some classes of refrigerator products, vacuum panels may be the most attractive option available to meet the proposed standards.

Gas-Filled Panels. Whirlpool stated there is a low probability that this technology will be viable for use on products built in 1998. It is not aware of any situation in which gas-filled panels have been successfully demonstrated in a refrigerator. A major problem with application in a refrigerator is the lack of sufficient structural integrity of the resulting product. Whirlpool recommended that this option not be considered. (Whirlpool, No. 36 at 5). U-Line commented that gas-filled panels are not a feasible technology. (U-Line, No. 11 at 3).

General Electric Appliances stated that the gas-filled panels developed at the LBL are even less promising than vacuum insulation panels. Insulation values are only about R13/inch even with the most insulating gas, krypton. This is only about 60 percent of the value of powder vacuum panels. At the same time, gas panels are projected to exceed vacuum panels in cost. Even if gas panels had comparable performance and cost characteristics, they would require enormous investment expenditures to be incorporated into current refrigerator designs. At present, virtually all mass-produced refrigerators are designed using the liner, foam insulation, and exterior metal case as integrated elements of the cabinet structure. General Electric Appliances also stated that gas panels have absolutely no structural capability and would require the development of a fundamentally different cabinet design concept to achieve adequate structural integrity. Unlike other design options, where the option is designed to fit the refrigerator, gas panels would require the refrigerator to be completely redesigned to accommodate this option. Finally, the cost to the industry would be enormous and, given the comparatively unattractive efficiencies offered, unjustified. (GEA, No. 39 at 6).

The Department concurs that gas-filled panels lack structural integrity and have low resistivity compared to evacuated panels and therefore has not considered them in this NOPR.

Improved Gaskets. Whirlpool stated that much work has been done in attempting to improve the performance characteristics of refrigerator door gaskets. However, there is a tradeoff between the thermal performance of a gasket and the forces required to open or close the door. This makes it extremely difficult to improve on current designs. While savings on the order of 1 percent may be achieved on some models, Whirlpool stated this design option may not be available for all products, and, therefore, should not be recommended as a viable design option. (Whirlpool, No. 36 at 5). U-Line stated that because many manufacturers redesigned gaskets prior to 1993, any additional enhancements would provide diminished returns. (U-Line, No. 11 at 3).

The Environmental Protection Agency submitted a report, ''Finite Element Analysis of Heat Transfer Through the Gasket Region of Refrigerators-Freezers,'' evaluating means of improving a 1991 model refrigerator, that described theoretical modeling and experimental research on gasket heat loads. (EPA, No. 34, Appendix 6). The report concluded that replacing about half of either the metal door flange or cabinet flange with plastic can reduce the heat flow through the gasket region by 25 percent. (EPA, No.34, Appendix 6 at 28). The report concluded that for one refrigerator-freezer, a 30 percent heat flux reduction for the gasket region led to a measured 7 to 8 percent energy use reduction, whereas for a second refrigerator-freezer, a 22 percent heat flux reduction led to a measured 4 to 5 percent energy use reduction. (EPA, No. 34, Appendix 6 at 26–28).

AHAM provided the Department with estimates of energy savings and the costs of improved gaskets from a number of its member manufacturers. These values ranged from less than 1 percent to nearly 3 percent energy savings depending on the size and configuration of the refrigerator product.

The Department has decided to use the industry supplied data in the engineering analysis for each class of refrigerator. (See TSD, Chapter 3.) The higher EPA energy savings estimates were based on a refrigerator that met the 1990 standards whereas the Department's analysis is based on models which meet the 1991 standards.

Double Door Gaskets. Whirlpool stated that this option involves the same tradeoff between thermal performance and door opening and closing forces discussed under ''improved gaskets,'' see above. The company does not recommend this as a viable design option. (Whirlpool, No. 36 at 5). General Electric Appliances agreed with Whirlpool's comments. (GEA, No. 39 at 6–7). U-Line stated that cabinet icing and other potential field service-related issues have precluded their application to compact refrigerators and freezers. (U-Line, No 11 at 3).

The Department's analysis indicates that a significant amount of heat leakage (from the outside) into a refrigerator occurs across the door gasket. Decreasing this leakage could result in significant energy savings. This could be achieved by either improving the gaskets or using double-door gaskets. The cost of a double-door gasket is more than the cost to improve the single gasket to achieve the same amount of savings. The Department has, therefore, decided not to consider this option but instead to consider improved gaskets, as discussed, *supra.*

Reduced Heat Load for Through-the-Door Features. Whirlpool stated that there is some potential for energy savings in this area through improvements in insulation around the

dispenser. However, the amount of savings is limited. It believes that an appropriate allowance for ''through-the-door features'' with improved insulation is approximately 70 kWh/year. (Whirlpool, No. 36 at 5). U-Line stated that compact refrigerator products do not employ through-the-door features. (U-Line, No. 11 at 3). General Electric Appliances stated that it had already made incremental design changes on some 1993 models to reduce the heat leakage of through-the-door features. (GEA, No. 39 at 7). These consisted of using polyurethane (vs. expanded bead polystyrene) insulation and totally redesigning the dispenser assembly. While some additional, marginal energy reductions are possible, GEA stated that if it extended these design changes to the full dispenser model line, further significant energy savings beyond this do not seem likely with current technology. No toxicity/safety or reliability problems exist with these changes. General Electric Appliances stated that these design changes could be introduced to the full line relatively quickly (i.e., from between 6 months and 2 years). (GEA, No. 39 at 7).

AHAM provided estimates of the energy savings from reducing the heat load for through-the-door features and the associated costs based on a survey of its members. These are the values that have been used in the analysis.

Reduction in Energy Used for Anti-Sweat Heaters. Whirlpool stated that most manufacturers utilize the minimum-needed energy within the cabinet for the anti-sweat heaters. Therefore, there is little opportunity to improve this option. (Whirlpool, No. 36 at 5). General Electric Appliances stated that required wattage for most anti-sweat heaters already has been reduced to save energy on 1993 models, variable-watt density heaters are already being used, and reducing the wattage further is expected to result in poor anti-sweat performance and reduced consumer satisfaction. (GEA, No. 39 at 7).

Based on the data supplied by manufacturers through AHAM, DOE decided not to use this option in its analyses because most models of refrigerator-freezers already employ condenser hot gas or liquid line to minimize the use of electric anti-sweat heat. Compacts and freezers, in general, do not use anti-sweat heat.

Substitution of Condenser Hot Gas for Electric Anti-Sweat Heat. Whirlpool stated this option already has been exercised by most manufacturers. (Whirlpool, No. 36 at 5). Sub-Zero stated the company already employs this option. (Sub-Zero, No. 37 at 5). U-Line stated that with the exception of some compact freezers, anti-sweat heaters are not employed in the designs of compact/undercounter refrigerator-freezers. (U-Line, No. 11 at 3). General Electric Appliances stated that it already uses condenser gas loops everywhere practicable. (GEA, No. 39 at 7).

After reviewing the data received from the manufacturers, the Department has concluded that this option already has been exercised by most of the manufacturers of refrigerator products and, therefore, this design option was not included in the engineering analysis for this rulemaking.

Reduction in Energy Used for Auto-Defrost Heater. Whirlpool stated that there are no significant savings available in this area because this energy is required to remove frost and prevent buildup of ice. Also, any savings would be redundant with savings from the use of adaptive defrost. The company, therefore, does not recommend this option. (Whirlpool, No. 36 at 5). U-Line stated that with the exception of some compact freezers, this design does not apply to the compact/undercounter refrigerator products. (U-Line, No. 11 at 4). General Electric Appliances stated that little significant energy savings are possible using this option; solenoid actuated dampers that attempt to retain heat in the evaporator compartment do not significantly reduce heater ''on'' times. (GEA, No. 39 at 7). Designs which attempt to transfer heat more directly to the evaporator, and thus less to the air are theoretically attractive but have achieved only minimal savings in practice while increasing the likelihood of evaporator ice-balling. Further reducing the temperature at which the thermostat turns the heater off would result in poor defrost performance and increased service calls. General Electric Appliances stated the basic defrost heater system must be very robust or severe reliability problems can occur. (GEA, No. 39 at 7).

The Department, after reviewing available data, concluded that most manufacturers already have reduced significantly the electric heat for automatic defrost in order to comply with the 1993 Standards, and there is little opportunity to save additional energy by exercising this option. The only exception is the side-by-side refrigerator-freezer without through-the-door features, where the baseline model has a higher defrost energy use than other models, and the Department included this option in the engineering analyses for that class.

Substitution of Condenser Hot Gas for Electric Auto Defrost Heat. Whirlpool stated it had explored this option in some depth in the 1970s. It was not successful in developing a system that would perform well and be reliable. Also, any savings that might be achieved would be redundant with savings from the use of adaptive defrost. The company believes adaptive defrost is the preferred alternative for saving defrost energy. Thus, it does not recommend substitution of condenser hot gas for electric auto defrost heat. (Whirlpool, No. 36 at 6). U-Line stated it is not aware of any compact/undercounter refrigerator-freezers that employ electric auto-defrost heaters. (U-Line, No. 11 at 4). General Electric Appliances believes this method of defrost is more complicated, more expensive and less reliable than its current designs. (GEA, No. 39 at 8).

The defrost system increases the energy usage of a system in two ways: the electric heater directly affects the electricity use and the heat of defrost increases the heat load inside the refrigerator, which to be rejected requires compressor work. One method of saving energy would be to do away with the electric heaters by substituting condenser hot gas in its place. The other method would be to better control the time and amount of defrost heat by using adaptive defrost. The Department did not find any data to demonstrate the condenser hot gas method to be more cost-effective than adaptive defrost, which is a well-developed and accepted technology. Thus, the condenser hot gas method of defrost was not considered in the engineering analysis for this rulemaking.

Adaptive Defrost Systems. Whirlpool stated this is a viable option for most of its products and produces energy savings on the order of 3 percent. (Whirlpool, No. 36 at 6). U-Line stated that it employs timers to initiate defrost, and it is unlikely that adaptive and demand defrost systems would significantly reduce energy consumption. (U-Line, No. 11 at 4).

The energy savings and associated costs of replacing the present defrost system with the adaptive defrost system have been provided to the Department by AHAM and its members. (See design option comments, supra). These are the values that have been used in the analysis. Compacts, in general, do not use electric heaters for initiation of auto defrost.

Improved Compressor Efficiency. Whirlpool expects to see further improvements in compressor efficiency prior to 1998. (Whirlpool, No. 36 at 6). However, the degree of improvement is uncertain at this time. Although compressor efficiencies as high as 5.8 EER have been projected, Whirlpool stated that any design changes made to

improve efficiency often have negative impacts on reliability. It believes the risk of failure has increased with the introduction of a new refrigerant and a new lubricant. Therefore, it believes a conservative estimate should be used for future compressor efficiencies. (Whirlpool, No. 36 at 6). Sub-Zero is concerned that efficiencies of small-capacity compressors may not improve in time for future standards. (Sub-Zero, Transcript at 427). It is concerned particularly with the changeover to HFC–134a and the timing of compressor efficiency improvements for small-capacity compressors. (Sub-Zero, Transcript at 426). U-Line stated that compressor EERs of 5.5 are not realistic at low capacities. It expects 3.6 EER for HFC–134a at 200 Btu/hr. Furthermore, due to their low production volumes, manufacturing units with low capacities is a low priority for compressor manufacturers. (U-Line, No. 11 at 4). Maytag stated there are patent restrictions on linear motors that protect their use. (Maytag, No. 20 at 6). Additionally, Maytag said there is not enough time for proper reliability testing and implementation of linear motor compressors for the January 1998 standards date. (Maytag, No. 20 at 5). The Environmental Protection Agency submitted a report that found efficiency levels of 5.0 EER can be obtained at the low end of the capacity range of 200–600 Btu/hr with an increased cost to refrigerator manufacturers of $10–20. (EPA, No. 34 at Appendix 4, ''State of the Art Survey of Hermetic Compressor Technology Applicable to Domestic Refrigerator-Freezers,'' at 7–1). The Environmental Protection Agency also stated that for compressor capacity of 750 Btu/hr and above, an EER level of 6.5 is technically feasible with an incremental increase in manufacturer costs of about $15. (EPA, No. 34, at Appendix 3, ''State of the Art Survey of Motor Technology Applicable to Hermetic Compressors for Domestic Refrigerator-Freezers,'' at i).

The Joint Comments stated that with improvements in foam insulation and gaskets in freezers, the compressor size needed to maintain freezer food quality is smaller than used in previous years. These smaller compressors have lower EERs than used in DOE's max tech analysis. Freezer manufacturers and compressor suppliers indicated that an improvement of approximately 7 percent in EER can be expected between 1994 and 1998. (Joint Comments, No. 49 at 19).

The Department has obtained data on efficiency and costs of HFC–134a compressors from three compressor manufacturers, from AHAM and its members, and from other sources (e.g., company literature from Sunpower, Inc. and EPA reports, referenced above). The Department expects future efficiencies of small-capacity compressors will continue to be lower than those of larger-capacity compressors and has reflected that in its analyses of refrigerator products. (See TSD, Chapter 3).

Two-compressor system. Whirlpool stated a two-compressor system requires the use of two smaller capacity compressors, thus inherently it will be less efficient than the one larger capacity compressor used in current refrigerators. One of these smaller compressors would be operating under more efficient conditions due to the raised evaporator temperature for the circuit cooling the refrigerator compartment. Whirlpool stated all indications are that the decrease in compressor EER from two smaller compressors offsets the increased efficiency in one portion of the sealed system due to increased evaporator temperature. In addition, any increase in refrigerator efficiency inherently involves several other negative factors. They are significant increases in product cost, increases in service incidence rates due to the use of more components, reduction of useful volume of the refrigerator due to a larger machine compartment for two compressors, and potential for increased sound level when both compressors are running. Whirlpool does not recommend this option. (Whirlpool, No. 36 at 6).

Sub-Zero stated that although it presently uses a two-compressor system, the efficiency gain from the higher evaporator temperature in the fresh-food section is offset by the lower compressor efficiency for the smaller capacity compressor. (Sub-Zero, No. 37 at 6). U-Line stated that two-compressor systems are not practicable for compact/undercounter refrigerator-freezers. (U-Line, No. 11 at 4).

The Department agrees that a two-compressor system requires a larger, more efficient compressor to be replaced by two smaller, less efficient compressors. Some of the gain from improving the thermodynamics of the system will be offset by the decrease in the compressor efficiencies. While it has been shown that the two-compressor system could save some energy in the older less efficient refrigerators, the Department is not aware of any experimental data that demonstrate energy savings from this option for refrigerators in the efficiency ranges being considered in this rulemaking. For this reason, this option has not been included in the engineering analysis.

Variable-Speed Compressor. Whirlpool stated that the key to the effectiveness of this type of compressor is the development of highly efficient, cost-effective, and reliable drive systems (motor plus power electronics) for the compressor. It said development to date for drive systems sized for refrigerators has not been able to achieve the efficiency levels required to make this concept viable. Once these drive systems are available, there are then several other issues to be addressed. For example, design changes will have to be made to the compressor valves and bearings for good performance at a range of speeds; compressor reliability will have to be ensured through extensive life testing at a variety of speeds; sound tests will have to be performed on the finished refrigerator under all speeds foreseen to make sure that no resonances (which cause sound problems) are present; and, there will have to be an understanding of the relationship between any projected energy savings from this feature and the amount of savings found in actual field usage conditions. Whirlpool stated that the availability of this option in 1998 should not be assumed. (Whirlpool, No. 36 at 7). U-Line stated that this option is not feasible for compacts. (U-Line, No. 11 at 5). General Electric Appliances stated its experiments indicate the energy savings are small and the costs are large; it halted development when they found there would be an unfavorable cost-performance ratio coupled with significant noise problems. (GEA, No. 39 at 8).

The Department concurs that this technology has not been developed to the point where it will be ready for incorporation into refrigerators by the effective date of this rulemaking. This option is not included in the analysis.

Improved Fan Motor Efficiency. Whirlpool commented that there is significant uncertainty concerning the newer ''permanent magnet'' motors. They have not yet been produced in adequate volume in the design required for refrigerators. The bearing systems must be made quieter and must be tested for reliability. Whirlpool stated there is a significant risk that these very high efficiency motors will not be available by 1998. If they are not, then savings would be less, because permanent split capacitor (PSC) motors would be the best available. Whirlpool argued that the DOE should ''count on'' the PSC fan motors and not count on permanent magnet motors as a viable design option. (Whirlpool, No. 36 at 7). The Association of Home Appliances

Manufacturers stated the cost estimated by LBL for electronically commutated motors is about 40 to 60 percent less than estimates provided to it by suppliers. (AHAM, No. 17, Attachment 17 at 2).

Sub-Zero stated that it expects efficiencies of evaporator and condenser fan motors to improve. (Sub-Zero, Transcript at 427). U-Line stated that some improvement in the fan motor still may exist. (U-Line, No. 11 at 5). General Electric Appliances said it is pursuing various options with both evaporator and condenser fan motors and that reliability and testing of these components are fairly well understood. (GEA, No. 39 at 8).

The Department obtained cost and efficiency data from three manufacturers of evaporator and condenser fan motors. Averages of these data were used in the analyses performed by the Department. The cost estimates obtained by the Department are for quantities equal to the present volumes of fan motors being purchased by refrigerator-freezer manufacturers. The Technical Support Document (Chapter 3) provides details on these data for the various product classes.

Improved Fan Efficiency. Whirlpool stated that potential savings through this option are very limited. Fan motor size is governed not only by the operating load on the fan, but also by the need to ensure starting under all anticipated voltage and temperature conditions. Whirlpool said that most of the potential for fan energy savings lies in the fan motors themselves. (Whirlpool, No. 36 at 7). U-Line stated that where fan motors and blades are employed, optimization does provide opportunity for energy improvement. (U-Line, No. 11 at 5). General Electric Appliances stated it found energy savings benefits for condenser fans are marginal and that an energy savings of approximately 4 kWh/yr are available from evaporator fan redesign. (GEA, No. 39 at 8).

The energy savings from improved condenser and evaporator fans and the associated costs have been provided to the Department by AHAM and its members. These figures have been used in the analysis for the full-sized refrigerator products. Because most of the compacts employ natural convection and do not use fans, this option is not included in the analysis for compacts.

Variable-Speed Fans. Whirlpool stated that with a single-speed compressor, the rate of heat transfer for either the evaporator or condenser does not vary appreciably with changes in either ambient temperature or control setting because the compressor operates at only one speed. The compressor has a longer duty-cycle as either the ambient temperature goes up or the control setting is lowered. In order for the variable-speed fan feature to reduce energy consumption, it must allow the refrigerator to attain a more optimal air flow condition for a particular set of circumstances. The optimal air-flow condition is a trade off—reduced heat transfer versus reduced fan use. Because the heat transfer rate with single-speed compressors does not vary appreciably, Whirlpool stated there is little potential for energy reduction due to variable fan speed with a single-speed compressor. In addition, it stated there are concerns about excessive costs for the motors and required electronic controls, and the reliability of both the mechanical (bearing) and electrical (windings and controls) systems. Whirlpool argued that variable-speed fans should not be counted on to save energy. (Whirlpool, No. 36 at 7). U-Line stated this option is considered infeasible by the compact/undercounter AHAM subcommittee. (U-Line, No. 11 at 5).

General Electric Appliances said fan energy consumption reductions achieve false savings to the extent that a change in fan speed and airflow adversely affects energy performance elsewhere within the refrigerator system. General Electric Appliances found from a recent internal study that a 25 percent reduction in evaporator fan power input for its 24 cubic foot side-by-side product (with an ECM fan motor) lowered the evaporator saturation temperature, lowered system capacity, increased compressor run-time, and increased overall energy consumption. General Electric Appliances also said that while increasing fan speed enhances heat exchanger performance, it also increases gasket heat leakage which, in turn, requires more fan motor input power. Additionally, GEA said noise from higher fan speeds is becoming such a significant issue with consumers that noise attenuation costs must be factored into this cost-performance assessment. (GEA, No. 39 at 8–9).

Based on the comments provided, the Department has decided this option should not be included in the analysis.

Hybrid Evaporator. Whirlpool commented that it has no experience with ''hybrid evaporators.'' (Whirlpool, No. 36 at 8). U-Line stated the evaporator may offer potential for energy improvement by enhancing air to refrigerant heat exchange. (U-Line, No. 11 at 5). General Electric Appliances understands this option to be a two-stage dual evaporator system. (GEA, No. 39 at 9).

A hybrid evaporator employs two evaporators, one for the freezer and the other for the fresh-food section.The Department did not include this option in the analysis because the data available showed little energy savings using this technology.

Other Refrigeration Cycles. Whirlpool commented that it worked cooperatively with a major university in a development program for the Lorenz cycle for more than 2 years. During that period, a number of prototype systems were built and tested in its labs. While some energy savings were measured, it was unable to consistently demonstrate substantial savings using this technology. For products tested, the maximum savings achieved was about 8 percent. Because the second evaporator required for such systems reduces the storage volume by approximately ½ cubic foot, the net savings were something less than 8 percent. Because of the difficulty in obtaining reproducible results and the relatively small savings achieved, Whirlpool found this not to be a viable technology. (Whirlpool, No. 36 at 8). U-Line stated that other refrigeration cycles do not offer a feasible alternate technology. (U-Line, No. 11 at 6). Maytag stated thermo-acoustic refrigeration system prototypes are not available. (Maytag, No. 20 at 6). General Electric Appliances stated it has undertaken studies of various refrigeration cycles (Brayton, gas absorption, thermoelectric, magneto-caloric, and thermoacoustic) to compare their energy savings potentials against enhanced Rankine cycle designs. Of the alternative cycles studied, only the Stirling presented a credible opportunity for competitive efficiencies. (GEA, No. 39 at 9–11). The company undertook development of Stirling cycles in concert with Sunpower, Inc. General Electric Appliances confirmed that the Stirling cycle could perform on a par with the Rankine cycle currently being used, but it did not present any material improvement. In addition, GEA said the problems and costs associated with developing a completely new cycle design, versus upgrading existing cycle technology, argued against pursuing the Stirling cycle. (GEA, No. 39 at 9).

Except for the Lorenz cycle, the Department is not aware of any prototypes using alternative refrigeration cycles. In the case of the Lorenz cycle, the reports of energy savings vary considerably. Although this option has a significant potential for future energy savings, this technology is not developed well enough at this time to be considered an option for 1998 refrigerator-freezers.

Two-Stage Two-Evaporator System. Whirlpool commented it understands this concept to be one whereby there is an evaporator in each compartment with refrigerant passing through both evaporators simultaneously. The two different temperature (and thus pressure) levels for the two evaporators require two compressors in order to attain any efficiency improvements. Therefore, the negative effects highlighted under two-compressor systems apply: Lower EER, service incidence rate increases, very significant increases in product cost, space concerns, and increased sound level. In addition, Whirlpool is concerned about the ability of the two-compartment control scheme in this concept to handle changes in relative heat loads between the two compartments. These changes can occur when the door is opened in one compartment only, or when warm food is added to one compartment only. Whirlpool also is concerned about the loss of the ability to provide independent temperature adjustment in each compartment. Whirlpool recommends against the use of this option. (Whirlpool, No. 36 at 8). U-Line stated that two-evaporator systems are not practicable for compact/undercounter refrigerator-freezers. (U-Line, No. 11 at 5).

Due to the inability of the Department to find usable performance data for this type of system, this option has not been included in the engineering analysis.

Improved Heat Exchangers. Whirlpool believes there may be some savings yet available with improved heat exchangers. Adding surface area is generally difficult. For the condenser, space is limited and densely finned surfaces do not have good lint-handling characteristics. For the evaporator, simply making it larger detracts from product volume, and increasing fin density can negatively impact frost handling characteristics, causing poor performance in humid climates. (Whirlpool, No. 36 at 8). U-Line stated that effectiveness improvements are expected to be in the range of only 1 to 2 percent. (U-Line, No. 11 at 6). General Electric Appliances stated evaporator improvements have reached the point of diminishing returns, and condenser improvement benefits can be achieved but cost/performance tradeoffs will limit opportunities to less than that which theory predicts. (GEA, No. 39 at 11). AHAM stated LBL should account for the fact that increasing the evaporator size results in a loss of internal volume; this results in a decrease in both the energy standard and the marketing utility of the refrigerator. (AHAM, No. 17, Attachment 17 at 2).

The energy savings from improving the heat exchange in the evaporator and condenser and the associated costs have been agreed upon by AHAM and its members and provided to the Department. These are the values that have been used in the engineering analysis. (*See* TSD, Chapter 3). Increasing the evaporator heat exchange effectiveness might increase evaporator area (although not necessarily) and therefore, decrease internal volume very slightly. This slight decrease, a maximum of ~0.15 cubic feet (~4.25L), would not be large enough to noticeably impact consumer utility.

Alternative Refrigerants. Whirlpool stated there are no pure refrigerants that demonstrate an efficiency improvement over HFC–134a and are ready for application development work on refrigerators. If such a candidate does appear, there is a long testing process before production. This testing includes toxicity testing, chemical compatibility testing, reliability testing and safety. Whirlpool believes this option should not be considered. (Whirlpool, No. 36 at 8). U-Line stated it is unlikely that refrigerants not yet identified could be commercially available in time to become a realistic part of the solution. (U-Line, No. 11 at 6). General Electric Appliances said HFC–134a is the refrigerant of choice and the flammability of HFC–152a makes it undesirable. (GEA, No. 39 at 11). It also said that hydrocarbon refrigerants are being used in Europe in cold wall evaporators only and use of those designs in the U.S. would require a total redesign of the refrigerator and would reduce consumer utility. (GEA, No. 39 at 12).

With the phaseout of CFC–12, HFC–134a appears to be the accepted refrigerant replacement in the U.S. There are other promising refrigerants under development but none of the replacements that are without problems such as toxicity or flammability have been proven to perform better than HFC–134a . Therefore, the Department has assumed that HFC–134a will be used as the refrigerant for 1998 refrigerators.

Improved Expansion Valve. Whirlpool stated expansion valves are not generally used in refrigerators because capillary tubes yield better performance. The company's studies show no savings from expansion valves. It does not recommend this option. (Whirlpool, No. 36 at 9). U-Line stated improved expansion valves offer no improvement over properly balanced refrigeration systems using conventional capillary tubes. (U-Line, No. 11 at 6). General Electric Appliances stated this is a viable option but will require considerable time (3–5 years) to optimize. It said reliability will be lower than that of the current capillary design, and the cost will be higher. It believes improvement may be limited to electronic units. (GEA, No. 39 at 12). AHAM stated the improved expansion valve should be eliminated if its savings are reflected in the fluid control valve option. (AHAM, No. 17, Attachment 17 at 3).

Because the Department was not able to find any data demonstrating that thermostatic or electronic expansion valves will save energy in refrigerators, this option has not been included in the analysis.

Fluid Control Valves. Whirlpool stated these devices provide significant savings when used with rotary compressors, which are designed with the compressor shell maintained at the condensing pressure. Whirlpool said they do not yield significant savings when used with reciprocating compressors, which operate with the compressor shell at the evaporator pressure. To Whirlpool's knowledge, no rotary compressors have passed reliability tests using HFC–134a and new lubricants. The company believes this design option should be dropped. (Whirlpool, No. 36 at 9). U-Line stated the application of fluid control valves in reciprocating compressors requires use of a high starting torque compressor (capacitor start motor) and that the energy savings, although potentially significant, may not be economically justified. (U-Line, No. 11 at 6). General Electric Appliances said this option carries the greatest benefit for high-side compressors, but they are no longer used in the U.S. This option has extremely limited value (2 to 3 percent energy reduction) when applied to the high-efficiency low-side compressors currently in use. The value of this option will continue to decrease as cycling losses are further reduced through other means. This type of design change could be put into production relatively quickly (1 to 2 years) once the reliability of the valve is confirmed. However, confidence in the valve must be high as its failure can result in a total loss of refrigeration. (GEA, No. 39 at 12).

Based upon the comments above and research data received from Oak Ridge National Laboratory [15] that fluid control valves do not save energy when used with reciprocating compressors, and since most of the manufacturers use reciprocating compressors, the

[15] Letter from J.R. Sand of Oak Ridge National Laboratory dated March 16, 1994.

Department has decided not to include this option in the analysis.

Location of Compressors. Whirlpool stated that for refrigerators with ''forced air hi-side'' design (which is the most common design used in the industry), there is no thermodynamic reason to expect energy savings from a change in location of the compressor and condenser. Such a change is also likely to decrease utility of the product by reducing the storage volume available at a convenient height off the floor. Whirlpool does not recommend this option. (Whirlpool, No. 36 at 9). Sub-Zero stated that it already mounts the compressors at the top of the unit; this allows easier servicing and theoretically should reduce the temperature differential. (Sub-Zero, No. 37 at 6). U-Line stated there are not many opportunities to relocate compressors and condensers for compact/under counter products. (U-Line, No. 11 at 7).

General Electric Appliances stated that the benefit of removing the evaporator fan from the refrigerated space diminishes as fan efficiencies improve. The feasibility of this option in large-scale production is questionable due to the need to seal the shaft without significantly increasing the frictional losses. Moisture migration, ice formation, and noise transfer to the cabinet are additional concerns. Moving the high-side components to the top of the refrigerator has marginal cabinet heat leakage benefits, but would require a fundamental redesign of the cabinet structure. Moving the high-side components would require the refrigerator to be completely redesigned to accommodate the option. It likely would require enhanced structural rigidity and deliberate means, such as low-placed weights, to prevent tip-overs. General Electric Appliances concluded that, absent a total restructuring of the production line, or creation of new production capacity, the cost of introducing this design option is prohibitive. (GEA, No. 39 at 12–13).

The Department could find no data that showed that relocation of the compressor would save energy. After consideration of the comments discussed above, the Department has decided that even if there are small energy savings from this option, these savings would be insignificant compared to the costs of redesigning and manufacturing a refrigerator with the compressor on top. Therefore, this option has not been included in the engineering analysis.

Use of Natural Convection. Whirlpool stated this option is counterproductive for larger products (above about 14 cubic feet) since the wattage of condenser fan motors has been reduced substantially in recent years. It does not recommend this option. (Whirlpool, No. 36 at 9). U-Line stated that except for frost-free models, all compact/undercounter refrigerator-freezers use natural convection evaporators. Those units using forced air condenser systems are designed for built-in or recessed installations. (U-Line, No. 11 at 7).

Based on the comments discussed above, the Department has concluded that the industry is already using this option where it is practical and so has not included it in the engineering analysis.

Electrohydrodynamic Enhancement of Heat Exchangers. Whirlpool considers this to be a technology that is impractical, unsafe, and expensive to implement in products. It does not recommend this option. (Whirlpool, No. 36 at 9). U-Line stated that the compact/undercounter AHAM subcommittee does not consider this option feasible. (U-Line, No. 11 at 7). Maytag stated that prototypes are not available for electrohydrodynamically enhanced evaporators or condensers. (Maytag, No. 20 at 6). General Electric Appliances stated this may be an inexpensive approach to obtaining marginal energy savings; however, the continuous use of an extremely high voltage field presents safety risks that simply are not acceptable, even if they could be addressed to some degree at a reasonable cost. (GEA, No. 39 at 13).

This concept has only been demonstrated in a laboratory, and no prototypes using this technology have been built. Since there is no cost or performance data for this design option in refrigerators, the Department has decided that this option is not well enough developed for consideration in this rulemaking.

Voltage Control Device. Whirlpool stated it has conducted tests on these devices and found that they save no energy on products which are designed to meet existing energy standards. It does not recommend this option. (Whirlpool, No. 36 at 9). U-Line stated these devices have not demonstrated measurable reductions in energy use when applied to refrigerators and freezers. (U-Line, No. 11 at 7). General Electric Appliances stated its testing indicates current high-efficiency compressors do not exhibit energy savings when used with devices that reduce line voltage and/or change phase angles. (GEA, No. 39 at 13).

Based upon data supplied to the Department,[16] the Department believes this option does not offer any potential for energy savings for new refrigerators and freezers.

(3) Other Comments.

a. Uncertainty Inherent in Data. The Joint Comments formulated a number of different approaches for quantifying the uncertainty and variance inherent in estimated energy savings and costs for individual design options. It said the basis for quantifying uncertainty lies not only in the estimates of energy savings and costs reasonable in the 1998 time frame, but also in the different economies of scales available to companies in the refrigerator-freezer industry. The impact of design options and associated costs affect these companies' products differently. (Joint Comments, No. 49 at 8).

An example from one of the uncertainty analyses demonstrates the variance in unit cost impacts on top-mounted nondispenser automatic-defrost refrigerators. In this example, for a trial standard energy consumption 30 percent below the 1993 level, the increase in manufacturing unit costs runs from approximately $65 up to $145, depending on the specific energy saving options used. (Joint Comments, No. 49 at 8).

The Department is aware there are uncertainties in the estimated costs and energy savings of the various design options. Additionally, the Department recognizes other uncertainties that affect the feasibility of design options, including reliability, performance, and safety. The Department has asked manufacturers to supply the data needed to address the issue of the impact of uncertainties on life-cycle cost and payback periods. The Department has considered the uncertainties in costs and energy savings in developing the proposed standards for this rulemaking. The Department has also considered design feasibility and marketing utility uncertainties.

b. Simulation Model. The Joint Comments were critical of the accuracy of the ERA model, which calculates refrigerator energy use. The industry members of the Joint Comments assessed the accuracy of the ERA model in two phases. The first phase was to use current technology and currently available products to determine the accuracy of the ERA estimates versus actual energy data from refrigerator-freezers. The second phase of this assessment was to determine how the ERA model handles nonconventional technologies, e.g., those technologies

[16] Admiral Refrigerator Test Report for the Admiral Company; Izagulrre, F. L., Senior Engineer, International Technical Services, Inc., August 25, 1993.

not currently in production. (Joint Comments, No. 49 at 5)

The industry members of the Joint Comments constructed 100 ERA input files on products ranging from compact refrigerator-freezers and freezers to full-size automatic defrost refrigerator-freezers. The standard uncertainty of the ERA model using this input data was approximately 19 percent. The Joint Comments argued this accuracy level makes the ERA useful to examine engineering assessments of energy savings options, but not a sufficient tool to determine multi-million dollar rulemaking impacts. (Joint Comments, No. 49 at 5)

AHAM also had Dr. Clark Bullard at the Air Conditioning and Refrigeration Center of the University of Illinois conduct an evaluation of the ERA model. (AHAM, Transcript at 296). This analysis of the ERA model focused on the ability of the model to properly evaluate nonconventional technologies which have yet to be built into full-size refrigerator-freezers and tested or are not yet currently in production. Dr. Bullard's final report noted that many of these design options as modeled by the ERA had errors between 50–75 percent compared to laboratory measurements of these technologies. (Joint Comments, 49 at 6).

The Environmental Protection Agency submitted the *User's Manual for the EPA Refrigerator Analysis Program*. (EPA, No. 34, Appendix 2). The EPA also submitted a rebuttal statement, ''Response to Report by Clark Bullard Associates Accuracy Analysis of the ADL/EPA Refrigerator Analysis (ERA) Model.'' (EPA, No. 34, Appendix 7). One of the EPA comments is that Dr. Bullard's analysis was based on an older version of ERA, which preceded the ''official'' release of Version 1.0. Version 1.0, which DOE used for its analysis, addressed the concerns about the model raised by Dr. Bullard. (EPA, No. 34, Appendix 7, cover letter).

The Department has reviewed the reports by Dr. Bullard and by the EPA concerning the ERA model. In performing the engineering analyses, the Department selected actual refrigerator models to use for each baseline case. The measured energy use for each of these baseline models (supplied by AHAM and its members) was used to calibrate the model for each class of refrigerator product evaluated. To account for changes in performance due to the use of HFC–134a, the Department used HFC–134a compressor maps in modeling each refrigerator class. For those design options included in the cost-efficiency analyses but not directly modeled with ERA, such as gasket improvements and vacuum panel insulation, DOE energy-efficiency improvement estimates were based on measured data or other methods of calculating the energy savings. (See discussions of individual design options.) In summary, the Department has utilized measured data rather than theoretical predictions whenever data has been available.

c. CFC Phaseout. AHAM stated the costs of CFC elimination are not included in the analysis. The effect of CFC elimination must first be taken into account before proceeding with implementing options to meet various standard levels above the 1993 energy standard. (AHAM, No. 17, Attachment 17 at 3).

The Department has accounted for the costs of CFC phaseout by increasing the cost of the baseline units. The manufacturer's costs associated with the phaseout of CFC are accounted for in the manufacturer impact analysis. (See discussion under ''baselines,'' below.)

4. Standards Proposed in the Joint Comments. The standards shown in Table 1, with accompanying discussions, were proposed in the Joint Comments. (Joint Comments, No. 49 at 14–27).

TABLE 1.—STANDARDS PROPOSED IN THE JOINT COMMENTS

Product class	HCFC-containing product	HCFC-free product
i. Automatic Defrost Refrigerator-Freezers (excludes compact refrigerator-freezers):		
1. Top-mounted freezer without through-the-door ice service	9.80AV+276.0	10.78AV+303.6
2. Top-mounted freezer with through-the-door ice service	10.20AV+356.0	11.22AV+391.6
3. Side-mounted freezer without through-the-door ice service	4.91AV+507.5	5.40AV+558.3
4. Side-mounted freezer with through-the-door ice service	10.10AV+406.0	11.11AV+446.6
5. Bottom-mounted freezer without through-the-door ice service	4.60AV+459.0	5.06AV+504.9
ii. Compact Refrigerator-Freezers (AHAM/FTC volume less than 7.75 cubic feet and less than 36 inches in height):		
1. Manual defrost refrigerator-freezer	10.70AV+299.0	11.77AV+328.9
2. Partial automatic defrost refrigerator-freezer	7.00AV+398.0	7.70AV+437.8
3. Top-mounted freezer automatic defrost refrigerator-freezer	12.70AV+355.0	13.97AV+390.5
4. Side-mounted freezer automatic defrost refrigerator-freezer	7.60AV+501.0	8.36AV+551.1
5. Bottom-mounted freezer automatic defrost refrigerator-freezer	13.10AV+367.0	14.41AV+403.7
6. Upright freezer automatic defrost	11.40AV+391.0	12.54AV+430.1
7. Upright freezer manual defrost	9.78AV+250.8	10.76AV+275.9
8. Chest freezer manual defrost	10.45AV+152.0	11.50AV+167.2
iii. Freezers (excludes compact freezers):		
1. Upright automatic defrost	12.43AV+326.1	13.67AV+358.7
2. Upright manual defrost	7.55AV+258.3	8.31AV+284.1
3. Chest freezer manual defrost	9.88AV+143.7	10.87AV+158.1
iv. Manual and partial defrost refrigerator-freezers (excludes compact refrigerator-freezers):		
1. Manual defrost	8.82AV+248.4	9.70AV+273.2
2. Partial automatic defrost	8.82AV+248.4	9.70AV+273.2

AV=Total adjusted volume, expressed in ft^3.

a. Full Sized Refrigerator-Freezers. The proposed standards ''are based on a negotiated approach to identifying the maximum level of efficiency that is technologically feasible and economically justified. A negotiated approach may provide slightly different results from those achieved by conventional rulemaking because this NAECA criterion can be satisfied in a more flexible way, providing greater overall energy savings for a given level of impacts.'' (Joint Comments, No. 49 at 14). That flexibility permitted the participants, for the first time, to

address both the cumulative economic impact of individual design options, and the varying severity of that impact upon different product classes and manufacturers. The negotiation process allowed for a cumulative assessment of impact, adjustments among various product standard levels, and better balance of the economic impact among manufacturers. The Joint Comments stated that * * *

''Impacts on manufacturers are different for different product classes. For product classes representing discretionary purchases, such as some compact refrigerators and most freezers, cost increases due to standards may result in much greater reductions in sales compared to the refrigerator-freezer classes, whose purchase is essentially necessary when a new house is constructed or when an existing product fails. Some design options with perceived consumer or marketing disadvantages, such as increasing wall thickness, are more troublesome for these more discretionary classes of products.

''The consumer cost-effectiveness of increasing levels of energy efficiency, as well as the impact of these levels on manufacturers, also depends on the scale on which the product is produced. For those products with the highest production volumes, capital cost increases can be amortized over a larger number of units, resulting in fewer impacts. In contrast, for products with smallest sales volumes capital cost increases will be spread over fewer models and will have a larger impact on product cost. These effects will operate differently for different manufacturers, depending on the mix of their sales.'' (Joint Comments, No. 49 at 14).

As a result, the Joint Comments final agreement ''concentrates the largest energy savings on the five automatic defrost categories (refrigerator-freezers with: top-mounted freezer non-dispenser, top-mounted freezer dispenser (ice and/or water), side-mounted freezer non-dispenser, side-mounted freezer dispenser, and bottom-mounted freezer) with the very largest percentage reduction in the two classes with the highest sales volumes. These five classes represent more than two-thirds of the total energy consumed by all refrigerators/freezers. These five product classes represent 85 percent of the total energy savings generated from the (proposed) standards.

''The parties agreed that in the interest of conserving engineering and capital resources while maximizing energy savings, the greatest changes in design should be concentrated on the largest two product classes of the five automatic defrost refrigerator-freezer classes—top mounted, non-dispenser, and side by side with dispensers—and not other refrigerator-freezers, freezers or compacts.'' (Joint Comments, No. 49 at 14).

''Dispensers for ice and/or water through the door affect the performance of top-mounted freezer models in which the dispenser is normally in the fresh food door and side-mounted freezer models in which the dispenser is normally in the freezer door, in significantly different ways. Because of this difference, the energy consumption of a side-mounted freezer dispenser can be higher than a top-mounted freezer dispenser. This is due to the greater amount of heat transferred through a freezer door dispenser.'' (Joint Comments, No. 49 at 15).

''Most manufacturers do not build all product classes or all sizes within a product class. This fact emphasizes the need to maximize the total energy savings while considering the resultant economic impacts to each company.'' (Joint Comments, No. 49 at 15).

The Department estimated both the long term and short term return on investment (ROI) for a typical small and a typical large company for each energy efficiency trial standard level considered and found that this evaluation tends to support the Joint Comments position that requiring the largest improvement in energy savings for the largest selling classes of products will maximize the energy savings.

b. Compact Refrigerators, Refrigerator-Freezers, and Freezers. This new set of classes (Nos. 11–18) includes all refrigerator products less than 7.75 cubic feet and 36 inches or less in height. The total energy consumption of all compact refrigerator products in the U.S. is less than 2.6 percent of the total energy consumed by all sizes of refrigerator products.

The only design options for compact refrigerator-freezers that were identified by industry as feasible from a design and marketing aspect were: improved gaskets, improved compressor efficiency and improved fan motor efficiency. Compact refrigerator manufacturers indicated that the other design options have extremely low design feasibility or marketing utility when applied to their products (not buildable or not saleable).

The Joint Comments stated ''The five compact refrigerator/freezer manufacturers supplying data for life cycle cost and payback analysis identified a ''max tech'' limitation to their products of approximately 15 percent below 1993 levels. This level did not take into account economic justification (consumer and manufacturer) or safe harbor issues.'' (Joint Comments, No. 49 at 16). This assessment took into account the following:

''• High efficiency compressors of 5.5 Energy Efficiency Ratio (EER) are not realistic for compact refrigerator/freezers. Low capacity compressors available for compact refrigerator/freezers in the 1998 time frame are expected to have efficiencies of approximately 3.6 EER.

''• Most compact refrigerator-freezer manufacturers are small companies with limited research and development funding and capital resources.

''• High efficiency foams require high pressure impingement systems that are only economically viable for very large manufacturers. Most compact manufacturers use what is known as an auto froth foaming system (low pressure) that cannot produce high efficiency foam insulation. Non-CFC auto froth formulations are also limited to moderately energy efficient replacements.

''• In most cases, compact refrigerator/freezers and freezers do not employ fan motors, mullions, auto-defrost or through-the-door features. As a result, design strategies which relate to these components or technologies are not available for improvement.

''• The need for high efficiency components by compact refrigerator/freezer and freezer manufacturers carries a low priority with component suppliers. Motor and compressor manufacturers apply their engineering resources to larger volume manufacturers leaving the low volume niche type compact products to the tail end of their design cycles. For example, there are compact manufacturers that still have not been provided with sample non-CFC–12 compressors that provide acceptable energy efficiency for household appliance applications.'' (Joint Comments, No. 49 at 16, 17).

''Because of the special design constraints and limited number of options applicable to compact refrigerator-freezers and freezers, it was difficult to develop life-cycle cost analyses that reflected the real marketing situation for these products. An LBL assessment using inputs from AHAM compact manufacturers showed that an energy savings level of 2 to 3 percent below the 1993 standards would result in a minimum five-year payback for consumers. This assessment did not take into consideration unique marketing restrictions of individual compact refrigerator-freezer and freezer manufacturers.'' (Joint Comments, No. 49 at 17).

In an effort to balance the economic impact on the compact product manufacturers and the consumers benefit from improvements in energy efficiency in these products, the Joint Comments proposed an energy level approximately 5 percent below the 1993 standards for all eight compact type refrigerator-freezers and freezers. (Joint Comments, No. 49 at 17).

The Department agrees with the Joint Comments statement that there are fewer design options available for improving the energy efficiency of compact refrigerator products. The Department also recognizes that there is relatively little opportunity for energy savings from the compact classes, given that they consume only 2.6 percent of total energy used by residential refrigerator products. Therefore, the Department has analyzed compact refrigerators, freezers, and refrigerator-freezers separately and is proposing separate energy efficiency standards for the compact refrigerator products.

c. Household Freezers. The Joint Comments stated ''The category of household freezers includes three product classes defined as: chest freezers with manual defrost; vertical freezers with manual defrost; and vertical freezers with automatic defrost. As a group, the freezer product classes have technical and marketing constraints unique to their individual markets. These design constraints are amplified by the fact that the 1993 NAECA energy efficiency standards imposed an additional 14% stricter target on household freezers than refrigerator/freezers. Energy efficiency gains on household freezers out pace those for any other appliance standard in the U.S. Some parties believe that as a direct partial consequence of the 1993 NAECA standards, three companies terminated production of these products.'' (Joint Comments, No. 49 at 18).

''The number of energy saving options applicable to household freezers is almost as limited as those for compact refrigerator/freezers. The options applied by LBL in its ''max tech'' analysis included increased wall and door thicknesses, higher EER compressors, improved gaskets, and enhanced performance of evaporator and condenser coils. In the automatic defrost vertical freezer product class, adaptive defrost and more efficient motors are applied. These latter options are not used on manual models.'' (Joint Comments, No. 49 at 18).

The Joint Comments stated the CFC replacement issue has been especially difficult to resolve on freezer products. The preferred refrigerant replacement, HFC–134a, ''has an additional 3 to 4 percent energy penalty inherent in its performance at temperatures necessary for household freezer products as compared to refrigerator-freezers.'' (Joint Comments, No. 49 at 19). ''The most common replacement for CFC–11 in the blowing agent for foam insulation is hydrochlorofluorocarbon (HCFC)-141b. Since this chemical is basically in a liquid phase while exposed to temperatures produced in household freezers, the liquid thermal conductivity is especially important in its performance as an energy efficient CFC–11 replacement. As applied to household freezers, however, this particular CFC–11 replacement carries an approximate 5 to 6 percent energy penalty when applied to household freezers.'' (Joint Comments, No. 49 at 19).

''Freezers are an optional commodity in a typical U.S. household. They are basically sold in the replacement market, and due to the price sensitivity of this market, there is a reduced opportunity to pass through costs of energy improvements to the consumers. Thus, if regulatory induced costs cannot be passed on, the product line becomes relatively unprofitable.'' (Joint Comments, No. 49 at 19)

After carefully reviewing the feasibility and energy efficiency options in the max tech analysis, and considering inputs from refrigerator manufacturers and compressor manufacturers, the Joint Comments proposed standards levels for freezer products. The proposal is based on most of the design options identified by DOE in the 1993 Advance Notice, but with the more conservative industry estimates of energy savings. (Joint Comments, No. 49 at 20).

The statements made by the Joint Comments concerning freezers support the Department's analysis.

d. Manual and Partial Defrost Refrigerators and Refrigerator-Freezers. The Joint Comments stated: ''There are only a few models with a small market niche in this declining product category. The percentage of U.S. sales in these product classes is 1.7 percent and falling. Data and analysis on elementary engineering and economic issues are difficult to obtain. However, non-industry participants felt that it is important to recommend a relatively stringent U.S. standard on this product class because of the potential impact on similar products produced in or for less-developed countries.'' (Joint Comments, No. 49 at 20). The Joint Comments believe it is likely these less-developed countries will adopt similar standards. Because of the limited availability of data and the small market, the Joint Comments proposed an energy consumption standard for manual and partial defrost refrigerator-freezers that is 10 percent lower than they proposed for Class 3 refrigerator-freezers (automatic defrost with top-mounted refrigerator-freezer without through-the-door ice service). (Joint Comments, No 49 at 20).

''The energy consumption differential between automatic defrost and non-automatic defrost units has been declining over time, and is expected to decline further as adaptive defrost options become incorporated into the automatic defrosting systems. The standards proposal is based on a judgment of all the participants that a 10% energy consumption difference for a given adjusted volume accounts for the relatively irreducible minimum change in energy consumption relating to a member's decision not to use automatic defrost.'' (Joint Comments, No. 49 at 20).

An analysis of the energy savings options available for the manual and partial defrost refrigerators and refrigerator-freezers by the Department supports the level of standards proposed by the Joint Comments parties. However, the concern raised by Joint Comments parties regarding the potential impact on similar products produced in or for less-developed countries was not considered by DOE.

e. Non-HCFC Products. The Joint Comments propose establishing separate classes for refrigerator products which do not use HCFCs. ''These non-HCFC classes would permit 10% greater energy use than the comparable HCFC-using classes to provide industry with a known, feasible way of meeting the standards before 2003.'' (Joint Comments, No. 49 at 21). The Joint Comments parties recommended that less stringent standards, which would expire 6 years after their effective date, be established for the HCFC-free refrigerator classes. It is anticipated that alternative design options will be available by this time. (Joint Comments, No. 49 at 21).

The Joint Comments recommended that the following conditions apply to the standards for the HCFC-free classes:

''(1) 18 months prior to the total phaseout by EPA of HCFC–141b in January 1, 2003, to wit, July 1, 2001;

''(2) 18 months prior to any earlier phaseout date or restriction on use of HCFC's in refrigerator-freezer foam set by EPA; or

''(3) After the granting of a petition by DOE which demonstrates that HCFC–141b is in very short supply or economically infeasible to use due to,

for example, chemical supplier announcements or other actions affecting supply or use.

''After the 1998 effective date of the basic standards and before the effective date of the non-HCFC standard as stated in (1)–(3) above, each manufacturer may annually produce non-HCFC units subject to the alternative standard for up to 5% of its total production or for 10,000 units, whichever is less. This allowance to apply the non-HCFC standard to a small number of units allows manufacturers the ability for field testing with real consumers under actual commercial conditions which will be necessary in the case of the advanced technology which will be required to meet the 1998 standards.'' (Joint Comments, No. 49 at 21).

As discussed earlier, because of the uncertainty of the availability of HCFC–141b replacements with equivalent thermal properties, the Department has decided to develop new product classes for products that do not use HCFC–141b or other HCFCs in the foam insulation. However, the timetable for adoption of HCFC-free standards proposed by the Joint Comments differs from that proposed by DOE in this NOPR.

IV. Analysis

A. Engineering—Technical Issues

1. Efficiency Levels Analyzed

The Department conducted engineering analysis of those classes of refrigerator products for which performance and cost data could be obtained. The classes analyzed were: Top-mounted refrigerator-freezer with auto defrost, top-mounted refrigerator-freezer with auto defrost and through-the-door features, side-by-side refrigerator-freezer with auto defrost, side-by-side refrigerator-freezer with auto defrost and through-the-door features, bottom-mounted refrigerator-freezer with auto defrost, upright freezer with auto defrost, upright freezer manual defrost, chest freezer manual defrost and compact refrigerator-freezer manual defrost. Data was collected by surveys of the industry, extensive literature review and discussions with experts. This information was used as the basis for determining the improvement in performance and the manufacturer cost for each design option added to the baseline unit. The engineering analysis determined the annual energy use, life cycle costs and pay back periods for each combination of design options. Proposed standards for classes which could not be analyzed, due to the lack of data, have been based on the percentage in performance improvement over current standards determined for a similar class that was analyzed. (See TSD, Chapter 3).

The combination of design options which results in the most performance improvement technologically feasible is call the ''max tech'' design level. Table 2 presents the max tech performance levels expressed as annual energy use for all analyzed classes of refrigerator products.

TABLE 2.—ANNUAL ENERGY USAGE FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS AT MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Annual energy use (kWh/yr)
Refrigerator-Freezers:	
Top Mounted Auto Defrost	422
Top Mounted Auto Defrost with Through-the-Door Feature	517
Side-by-Side Auto Defrost	502
Side-by-Side Auto Defrost with Through-the-Door Feature	516
Bottom Mounted Auto Defrost ..	444
Freezers:	
Upright Auto Defrost	484
Upright Manual Defrost	278
Chest Manual Defrost	284
Compacts: Manual Defrost Refrigerator-Freezer	260

The Department selected the max tech level and three other levels from the engineering analysis for further examination. Table 3 presents the four efficiency levels selected for analysis for the nine classes of refrigerator products analyzed Level 4 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 3.—STANDARD LEVELS ANALYZED FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS—ANNUAL ENERGY USE (KWH/YR)

Product class	Baseline	Level 1	Level 2	Level 3	Level 4
Refrigerator-Freezers:					
Top Mounted Auto Defrost	397 + 14.2 AV (397 + 0.50 av)	275 + 9.8 AV (275 + 0.35 av)	270 + 9.7 AV (270 + 0.34 av)	260 + 9.3 AV (260 + 0.33 av)	239 + 8.5 AV (239 + 0.30 av)
Top Mounted Auto Defrost with Through the Door Feature	462 + 13.0 AV (462 + 0.46 av)	362 + 10.2 AV (362 + 0.36 av)	330 + 9.3 AV (330 + 0.32 av)	321 + 9.03 AV (321 + 0.32 av)	300 + 8.5 AV (300 + 0.30 av)
Side-by-Side Auto Defrost	609 + 5.8 AV (609 + 0.20 av)	514 + 4.9 AV (514 + 0.17 av)	429 + 4.1 AV (429 + 0.14 av)	415 + 4.0 AV (415 + 0.14 av)	402 + 3.8 AV (402 + 0.14 av)
Side-by-Side Auto Defrost with Through the Door Feature	484 + 12.1 AV (484 + 0.43 av)	405 + 10.1 AV (405 + 0.36 av)	353 + 8.8 AV (353 + 0.31 av)	336 + 8.4 AV (336 + 0.30 av)	312 + 7.8 AV (312 + 0.27 av)
Bottom Mounted Auto Defrost	579 + 5.6 AV (579 + 0.29 av)	476 + 4.6 AV (476 + 0.16 av)	419 + 4.1 AV (419 + 0.14 av)	393 + 3.8 AV (393 + 0.13 av)	359 + 3.5 AV (359 + 0.12 av)
Freezers:					
Upright Auto Defrost	399 + 14.2 AV (399 + 0.50 av)	349 + 12.4 AV (349 + 0.44 av)	321 + 11.4 AV (321 + 0.40 av)	288 + 10.3 AV (288 + 0.36 av)	254 + 9.1 AV (254 + 0.32 av)
Upright Manual Defrost	275 + 8.6 AV (275 + 0.30 av)	241 + 7.6 AV (241 + 0.27 av)	187 + 5.8 AV (187 + 0.21 av)	172 + 5.4 AV (172 + 0.19 av)	158 + 5.0 AV (158 + 0.17 av)
Chest Manual Defrost	170 + 11.8 AV (170 + 0.42 av)	142 + 9.9 AV (142 + 0.35 av)	117 + 8.1 AV (117 + 0.29 av)	111 + 7.7 AV (111 + 0.27 av)	102 + 7.1 AV (102 + 0.25 av)
Compacts:					
Manual Defrost Refrigerator-Freezer	292 + 13.8 AV (292 + 0.48 av)	286 + 13.5 AV (286 + 0.48 av)	280 + 13.2 AV (280 + 0.47 av)	274 + 13.0 AV (274 + 0.46 av)	274 + 13.0 AV (274 + 0.46 av)

AV = Total adjusted volume, expressed in ft^3
(av = Total adjusted volume, expressed in Liters)

Rather than presenting the results for all classes of refrigerator products in today's NOPR, the Department selected a representative class of refrigerator-freezer, and is presenting the results only for that class. The results for the other classes can be found in the TSD in the same sections as those referenced for the representative class. The representative class for refrigerator products is a top mounted automatic defrost refrigerator-freezer, which accounts for more than 50 percent of the sales of all refrigerator-freezer products. For this representative class, trial standard level 1 accomplishes its efficiency improvements from the baseline by increased insulation, improved compressor efficiency, reduced condenser and evaporator motor power, reduced gasket heat leak, and improvements in evaporator fan efficiency; level 2 adds additional insulation and increased evaporator area; level 3 adds increased condenser area and adaptive defrost, and level 4 adds vacuum panels on the walls and doors. Similar design options are used to achieve the above efficiencies for the other classes and are found tabulated in Section 3.3 of the TSD.

2. *Payback Period.* Table 4 presents the payback periods for the efficiency levels analyzed for the representative class of the product. Payback for all classes of refrigerator products may be found in Tables 4.12 to 4.36 of the TSD.

TABLE 4.—PAYBACK PERIODS OF DESIGN OPTIONS (YEARS) FOR REPRESENTATIVE CLASS OF REFRIGERATOR-FREEZERS

Standard level	Payback period
1	3.7
2	3.9
3	4.5
4	6.2

3. Significance of Energy Savings. To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of refrigerator products under the base case is compared to the energy consumption of products complying with the candidate standard levels. For the candidate energy conservation standards, the REM projects that over the period 1998–2030, the following energy savings would result for all classes of the product:

Level 1—7.12 Quads (7.51 EJ)
Level 2—9.05 Quads (9.55 EJ)
Level 3—10.26 Quads (10.82 EJ)
Level 4—12.05 Quads (12.71 EJ)

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

B. Economic Justification

1. Economic Impact on Manufacturers and Consumers. The manufacturers' cost increase per unit over the base case to meet the efficiency of level 1 is $40.81; to meet level 2, 3, and 4, the manufacturers' cost increases are $43.92, $54.33, and $86.15, respectively. (See TSD, Table 3.5.)

At those levels of efficiency, the projected consumer price increases are $69.22 for level 1 and $74.32, $92.56, and $146.02 for standard levels 2 through 4, respectively. (See TSD, Table 4.1.)

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $19.06 for the representative class; standard level 2 would reduce energy expenses by $19.70; standard level 3 by $21.32; and standard level 4 by $24.55. (See TSD, Table 4.1.)

The Lawrence Berkeley Laboratory Manufacturer Impact Model results for all classes of refrigerator products show that revised standards would cause a prototypical manufacturer to have fairly large reductions in short-run return on equity (ROE) from the 7.3 percent return in the base case. Standard levels 1 through 4 for refrigerator-freezers are projected to produce short-run ROEs of 7.0 percent, 6.2 percent, 5.8 percent, and 7.1 percent, respectively. Similarly, revised standards have only a small effect on the prototypical manufacturer's long run ROE of 7.3 in the base case. Standard levels 1 through 4 for refrigerator-freezers are projected to produce long-run ROEs of 7.4 percent, 7.2 percent, 7.2 percent, and 7.7 percent, respectively. (See TSD, Tables 6.4 and 6.8.)

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most manufacturing firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g., debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

2. Life-Cycle Cost and Net Present Value (NPV). A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative class, life-cycle costs at all standard levels are less than the baseline unit. Of the four candidate standard levels, a unit meeting level 2 has the lowest consumer life-cycle cost. (See TSD, Figure 4.1.)

At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered and assuming that consumers who would purchase units at or above this level, even without a standard, would not be affected. This is done by assuming in the base case a distribution of purchases of units meeting the respective efficiencies of each standard level. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle cost for the average affected consumer of $143.36 for the representative class of refrigerator products; standard level 2 would reduce average life-cycle costs by $145.46; standard level 3, by $145.24; and standard level 4, by $127.81. These life-cycle cost reductions indicate that no standard level would cause any economic burden on the average consumer. (See TSD, Table 4.1.) The Department notes that standard levels 3 and 4 are beyond the minimum life-cycle point which, if adopted, could require some consumers, who would have otherwise purchased refrigerators having the characteristics of standard level 2, to experience higher life cycle costs.

The net present value analysis, a measure of the net savings to society, indicates that for all classes of refrigerator products, standard level 1 would produce a NPV of $7.66 billion to consumers. The corresponding net present values for standard levels 2–4 are $8.19 billion, $8.26 billion, and $7.78 billion, respectively. (See TSD, Table 5.20.)

Even though the life cycle cost and net present value analyses indicate that the proposed standards would result in substantial net benefits for consumers, as well as the nation as a whole, the Department is concerned about whether there might be adverse effects of the proposed standards on identifiable groups of consumers. Because the proposed standard level is below the level that is estimated to result in minimum life-cycle cost (level 2), it would not preclude manufacturers from producing refrigerators (or consumers from purchasing) refrigerators with even lower life-cycle costs. This assumes that

the affected consumers experienced discount rates, energy prices and usage patterns similar to those assumed in the DOE analysis. However, because DOE believes that significant numbers of refrigerator users are likely to experience discount rates and energy prices that differ from the average rates and prices used in DOE's basic analysis, DOE performed additional sensitivity analyses using lower and higher consumer discount rates (2 and 15 percent), and lower and higher energy prices. These sensitivity analyses indicated that these variations in discount rates and energy prices did not change the Department's conclusion that the proposed standards would result in significant net benefits and had little or no impact on the relative merits of the different standard levels analyzed. DOE believes that there is little variation in the usage patterns of refrigerators, and therefore did not perform sensitivity analyses on this factor. The Department invites comments on whether the proposed standard would have any significant adverse effect on any identifiable group of consumers.

3. Energy Savings. As indicated above, DOE concludes that standards, at each candidate standard level, will result in significant savings of electricity consumption by refrigerator products.

4. Lessening of Utility or Performance of Products. As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of refrigerator products.

5. Impact of Lessening of Competition. The determination of this factor must be made by the Attorney General.

6. Need of the Nation to Save Energy. In addition to the reasons for saving energy recognized when Congress established the appliance standards program, there is an extraordinary need to save energy to reduce damage to the environment. Refrigerator products use electricity directly. In 1993, 1.74 quads (1.84 EJ) were used by refrigerator products nationally. Improving the energy efficiency of these products will reduce future electricity demands and thereby decrease air pollution. (See TSD, Environmental Assessment.)

As a result of the national cap on emissions of sulfur dioxide, together with a credit and trading system, established by the Clean Air Act Amendments of 1990, the proposed refrigerator standards are unlikely to have any significant effect on actual emissions of sulfur dioxide. However, because the proposed standards will reduce overall electricity demand, they will also enable electric utilities and other covered sources of sulfur dioxide to spend less on sulfur dioxide emission controls. This savings will be reflected in the marginal costs experienced by utilities, but may not be fully reflected in the average rates charged consumers. Because there may be some marginal benefit associated with the avoidance of sulfur dioxide emission control costs, DOE has continued to estimate the tons of sulfur dioxide emissions represented by the reductions in electricity demand likely to result from the standards. For all classes of refrigerator products at standard level 1, over the years 1998 to 2030, the total estimated sulfur oxide emissions (listed in equivalent weight of sulfur dioxide (SO_2)) affected would be 1017 kt (1120 thousand short tons). During this time period, the peak annual SO_2 emissions affected would be 0.7 percent of the U.S. total. For standard levels 2–4, the emissions affected are estimated to be 1292 kt (1424 thousand short tons); 1465 kt (1615 thousand short tons); and 1720 kt (1896 thousand short tons), respectively. The highest peak annual amount of emissions affected at these levels is estimated to be 1.20 percent.

Standards are expected to result in some decreases in nitrogen dioxide (NO_2) emissions, although here too the Clean Air Act Amendments established new requirements that may lead to regional caps (and floors) on emissions of NO_2 in certain nonattainment areas. These new requirements could, in turn, reduce or eliminate the impact of the proposed refrigerator standards on NO_2 emissions in these areas. It should also be noted that while the proposed refrigerator standards are likely to result in significant reductions of NO_2 emissions in areas of the country that are already in compliance with national ambient air quality standards for NO_2, the benefits of such reductions are likely to be very small or insignificant compared to those resulting from reductions in nonattainment areas. For standard level 1, over the years 1998 to 2030, the total estimated NO_2 reduction would be 966 kt (1065 thousand short tons), assuming that there are no regional caps/floors on NO_2 emissions. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the U.S. is 0.70 percent. For standard levels 2–4, the reductions are 1228 kt (1353 thousand short tons); 1393 kt (1535 thousand short tons); and 1635 kt (1802 thousand short tons), respectively. The highest peak annual reduction of these levels is 1.20 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1998 to 2030, the total estimated CO_2 reduction would be 540 Mt (595 million short tons). During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the U.S. is 0.70 percent. For standard levels 2–4, the reductions are 686 Mt (756 million short tons); 778 Mt (858 million short tons); and 914 Mt (1007 million short tons), respectively. The highest peak annual reduction of these levels is 1.20 percent.

C. Conclusion

The Joint Comments made a valuable contribution to the development of the energy conservation standards proposed in this NOPR. The Department found the recommendations in the Joint Comments to be reasonable and based on reliable data. The Department reached its conclusions after carefully considering the Joint Comments and all other comments received.

With this NOPR the Department is proposing new product classes for compact refrigerator products and for HCFC-free refrigerator products. Based on an analysis of the alternatives, the Department concludes that standard level 1 for classes of refrigerator products achieves the maximum improvement in energy efficiency that is both technologically feasible and economically justified.

1. Product Classes. The Department proposes to add new product classes in two categories.

a. Compact Refrigerators, Refrigerators-Freezers and Freezers. The Department proposes that new product classes be established for compact refrigerator products. The Department recommends a new set of product classes which includes all products less than 7.75 cubic feet (FTC/AHAM rated volume) and 36 inches or less in height. The total energy consumption of all compact refrigerator products in the U.S. is less than 2.6 percent of the total energy consumed by all refrigerator products. There are only three or four energy savings options expected to be available for these products by 1998. Because of small production volumes, the impact on these manufacturers is also relatively severe. Furthermore, a 5-year payback is required to recoup the cost of improvement in efficiency at levels only 2 to 3 percent below the 1993 levels.

b. HCFC-Free Refrigerators, Refrigerator-Freezers, and Freezers. The Department proposes the addition of classes for HCFC-free refrigerator products. For the purposes of this rulemaking, a HCFC-free refrigerator product is defined as a product which

contains 10 percent or less by mass hydrochlorofluorocarbon in the blowing agent portion of the foam insulation. According to section 325(o)(2)(B) of the Act, the Department must consider a number of concerns when determining whether the benefits of a standard exceed its burdens. The Department believes that by establishing separate classes for HCFC-free products, industry will be encouraged to develop products which are environmentally benign.

For the HCFC-free full sized refrigerator products, the Department recommends standards which would permit 10 percent greater energy use than the comparable HCFC-using classes. The 10 percent relaxation for HCFC-free classes, however, does not apply to the compact classes, because this would result in standards that are less stringent than those standards now in effect. This is prohibited by section 325(o)(1) of the Act. Instead, for the compact classes, the HCFC-free standards are proposed to be identical to the 1993 standards.

2. Standards. Section 325(o)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that ''achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.''

a. Standard Level 4. The Department first considered the max tech level of efficiency, i.e., standard level 4 for amended refrigerator, refrigerator-freezer, and freezer standards. Standard level 4, max tech, would save the most energy: 10.0 quads (10.55 EJ) for refrigerators (including refrigerator-freezers) and 2.0 quads (2.11 EJ) for freezers between 1998 and 2030. In order to meet this standard, the Department assumes that all refrigerator products would incorporate vacuum panel insulation. The use of vacuum panel insulation accounts for 30 percent of total energy savings, with increasing wall thickness as the only alternative. Vacuum panel technology has progressed, but it is not ready to be applied as a reliable design option in the production of a 1998 compliant product. There are concerns about manufacturability, availability, reliability, and performance. Vacuum panels are 6 to 10 times heavier than foam. The increase in door weight may cause the appliance to tip over when the door is opened. Also, current production capability for vacuum panels is far too small for the projected demand. A 1-inch increase in wall and door thickness (a 2-inch increase in the side-to-side dimension) is not a viable option. Too many products are already constrained by the need to fit into existing spaces and through doors and passages. Decreasing interior volume would sacrifice product utility. In addition, because standard level 4 is beyond the minimum life cycle point, there are likely to be some consumers who would experience net life-cycle cost increases compared to the units they would have otherwise purchased. Based upon a consideration of the above, the Department therefore concludes that the burdens of standard level 4 for refrigerators, refrigerator-freezers and freezers outweigh the benefits, and rejects the standard level.

b. Standards Level 3. This standard level is projected to save 8.6 quads (9.1 EJ) of energy for refrigerators and refrigerator-freezers and 1.7 quads (1.8 EJ) for freezers. While this level does not use vacuum panels, for most of the classes about 40 percent of the energy savings, compared to the base case, is obtained by increasing the insulation values. As indicated in the comments, there is general agreement that an increase in the wall thickness is not acceptable for many of the larger models in each class. This level has a payback periods as high as 25.5 years (much longer than the product life) and reduces refrigerator manufacturer short-run ROE from 7.3 percent to 5.8 percent, a reduction of 20 percent. For freezer manufacturers, short-run ROE drops from 7.3 percent to 4.7 percent, a reduction of more than 35 percent. Based on a consideration of the above, the Department concludes that the burdens of standard level 3 for refrigerators, refrigerator-freezers and freezers outweigh the benefits, and rejects the standard level.

c. Standard Level 2. This standard level is projected to save 7.8 quads (8.2 EJ) of energy for refrigerators and refrigerator-freezers, and 1.3 quads (1.4 EJ) for freezers. The payback at this level may be as long as 19.0 years, the expected life of the product. The initial burden on the manufacturers is also unacceptably high; short-run ROE for both refrigerators and freezers decreases from 7.3 percent to 6.2 percent, a reduction of 16 percent. Based on a consideration of the above, the Department concludes that the burdens of standard level 2 for refrigerators, refrigerator-freezers and freezers outweigh the benefits, and rejects the standard level.

d. Standard Level 1. During the period 1998–2030, the savings at this level are calculated to be 7.13 quads (7.5 EJ) of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of SO_2 by up to 1017 kt (1120 short tons) or by as much as 0.7 percent by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 540 Mt (595 million tons), or as much as 0.7 percent, over the forecast period.

The technologies that are necessary to meet this standard level 1 are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 3.7 years for the representative class and no more than 9.2 years for any class. This standard is at or near the lowest life-cycle cost for all classes and is expected to result in a reduction in life-cycle cost of approximately $143 for the representative class. The proposed standard is also unlikely to affect adversely any identifiable group of consumers. Additionally, the standard is expected to have essentially no impact on the prototypical manufacturer's ROE of 7.3 percent.

The Department concludes that standard level 1 for refrigerator products saves a significant amount of energy and is technologically feasible and economically justified. The level 1 standards correspond closely to the standards proposed by the Joint Comments. (The Joint Comments standards will result in slightly more energy savings.) The Department proposes to amend the existing standards for refrigerator products to correspond to the standards agreed to by the Joint Comment parties. As discussed in the previous section, the Department agrees with the Joint Comment recommendation to relax the standards for full-sized HCFC-free classes of refrigerator products by 10 percent for a period of 9 years after publication of the final rule, but is proposing that the standards for the HCFC-free compact classes during the same period be the equivalent to the 1993 standards.

3. Effective Dates. The effective date of standards for the full-size refrigerator products (Classes 1–10 in the ''Product Classes and Effective Date Table'') is 3 years after publication of the final rule. The compact refrigerator product classes, Nos. 11–18, would also have an effective date of 3 years after publication of the final rule.

The HCFC-free refrigerators, listed in Product Classes 19–36, have more complex effective dates. The effective date for the HCFC-free standards will be the same date as for the other classes of products—3 years after the publication of the final rule. The effective date proposed for the HCFC-free classes is 3 years earlier than the suggestion in the Joint Comments, because section 325(o)(1) of the Act specifically prohibits the Secretary from specifying

standards which would permit an increase in the energy used by a covered product. The impact on energy savings of the earlier effective date for HCFC-free product standards is not large: compared to introducing HCFC-free classes in 2001, the 1998 introduction carries an energy penalty of less than 0.1 quad over the period 1998–2030. The earlier effective date may have a countervailing environmental benefit by encouraging earlier use of HCFC substitutes.

The standards for the HCFC-free classes of products will be raised to a standard level equal to that for comparable HCFC-using classes effective 9 years after publication of the final rule for this rulemaking. At this time it is anticipated that alternative design options without HCFCs will permit efficiency improvements. The Department is seeking comments concerning requirements for HCFC-free products.

V. Environmental, Regulatory Impact, Takings Assessment, Federalism, and Regulatory Flexibility Reviews

A. Environmental Review

The Draft Environmental Assessment for Proposed Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), the Department regulations for compliance with NEPA (10 CFR part 1021) and the Secretarial Policy on the National Environmental Policy Act (June 1994). Section V.B.2. of the Secretarial Policy requires that the Department provide an opportunity for interested parties to review environmental assessments prior to the Department's formal approval of such assessments.

In accordance with the Secretarial Policy, the Department seeks comments on the Draft Environmental Assessment, which is printed within the TSD accompanying this proposed rulemaking.

B. Regulatory Planning and Review

Today's regulatory action has been determined to be an ''economically significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' (58 FR 51735, October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

There were no substantive changes between the draft submitted to OIRA and today's action. The draft and other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in the Department Freedom of Information Reading Room, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, telephone (202) 586–6020.

The following summary of the Regulatory Analysis focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete draft ''Regulatory Impact Analysis,'' which is contained in the TSD, available as indicated at the beginning of this NOPR. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the economic impact of the proposed standard.

DOE identified the following six major policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Informational Action
  —Product labeling
  —Consumer education
- Prescriptive Standards
- Financial Incentives
  —Tax credits
  —Rebates
- Voluntary Energy Efficiency Targets
- The Proposed Approach (Performance Standards)

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs, and has been compared to the effectiveness of the proposed rule.

If no new regulatory action were taken, then no new standards would be implemented for these products. This is essentially the ''base case'' for each appliance. In this case, between the years 1998 and 2030 there would be expected energy use of 45.54 quads (48.05 EJ) of primary energy, with no energy savings and a zero net present value.

Several alternatives to the base case can be grouped under the heading of informational action. They include consumer product labeling and DOE public education and information programs. Both of these alternatives are already mandated by, and being implemented under the Act. One base case alternative would be to estimate the energy conservation potential of enhancing these programs. To model this possibility, the Department assumed that market discount rates would be lowered by 5 percent for purchasers of refrigerator products. This resulted in energy savings equal to 0.05 quads (0.05 EJ), with expected consumption equal to 45.5 quads (48 EJ). The net present value is estimated to be $0.08 billion.

Another method of setting standards would entail requiring that certain design options be used on each product, i.e., for DOE to prescribe technology standards. For these products, prescriptive standards are assumed to be implemented as standards at one level below the performance standards. The lower standards level entails slightly smaller expenditures for tooling and purchased parts. Consequently, the economic impacts that are expected before the implementation date should be slightly smaller for prescriptive standards. This resulted in energy consumption, between 1998 and 2030, of 39.27 quads (41.43 EJ), and savings of 5.76 quads (6.62 EJ). The net present value, in 1990 dollars, was $7.26 billion.

Various financial incentive alternatives were tested. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. The tax credits to consumers were assumed to be 15 percent of the increased expense for higher energy-efficiency features of these appliances, while the rebates were assumed to be 15 percent of the increase in equipment prices. The tax credits to consumers showed a change from the base case, saving 0.07 quads (0.07 EJ) with a net present value of $0.19 billion. Consumer rebates showed slightly higher energy savings; they would save 0.07 quads (0.08 EJ) with a net present value of $0.23 billion.

Another financial incentive that was considered was a tax credit to manufacturers for the production of energy-efficient models of these appliances. In this scenario, an investment tax credit of 20 percent was assumed. The tax credits to manufacturers had no effect; the energy consumption estimates are 45.54 quads (48.05 EJ) with no energy savings and a zero net present value.

The impact of this scenario produces no savings because the investment tax credit was applicable only to the tooling and machinery costs of the firms. The firms' fixed costs and most of the design improvements that would likely be adopted to manufacture more efficient versions of these products would involve purchased parts. Expenses for

purchased parts would not be eligible for an investment tax credit.

Two scenarios of voluntary energy-efficiency targets were examined. In the first one, the proposed energy conservation standards were assumed to be voluntarily adopted by all the relevant manufacturers in 5 years. In the second scenario, the proposed standards were assumed to be adopted in 10 years. In these scenarios, voluntary improvements having a 5-year delay, compared to implementation of mandatory standards, would result in energy consumption by these appliances of 39.78 quads (41.97 EJ), energy savings of 5.76 quads (6.08 EJ), and a net present value of $6.07 billion; voluntary improvements having a 10-year delay would result in 41.22 quads (43.40 EJ) of energy being consumed, 4.42 quads (4.56 EJ) being saved, and a net present value of $4.33 billion. These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by these appliance manufacturers, an assumption for which there is no reasonable assurance.

Lastly, all of these alternatives must be gauged against the performance standards that are being proposed in this NOPR. Such performance standards would result in energy consumption of refrigerator products to total an estimated 38.42 quads (40.53 EJ) of primary energy over the 1998–2030 time period. Savings would be 7.12 quads (7.52 EJ), and the net present value would be an expected $8.19 billion. As indicated in the paragraphs above, none of the alternatives that were examined for these products saved as much energy as the proposed rule. Also, most of the alternatives would require that enabling legislation be enacted, since authority to carry out those alternatives does not presently exist.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires an assessment of the impact of regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

The refrigerator products industry is characterized by two firms accounting for nearly 60 percent of sales. The five largest manufacturers account for 97 percent of sales. Smaller businesses and firms, which make primarily compact refrigerator products, share the remaining 3 percent of the market.

In this industry, average cost has an inverse relationship to firm size. The industry has economies of scale, and large firms (to the extent that their facilities are up-to-date) have lower average costs than small firms. This fact, coupled with increasing competitiveness of the national market, probably accounts for the continuing consolidation that has been occurring for several decades. The fact that the consolidation has been producing larger firms strongly corroborates the finding that large firms have a cost advantage.

A principal implication of consolidation is that the smaller of the firms will be, on average, in more danger of failing. Any decrease in average profitability is more likely to mean the difference between success and failure for a smaller firm.

While some small firms have more energy efficient models than larger firms, and while some have more models of average efficiency, the impact of higher efficiency standards on small firms is likely to be mixed. If standards are technologically difficult to meet, however, they may hurt selected smaller firms the most, because smaller firms have less sophisticated research and development capabilities. The Department has taken this into consideration in this rulemaking and this is one of the reasons the Department is proposing standards for the compact refrigerator products that are less stringent than those for full size refrigerator products.

In view of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that, for this particular industry, the proposed standard levels in today's Proposed Rule will not ''have a significant economic impact on a substantial number of small entities,'' and it is not necessary to prepare a regulatory flexibility analysis.

D. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a Federalism assessment to be used in decisions by senior policy makers in promulgating or implementing the regulation.

The Department has identified a substantial direct effect that today's proposed rule might have on state governments. It would preempt any State regulations imposing energy efficiency standards for refrigerator products. However, DOE has concluded that such effect is not sufficient to warrant preparation of a Federalism assessment. The Department knows of no such state regulations. Moreover, if any such state regulations are adopted, the Act provides for subsequent state petitions for exemption. If DOE receives such a petition, it will then be appropriate to consider preparing a Federalism assessment.

E. ''Takings'' Assessment Review

It has been determined pursuant to Executive Order 12630 (53 FR 8859, March 18, 1988) that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution.

F. Paperwork Reduction Act Review

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

VI. Public Comment Procedures

A. Participation in Rulemaking

DOE encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, associations, states or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written comments on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, D.C., at the time and place indicated at the beginning of this NOPR.

The DOE has established a comment period of 75 days following publication of this NOPR for persons to comment on this proposal. All public comments received and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room.

B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this NOPR. Instructions for submitting written comments are set forth at the beginning of this NOPR and below.

Comments should be labeled both on the envelope and on the documents, *''Refrigerator Rulemaking (Docket No. EE-RM–93–801),''* and must be received by the date specified at the beginning of this NOPR. Ten copies are requested to be submitted. Additionally, the Department would appreciate an

electronic copy of the comments to the extent possible. The Department is currently using WordPerfect™ 5.1. All comments received by the date specified at the beginning of this NOPR and other relevant information will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this NOPR.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit 1 complete copy of the document and 10 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat information as confidential, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

C. Public Hearing

1. Procedure for Submitting Requests to Speak. The time and place of the public hearing are indicated at the beginning of this NOPR. DOE invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, ''Refrigerator Rulemaking *(Docket No. EE-RM–93–801),*'' and should be sent to the address, and must be received by the time specified, at the beginning of this NOPR. Requests may be hand-delivered or telephoned into such addresses between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person selected to be heard will be notified by DOE as to the time they will be speaking.

Each person selected to be heard is requested to submit an advance copy of his or her statement prior to the hearing as indicated at the beginning of this NOPR. In the event any person wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. *Conduct of Hearing.* DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any questions to be asked of a person making a statement at the hearing must be submitted to the presiding official in writing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for an answer.

Further questioning will be permitted by the presiding official. The presiding official will afford any interested person an opportunity to question, other interested persons who made oral presentations, as well as employees of the U.S. Government who have made written or oral presentations with respect to disputed issues of material fact, relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of disputed issues of material fact. If the time provided is insufficient or inconvenient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this NOPR. Any person may purchase a copy of the transcript from the transcribing reporter.

D. Issues for Comment

Comments may address any issue related to this proposed rule. As discussed above in today's NOPR, DOE has identified a number of issues where comments are specifically requested. These issues include, but are not limited to, the following:

- The baseline units and the base cases;
- Any likely adverse affects of the standards on identifiable groups of consumers;
- Market share elasticities;
- Usage elasticities;
- The characterization of prototypical firms for the manufacturer impact analysis;
- Efficiency forecasts for these products;
- Any lessening of product utility resulting from the incorporation of the design options identified, including but not limited to the addition of insulation;
- The effects of standards on manufacturers' incentives to develop innovative products and product features;
- Any uncertainties in modeling, especially with regard to product usage (e.g., changes in usage rates as shown by survey data or changes in usage of features);
- Lifetimes of appliances; and
- Maintenance costs and failure rates of appliances and components.

Appendices

I. Acronyms and Abbreviations

As a convenience to the reader, the following list of acronyms and abbreviations is provided. Their application is limited to the preamble of this NOPR on Energy Conservation Standards for Refrigerators.

ACEEE American Council for an Energy Efficient Economy
ADL Arthur D. Little, Inc.
AHAM Association of Home Appliance Manufacturers
Amana Amana Corporation
ANOPR Advance Notice of Proposed Rulemaking
ARI Air-Conditioning and Refrigeration Institute
CEC California Energy Commission
CFC chlorofluorocarbon
EEI Edison Electric Institute
EER Energy Efficiency Ratio
ELCON Electricity Consumers Resource Council
EPA Environmental Protection Agency
EPCA Energy Policy and Conservation Act
ERA EPA Refrigerator Analysis
FTC Federal Trade Commission
GAMA Gas Appliance Manufacturers Association
GEA General Electric Appliances
GRI Gas Research Institute
GRIM Government Regulatory Impact Model
HCFC hydrochlorofluorocarbon
LBL Lawrence Berkeley Laboratory
LBL/MAM Lawrence Berkeley Laboratory Manufacturer Analysis Model
LBL/MIM Lawrence Berkeley Laboratory Manufacturer Impact Model
LBL/REM Lawrence Berkeley Laboratory Residential Energy Model
max tech maximum technologically feasible
NAECA National Appliance Energy Conservation
NECPA National Energy Conservation Policy Act
NEPA National Energy Policy Act
NOPR Notice of Proposed Rulemaking
NRDC National Resources Defense Council
NRECA National Rural Electric Cooperative Association
NWPPC Northwest Power Planning Commission
NYSEO New York State Energy Office
OMB Office of Management and Budget
ORNL Oak Ridge National Laboratory
OIRA Office of Information and Regulatory Affairs
PG&E Pacific Gas and Electric
SoCal Southern California Edison
TECo. Tampa Electric Co.
UL Underwriters Laboratories

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, July 12, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

In consideration of the foregoing, it is proposed to amend part 430 of chapter II of title 10, Code of Federal Regulations, as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.2 Definitions is amended by adding the following definitions:

* * * * *

Compact refrigerator/refrigerator-freezer/freezer means any refrigerator, refrigerator-freezer or freezer with total volume less than 7.75 cubic feet (220 liters) (rated volume as determined in Appendix A1 and B1 of subpart B of this part) and 36 inches (0.91 meters) or less in height.

* * * * *

HCFC-free means any product which contains 10 percent or less by mass hydrochlorofluorocarbon in the blowing agent portion of the foam insulation used in the product.

* * * * *

3. Section 430.32 is amended by revising paragraph (a) to read as follows:

§ 430.32 Energy conservation standards and effective dates.

The energy conservation standards for the covered product classes are:

(a) *Refrigerators/refrigerator-freezers/freezers.* These standards do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet (1104 liters) or freezers with total refrigerated volume exceeding 30 cubic feet (850 liters).

(1) Refrigerators/refrigerator-freezers/freezers which contain HCFCs

Product class	Energy standards equations (Kwh/yr) effective dates	
	Jan. 1, 1993	3 years after publication of final rule
1. Refrigerators and Refrigerator-freezers with manual defrost	13.5AV + 299 0.48av + 299	8.82AV + 248.4 0.31av + 248.4
2. Refrigerator-Freezer—partial automatic defrost	10.4AV + 398 0.37av + 398	8.82AV + 248.4 0.31av + 248.4
3. Refrigerator-Freezers—automatic defrost with top-mounted freezer without through-the-door ice service and all Refrigerators—automatic defrost and: All-refrigerators with automatic defrost	16.0AV + 355 0.57av + 355	9.80AV + 276.0 0.35av + 276.0
4. Refrigerator-Freezers—automatic defrost with side-mounted freezer without through-the-door ice service	11.8AV + 501 0.42av + 501	4.91AV + 507.5 0.17av + 507.5
5. Refrigerator-Freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service	16.5AV + 367 0.58av + 367	4.60AV + 459.0 0.16av + 459.0
6. Refrigerator-Freezers—automatic defrost with top-mounted freezer with through-the-door ice service	17.6AV + 391 0.62av + 391	10.20AV + 356.0 0.36av + 356.0
7. Refrigerator-Freezers—automatic defrost with side-mounted freezer with through-the-door ice service	16.3AV + 527 0.58av + 527	10.10AV + 406.0 0.36av + 406.0

Product class	Energy standards equations (Kwh/yr) effective dates	
	Jan. 1, 1993	3 years after publication of final rule
8. Upright Freezers with Manual Defrost	10.3AV + 264 0.36av + 264	7.55AV + 258.3 0.27av + 258.3
9. Upright Freezers with Automatic Defrost	14.9AV + 391 0.53av + 391	12.43AV + 326.1 0.44av + 326.1
10. Chest Freezers and all other Freezers except Compact Freezers	11.0AV + 160 0.39av + 160	9.88AV + 143.7 0.35av + 143.7
11. Compact Refrigerators and Refrigerator-Freezers with Manual Defrost	13.5AV + 299 0.48av + 299	10.70AV + 299.0 0.38av + 299.0
12. Compact Refrigerator-Freezer—partial automatic defrost	10.4AV + 398 0.37av + 398	7.00AV + 38.0 0.25av + 398.0
13. Compact Refrigerator-Freezers—automatic defrost with top-mounted freezer and compact all-refrigerators—automatic defrost	16.0AV + 355 0.57av + 355	12.70AV + 355.0 0.45av + 355.0
14. Compact Refrigerator-Freezers—automatic defrost with side-mounted freezer	11.8AV + 501 0.42av + 501	7.60AV + 501.0 0.27av + 501.0
15. Compact Refrigerator-Freezers—automatic defrost with bottom-mounted freezer	16.5AV + 367 0.58av + 367	13.10AV + 367.0 0.46av + 367.0
16. Compact Upright Freezers with Manual Defrost	10.3AV + 264 0.36av + 264	9.78AV + 250.8 0.35av + 250.8
17. Compact Upright Freezers with Automatic Defrost	14.9AV + 391 0.53av + 391	11.40AV + 391.0 0.40av + 391.0
18. Compact Chest Freezers	11.0AV + 160 0.39av + 160	10.45AV + 152.0 0.37av + 152.0

(2) HCFC-free refrigerators/ refrigerator-freezers/freezers

Product class	Energy standards equations (Kwh/yr) effective dates		
	Jan. 1, 1993	3 years after publication of final rule	9 years after publication of final rule
19. HCFC-Free Refrigerators and Refrigerator-Freezers with Manual Defrost	13.5AV + 299 0.48av + 299	9.70AV + 273.2 0.34av + 273.2	8.82AV + 248.4 0.31av + 248.4
20. HCFC-Free Refrigerator-Freezer—partial automatic defrost	10.4AV + 398 0.37av + 398	9.70AV + 273.2 0.34av + 273.2	8.82AV + 248.4 0.31av + 248.4
21. HCFC-Free Refrigerator-Freezers—automatic defrost with top-mounted freezer without through-the-door ice service and: HCFC-Free all-refrigerators—automatic defrost	16.0AV + 355 0.57av + 355	10.78AV + 303.6 0.38av + 303.6	9.80AV + 276.0 0.35av + 276.0
22. HCFC-Free Refrigerator-Freezers—automatic defrost with side-mounted freezer without through-the-door ice service	11.8AV + 501 0.42av + 501	5.40AV + 558.3 0.19av + 558.3	4.91AV + 507.5 0.17av + 507.5
23. HCFC-Free Refrigerator-Freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service	16.5AV + 367 0.58av + 367	5.06AV + 504.9 0.18av + 504.9	4.60AV + 459.0 0.16av + 459.0
24. HCFC-Free Refrigerator-Freezers—automatic defrost with top-mounted freezer with through-the-door ice service	17.6AV + 391 0.62av + 391	11.22AV + 391.6 0.40av + 391.6	10.20AV + 356.0 0.36av + 356.0
25. HCFC-Free Refrigerator-Freezers—automatic defrost with side-mounted freezer with through-the-door ice service	16.3AV + 527 0.58av + 527	11.11AV + 446.6 0.39av + 446.6	10.10AV + 406.0 0.36av + 406.0
26. HCFC-Free Upright Freezers with Manual Defrost	10.3AV + 264 0.36av + 264	8.31AV + 284.1 0.29av + 284.1	7.55AV + 258.3 0.27av + 258.3
27. HCFC-Free Upright Freezers with Automatic Defrost	14.9AV + 391 0.53av + 391	13.67AV + 358.7 0.48av + 358.7	12.43AV + 326.1 0.44av + 326.1
28. HCFC-Free Chest Freezers and All Other Freezers Except Compact Freezers	11.0AV + 160 0.39av + 160	10.87AV + 158.1 0.38av + 158.1	9.88AV + 143.7 0.35av + 143.7
29. HCFC-Free Compact Refrigerators and Refrigerator-Freezers with Manual Defrost	13.5AV + 299 0.48av + 299	13.5AV + 299.0 0.48av + 299.0	10.70AV + 299.0 0.38av + 299.0
30. HCFC-Free Compact Refrigerator-Freezer—partial automatic defrost	10.4AV + 398 0.37av + 398	10.4AV + 398.0 0.37av + 398.0	7.00AV + 398.0 0.25av + 398.0

Product class	Energy standards equations (Kwh/yr) effective dates		
	Jan. 1, 1993	3 years after publication of final rule	9 years after publication of final rule
31. HCFC-Free Compact Refrigerator-Freezers—automatic defrost with top-mounted freezer and: HCFC-free compact all-refrigerators—automatic defrost	16.0AV + 355 0.57av + 355	16.0AV + 355.0 0.57av + 355.0	12.70AV + 355.0 0.45av + 355.0
32. HCFC-Free Compact Refrigerator-Freezers—automatic defrost with side-mounted freezer	11.8AV + 501 0.42av + 501	11.8AV + 501.0 0.42av + 501.0	7.60AV + 501.0 0.27av + 501.0
33. HCFC-Free Compact Refrigerator-Freezers—automatic defrost with bottom-mounted freezer	16.5AV + 367 0.58av + 367	16.5AV + 367.0 0.58av + 367.0	13.10AV + 367.0 0.46av + 367.0
34. HCFC-Free Compact Upright Freezers with: Manual defrost	10.3AV + 264 0.36av + 264	10.3AV + 264.0 0.36av + 264	9.780AV + 250.8 0.350av + 250.8
35. HCFC-Free Compact Upright Freezers with: Automatic defrost	14.9AV + 391 0.53av + 391	14.9AV + 391.0 0.53av + 391.0	11.40AV + 391.0 0.40av + 391.0
36. HCFC-Free Compact Chest Freezers	11.0AV + 160.0 0.39av + 160	011.0AV + 160.0 0.39av + 160.0	10.45AV + 152.0 0.37av + 152.0

AV = Total adjusted volume, expressed in ft^3 as determined in Appendices A1 and B1 of Subpart B of this Part.
av = Total adjusted volume, expressed in Liters.

* * * * *

[FR Doc. 95–17625 Filed 7–19–95; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

25 CFR Chapter VI

Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Membership in and Meetings of the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee.

SUMMARY: This notice is to inform the public regarding the membership and meeting dates and places of the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee. This notice also announces that, pursuant to the Tribal Self-Governance Act of 1994 (Title II of P.L. 103–413) and the Unfunded Mandate Reform Act of 1995 (P.L. 104–4), the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee is not subject to, and will not be following, the procedures stipulated in the Federal Advisory Committee Act.

DATES: The following work sessions of the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee are currently planned.

7/18–7/20/95 Sequim, Washington (Jamestown S'Klallam)
8/14–8/16/95 Hinckley, Minnesota (Mille Lacs Band)
9/12–9/14/95 San Diego, California
10/10–10/12/95 Washington, DC

FOR FURTHER INFORMATION CONTACT: William A. Sinclair, U.S. Department of the Interior, Office of Self-Governance, 1849 C Street NW., Mail Stop 2548–MIB, Washington, DC 20240, 202–219–0240.

SUPPLEMENTARY INFORMATION:

Committee Membership

The Tribal Self-Governance Act of 1994 requires that the committee be comprised only of federal and tribal government representatives and that a majority of the tribal committee members be representatives from self-governance tribes. In a letter to the Secretary of the Interior on November 1, 1994, the self-governance tribes nominated their representatives and these names were listed in a February 15, 1995 **Federal Register** announcement. Representatives of the non-self-governance tribes were selected by the Assistant Secretary—Indian Affairs following an opportunity for non-self-governance tribes to submit names as requested by the February 15, 1995, **Federal Register** announcement.

Committee membership consists of:

Representatives From Self-Governance Tribes:

Rhonda Swaney (The Confederated Tribes of Salish & Kootenai)
W. Ron Allen (Jamestown S'Klallam Tribe)
Loretta Bullard (Kawerak Inc.—Alaska)
Dale Risling (Hoopa Valley Tribe)
Bernida Churchill (Mille Lacs Band of Ojibwe Chippewa)
Lindsey Manning (Shoshone-Piaute Tribes—Duck Valley)
Merle Boyd (Sac & Fox Nation of Oklahoma)

Representatives From Non-Self-Governance Tribes:

Thomas Atcitty (Navajo Nation)
Brian Wallace (Washoe Tribe of Nevada and California)
Francis Shaw (Manzanita Tribe)
Janice Hawley (Fort Belknap)

Representatives of the Federal Government

Glynn Key (Special Assistant to the Secretary of the Interior)
Michael J. Anderson (Deputy Assistant Secretary—Indian Affairs)

The tribal co-chair person is W. Ron Allen and the tribal designated alternate is Bernida Churchill. The federal co-chair person is Glynn Key and the designated alternate is Michael Anderson.

Negotiation Procedures

The Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee adopted organizational protocols that indicated the following:

1. The Federal Advisory Committee Act does not apply pursuant to the Unfunded Mandate Reform Act of 1995 (P.L. 104–4) and Tribal Self-Governance Act of 1994 (P.L. 103–413, Title II, Sec. 407).

2. The negotiation sessions and the working group meetings will be open to federal representatives, tribal representatives, tribal organizations, and their designated representatives. At the discretion of the committee, meetings may be open to the public, who may also be given the opportunity to make comments.

3. Minutes shall be kept and be made available once approved by the committee.

4. Meeting agendas will be developed by the committee co-chair persons.

5. Both the tribal and federal representatives shall select a co-chair and an alternate and these co-chairs shall have the authority to call the meetings, set agendas and to chair the meetings;

6. A quorum shall consist of 8 members including 7 tribal members and one federal member.

7. The committee will operate by consensus of the federal and tribal members.

8. Smaller work groups may be formed by the committee to address specific issues and to make recommendations to the committee.

9. The intended product of the negotiations is a preliminary report and proposed regulations in the form of a written statement developed by the committee members on behalf of the Secretary of the Department of the Interior and tribal representatives. The Secretary agrees to use the committee's preliminary report and proposed regulations as the basis for the Notice of Proposed Rulemaking (NPRM). If the Secretary submits an NPRM to the Office of Management and Budget (OMB) that is different than what the committee initially submitted, then the changes along with an explanation will be provided to the committee, which shall be given an opportunity to comment to the Department.

Comments and Questions

Comments and questions regarding this announcement should be directed to William A. Sinclair, Office of Self-Governance, U.S. Department of the Interior MS 2548–MIB, 1849 C Street NW., Washington DC 20240.

Dated: July 14, 1995.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–17792 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–02–M

Minerals Management Service

30 CFR Chapter II

Meetings of the Indian Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of revised meeting dates.

SUMMARY: The Secretary of the Department of the Interior (Department) has established an Indian Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Indian gas valuation under its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA.

In a notice of meetings published in the **Federal Register** on June 27, 1995 (60 FR 33185), Committee meetings were scheduled for August 9–10, 1995. This notice adds a meeting on August 8, 1995, to the schedule.

DATES: The Committee will have meetings on the dates and at the times shown below:

Tuesday, August 8, 1995—9:30 a.m. to 5:00 p.m.

Wednesday, August 9, 1995—8:00 a.m. to 5:00 p.m.

Thursday, August 10, 1995—8:00 a.m. to 5:00 p.m.

ADDRESSES: These meetings will be held in the 45th floor meeting room at Holme Roberts & Owen LLC, 1700 Lincoln, Suite 4100, Denver, Colorado 80203.

Written statements may be submitted to Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, Colorado, 80225–0165, telephone number (303) 231–3899, fax number (303) 231–3194. At Holme Roberts & Owen LLC, you may contact Marla Williams at (303) 861–7000 or Lynn Malloy (303) 866–0482.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meetings, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the MMS address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days following each meeting at the Denver Federal Center, Bldg. 85, Denver, CO 80225. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: July 14, 1995.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 95–17899 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–95–29]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the City of Chesapeake, the Coast Guard is proposing to change the regulations that govern the operation of the drawbridge across the Southern Branch of the Elizabeth River, Atlantic Intracoastal Waterway, mile 8.8, at Chesapeake, Virginia, by extending the period of restricted bridge openings for recreational vessels during the morning rush hours and eliminating the 5 p.m. opening for waiting recreational boats during the evening rush hour. This proposed rule is intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before October 18, 1995.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to Room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection at Room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

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 rulemaking (CGD05–95–29) and the specific section of this rule to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgement 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 rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) 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**.

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and CDR C. A. Abel, Project Counsel, Fifth Coast Guard District Legal Office.

Background and Purpose

The City of Chesapeake has requested that openings of the Dominion Boulevard Bridge, also known as the Steel Bridge, located at mile 8.8 of the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, at Chesapeake, Virginia, be further limited by extending the morning rush hour closure period to recreational vessel traffic, and by eliminating the 5 p.m. opening for recreational vessels during the evening rush hour period, while continuing to open on signal at all other times.

Currently, the Dominion Boulevard Bridge is closed to recreational vessel traffic from 7 a.m to 8 a.m and 4 p.m. to 6 p.m., with a 5 p.m. opening for recreational vessels waiting to pass, Monday through Friday, except Federal holidays. The draw opens on signal at all other times. This proposed rule would extend the morning rush hour closure period for recreational vessels by requiring the bridge to remain closed from 7 a.m. to 9 a.m. From 4 p.m. to 6 p.m., the 5 p.m. opening for waiting recreational vessels would be eliminated. Vessels in distress or in an emergency situation will continue to be allowed passage through the bridge at any time.

This request is based on an analysis the City of Chesapeake conducted on highway traffic data for 1990, 1992, and 1994, and a review of the drawlogs from January 1994 to April 1995 for the Dominion Boulevard Bridge. The drawlogs revealed that bridge openings between 8 a.m. and 9 a.m. and at 5 p.m. caused by recreational vessels were frequent enough to cause highway traffic to back up on each side of the bridge resulting in congestion and delays. The highway traffic data revealed that more vehicles are crossing the bridge between 8 a.m. to 9 a.m. By extending the morning rush hour closure period by one additional hour and eliminating the 5 p.m. opening during the evening rush hours, traffic conditions that currently exist at this bridge will be relieved as well as public safety and welfare concerns associated with frequent bridge openings caused by recreational boats.

The Coast Guard believes these regulations should not unduly restrict recreational vessel passage through the bridge, since they can plan their vessel transits around the hours of restriction. This proposed change to the regulations is intended to establish a schedule that will meet the reasonable needs of waterway users and, at the same time, diminish delays to an improve the flow of motor vehicles crossing the bridge.

Regulatory Evaluation

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

Small Entities

Under the Regulatory Flexibility Act (U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, 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 under the principals and criteria contained in Executive Order 12612, and it has been determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environment impact of this proposal and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In section 117.997 paragraph (d) is revised to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(d) The draw of the Dominion Boulevard Bridge, mile 8.8, in

Chesapeake shall open on signal, except:

(1) From 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the drawbridge may not open the passage of recreational vessels.

(2) Vessels in an emergency involving danger to life or property shall be passed at any time.

* * * * *

Dated: June 14, 1995.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 95–17874 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–14–M

46 CFR Parts 25, 26, and 162

[CGD 74–284]

RIN 2115–AA08

Fixed Fire-Extinguishing Systems for Pleasure Craft and Other Uninspected Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: This rulemaking was initiated to establish standards and procedures for approving gaseous-type fixed fire-extinguishing systems for pleasure craft and other uninspected vessels. At the time, most fixed systems for pleasure craft used Halon 1301 and Halon 1211 as the extinguishing agents, and several of the provisions of this rulemaking specifically would have allowed (though not required) the use of halons. Since that time, halons have been identified as an ozone-depleting substance; on January 1, 1995, their production was terminated. The Coast Guard considered redrafting this rulemaking to allow the use of halon replacement gases instead of halons. However, the development and evaluation of these gases is incomplete. The Coast Guard has decided to withdraw this project. It may initiate new rulemaking under a new docket-number when the development and evaluation are complete.

DATES: This withdrawal is effective on July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Klaus Wahle, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G–MVI–3), (202) 267–1444.

SUPPLEMENTARY INFORMATION: On January 9, 1991, the Coast Guard published a Supplementary Notice of Proposed Rulemaking (SNPRM) [56 FR 829] titled ''Fixed Fire-Extinguishing Systems for Pleasure Craft and Other Uninspected Vessels'' [CGD 74–284]. The SNPRM contained approval standards for voluntary fixed systems using halon and carbon dioxide, and depended in large part on standards of industry such as ANSI/UL 1058 of Underwriters Laboratories, Inc., titled ''Halogenated Agent Extinguishing System Units'' (Second Edition; October 6, 1989). The termination of halon production due to environmental concerns and the development and evaluation of halon replacement gases will require some changes in the rulemaking to delete references to halons and address the properties of the new gases instead. Since several of these gases are still being developed and evaluated, not enough information is available to redraft the approval standards contained in the SNPRM.

The Coast Guard has therefore determined that the best course of action at this point is to withdraw this rulemaking, and examine the necessity of a distinct rulemaking at some point in the future. The Coast Guard withdraws all rulemaking under docket-number 74–284.

Dated: July 7, 1995.

G.N. Naccara,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–17875 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD24

Endangered and Threatened Wildlife and Plants; Proposed Rule Exempting Certain Small Landowners and Low-Impact Activities From Endangered Species Act Requirements for Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to amend the general regulations for threatened species (50 CFR 17.31) under the Endangered Species Act of 1973 by establishing a new exemption for certain small landowners and low impact activities that are presumed to individually or cumulatively have little or no lasting effect on the likelihood of survival and recovery of threatened species of fish and wildlife, and, therefore, have only minor or negligible adverse effects. This exemption would be applied to all threatened species of fish and wildlife listed in the future unless the Service concluded for a given species that the exemption was inappropriate because its individual or cumulative biological effects would not be insignificant for the species as a whole. In such a case, the Fish and Wildlife Service would issue a ''special rule'' for the species that would contain either no small landowner or low-impact activities exemptions or some reduced variation of those exemptions. This proposed rule also seeks to establish an additional general exemption for activities that are conducted in accordance with a State-authorized or -developed habitat conservation strategy for a threatened species which the Service has found to comprehensively address the threats to the species and promote the species' survival and recovery.

DATES: Comments on this proposal must be received by September 18, 1995, in order to be considered in the final decision on this proposal.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street NW., Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, during normal business hours in Room 452, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, at the above address (703/358–2171; facsimile 703/358–1735).

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1975, the U.S. Fish and Wildlife Service (Service) adopted general regulations in 50 CFR Part 17 governing the way endangered and threatened species would be regulated under the Endangered Species Act of 1973, as amended (Act). Section 9 of the Act prohibits by statute the ''take'' of federally listed endangered species. However, Congress deferred to Secretarial discretion the issue of how ''threatened'' species would be treated with respect to the section 9 take prohibition. In the 1975 regulations (50 CFR 17.31), the Service generally adopted for threatened species of fish and wildlife a blanket set of prohibitions identical to the prohibitions the Act itself applied to

endangered species. Under section 17.31, if the Service concluded for a given threatened species that the general prohibitions were inappropriate or inadequate, the Service committed to issuing a ''special rule'' under section 4(d) of the Act containing different prohibitions and exceptions tailor made for the threatened species in question. However, the Act does not make this option available to species listed as endangered.

Underlying this approach taken in 1975 was the general assumption that the majority of threatened species of fish and wildlife would require the same level of protection against takings afforded to endangered species, and that only a small number of threatened species would require specialized regulatory attention. For the anticipated small handful of threatened listings where the ''one size fits all'' approach to takings prohibitions would not work, additional time and effort would be spent developing a tailor made special rule. This approach with regard to the taking of threatened fish and wildlife was not extended to the protection of threatened plants because as a general matter the taking of plants is not a prohibited activity on private lands.

Currently, a total of 111 fish and wildlife species endemic to the U.S. are listed as threatened. An additional six fish and wildlife species are proposed for listing as threatened. Thus, during the past twenty years of implementing the Act, the Service has gained significant experience and insight into the management and conservation of threatened species. The Service has found in some cases that existing prohibitions have been unnecessarily restrictive or too inflexible to encourage creative conservation opportunities for threatened species. Further, the Service has found that these prohibitions may ''over-regulate'' certain activities which, on the whole, are otherwise insignificant for some species, and in some cases may actually generate disincentives for private landowner support for threatened species conservation. Both of these situations have led to considerable anxiety on the part of private landowners, particularly smaller landowners who believe that they have little to contribute to threatened species conservation.

With regard to small landowners and small-scale or low-impact activities, the Service now believes that it is no longer necessary, appropriate, or advisable to maintain a regulatory presumption that isolated takings associated with such activities must be strictly regulated or prohibited for the conservation of all threatened species. For some threatened species, the opposite is true.

For example, in the case of occupied household dwellings used solely for residential purposes, the Service has found that there are few routine yard maintenance or construction activities which are likely to adversely affect threatened species in any meaningful way. Moreover, the relative habitat value of residential property is very limited in most cases. Small-scale land use disturbance activities are another category of events which are likely to generate little or no lasting effect on the likelihood of the survival and recovery of a number of threatened species, especially species which are wide ranging. The Service believes that for many threatened species, a variety of small-scale activities might technically result in an isolated incidental ''taking'' of a species without individually or cumulatively having a significant adverse effect upon its long-term conservation.

In light of the above considerations, the Service now proposes to amend 50 CFR 17.31 by creating a new set of presumptions which would exempt certain small landowners and categories of small-scale or negligible-impact activities from possible incidental take liability for threatened species. Upon final adoption of this amendment, the Service would automatically exempt the delineated categories of activities from the incidental taking restrictions of future threatened species listings, unless for a given proposed listing, the Service concluded that the individual or cumulative adverse effects were likely to be significant. In such a case, the Service would issue a special rule which would modify the proposed exemptions as necessary and otherwise assure that any individual or cumulative effects would be insignificant.

The Service anticipates three different scenarios for implementing the new small landowner and low-impact exemption regulation, depending on where a species is in the listing process. The three situations would involve species that are listed as threatened at some time in the future after the possible adoption of these new exemptions; species that are proposed for listing as threatened and are presently in the listing process; and species that are already listed as threatened. In the first situation, the new exemptions in 50 CFR 17.31, if ultimately adopted, would automatically apply to any species listed as threatened in the future except where the adverse effects of the exemption would be significant.

The second situation involves the Service's interim application of the proposed exemptions, pending final adoption of an amendment to 50 CFR 17.31. During this interim period, the Service will consider the application of the exemptions on a case-by-case basis for currently proposed threatened species listings, and will issue a proposed special rule to adopt those exemptions for any species where it is found to be warranted. This could result in two opposite uses of special rules for threatened species with regard to small landowner and low-impact exemptions: once the new exemptions are finalized and formally inserted into 50 CFR 17.31, a special rule would be used to ''opt out of'' (i.e., not to adopt) the new exemptions where necessary. Pending the final amendment of 50 CFR 17.31, however, a special rule would be needed to ''opt in to'' (i.e., to adopt) the proposed exemptions for a new threatened species listing. In either situation, the special rule would fully explain the circumstances and the rationale for its treatment of small landowner and small impact activities as they relate to incidental take prohibitions for the affected threatened species.

The third situation involves the 111 fish and wildlife species currently on the threatened species list. These species were placed previously on the list without specific consideration of a small landowner or low-impact exemption. The Service intends to complete within 90 days a preliminary assessment of all currently listed threatened species of fish and wildlife to assess the extent to which the new proposed exemptions could be applied. In those instances where such application is warranted, the Service would propose subsequent special rules to address currently-listed threatened species.

Section By Section Analysis

Subsection (a) *General.*—The current language of subsection (a) states that with three expressly noted exceptions, all of the prohibitions applicable to endangered species are made applicable to threatened species of fish and wildlife. The proposed rule would make a technical addition to the list of exceptions by adding a reference to ''subsection (d)'' which would contain the new proposed exemptions for small landowners and small-scale and negligible impacts. The net effect of this change would be to establish a new presumption for future threatened species listings that the regulatory prohibition against takings would not apply to activities conducted in

accordance with the new exemptions in subsection (d). The proposed rule also adds the title, ''General,'' to this subsection.

Subsection (b) *Cooperative agreements*. This subsection does not propose any changes from the existing text in 50 CFR 17.31(b) except for the addition of the title, ''Cooperative Agreements.''

Subsection (c) *Special rules*. This subsection proposes to make only technical changes to the current text of 50 CFR 17.31(c) to clarify that a special rule may apply to only portions of a species range. If a special rule applies to only part of the species range, the prohibitions in subsections (a), (b), and (d) would apply in portions of the range not covered by the special rule. The subsection would also retain the provisions of the current text of 17.31(c) which indicates that where a special rule applies, the terms of the special rule would displace any of the general provisions of 50 CFR 17.31 (a), (b), and (d). Thus, if the Service concluded that it was biologically inappropriate to apply to a given threatened species any of the new exemptions established in subsection (d) for small landowners or low impacts, the Service would issue a special rule for that species that would eliminate or amend the language in subsection (d) as necessary to protect that particular species. All or part of the proposed exemptions could be amended in such cases. The proposed rule also adds the title, ''Special rules,'' to this subsection.

Subsection (d) *Landowner exemptions*.—A new subsection (d) states that any person may take a threatened species in the course of an otherwise lawful activity conducted by the landowner or with the landowner's permission in three situations involving the use of private property. The three exceptions apply to single household dwellings on 5 acres of land or less, low-impact activities that result in the cumulative disturbance of less than 5 acres of land, and activities that otherwise are found by the Service to be negligible in their effects upon a threatened species.

These exemptions or exceptions would only be applicable to ''otherwise lawful activities''. This phrase would limit their application to land use activities which were conducted in accordance with all Federal, state and local land use or environmental laws (e.g. water quality standards, pesticide use, zoning).

Paragraph (d)(1) proposes an exemption for activities which take place around a private residence on a parcel of land of 5 acres or less. In particular, the exemption would apply to those activities conducted on a contiguous parcel of land of 5 acres or less which was occupied by a single household structure or dwelling. An additional requirement would be that the parcel of land surrounding the dwelling be used principally for residential, noncommercial purposes. The limitation on noncommercial activities is intended to be applied to the use of the land surrounding the dwelling, as opposed to limited commercial activities within the residential dwelling itself. Thus, the proposed exemption would still apply in the situation where a small business was run out of a home or one or more rooms were rented out to someone outside of the immediate family of the landowner. It is the intention of the Service that this exemption would run with the land and the residential property, and transfer from owner to owner.

As previously noted, the Service believes that this exemption is justified because residential property generally has limited habitat value for listed species. Moreover, the types of activities associated with non-commercial dwellings such as maintenance, enhancement, or the general use and enjoyment of such tracts and their associated facilities often will often have no lasting effect upon the likelihood of the survival and recovery of threatened species.

Paragraph (d)(2) would propose an exemption for activities that cumulatively disturb over time no more than 5 total contiguous acres within a given parcel of land. Like the above exemption for residential households, this exemption would run with the land from owner to owner until the area of disturbance cumulatively totaled 5 contiguous acres. This exemption would apply regardless of whether the disturbance activities were commercial or noncommercial in nature.

This provision should provide considerable relief to small landowners and small businesses, since it would allow for the clearing and development of a parcel of land, so long as the cumulative disturbance over time was limited to 5 total contiguous acres or less. This would allow a property owner, for example, to construct a small to mid-sized business establishment or to utilize part of a residential property for income-producing purposes. While a cumulative cap of 5 acres is proposed for the maximum area of disturbance over time, it is not intended to limit the exemption only to people who own less than 5 acres of land in total; a person could own a larger piece of property so long as the total area of disturbance under the exemption was no larger than 5 acres.

It should be noted that these first two exemptions for residential property and 5-acre disturbance are intended to be mutually exclusive and not cumulative in their application. That is, a given landowner can take advantage of either the 5-acre residential property exemption or the 5-acre disturbance exemption, but cannot take both for a combined exemption total of 10 acres. Each property owner would also be limited to applying the exemptions to one contiguous parcel of land as opposed to separate 5-acre exemptions for each parcel of land that they may own.

It should also be noted that while the Service has chosen 5 acres as the maximum acreage for disturbance under the general exemption proposed for 50 CFR 17.31, the Service will consider proposing land use exemptions greater than 5 acres on a species-by-species basis where such acreage is biologically defensible. Thus, for example, the Service proposed an 80-acre small landowner exemption for the northern spotted owl on February 17, 1995. The Service believed that 80 acres was warranted in that particular case because of the adoption of a comprehensive Federal Forest Plan to conserve the owl.

Paragraph (d)(3) sets out a third exemption for all other activities identified by the Service as having negligible adverse effects upon a particular threatened species. In order to provide maximum guidance and assurance to the public, the Service will attempt to identify activities in future listings which, while technically qualifying as a possible take of a threatened species, are deemed to have no lasting effect on the long-term survival and recovery of the species. Land use activities identified under this paragraph will fall into categories which for one reason or another did not fit into the previous two exemptions but were negligible in their impacts nonetheless. Negligible effects activities would be identified on a case-by-case basis either in the final rulemaking listing a threatened species or in a subsequent general notice published in the **Federal Register**. The Service would also be willing to work with individual landowners on a voluntary basis to assess whether or not a particular proposed activity would have only negligible effects, thereby qualifying for this exemption as well. Whether effects are deemed to be negligible would be determined by their impact on the

species as a whole as opposed to any one individual specimen.

Paragraph (d)(4) sets out a fourth exemption which is designed to provide an incentive to encourage the development of State-authorized or -developed comprehensive habitat conservation plans for threatened species. Premised upon the State of California's Natural Community Conservation Planning Program and the Service's special rule for the California gnatcatcher, this exemption would be triggered by a finding published by the Fish and Wildlife Service in the **Federal Register** that a given State has developed an adequate habitat conservation plan for a threatened species that comprehensively addresses the threats to the species within that State and promotes its survival and recovery. Any subsequent land use activity within that State which was in accordance with the approved State habitat plan, would be exempted from any further Federal taking prohibitions for threatened species under the Endangered Species Act. Thus, by taking the initiative and developing a State-authorized or -developed conservation plan, a State could eliminate a separate Federal set of regulatory guidelines which landowners would otherwise have to comply with. Further, this provision could apply to conservation plans developed at the regional or county level so long as such plans comprehensively address the threats to a species throughout its range or the primary portions of its range and are authorized by a State conservation program.

Paragraph (d)(5) contains various provisos limiting the application of the personal residence and 5-acre exemptions set out in paragraphs (d)(1) and (2) of this subsection. The first proviso is designed to clarify, as previously noted, that landowners could take advantage of either the 5-acre residential property exemption or the 5-acre disturbance exemption but not both together for a 10-acre cumulative total. The second proviso is intended to clarify that property owners with multiple ownerships are limited to one exemption for all of their properties and not one exemption per property. The third proviso is designed to avoid the potential abuse of these exemptions through the subsequent subdivision of property into smaller parcels, each qualifying for its own personal residence or 5-acre exemption. In the case of future listings, the Service proposes to bar the application of these exemptions to individual parcels of land where the parcels were subdivided from a larger block of land after the date of proposed listing for the affected threatened species. For any subdivision created after the relevant cut-off date, the 5-acre exemption would apply in aggregate total to disturbances within the subdivision as a whole and not be tallied separately for the individual tracts of land. However, if certain parcels of land had been broken off or subdivided from a larger parcel prior to the proposal to list the species, the personal residence and 5-acre exemptions could still potentially be applied to each individual parcel.

For those species which are already on the threatened species list, the Service would propose to use a different exemption cut-off date to deal with the problem of land subdivision. Rather than use the date of a species' proposed listing, which may have occurred a long time ago, the Service proposes to use March 6, 1995, as the subdivision cut-off point. March 6, 1995 was chosen as the reference cut-off date since it was on that date that Secretary Babbitt announced the decision to authorize personal residence and 5-acre exemptions for threatened species, where appropriate. Thus, for presently listed species, parcels of land divided prior to March 6, 1995, could still qualify individually for an exemption.

The last proviso in paragraph (d)(5) also clarifies that the new exemptions set out in paragraphs (d)(1) and (d)(2) would not immediately and automatically apply to species which were already on the threatened species list as of the date of the finalization of these amendments to 50 CFR 17.31. As previously noted, the Service is beginning an immediate review of the potential effects of these amendments to species which are already listed as threatened and the agency intends to complete a preliminary assessment of this matter within 90 days. The Service will then begin the process of formally amending the existing regulations for those threatened species for whom the exemptions have been found to be appropriate. The Service could publish these proposed exemptions either for individual species or for clusters or groups of species.

Finally, the Service notes that there is nothing in the new proposed exemptions which would preclude a State, or a political subdivision of a State, that is the recipient of a Habitat Conservation Plan (HCP) permit under section 10(a)(1)(B) of the Act, from requiring any landowner within the permit area to pay a fee to contribute to mitigation of impacts resulting from issuance of the permit.

Public Comments Solicited

The Service intends any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. In particular, the Service seeks comments on the extent to which, or under what circumstances, the small landowner and low-impact activity exemptions should be applied to currently-listed threatened species and threatened species listed in the future. Final promulgation of the proposed rule will take into consideration all comments and any information received by the Service. Any information the Service receives during the comment period may lead to a final rule that differs from this proposed rule.

National Environmental Policy Act of 1969 (NEPA)

The Service believes this action may be categorically excluded under the Department's NEPA procedures. (See 516 DM 2 Appendix I Categorical Exclusion 1.10).

Required Determinations

This rule was reviewed under Executive Order 12866. The Fish and Wildlife Service also certifies that the proposed revisions to 50 CFR 17.31 will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Significant adverse economic impacts are not expected as a result of the proposed rule because: (1) The rule is intended to reduce or eliminate altogether regulatory requirements on small entities under the Act with respect to threatened species; and (2) the rule restates internal administrative guidance and revises the regulatory presumption under 50 CFR 17.31 with respect to take of threatened species by small landowner activities, the effects of which will be triggered by future listing decisions under the Act. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this proposed rule, nor does the proposed rule contain any recordkeeping requirements as defined by the Paperwork Reduction Act of 1990. Further, this rule does not require a Federalism assessment under Executive Order 12612 because it would have no significant Federalism effects as described in the order. Finally, the Service has determined that the

proposed action qualifies for categorical exclusion under the requirements of Executive Order 12630, ''Government Actions and Interference with Constitutionally Protected Property Rights,'' and preparation of a Takings Implication Assessment is not required. Regulations that reduce Federal restrictions on use of private property are designated as categorical exclusions under this order.

Author

The author of this proposal is Don Barry, Counselor to the Assistant Secretary for Fish, Wildlife and Parks, Department of the Interior, Washington, DC 20240 (202/208–5347).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subpart D of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.31 is revised to read as follows:

SUBPART D—THREATENED WILDLIFE

§ 17.31 Prohibitions.

(a) *General.* Except as provided for in subpart A of this part, paragraph (d) of this section, or in a permit issued under this subpart, all of the prohibitions and provisions in § 17.21 shall apply to threatened wildlife, except § 17.21(c)(5).

(b) *Cooperative agreements.* In addition to any other provisions of this part 17, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency which is operating a conservation program pursuant to the terms of a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, and who is designated by his or her agency for such purposes, may, when acting in the course of their official duties, take those threatened species of wildlife which are covered by an approved cooperative agreement to carry out conservation programs.

(c) *Special rules.* (1) Whenever a special rule in § 17.40 through § 17.48 applies to a threatened species of wildlife, none of the provisions of paragraphs (a), (b), or (d) of this section shall apply in those portions of the species' range covered by the special rule. The special rule will contain all of the applicable prohibitions and exceptions for the species: *Provided,* that where a special rule covers only a portion of a species' range, paragraphs (a), (b), and (d) of this section will apply to those portions of the species' range not covered by the special rule.

(2) Whenever the Fish and Wildlife Service determines that the individual or cumulative adverse effects of applying one or more exemptions under paragraph (d) of this section are likely to be significant for a given threatened species, the Fish and Wildlife Service shall issue a special rule for that species which shall contain only such exemptions or prohibitions as are deemed necessary and advisable for the species.

(d) *Landowner exemptions.* Notwithstanding paragraph (a) of this section, any person may take threatened wildlife incidentally in the course of otherwise lawful activities:

(1) Conducted on a contiguous parcel of land of 5 acres or less that is occupied by a single household dwelling and is used principally for residential, noncommercial purposes;

(2) Conducted on a parcel of land that results in the cumulative disturbance of no more than 5 total contiguous acres for the entire parcel;

(3) Identified by the Fish and Wildlife Service at the time of the final listing of the affected threatened species, in a subsequent general notice published in the **Federal Register**, or in a written response to voluntary inquiries from landowners, as likely to have negligible adverse effects upon the species; or

(4) Conducted in accordance with a State-authorized or -developed comprehensive habitat conservation planning program for the affected threatened species of wildlife that has been found by the Fish and Wildlife Service in a notice published in the **Federal Register** to address the threats to the species within that State and to promote its survival and recovery.

(5) Notwithstanding the provisions of paragraphs (d) (1) and (2) of this section, such exemptions shall not apply:

(i) In combination with each other for any one person or ownership and shall be mutually exclusive;

(ii) In any instance to more than one parcel of land per person or ownership;

(iii) In the case of any threatened species of wildlife listed after the date of final rulemaking establishing such exemptions, to individual smaller parcels of land which were subdivided from a larger contiguous parcel of land after the date of proposed listing of the affected threatened species; and

(iv) In the case of threatened species of wildlife listed prior to the date of final rulemaking establishing such exemptions, unless the Fish and Wildlife Service has completed an assessment of the affects of such exemptions upon such species and has published in the **Federal Register** either a specific finding of applicability of such exemptions to such species or a special rule in § 17.40 through § 17.48 of this part, as appropriate, barring the application of those portions of the exemptions which might result in significant adverse effects to such species. For species covered by the provisions of this paragraph (d)(5)(iv), no exemption established under the provisions of paragraphs (d) (1) and (2) of this section shall be extended to individual smaller parcels of land which were subdivided from a larger contiguous parcel of land after March 6, 1995.

Dated: June 14, 1995.

George T. Frampton, Jr,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–17856 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 60, No. 139

Thursday, July 20, 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

Forms Under Review by Office of Management and Budget

July 14, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

New

- *Federal Crop Insurance Corporation*
  Prototypical Survey Example.
  Farms; Business or other for-profit; Not-for-profit institutions; 2,300 responses; 575 hours.
  Vondie O'Conner (816) 926–6343.

Extension

- *Animal and Plant Health Inspection Service*
  Witchweed Mail Survey.
  Farms; 2,800 responses; 1,400 hours.
  Edna Suggs (910) 323–0690.
- *Rural Utilities Service*
  Personal Experience Record of Applicant for Position as Manager.
  RUS Form 328.
  Business or other for-profit; 95 responses; 119 hours.
  Dawn Wolfgang (202) 720–4120.

Revision

- *Agricultural Marketing Service*
  Handling of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida.
  Business or other for-profit; Farms; 1107 responses; 195 hours.
  Kenneth G. Johnson (202) 720–2861.
- *Animal Plant Health Inspection Service*
  Field Investigation (READI).
  VS Form 12–27 & A, B.
  Business or other for-profit; Farms; 310 responses; 310 hours.
  Dr. Robert Southhall (301) 734–8069.
- *Animal Plant Health Inspection Service*
  7 CFR 319.76 Exotic Bee Diseases and Parasites, 7 CFR 322.
  Honeybees and Honeybee Semen.
  Business or other for-profit; Individuals or households; Farms; Federal Government; State, Local or Tribal Government; 283 responses; 54 hours.
  Robert V. Flanders (301) 734–5930.
- *Animal Plant Health Inspection Service*
  Importation of Animal and Poultry, Animal/Poultry Products, Certain Animal Embryos, Semen and Zoological Animals—Addendum.
  Business or other-profit; 1,655,538 responses; 62,383 hours.
  Tom Cramer (301) 734–3280.
- *Rural Economic and Community Development*
  7 CFR 1944–A, Section 502 Rural Housing Loan Policies, Procedures, and Authorizations—Addendum.
  FmHA 410–A; 440–34; 1910–5; 1944–3, 4, 5, 6, A6, B6, 12, 36; RECD–14, A14, 60, 62.
  Individuals or households; Business or other for-profit; 2,448,020 responses; 1,057,238 hours.
  Jack Holston (202) 720–9736.

Reinstatement

- *Departmental Administration*
  Uniform Administrative Requirements For Grants and Cooperative Agreements—7 CFR 3016 and 3019.
  SF–424, 269, 272, 272A, 270, 271, 269A, 424A, 424B, 424C, 424D.
  State, Local or Tribal Government; Business or other for-profit; Not-for-profit institutions; 1,350 responses; 304,500 hours.
  Gerald Miske (202) 720–1553.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–17814 Filed 7–19–95; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Trail Creek Timber Sale; Beaverhead National Forest, Beaverhead County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare a Supplemental Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, will prepare a Supplemental Environmental Impact Statement (SEIS) to disclose the environmental impacts of timber harvest, reforestation, and road construction and reconstruction, access management and related activities in the Trail Creek area of the Wisdom Ranger District, Beaverhead National Forest. The area is located on the west side of the Big Hole valley approximately 12 miles west of Wisdom, Montana in the Beaverhead Mountains of the Bitterroot Range. The area lies between Big Hole National Battlefield located east of the Beaverhead Forest Boundary and the Continental Divide on Chief Joseph Pass.

The original Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register**, September 15, 1988 (FR Volume 53, No. 179, page 35870–35871). A revised Notice of Intent for the same project was published on April 14, 1989 (FR Volume 54, No. 71, page 14980–14981). The Notice of the availability of the Trail Creek Final Environmental Impact Statement (FEIS) was filed in the **Federal Register** on March 16, 1990 (FR Volume 55, No. 52, page 9951) and the Record of Decision (ROD) for the Trail Creek timber sale was signed April 30, 1990.

The Trail Creek Decision was subsequently appealed through the Forest Service's Administrative Appeals process. In December of 1990 a complaint was filed in United States District Court for the District of Montana by two non-profit corporations. On

December 29, 1994, Chief Judge Paul Hatfield released his decision finding portions of the contested analysis to be adequate and a portion to be inadequate. Judge Hatfield ordered ''that the Trail Creek final environmental impact statement is REMANDED for development and consideration of an alternative that preserves the roadless areas within the Trail Creek area.''

This SEIS will respond directly to the court's order and will consider one additional alternative in addition to those analyzed in the 1990 Trail Creek FEIS. This additional alternative will keep all harvest and road activities outside of the Beaver Lake roadless area 1–003. In addition, the SEIS will address any changed conditions in the area that the agency has become aware of since the signing of the Record of Decision in 1990.

The purposes of the project remain the same as those stated in the 1990 FEIS. The proposal is designed to help achieve the goals, objectives, and standards of the 1986 Beaverhead Land and Resource Management Plan. More specifically the proposed action is designed to help satisfy the short-term demand for timber and maintain a continuous supply of timber in the future. Second, the proposed action is designed to produce a distribution of size and age classes of timber stands that are more resistant to insect infestations and disease than existing stands.

This project level SEIS tiers to the 1986 Beaverhead National Forest Land and Resource Management Plan (Forest Plan) and Final EIS, which provides overall guidance of all land management activities on the Beaverhead National Forest, including timber and road management. It will also tier to the 1990 Trail Creek FEIS, and will incorporate by reference the Trail Creek Supplemental Information Report, published April 2, 1991.

No additional scoping to identify issues and concerns is planned prior to the release of the Draft Supplemental Environmental Impact Statement. However, the Forest Service would like information concerning possible changed conditions within the Trail Creek project area that may affect project implementation. Changed conditions are those conditions which may not have been present and considered during the analysis of the original document.

The Agency is aware of three changed conditions within the project area that may affect the proposal. These changed conditions are: (1) The expanded Chief Joseph Cross Country Ski Trail system, with increased trail length and recreational use; (2) the presence of the sensitive plant species *Allotropa virgata*, along with a draft Conservation Strategy to protect this species; (3) proposed harvest units have been marked, surveyed and cruised. This provides more accurate unit measurements than the predicted values used in the Trail Creek FEIS.

DATES: Written comments and suggestions on significant new circumstances, or new information relevant to environmental concerns with a bearing on this proposed project, or its impacts, should be received within 30 days following publication of this notice. A Draft Supplemental Environmental Impact Statement is scheduled for release on or about September 15, 1995.

ADDRESSES: Submit written comments and suggestions, or a request to be placed on the mailing list to Dennis Havig, District Ranger, Wisdom Ranger District, Beaverhead National Forest, Box 238, Wisdom, Montana 29761. Debbie Austin, Forest Supervisor, for the Beaverhead National Forest is the responsible official for this SEIS; written comments can be mailed to her as well at 420 Barrett, Dillon, Montana 59725.

FOR FURTHER INFORMATION CONTACT: Tom Malecek, SEIS Team leader, Wisdom Ranger District, Beaverhead National Forest (406) 689–3243.

SUPPLEMENTARY INFORMATION: Timber harvest and reforestation is proposed in 32 units over 696 acres, requiring approximately 4.9 miles of temporary and low standard road, yielding approximately 4.8 MMBF. All of the forested land involved has been designated as suitable for timber management by the Beaverhead Forest Plan. Unit boundaries near the Chief Joseph cross country ski trails will be modified to accommodate and protect skiing opportunities, and units with populations of Allotropa virgata will be adjusted to minimize impacts to the plants. All units have been inventoried to identify the distribution of these plants. All development activities in this alternative stay out of roadless lands.

The Beaverhead Forest Plan management direction used in the final EIS has not changed and provides the framework for the analysis of the new alternatives.

The range of alternatives, including those analyzed in the Trail Creek EIS, and the one proposed in this SEIS, examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues, other resource values, and any changed conditions in the project area. One of the alternatives will be the ''no action'' alternative, in which none of the proposed activities would be implemented.

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

Public participation has played a very important part in the analysis of past alternatives. This Notice of Intent requests additional public participation in the manner described above. Since all issues and concerns were adequately presented in the EIS, the Forest Service requests only new information concerning changed conditions within the project area.

Dated: July 3, 1995.

Gerald W. Alcock,

Acting Forest Supervisor, Beaverhead National Forest.

[FR Doc. 95–17833 Filed 7–19–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee Partially Closed Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held August 11, 1995, 9 a.m., in the Herbert C. Hoover Building, room 3884, 14th Street and Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the FAR as needed.

Agenda

General Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion on Work Plan for FY 1996.
4. Election of Chairman and Vice Chairman.
5. Report on Regulations Reform.
6. Discussion on Automated Export System.
7. Update on Bureau of Export Administration.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356,

dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter,TAC Unit/OAS/EA, room 3886C, Bureau of Export Administration,U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 22, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: July 14, 1995.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 95–17818 Filed 7–19–95; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of commerce.

ACTION: Notice of initiation of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico, which has a December anniversary date. In accordance with 19 CFR 353.22(h)(6) (1995) we are initiating this administrative review.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request, pursuant to section 751(a)(2)(B) of the Tariff Act of 1933, as amended by the Uruguay Round Agreements Act of 1994 (the Act), and in accordance with 19 CFR 353.22(h)(2) (1995), for a new shipper review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico, which has a December anniversary date.

The company requesting the new shipper review is Esmaltaciones San Ignacio, S.A. de C.V. (San Ignacio).

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 353.22(h)(6), we are initiating a new shipper review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico. We intend to issue the final results of these reviews not later than 270 days from the date of publication of this notice.

Antidumping duty proceeding	Period to be reviewed
Mexico:	
Porcelain-on-Steel Cooking Ware	
A–201–504	
Esmaltaciones San Ignacio, S.A., (San Ignacio)	01/01/95–06/30/95

Concurrent with publication of this notice, we will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise (19 CFR 353.22(h)(B)(4) (1995)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 29 CFR 353.34(b).

This initiation and this notice are in accordance with section 751 (a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)) and 29 CFR 353.22. (h).

Dated: July 14, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–17869 Filed 7–19–95; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–505]

Initiation of New Shipper Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico, which has a December anniversary date. We are initiating this new shipper administrative review in accordance with 19 CFR 355.22(j)(6)(1995).

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT:

Norma Curtis or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, (the Act), and in accordance with 19 CFR 355.22(j)(2)(1995) for a new shipper administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico, which has a December anniversary date. The company requesting a new shipper review is Esmaltaciones San Ignacio, S.A. de C.V. (San Ignacio).

Initiation of Reviews

Pursuant to section 751(a)(2)(B)(ii) of the Act and 19 CFR 355.22(j)(6), we are initiating a new shipper review of the countervailing duty order on porcelain-on-steel cookingware from Mexico. We intend to issue the final results of this review not later than 270 days from the date of publication of this notice.

Countervailing duty proceeding	Period to be reviewed
Mexico:	
Porcelain-on-Steel Cookingware	
C–201–505	
San Ignacio	01/1/95–06/30/95

Concurrent with publication of this notice, we will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise (19 CFR 355.22(j)(4)(1995)).

Interested Parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 355.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 355.22(j).

Dated: July 14, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–17870 Filed 7–19–95; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

July 14, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–94212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for certain categories are being increased by recrediting unused portions of carryforward and unused special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 5371, published on January 27, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 14, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on July 17, 1995, you are directed to amend the January 24, 1995 directive to adjust the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
331	922,759 dozen pairs.
334	113,662 dozen.
335	206,470 dozen.
336/636	366,284 dozen.
338/339	1,063,816 dozen.
342/642	336,787 dozen.
351/651	485,042 dozen.
352/652	8,086,245 dozen.
634	319,858 dozen.
635	219,736 dozen.
638/639	1,176,288 dozen.
645/646	310,205 dozen.
647/648	1,061,366 dozen.
847	547,079 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–17897 Filed 7–19–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

July 14, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 342 is being increased for special shift. The limit for Category 642 is being reduced to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Agreement, 1994, but are designed to assist only in

the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 14, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on July 24, 1995, you are directed to amend further the directive dated December 16, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
342	291,738 dozen.
642	276,152 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–17895 Filed 7–19–95; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

July 14, 1995

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: July 25, 1995

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on May 17, 1995 (60 FR 26407) (Category 603) and May 23, 1995 (60 FR 27275) (Category 670–L) announces that if no solution is agreed upon in consultations between the Governments of the United States and Thailand on Categories 603 and 670–L the Committee for the Implementation of Textile Agreements may establish a limit at levels of not less than 1,249,659 kilograms (Category 603) and 19,792,859 kilograms (Category 670–L) for the twelve-month period beginning on April 27, 1995 and extending through April 26, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 603 and 670–L for the period beginning on April 27, 1995 and extending through April 26, 1996 at levels of 1,249,659 kilograms (Category 603) and 19,792,859 kilograms (Category 670–L).

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 603 and 670–L. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 14, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 30, 1972, as amended, you are directed to prohibit, effective on July 25, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in the following categories, produced or manufactured in Thailand and exported during the period beginning on April 27, 1995 and extending through April 26, 1996, in excess of the following limits:

Category	New limit [1]
603	1,249,659 kilograms.
670–L [2]	19,792,859 kilograms.

[1] The limits have not been adjusted to account for any imports exported after April 26, 1995.

[2] Category 670–L: Only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030, 4202.92.9025.

Textile products in Categories 603 and 670–L which have been exported to the United States prior to April 27, 1995 shall not be subject to this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–17896 Filed 7–19–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

Privacy Act of 1974; Notice to Amend Systems of Records

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice to amend systems of records.

SUMMARY: The Defense Contract Audit Agency is amending their systems of records notices in their inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), to reflect a change of physical address.

The amendment consists of changing the Cameron Station, Alexandria, VA address to 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219. Any reference to building and room numbers at the Alexandria address will be deleted. The categories affected are the System location, System manager(s) and address, Notification procedure, Record access procedures, and the DCAA mailing directory.

DATES: This proposed action will be effective without further notice on July 20, 1995.

ADDRESSES: Information and Privacy Advisor, CMR, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvior, VA 22060–6219.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall (703) 767–1244.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Contract Audit Agency is amending their systems of records notices in their inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), to reflect a change of physical address.

The amendment consists of changing the Cameron Station, Alexandria, VA address to 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219. Any reference to building and room numbers at the Alexandria address will be deleted. The categories affected are the System location, System manager(s) and address, Notification procedure, Record access procedures, and the DCAA mailing directory.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 28, 1995.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–17112 Filed 7–19–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: August 1, 1995, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: Gateway Crystal Marriott, Main Ballroom, 1700 Jefferson Davis Highway, Alexandria, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 600 Independence Avenue SW., room 3127, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to hold an open hearing with the participants of the Partnerships for Progress Conference concerning early childhood issues.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue SW., room 3127, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–17799 Filed 7–19–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket No. CP95–35–000, PRPB Docket No. 94–62–1219–JPM]

Puerto Rico Planning Board, EcoEléctrica, L.P.; Notice of Site Visit and Technical Conference

July 14, 1995.

On August 3, 1995, at approximately 8 a.m., the staff of the Federal Energy Regulatory Commission (FERC or Commission) will conduct a second visit to the proposed LNG site in the above dockets. Those planning to attend must provide their own transportation.

On August 3, 1995, at 2 p.m., the staff will conduct a Technical Conference on

the seismic design of the LNG project proposed in the above dockets. The Technical Conference will be held at the Puerto Rico Planning Board (PRPB), Minillas Governmental Center, 16th floor, De Diego Avenue, Stop 22; San Juan, Puerto Rico 00940. The discussion will initially be limited to FERC staff and the members of the applicant's staff who have expertise in the given topics. Other attendees will be given the opportunity to ask questions on the above issues after the initial discussions have concluded.

For further information on the site, visit or the Technical Conference, call Robert Arvedlund, Chief, Environmental Review and Compliance Branch I, FERC at (202) 208–0091 or José Caballero of the PRPB at (809) 727–4444.

Robert J. Cupina,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 95–17806 Filed 7–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER95–1084–000, ER94–1625–000, ER95–264–000, and EL95–61–000]

Wisconsin Electric Power Company; Notice of Initiation of Proceeding and Refund Effective Date

July 14, 1995.

Take notice that on July 13, 1995, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL95–61–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL95–61–000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 95–17808 Filed 7–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–605–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

July 14, 1995.

Take notice that on July 10, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77056–5310, filed in Docket No. CP95–605–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point located in Clay County, Mississippi under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and operate a 4-inch tap valve, a 4-inch check valve, and appurtenant facilities on its Line No. 30 to provide up to 13,500 Dth per day of interruptible, natural gas transportation service for Mississippi Valley Gas Company (MVG), an existing customer. Texas Eastern states that MVG requested the subject service and would reimburse Texas Eastern for 100% of the construction cost, estimated to be $62,300. Texas Eastern mentions that the quantities of gas to be delivered will be within MVG's certificated entitlement. Texas Eastern asserts that the proposed installation will have no effect on its peak day or annual deliveries and that none of its other existing customers would be adversely impacted.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–17807 Filed 7–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC95–16–000]

Wisconsin Electric Power Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and Cenergy, Inc.; Notice of Filing

July 14, 1995.

Take notice that on July 10, 1995, Wisconsin Electric Power Company (WEPCO), Northern States Power Company, a Minnesota corporation (NSP), Northern States Power Company, a Wisconsin corporation (NSPW), and Cenergy, Inc. (Cenergy) (collectively, the ''Applicants'') filed a Joint Application pursuant to Section 203 of the Federal Power Act and 18 CFR Part 33 of the Commission's Regulations requesting authorization and approval of the mergers and corporate transactions described therein resulting from the proposed merger of NSP and Wisconsin Energy Corporation (WEC), the parent company of WEPCO (the ''Merger Transaction''). Under the proposed Merger Transactions, WEC will be renamed Primergy Corporation (''Primergy''), and will become a registered utility holding company under PUHCA. Primergy will own two operating utility subsidiaries: (1) NSP, which will be reincorporated in Wisconsin (the reincorporated company is referred to as ''Northern States'') and (2) a merged WEPCO/NSPW, which will be named Wisconsin Energy Company (''Wisconsin Energy''). Northern States will continue to operate primarily the same facilities in the same locations the NSP did before. Wisconsin Energy will conduct all of the combined electric operations of the Applicants in Wisconsin and Michigan gas operations transferred from NSPW to NSP, all of their combined gas operations in the same states. Primergy also will directly own Cenergy, as well as most of the unregulated subsidiaries of WEC and NSP.

The Applicants also submitted testimony and other evidence in support of the Merger Transactions. The Applicants have requested that the Commission issue its approval of the Merger Transactions expeditiously without conducting an evidentiary hearing.

In order to help interested parties to understand their filing, the Applicants have scheduled meetings for the week of July 31, 1995 to discuss their filing and any questions that parties may have. Any person desiring to attend the meetings should notify the Applicants in writing by July 21, and should include a list of topics they would like to discuss. Any party desiring a copy of the workpapers supporting the Joint Application also should request a copy from the Applicants.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–17809 Filed 7–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–62–000, et al.]

British Columbia Power Exchange Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 13, 1995.

Take notice that the following filings have been made with the Commission:

1. British Columbia Power Exchange Corporation

[Docket No. EL95–62–000]

Take notice that on July 3, 1995, the British Columbia Power Exchange Corporation (Powerex), a wholly-owned Canadian subsidiary of the British Columbia Hydro Power Authority (''BC Hydro''), a Provincial Crown Corporation, filed a Petition for Declaratory Order requesting that the Commission: (i) rule that Powerex is a nonpublic utility exempt from the Commission's jurisdiction under Part II of the FPA; and (ii) declare that Powerex may make sales of electricity at wholesale in U.S. interstate commerce without rate regulation by the Commission.

Comment date: August 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Cleveland Electric Illuminating Company

[Docket No. ER95–499–000]

Take notice that on July 3, 1995, the Cleveland Electric Illuminating Company (CEI) amended its filing in the above-referenced docket to modify the method by which CEI will determine the cost of emission allowances in the coordinated sales of agreements between CEI and Ohio Power Company, American Municipal Power-Ohio, Cleveland Public Power, Pennsylvania-New Jersey-Maryland Interconnection, the City of Painesville, and the parties to CAPCO Basic Operating Agreement (namely, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and the Cleveland Electric Illuminating Company).

A copy of the filing was served upon the parties affected by the amendment and the Ohio Public Utilities Commission.

Comment date: July 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Kentucky Utilities Company

[Docket No. ER95–854–002]

Take notice that on June 30, 1995, Kentucky Utilities Company tendered for filing its compliance filing in the above-referenced docket pursuant to the Commission's order dated issued on May 31, 1995.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Edison Company

[Docket No. ER95–901–000]

Take notice that on June 8, 1995, Commonwealth Edison Company tendered for filing an amendment to its April 12, 1995, filing in the above-referenced docket.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power Company

[Docket Nos. ER95–1181–000 and ER95–1197–000]

Take notice that on June 26, 1995, the Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an amendment to filing Docket Nos. ER95–1181–000 and ER95–1197–000 to include a Certificate of Concurrence under service agreements with Utility-2000 Energy Corp. and Mock Resources, Inc. dba Wickland Power Services, respectively, regarding exchanges under the Electric Tariff Original Volume No. 4.

A copy of this filing was served upon Utility-2000 Energy Corporation and Mock Resources, Inc. dba Wickland Power Services.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Company

[Docket No. ER95–1262–000]

Take notice that on June 23, 1995, Maine Public Service Company submitted an agreement under its Umbrella Power Sales tariff.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER95–1265–000]

Take notice that on June 26, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing, an amendment to its filing dated June 23, 1995, regarding the Marcy-South Facilities Agreement with the Power Authority of the State of New York (NYPA).

Copies of this filing were served upon NYPA and the Public Service Commission of New York.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER95–1266–000]

Take notice that on June 26, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as ''Southern Companies''), tendered for filing three Service Agreements with Entergy Power, Inc. (EPI) regarding service under Southern Companies' Point to Point Transmission Service Tariffs. One Service Agreement provides for firm transmission service from Alabama Power Company, Gulf Power Company and Mississippi Power Company (West Zone Companies). EPI has contracted for 30 MW of service from July 1, 1995 until July 1, 1996, at which time the amount increases to 50 MW and continues at that level until the term of the agreement ends on December 31, 2005. The other two Service Agreements allow EPI to schedule non-firm service from the West Zone Companies and Georgia Power Company and Savannah Electric and Power Company (East Zone Companies), respectively. Southern Companies request an effective date of June 30, 1995 to allow service to commence on July 1, 1995.

Comment date: July 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER95–1291–000]

Take notice that on June 29, 1995, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission its Notice of Cancellation of FERC Rate Schedule No. 15 and supplements.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER95–1297–000]

Take notice that on June 30, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service

Agreement with New York State Electric & Gas Corporation (NYSEG) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to NYSEG.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: July 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER95–1298–000]

Take notice that on June 30, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with CMEX Energy, Inc. (CMEX) under the NU System Companies System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to CMEX.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: July 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of Oklahoma

[Docket No. ER95–1299–000]

Take notice that on June 30, 1995, Public Service Company of Oklahoma (PSO), submitted a Service Agreement, dated May 22, 1995, establishing NorAm Energy Services, Inc. (NorAm) as a customer under PSO's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff).

PSO requests an effective date of June 1, 1995, and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon NorAm Energy Services, Inc. and the Oklahoma Corporation Commission.

Comment date: July 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Central Power and Light Company

[Docket No. ER95–1300–000]

Take notice that on June 30, 1995, Central Power and Light Company (CPL), submitted a Service Agreement, dated June 23, 1995, establishing the City of Robstown Utility System (Robstown) as a customer under CPL's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff).

CPL requests an effective date of June 23, 1995, and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Robstown and the Public Utility Commission of Texas.

Comment date: July 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. UtiliCorp United Inc.

[Docket No. ES95–19–003]

Take notice that on July 5, 1995, UtiliCorp United Inc. (UtiliCorp), made a filing requesting that the Commission amend the authorization granted in Docket Nos. ES95–19–000, ES95–19–001 and ES95–19–002.

By letter order dated February 17, 1995 (70 FERC ¶ 62,105), UtiliCorp was authorized to enter into a loan purchase agreement to provide corporate guaranties, in an amount not to exceed $112.5 million to guarantee payment by UtiliCorp South Pacific, Inc. (USP) of borrowings under a three-year line of credit. The original application contemplated that the loan proceeds subject to the loan purchase agreement would be used for acquisition of equity interests in two New Zealand electric companies, Power New Zealand (PNZ) and EnergyDirect Corporation Limited (EDL).

In its July 5, 1995 filing, UtiliCorp states that USP no longer intends to acquire an equity interest in EDL and now intends to use that portion of the loan proceeds to fund USP's portion of UtiliCorp New Zealand's (UNZ) cost to acquire additional shares in WEL Energy Group Limited (WEL).

UtiliCorp requests clarification from the Commission that no additional authorization is needed for UtiliCorp to guarantee repayment of the portion of the loan proceeds used to fund the purchase of additional shares in WEL. In the alternative, UtiliCorp requests that the Commission amend its authorization to permit UtiliCorp to extend the guarantee to cover the substitute use of a portion of the loan purchase agreement funds.

Also, UtiliCorp requests that the amendment be exempted from the Commission's competitive bidding and negotiated placement requirements.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–17802 Filed 7–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1014–000, et al.]

Public Service Electric and Gas Company, et al.; Electric Rate and Corporate Regulation Filings

July 12, 1995.

Take notice that the following filings have been made with the Commission:

1. Public Service Electric and Gas Company

[Docket No. ER95–1014–000]

Take notice that June 23, 1995, Public Service Electric and Gas (PS) Company tendered for filing additional information with respect to the Supplemental Agreement between Atlantic City Electric Company (ACE) and PS amending the original March 1, 1969 agreement, as supplemented (PS FERC Rate Schedule No. 43) in the above Docket.

PS and ACE request that the filing be permitted to become effective as of the date the Tabernacle supply facilities were placed in service December 20, 1994 and therefor requests waiver of the Commission's notice requirements.

PS states that a copy of this filing has been sent to ACE and to the New Jersey Board of Public Utilities.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company (Minnesota Company)

[Docket No. ER95–1057–000]

Take notice that July 6, 1995, Northern States Power Company-Minnesota (NSP–MN) tendered for filing an amended Service Schedule to an Electric Services Agreement dated February 28, 1994, among NSP-MN, Northern States Power Company—Wisconsin (NSP–WI), and the City of Wisconsin Rapids (the City). NSP-MN files this agreement on behalf of NSP-WI, the City and itself.

The Electric Services Agreement provides for the interchange of electrical power and energy between the parties. NSP requests the Commission waive its Part 35 Notice Requirements and accept this Agreement for filing effective July 1, 1995.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1281–000]

Take notice that June 28, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with Green Mountain Power Corporation (GMPC) to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour.

Con Edison states that a copy of this filing has been served by mail upon GMPC.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1282–000]

Take notice that June 28, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 130, a facilities agreement with the New York Power Authority (NYPA). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of July 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER95–1292–000]

Take notice that on June 30, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and Entergy Power, Inc. (EPI). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies will provide EPI firm transmission service under their Transmission Service Tariff in connection with EPI's service to the Alabama Municipal Electric Authority.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. The Montana Power Company

[Docket No. ER95–1293–000]

Take notice that on June 30, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, an unexecuted ''Firm Transmission Service Agreement Between The Montana Power Company and Idaho Power Company''. Montana requests that the Commission accept the Agreement for filing, to be effective on September 1, 1995.

A copy of the filing was served upon Idaho Power Company.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Electric Company Cambridge Electric Light Company

[Docket No. ER95–1296–000]

Take notice that on June 30, 1995, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the ''Companies'', tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Customers: Green Mountain Power Corporation (Green Mountain), Public Service Electric and Gas Company (PSE&G), UNITIL Power Corporation (UNITIL).

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 13, 1995, and which have an effective date of March 20, 1995, will allow the Companies and the Customers to enter into separately scheduled transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: July 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17803 Filed 7–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 11496–000 et al.]

Hydroelectric Applications (City of Oconto Falls, Wisconsin, et al.); Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Subsequent License.

b. *Project No.:* 11496–000.

c. *Dated Filed:* August 29, 1994.

d. *Applicant:* The City of Oconto Falls, Wisconsin.

e. *Name of Project:* Oconto Falls Hydro Project.

f. *Location:* On the Oconto River in Oconto County, near Oconto Falls, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Honorable Lynn V. Heim, Mayor, 104 South Franklin Street, Oconto Falls, WI 54154, (414) 846–4505.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* September 4, 1995.

k. *Status of Environmental Analysis:* This application has been accepted for

filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project would consist of: (1) An existing reservoir with a surface area of about 240 acres and a total storage volume of about 2,280 acre-feet at the normal maximum surface elevation of 729.7 feet (MSL); (2) an existing earth embankment, about 1,350 feet long with a crest width ranging from 15 feet to 60 feet, constructed of sand and gravel fill with reinforced concrete corewalls to bedrock; (3) an existing non overflow concrete gravity dam, 110 feet long and about 28 feet high; (4) an existing spillway, 84 feet long and about 32 feet high, constructed of reinforced concrete keyed into bedrock, consisting of three, 11 foot high by 20 foot wide, manually operated Taintor gates, and a fourth non operational gate, 11 feet high by 5 feet wide; (5) an existing powerhouse with a substructure, constructed of reinforced concrete on bedrock, about 86 feet long by 72 feet wide, and a superstructure, constructed of stone masonry with a steel frame roof; (6) existing powerhouse generating equipment consisting of: (a) three horizontal shaft Francis turbines, Units 1 and 2 rated at 600 hp at 28.5 feet of head, each with a maximum hydraulic capacity of 254 cfs, and Unit 3 rated at 450 hp at 28.5 feet of head with a maximum hydraulic capacity of 250 cfs (providing a maximum plant hydraulic capacity of 758 cfs), and (b) three horizontal shaft generators, Unit 1 manufactured by Electric Machinery Company and rated at 480 Kw, Unit 2 manufactured by Westinghouse and rated at 480 Kw as well, and Unit No. 3 manufactured by Westinghouse and rated at 360 Kw (providing a total plant capacity of 1,320 Kw); (7) an existing earth embankment, about 175 feet long with a crest width ranging from 15 feet to 60 feet, constructed of sand and gravel fill with reinforced concrete corewalls to bedrock; and (8) appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 7,495 Mwh. The dam and existing project facilities are owned by Wisconsin Electric Power Company, 231 W. Michigan, P.O. Box 2046, Milwaukee, WI 53201.

m. *Purpose of Project:* Project power would be sold to Wisconsin Electric Power Company.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at The City of Oconto Falls, Wisconsin, 104 South Franklin Street, Oconto Falls, WI 54154 or by calling (414) 846–4505.

2 a. *Type of Application:* Major New License.

b. *Project No.:* 1927–008.

c. *Date filed:* January 30, 1995.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* North Umpqua.

f. *Location:* On the North Umpqua River in Douglas County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:*

Stanley A. deSousa, Director, Hydro Resources PacifiCorp, 920 S.W. Sixth Avenue, Portland, OR 97204, (503) 464–5343

Thomas H.Nelson, Stoel Rives Boley Jones & Grey, 900 S.W. Fifth Avenue, Portland, OR 97204, (503) 294–9281.

i. *FERC Contact:* Héctor M. Pérez, (202) 219–2843.

j. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

k. *Deadline for protests and motions to intervene:* September 1, 1995.

l. The project consists of 8 developments as follows:

Lemolo No. 1 : (1) The 120-foot-high, 885-foot-long rockfill with concrete facing Lemolo dam with a sluice outlet discharge structure and a 106-foot-long spillway that has a 33-foot-wide Tainter-gated section and two 3-foot-high flashboards sections with a maximum operating elevation of 1,148.5 feet U.S.G.S.; (2) Lemolo Lake with a storage capacity of 11,752 acre-feet at normal maximum water elevation of 1,148.5 feet (Its principal tributaries are the North Umpqua River, Pool Creek, Lake Creek, and Spring River.); (3) a canal intake structure with trashracks and an intake gate; (4) a 7.5-foot-diameter and 164-foot-long power conduit; (5) a 61-foot-long discharge structure; (6) a 91-foot-long stilling basin; (7) a 195-foot-long control structure; (8) a 16,310-foot-long open channel conduit consisting of sections of gunite-lined canal (14,176 total length), concrete flume (2,042 feet) and concrete transitions (92 feet); (9) a forebay; (10) a 7,328-foot-long steel penstock varying in diameter from 9.7 to 7 feet; (11) a concrete powerhouse on the North Umpqua River at the mouth of Warm Springs Creek containing a turbine-generator unit with a rated capacity of 29,000 kilowatts (Kw); and (12) the 12-mile-long transmission line No. 53 to the Clearwater switching station.

The licensee proposes to modify this development by: (1) changing the operating levels of Lemolo Lake; (2) expanding the forebay; (3) replacing the turbine runner to increase the output to 33,300 Kw; and (4) adding a wildlife canal escape at the downstream end of the canal near the forebay.

Lemolo No. 2: (1) The 25-foot-high and 350-foot-long concrete gravity Lemolo No. 2 dam with a sluice outlet structure and gate, a fish ladder, and a spillway with crest elevation of 3,322 feet with 3.3-foot-high flashboards, 190 feet downstream from the Lemolo No. 1 powerhouse; (2) a small pool with an area of 1.4 acres at normal water surface elevation of 3,325 feet (its maximum water surface elevation is 3,327 feet); (3) an intake structure with trashracks and a side channel intake spillway; (4) a 69,989-foot-long waterway consisting of 9,931 feet of concrete flume, 49,352 feet of gunite-lined canal, 6,465 feet of concrete and rock flume, 3,755 feet of steel flume, a 486-foot-long invert siphon, and concrete transitions; (5) a forebay; (6) an intake structure; (7) a 3,975-foot-long penstock with a diameter varying from 10.5 to 7.3 feet consisting of an 11-foot-long concrete section, a 108-foot-long concrete-encased steel section, and a 3,856-foot-long steel section; (8) a reinforced concrete powerhouse on the North Umpqua River containing a 33,000–Kw turbine-generator unit; and (9) the 1.4-mile-long transmission line No. 55 to Clearwater switching station.

These 7 creeks divert into the waterway along its length: Helen Creek, Potter Creek, Spotted Owl Creek, Karen Creek, Deer Creek, Thorn Creek, and Mill Creek.

The licensee proposes to modify this development by: (1) Adding resident fish screens in the forebay; (2) restoring the forebay removing the accumulated sediment; (3) upgrading the waterway capacity; (4) replacing the turbine runner to increase the maximum output to 39,800 Kw; (5) adding a new instream release structure and flow recording gage; (6) adding 14 wildlife bridges; and (7) adding 3 wildlife canal escapes.

Clearwater No. 1: (1) The 17-foot-high and 1,426-foot-long earthfill Clearwater No. 1 dam with a sluice outlet and a spillway with a crest elevation of 3,875 feet and 7.2-inch-high flashboards on the Clearwater River, about 9 miles of its confluence with the North Umpqua River; (2) Stump Lake with a storage capacity of 30.2 acre-feet at normal

maximum elevation of 3,875 feet; (3) an intake structure with trashracks, and a skimming side channel spillway; (4) a waterway consisting of 12,578 feet of gunite-lined canal, 342 feet of concrete flume, and a 117-foot-long concrete road culvert; (5) a forebay; (6) a concrete intake structure; (7) a 4,863-foot-long steel penstock with a diameter varying from 6.7 to 5 feet; (8) a reinforced concrete powerhouse containing a 15,000–Kw turbine-generator unit; and (9) a 5.1-foot-long transmission line to the Clearwater switching station.

The licensee proposes to modify this development by: (1) Restoring the forebay capacity removing the accumulated sediment; (2) installing an instream flow release structure and staff gage; (3) adding 2 wildlife bridges; and (4) adding one wildlife canal escape.

Clearwater No. 2: (1) The 18-foot-high and 157-foot-long concrete buttress Clearwater No. 2 dam with a sluice outlet and a spillway with a crest elevation of 3,212 feet immediately downstream of the Clearwater No. 1 powerhouse, at the mouth of Mowich Creek; (2) a small reservoir with a surface area of 1.2 acres at normal water surface elevation of 3,212 feet; (3) an intake bay with trashracks and side channel spillway; (4) a waterway consisting of 8,864 feet of concrete flume, an 88-foot-long concrete culvert, 2,852 feet of concrete and rock flume, 18,599 feet of gunite-lined canal, 359 feet of rock flume, and 473 feet of steel flume; (5) a forebay; (6) an intake structure with trashracks; (7) a 1,169-foot-long steel and concrete-encased steel penstock; (8) a reinforced concrete powerhouse containing a 26,000–Kw turbine-generator unit on the North Umpqua River at Toketee Lake; and (9) the 0.3-mile-long transmission line No. 55–1 to Clearwater switching station.

The licensee proposes to modify this development by: (1) Restoring the forebay capacity removing the accumulated sediment; (2) restoring the waterway freeboard; (3) rehabilitating the turbine; (4) installing an instream flow release structure and gaging equipment; (5) adding 7 wildlife bridges; and (6) adding 3 wildlife canal escapes.

Toketee : (1) The 58-foot-high and 1,381-foot-long earthfill with center core Toketee dam immediately downstream of the mouth of the Clearwater River with a sluice outlet gate and a spillway with a crest elevation of 2,430 feet; (2) Lake Toketee with a storage capacity of 491.4 acre-feet at normal maximum water surface elevation of 2,430 feet; (3) an intake structure with trashracks; (4) a waterway consisting of a 12-foot-diameter and 1,664-foot-long wood stave pipe, a 12-foot-diameter and 1,000-foot-long concrete-lined tunnel section, a 16.5-foot-diameter and 4,080-foot-long unlined tunnel section and a 12-foot-long and 250-foot-long concrete-lined section; (5) a 12-foot-diameter and 1,067-foot-long steel penstock; (6) a surge tank; (7) three 6.3-foot-diameter and 158-foot-long steel penstocks; (8) and a reinforced concrete powerhouse with 3 turbine-generator units with a combined rated capacity of 42,500 Kw about 1.25 miles downstream from the Toketee Falls.

The licensee proposes modify this development by: (1) Restoring the Toketee Lake capacity removing the accumulated sediment; (2) replacing on of the turbine's runner to increase the maximum output from 15,300 to 15,900 Kw and rehabilitating another of the turbines; and (3) adding an instream release structure.

Fish Creek: (1) The 6.5-foot-high and 133-foot-long concrete gravity Fish Creek dam with a free crest spillway at elevation 3,057.7 feet, a fish ladder, and a sluiceway, on Fish Creek about 6 miles upstream from its confluence at the North Umpqua River; (2) a small impoundment with a surface area of 3 acres at normal water surface elevation of 3,057.7 feet; (3) a diversion forebay; (4) an intake structure with trashracks; (5) a waterway consisting of 178 feet of timber flume, 1,689 feet of steel flume, 8,513 feet of concrete fume, 15,282 feet of gunite-lined canal; (6) a forebay; (7) a 2,358-foot-long steel and concrete-encased steel penstock with a diameter varying from 4.5 to 3 feet; (8) and a reinforced concrete powerhouse containing a 11,000–Kw turbine-generator unit.

The licensee proposes to modify this development by: (1) Increasing the capacity of the waterway; (2) uprating the turbine from 11,000 to 14,500 Kw; (3) expanding the instream flow release capacity; (4) adding 3 wildlife bridges; (5) adding 3 wildlife canal escapes; and (6) adding one passive wildlife canal escape.

Slide Creek: (1) The 30-foot-high and 183-foot-long concrete gravity Slide Creek dam with a spillway gates with a top elevation of 1,982.8 feet on the North Umpqua River 900 feet downstream of the Toketee powerhouse; (2) an impoundment with a storage capacity of 43 acre-feet at normal water surface elevation of 1,982 feet; (3) an intake structure with trashracks and a Tainter gate the right abutment of the dam; (4) a waterway consisting of 1,921 feet of concrete and rock flume, 3,396 feet of two-wall concrete flume, and 4,336 feet of concrete-lined canal; (5) a 12-foot-diameter and 374-foot-long steel penstock; and (6) a reinforced concrete powerhouse containing a 18,000 Kw turbine generator unit on North Umpqua River at the mouth of Slide Creek, approximately 1.3 miles upstream of the Soda Springs dam.

The licensee proposes to install an instream flow release structure and flow gaging device.

Soda Springs: (1) The 77-foot-high and 309-foot-long thin arch reinforced concrete type Soda Springs dam with a spillway gates with a top elevation of 1,805.9 feet; (2) an impoundment with a total storage capacity of 411.6 acre-feet at normal maximum water surface elevation of 1,807 feet; (3) a concrete intake structure; (4) a 2,112-foot-long and 12-foot-diameter steel pipe; (5) a surge tank; (6) a 168-foot-long 12-foot-diameter penstock; and (7) a reinforced concrete powerhouse on the North Umpqua River containing a 11,000–Kw turbine generator unit.

The licensee proposes to modify this development by: (1) Restoring the capacity of the reservoir removing accumulated sediment; (2) replacing the turbine runner to increase the maximum output to 12,300 Kw; and (3) adding an instream flow release structure and flow measuring facilities.

m. This notice also consists of the following standard paragraph: B1, and E1.

n. *Available Locations of Application*: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

o. Requests for additional studies have been filed in accordance with Section 4.32 (b)(7) of the Commission's Regulations. These study requests will be addressed in the additional information request to be issued later in the licensing proceeding.

3a. *Type of Application:* Amendment to Project Design.

b. *Project No*: 2426–076.

c. *Date Filed*: March 16, 1995.

d. *Applicant*: Department of Water Resources of the State of California and City of Los Angeles Department of Water and Power.

e. *Name of Project*: California Aqueduct, San Luis Obispo Powerplant.

f. *Location*: Was to be constructed as part of the Coastal Branch, Phase II water delivery facilities in San Luis Obispo County, California.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact*: John J. Silveria, Deputy Director, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236–0001, Tel: (916) 653–7092.

i. *FERC Contact*: Mohamad Fayyad, (202) 219–2665.

j. *Comment Date*: August 21, 1995.

k. *Description of Amendment*: Licensee proposes to delete the San Luis Obispo Powerplant, which was to be constructed as part of the Coastal Branch, Phase II water delivery facilities. The licensee's revision of the design of its water delivery facilities, which are not features of the licensed project, eliminated the feasibility of the San Luis Obispo Powerplant.

l. *This notice also consists of the following standard paragraphs*: B, C2, and D2.

4 a. *Type of Application*: New License for Minor Project.

b. *Project No.*: 1517–008.

c. *Date filed*: June 19, 1995.

d. *Applicant*: Monroe City Corporation.

e. *Name of Project*: Upper Monroe Hydroelectric Project.

f. *Location*: Partially within Fishlake National Forest, on Shingle Creek, Serviceberry Creek, and the First Lefthand Fork of the Monroe Creek, near the town of Monroe City, in Sevier County, Utah.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact*: John Spendlove, Jones & DeMille Engineering, 45 East 500 North, Richfield, Utah 84701, (801) 896–8266.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827

j. *Description of Project:* The run-of-river project as licensed consists of: (1) A small diversion structure on each of the following three streams—First Lefthand Fork, Shingle Creek, and Serviceberry Creek; (2) an 11,200-foot-long penstock leading from the diversion structure on Left Hand Fork to a powerhouse; (3) a 3,300-foot-long penstock leading from the diversion structure on Shingle Creek to a point on the Left Hand Fork penstock 7,400 feet upstream from the powerhouse; (4) a 12,900-foot-long penstock leading from the diversion structure on Serviceberry Creek to a point on the First Lefthand Fork penstock 15 feet upstream from the powerhouse; (5) the powerhouse containing one generating unit with an installed capacity of 250 kW; (6) a 1.65-mile-long transmission line; (7) a tailrace returning water to Monroe Creek; and (8) appurtenant facilities. No new construction is planned.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. Under Section 4.32(b)(7) of the Commission's Regulations (18 CFR), if any resource agency, SHPO, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

5 a. *Type of Application*: Amendment of License to Replace Powerhouse.

b. *Project No*: 1933–011.

c. *Date Filed*: June 12, 1995.

d. *Applicant*: Southern California Edison Company.

e. *Name of Project*: Santa Ana River No. 1 & No. 2 Project.

f. *Location*: Near the mouth of the Santa Ana River Canyon, in San Bernardino County, California.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact*: Mr. Bryant C. Danner, Vice President and General Counsel, Southern California Edison Company, P. O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (818) 302–4459.

i. *FERC Contact*: Mohamad Fayyad, (202) 219–2665.

j. *Comment Date*: August 28, 1995.

k. *Description of Amendment*: Licensee proposes to build a new powerhouse to replace existing Santa Ana No. 2 powerhouse (SAR 2). The existing SAR 2 powerhouse could be inundated due to the construction of Corps' Seven Oaks Dam. The new SAR 2 powerhouse would be constructed about 2 miles downstream of the existing site on an existing flume alignment immediately downstream of the new Seven Oaks Dam. In addition, the portion of the existing water conveyance facility between the existing location of SAR 2 powerhouse and SAR 3 powerhouse under FERC license No. 2198, would be reconstructed. The new water conveyance facility up to the new SAR 2 powerhouse would become part of Project No. 1933.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6 a. *Type of Application*: Amendment of License.

b. *Project No*: 2198–007.

c. *Date Filed*: June 12, 1995.

d. *Applicant*: Southern California Edison Company.

e. *Name of Project*: Santa Ana River No. 3 Project.

f. *Location*: On the Santa Ana River, in San Bernardino County, California.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact*: Mr. Bryant C. Danner, Vice President and General Counsel, Southern California Edison Company, P. O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (818) 302–4459.

i. *FERC Contact*: Mohamad Fayyad, (202) 219–2665.

j. *Comment Date*: August 28, 1995.

k. *Description of Amendment*: Due to the replacement of Santa Ana No. 2 powerhouse (SAR 2) under FERC license No. 1933, which is proposed to be constructed about 2 miles downstream of its existing site, at a point along the existing Project No. 2198 SAR 3 flume, the water conveyance facilities upstream of the new SAR 2 powerhouse must become part of Project No. 1933. Therefore, licensee proposes to remove from Project 2198 SAR 3, those water conveyance facilities that will become part of Project No. 1933.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

7 a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 11543–000.

c. *Date filed*: May 31, 1995.

d. *Applicant*: Richard D. Ely, III.

e. *Name of Project*: Lewiston Water Power Project.

f. *Location*: On the Trinity River, at the Lewiston dam, near the town of Lewiston, in Trinity County, California. Section 8 of T33N, R8W.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact*: Richard D. Ely, III, 1213 Purdue Drive, Davis, California 95616, (916) 753–8864.

i. *FERC Contact*: Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date*: September 22, 1995.

k. *Description of Project*: The proposed project would utilize the Bureau of Reclamation's existing 70-foot-high Lewiston dam and 14,000-acre-foot Lewiston Lake and include: (1) A 100-foot-long penstock; (2) a powerhouse, integral with the dam, containing three generating units with a total installed capacity of 445 Kw; (3) a tailrace returning flow to the Trinity River; (4) a 250-foot-long transmission line interconnecting with an existing Trinity County Public Utility District transmission line; and (5) appurtenant facilities.

No new access roads will be needed to conduct the studies.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. *Type of Application*: Major License.

b. *Project No.*: 11181–002.

c. *Date filed*: November 28, 1994.

d. *Applicant*: Energy Storage Partners.

e. *Name of Project*: Lorella Pumped Storage.

f. *Location*: On Bureau of Land Management land, near the towns of Lorella and Malin, in Klamath County, Oregon. T39S, R11E, section 35, T40S, R12E, section 2, T40S, R12E, section 1, T40S, R12E, section 12, T40S, R12E, section 11, T40S, R12E section 14, T40S, R12E, section 22.

g. *Filed Pursuant to*: Federal Power Act 16 USC §§ 791(a)–825(r).

h. *Applicant Contact*: Mr. Douglas Spaulding, Energy Storage Partners, c/o Independent Hydro Developers, 5402 Parkdale Drive, Minneapolis MN 55416, (612) 525–1445.

i. *FERC Contact*: Michael Spencer at (202) 219–2846.

j. *Deadline Date for Protests and Interventions*: September 13, 1995.

k. *Status of Environmental Analysis*: This application is not ready for environmental analysis at this time—see attached paragraph D8. A separate notice of upcoming scoping meetings and site visit will be issued. If you have any questions about that notice call Michael Spencer at (202) 219–2846.

l. *Description of Project*: The proposed pump storage project would consist of: (1) An upper storage reservoir formed behind two 178-foot-high embankment dams, with a maximum surface area of 199 acres, a total reservoir capacity of 16,519 acre-feet, and a maximum surface elevation of 5,523 feet msl; (2) a 24-foot-diameter, 4,526-foot-long tunnel, joining a penstock mainfold which divides the power tunnel into 4 penstocks; (3) each penstock will have a 12-foot-diameter, and 355-foot-length; (4) a powerhouse/pump station containing 4 motor/generator and pump/turbine units with a total installed capacity of 1,000 MW and producing an estimated average annual generation of 1,927 GWh; (5) a 1,500-foot-long, 38-foot-square D-shaped concrete tailrace tunnel; (6) a lower storage reservoir formed behind a 57-foot-high embankment dam, with a maximum surface area of 405 acres, a total reservoir capacity of 18,646 acre-feet, and a maximum surface elevation of 4,191 feet msl; (7) a 4-mile-long, 500-kV transmission line interconnecting with the existing area transmission system; and (8) appurtenant facilities. Water for the project would be supplied by three wells. The cost of the project is estimated at $1,174,249,000.

m. *Purpose of the Project*: Project power would be sold.

n. This notice also consists of the following standard paragraphs: A2, A9, B1, D8.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An

additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: July 14, 1995, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17804 Filed 7–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP93–541–006, et al.]

Young Gas Storage Company, Ltd., et al.; Natural Gas Certificate Filings

July 13, 1995.

Take notice that the following filings have been made with the Commission:

1. Young Gas Storage Company, Ltd.

[Docket No. CP93–541–006]

Take notice that on June 23, 1995, Young Gas Storage Company, Ltd. (Young), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93–541–006 a petition pursuant to Section 7(c) of the Natural Gas Act requesting authority to amend the certificate issued June 22, 1994 [1] in Docket Nos. CP93–541–000 and 001, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Young states that upon further study of data gained in the development of its storage field located in Morgan County, Colorado, certain changes to well requirements are needed to provide for the continued development of the storage field so that service can be provided at the certificated levels. In Phase I of the proposal, Young would convert three observation wells to two injection/withdrawal wells and one water injection well. Young also proposes, in Phase II of the amendment, to drill and connect up to four injection/withdrawal wells in 1996.

Comment date: August 3, 1995, in accordance with Standard Paragraph F at the end of this notice.

[1] 67 FERC ¶ 61,375.

2. Williston Basin Interstate Pipeline Company

[Docket No. CP95–602–000]

Take notice that on July 7, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP95–602–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to purchase an existing meter station from Montana-Dakota Utilities Co. (Montana-Dakota) under Williston Basin's blanket certificate issued in Docket Nos. CP82–487–000 *et al* pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to purchase Montana-Dakota's existing Ellsworth Air Force Base (EAFB) housing meter station and associated appurtenant facilities located in the NE¼SE¼ Section 18, T2N, R9E, Pennington County, South Dakota. Williston Basin states that Montana-Dakota no longer has any use for these facilities because Montana-Dakota is serving EAFB housing by a different meter station. Williston Basin asserts that the subject meter station is essential to its operations because it uses the building, regulator, relief valves, and station piping to serve the Villa Ranchaero subdivision.

Comment date: August 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP95–603–000]

Take notice that on July 10, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–603–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate facilities to expand an existing point of delivery to Pennsylvania Gas & Water Company (PG&W) and to abandon an existing 4-inch tap and approximately 60 feet of 4-inch pipeline, approximately 100 feet of 6-inch pipeline and an existing 6-inch side valve assembly located in Susquehanna County, Pennsylvania (Uniondale Meter Station) under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to expand the Uniondale Meter Station delivery point, requested by PG&W, by replacing approximately 60 feet of 4-inch interconnecting pipe with 12-inch pipe between Tennessee's 24 inch 300–1 mainline and its existing meter tube, and approximately 100 feet of 6-inch interconnecting pipe with 12-inch pipe between the existing meter tube and the interconnect with PG&W. Additionally, Tennessee proposes to replace the existing 6-inch side valve assembly on Tennessee's mainline with a 12-inch side valve assembly and install an additional 8-inch orifice meter tube, parallel to the existing meter tube. Tennessee states that Tennessee would install, operate and maintain the replacement facilities.

Tennessee states that, because it is not proposing to increase the maximum contract quantity of PG&W, the addition of this delivery point would have no impact on Tennessee's peak day deliveries or annual deliveries, and is not prohibited by Tennessee's tariff. Tennessee has sufficient capacity to accomplish deliveries at this delivery point without detriment or disadvantage to Tennessee's other customers.

Comment date: August 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP95–604–000]

Take notice that on July 10, 1995, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed a request with the Commission in Docket No. CP95–604–000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point, authorized in blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to construct, install and operate a delivery point at Mile Post 19.3 on its 12-inch Brunswick Line in Twiggs County, Georgia. The delivery point would deliver gas to the City of Warner Robins (Warner Robins). The proposed delivery point would enable Warner Robins to receive gas for redelivery to Georgia Power Company. The total estimated cost of the interconnection facilities is $479,500. The Municipal Gas Authority of Georgia, acting as agent for Warner Robins, has agreed to reimburse Southern for all of the total actual cost of the facilities.

Comment date: August 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Western Gas Interstate Company

[Docket No. CP95–606–000]

Take notice that on July 10, 1995, Western Gas Interstate Company (Western), filed in Docket No. CP95–606, an application pursuant to Western's authority granted in Docket No. CP82–411–000 and Section 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205, and 157.211) for authorization to upgrade and construct a new delivery point to enable Western to deliver natural gas to Seaboard Farms Inc., end user, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Western states that the estimated cost of the proposed new delivery point is $1,549,838.00. It is stated that Seaboard would reimburse Western $450,000 as part of the costs to install the facilities. It is further stated that the Oklahoma Highway Commission would also pay $371,000 to relocate a portion of its pipeline from a highway expansion project.

Western states that the estimated peak day, average day, and annual volumes to be delivered would be 3,000 MMBtu, 2,200 MMBtu, and 675,000 MMBtu per day, respectively. Western also states that the gas volumes would be transported and delivered under Western's Rate Schedule FT–N and would be accomplished without disadvantage to Western's other customers.

Comment date: August 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP95–608–000]

Take notice that on July 10, 1995, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158–0900, filed in Docket No. CP95–608–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate delivery facilities to provide natural gas transportation service to the City of Blanding's distribution system in San Juan County, Utah, under its blanket certificate issued in Docket No. CP82–433–000,[2] all as more fully set forth in the request for authorization on file with the

[2] See, 20 FERC ¶ 62,412 (1982).

Commission and open for public inspection.

Northwest states the proposed facilities consist of a new meter station, to be named the Blanding Meter Station, approximately 2.86 miles of 6-inch pipeline, a block valve and appurtenances. Northwest will initially provide up to 1,000 Dth per day of natural gas transportation service. Northwest further states that the total cost of the project is estimated to be approximately $327,768.

Northwest states that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northwest holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP86–578–000.[3] Northwest states that construction of the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to deliver the requested gas volumes without detriment or disadvantage to it's other customers.

Comment date: August 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company

[Docket No. CP95–611–000]

Take notice that on July 11, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP95–611–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a new delivery point in Cerro Gordo County, Iowa, to accommodate natural gas deliveries to AG Processing, Inc. (AGP) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that it is currently providing service to Interstate Power Company (IPC) for resale by IPC to AGP for use at AGP's plant near Mason City, Iowa. It is stated that upon approval of the authorization herein, Northern will be providing service directly to AGP. It is also stated that service will be provided to AGP through either interruptible throughput service under Northern's currently effective throughput service agreements, or by accessing released capacity of other shippers. Northern asserts that AGP has requested the new delivery point and throughput service.

Northern states that the proposed volumes to be delivered to AGP at the AGP TBS #1 are 1,875 Mcf on a peak day and 528,500 Mcf on an annual basis. Northern estimates the cost of constructing the delivery point to be $130,000, which AGP will make a contribution in aid of construction of the total amount.

Comment date: August 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–17805 Filed 7–19–95; 8:45 am]

BILLING CODE 6717–01–P

[3] See, 42 FERC ¶ 61,019 (1988).

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–5260–8]

California State Nonroad Equipment Pollution Control Standards; Authorization of State Standards Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice regarding authorization of State standards.

SUMMARY: EPA is authorizing California to enforce regulations for exhaust emission standards and test procedures for 1995 and later new utility and lawn and garden equipment engines 25 horsepower and below pursuant to section 209(e) of the Clean Air Act.

ADDRESSES: The Agency's decision document containing an explanation of the Administrator's decision, as well as all documents relied upon in reaching that decision, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center in Docket A–91–01 during the working hours of 8 a.m. to 5:30 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. Copies of the decision can be obtained from EPA's Manufacturers Operations Division by contacting David Dickinson, as noted below.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney/Advisor, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Telephone: (202) 233–9256.

SUPPLEMENTARY INFORMATION: I have decided to authorize California to enforce regulations for standards and test procedures for nonroad engines pursuant to section 209(e) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543. These regulations establish exhaust emission standards and test procedures for 1995 and later new utility and lawn and garden equipment engines 25 horsepower and below, including a second tier of standards for engines produced on or after January 1, 1999. A comprehensive description of these California regulations can be found in the decision document for this authorization and in materials submitted by CARB.

On the basis of the record before me, I cannot make the findings required to deny authorization under section 209(e)(2) of the Act. Therefore, I am authorizing California to enforce these regulations.

On September 6, 1991 EPA published a ''Proposed Decision of the Administrator; Opportunity for Public Comment'' for the California Air Resources Board's (CARB) authorization request.[1] On July 20, 1994 EPA published its final rule under section 209(e) entitled ''Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards'' (section 209(e) rule).[2] On November 8, 1994 EPA published a notice of opportunity for a public hearing and a request for written comments concerning a revised authorization request received from CARB.[3] EPA held its public hearing on December 6, 1994 and received oral comments from the California Air Resources Board (CARB), the Portable Power Equipment Manufacturers Association (PPEMA), the Engine Manufacturers Association (EMA) and Outdoor Power Equipment Institute (OPEI), and Kohler. EPA received written comments from the American Pulpwood Association, the Associated California Loggers, the Illinois Farm Bureau, CARB, the American Forest & Paper Association, the Manufacturers of Emission Controls Association, the North American Equipment Dealers Association, PPEMA, EMA and OPEI, and Toro. Consequently, this determination is based on the oral and written submissions by CARB, the oral comments delivered at the December 6, 1994 hearing, and the written comments submitted in response to the above-mentioned notice and all other relevant information.[4]

Section 209(e) of the Act as amended, 42 U.S.C. 7543(e), addresses state regulation of nonroad engines and vehicles. EPA issued on July 20, 1994 a final regulation to implement section 209(e).[5] Section 209(e)(1) preempts states from regulating new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower and new locomotives or new engines used in locomotives. The section 209(e) rule sets forth definitions for these preempted categories of engines.

For those new pieces of equipment or new vehicles other than those a State is permanently preempted from regulating under section 209(e)(1), the State of California may promulgate standards regulating such new equipment or new vehicles provided California complies with Section 209(e)(2). The section 209(e) rule provides that if certain criteria are met, the Administrator shall authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards; whether California needs state standards to meet compelling and extraordinary conditions; and whether California's standards and accompanying enforcement procedures are consistent with section 209.

California determined that its standards and test procedures would not cause California emission standards, in the aggregate, to be less protective of public health and welfare as the applicable Federal standards. Information presented to me by parties opposing California's authorization request did not demonstrate that California arbitrarily or capriciously reached this protectiveness determination. Therefore, I cannot find California's determination to be arbitrary or capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program. In addition, CARB provided information regarding actions taken by the California Legislature in an effort to address the current air quality conditions in California, directing CARB to consider adopting regulations for off-road engines. Information presented to me by parties opposing California's authorization request did not demonstrate that California no longer has a compelling and extraordinary need for its own program. Based on previous showings by California in the context of motor vehicle waivers and CARB's submission to the record regarding the status of air quality in the state, I agree that California continues to have compelling and extraordinary conditions for its own program. Thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures do not violate the permanent preemption provisions of section 209(e)(1), do not violate the motor vehicle preemption provisions of section 209(a), and are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 209 of the Act.

No information has been submitted to demonstrate that California did not satisfy its burden of demonstrating that its emission standards and test procedures do not violate section 209(e)(1). No information has been submitted to demonstrate that California's emission standards and test procedures violate section 209(a). Information submitted to me by parties opposing California's authorization request did not satisfy the burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. In addition, no information has been submitted to demonstrate that California's certification test procedures are inconsistent with Federal certification test procedures. Accordingly, I cannot make the determinations required for a denial of this authorization under section 209(e) of the Act, and therefore, I authorize the State of California to enforce these regulations.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce nonroad equipment engines for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

[1] 56 FR 45873 (September 6, 1991). No final EPA decision was made on this proposal until today's authorization determination.

[2] 59 FR 36969 (July 20, 1994).

[3] 59 FR 55658 (November 8, 1994).

[4] This information is contained in Docket A–91–01.

[5] *See* 59 FR 36969, July 20, 1994 (to be codified at 40 CFR Part 85, Subpart Q, §§ 85.1601–85.1606). This final rule titled ''Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards'' was proposed at 56 FR 45866, Sept. 6, 1991.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by September 18, 1995. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(e) of the Act to the Assistant Administrator for Air and Radiation.

Dated: July 5, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–17762 Filed 7–19–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5260–6]

Public Notice; Extension of Public Comment Period for the Lake Michigan Lakewide Management Plan

AGENCY: Environmental Protection Agency.

ACTION: Extension of public comment period.

ACTION: This notice extends the public comment period for the revised draft Lakewide Management Plan (LaMP) for Lake Michigan by 30 days, through August 5, 1995. A Notice of Availability for the draft Lake Michigan LaMP was published in the **Federal Register** on May 5, 1995 (60 FR 22381–22388), soliciting public review and comment.

All comments should be addressed to Jeanette Morris-Collins, Environmental Protection Assistant, U.S. EPA, Region 5 (WQ–16J), 77 West Jackson Boulevard, Chicago, Illinois 60604 (telephone: 312/886–0152).

ADDRESSES: To obtain a copy of the revised draft Lake Michigan LaMP, please contact Jeanette Morris-Collins, Environmental Protection Assistant, U.S. Environmental Protection Agency, Region 5 (WQ–16J), 77 West Jackson Boulevard, Chicago, Illinois 60604, 312/886–0152. Copies of the revised draft Lake Michigan LaMP may also be obtained from the following offices:

Illinois Environmental Protection Agency, Attn: Bob Schacht, 1701 S. First Avenue, Suite 600, Maywood, Illinois 60153, 708/338–7900

Indiana Department of Environmental Management, Attn: Adriane Esparza, Gainer Bank Building, 504 N. Broadway, Suite 418, Gary, Indiana 46402, 219/881–6707

Michigan Department of Natural Resources, Attn: Bob Day, P.O. Box 30028, Lansing, Michigan 48909, 517/335–3314

Water Resources Management, Wisconsin Department of Natural Resources, Attn: Jo Mercurio, 101 S. Webster Street, P.O. Box 7921, Madison, Wisconsin 53707, 608/267–2452

Lake Michigan Federation, 59 E. Van Buren Street, Suite 2215, Chicago, Illinois 60605, 312/939–0838

Lake Michigan Federation, 1270 Main Street, Green Bay, Wisconsin 54302, 414/432–5253

Lake Michigan Federation, 647 W. Virginia, Milwaukee, Wisconsin 53204, 414/271–5059

Lake Michigan Federation, 425 Western Avenue, Suite 201, Muskegon, Michigan 49440, 616/722–5116

FOR FURTHER INFORMATION CONTACT: Gary Kohlhepp, Lake Michigan LaMP Coordinator, U.S. EPA, Region 5 (WA–16J), 77 West Jackson Blvd., Chicago, Illinois 60604.

Dated: July 10, 1995.

Valdas V. Adamkus,

Regional Administrator, Region 5.

[FR Doc. 95–17764 Filed 7–19–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5261–2]

Clean Air Scientific Advisory Committee, Science Advisory Board, Notification of Public Advisory Committee Meeting; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will meet on August 3 and 4, 1995 at the Holiday Inn, 4810 New Page Road, Research Triangle Park, NC (919) 941–6000. The meeting will begin at 9:00 a.m. and end no later than 5:00 p.m. on both days (times noted are Eastern Time). The meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come first-served basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning document availability from the relevant Program area is included.

Purpose of the Meeting

The Committee will meet to discuss the draft EPA document Air Quality Criteria for Airborne Particulate Matter (600/AP–95/001abc). That criteria document is being prepared by EPA as part of the process to meet Clean Air Act statutory requirements for the periodic review and revision, as appropriate, of criteria and National Ambient Air Quality Standard for Particulate Matter. Single copies of the draft document can be obtained from Ms. Diane Ray, Environmental Criteria and Assessment Office (MD–52), U.S. EPA, Research Triangle Park, NC 27711. Ms. Ray can also be reached by phone at (919) 541–3637 or by fax at (919) 541–1818.

For Further Information

Members of the public desiring additional information about the meeting should contact Mr. Randall Bond, Designated Federal Official, Clean Air Scientific Advisory Committee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460, by telephone at 202/260–8414, or by fax at 202/260–1889, or via the INTERNET at BOND.RANDY@EPAMAIL.EPA.GOV. Those individuals requiring a copy of the draft Agenda should contact Ms. Lori Anne Gross at 202/260–8414, by fax at 202/260–1889 or by way of the INTERNET at GROSS.LORI@EPAMAIL.EPA.GOV. Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in The Annual Report of the Staff Director which is available by contacting Ms. Gross at the previously stated address.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Bond in writing (by letter or fax—see previously stated information) no later than 12 noon Eastern Time, Friday, July 21, 1995 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at

least 35 copies of an outline of the issues to be addressed or a copy of the presentation itself.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously stated oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. For conference call meetings, opportunities for oral comment are limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments of any length (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee or subcommittee up until the time of its meeting, unless other publicly announced arrangements have been made.

Dated: July 12, 1995.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 95–17898 Filed 7–19–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5261–3]

Massachusetts Marine Sanitation Device Standard; Notice of Determination

On June 9, 1995, notice was published that the State of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all the coastal waters of Wellfleet Harbor, in the Town of Wellfleet, County of Barnstable, State of Massachusetts. The petition was filed pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4, for the purpose of declaring these waters a ''No Discharge Area.''

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Massachusetts certified that there are three disposal facilities available to service vessels in Wellfleet Harbor. The facilities will be operated by the Town of Wellfleet through the Office of the Harbormaster. These facilities are available between the hours of 6:00 am and 8:00 pm, seven days a week, from mid-May to mid-November. Outside of these hours appointments can be made by calling the Harbormaster's office at (508) 349–0320 or by radio on Channel 9. There is no fee for pump-out services.

Two of the disposal services are rolling pump-out facilities located on the town dock. Each pump is capable of evacuating and discharging to head differences of 15 feet. One rolling facility has a capacity of 25 gallons and the other has a capacity of 40 gallons. The third pump-out facility is a 22-foot pump-out boat with a holding capacity of 300 gallons. In addition, there is a wash down facility, directly connected to the 3,500 gallon tight tank storage facility, and located on the Town dock that will be used for emptying of portable toilet devices.

All sanitary wastes removed from boats are transferred to a 3500 gallon tight tank storage facility located near the Harbormaster's office. These tanks are fitted with alarms that activate in time to ensure waste removal long before the capacity is reached. The Town of Wellfleet has an annual agreement with a septage pumper to service the holding tanks at the town marina. The septage is transported to the Tri-Town Septage Treatment Facility in Orleans, and occasionally, to the Upper Blackstone Septage Treatment Facility. Trucks used by the septage pumpers are inspected annually by the town to ensure tightness.

There are an estimated 640 boats that use the harbor per season. The harbor has 200 slips, 250 moorings in the primary mooring basin, 12 transient moorings, and approximately 100 moorings in scattered satellite areas throughout the harbor. At present these moorings and slips accommodate the seasonal boat traffic.

Therefore, based on an examination of the petition and its supporting information, which included a site visit by EPA New England staff, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available and that areas covered under this determination include all the waters and tributaries of Wellfleet Harbor enclosed by a line drawn between Jeremy Point (latitude 41° 52′ 40″ Longitude 70° 04′ 00″) eastward to the Wellfleet-Eastham town line at the mouth of Hatches Creek. This determination is made pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4.

Dated: July 12, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–17882 Filed 7–19–95; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

[NV 95–40]

Farm Credit System Building Association Management Operations Policies and Practices

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: On July 7, 1995, the Farm Credit Administration (FCA), by its Board (Board), adopted a policy statement concerning general parameters and policies for the operational practices of the Farm Credit System Building Association (FCSBA) which are supplementary to the FCSBA Bylaws. The FCSBA was established to provide the facilities and related services for the FCA and its regional offices. The FCSBA is owned by the banks of the Farm Credit System (Banks) and is funded by assessments, commercial tenants, and other income. The FCSBA owns and operates the FCA McLean, Virginia headquarters and holds the leases and provides certain services and furnishings for FCA field offices. The FCA Board has sole discretionary authority under section 5.16 of the Farm Credit Act of 1971, as amended, to approve the plans and decisions for such building and facilities. In order to carry out this authority and to preserve the FCA's arm's-length relationship with the Banks, the Articles of Association and Bylaws of the FCSBA grant the FCA Board the responsibility to oversee the affairs of the FCSBA. The Chairman of the FCA Board shall be responsible for coordinating the FCA Board's involvement in and responsibilities for the operation of the FCSBA. The FCSBA President reports to the FCA Board and is generally responsible within the context of governing policies for all

activities, necessary to manage FCSBA support to the FCA, manage the assets of the FCSBA, understand and consider the interests of the Banks. Specific responsibilities include budget preparation and execution, planning, financial reporting and control, preparation of quarterly cashflow projections, supervision of inventory and supporting schedules for all fixed assets.

EFFECTIVE DATE: July 7, 1995.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4000, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The text of the Board's policy statement on the Farm Credit System Building Association Management Operations Policies and Procedures is set forth below in its entirety:

FCA Board Action on FCS Building Association Management Operations Policies and Practices

NV 95–40

FCA–PS–68

Effective Date: July 7, 1995.

Effect on Previous Action: Supersedes Policy Statement NV 93–43.

Source of Authority: Farm Credit Act of 1971, as amended (Act) and the FCS Building Association (FCSBA) Articles of Association and Bylaws.

The FCA Board hereby adopts the following statement of policy:

The FCSBA was established to provide the facilities and related services for the Farm Credit Administration (FCA) and its regional offices. The FCSBA is owned by the banks of the Farm Credit System (Banks) and is funded by assessments, commercial tenant, and other income. The original ownership interest of each bank was based on the bank's assets as a percentage of total Farm Credit System (FCS) assets on June 30, 1981. The FCSBA owns and operates the FCA McLean, Virginia headquarters and holds the leases and provides certain services and furnishings for FCA field offices. The FCA Board has sole discretionary authority under section 5.16 of the Act to approve the plans and decisions for such building and facilities. In order to carry out this authority and to preserve the FCA's arms-length relationship with the Banks, the Articles of Association and Bylaws of the FCSBA grant the FCA Board the responsibility to oversee the affairs of the FCSBA.

The purpose of this policy statement is to outline general parameters and policies for various operational practices of the FCSBA which are supplementary to the FCSBA Bylaws.

A. FCA Board Responsibilities

Board Responsibilities. As outlined further in this policy statement, the FCA Board is responsible for items including, but not limited to, approval of all budgets and subsequent changes in object class limitations, signature authorities for financial expenditures, and long term investment decisions. The FCA Board concurs in the development of performance standards, goals and pay scales for the FCSBA President as provided by the FCA Chairman. Additionally, the FCA Board approves certain contracts for services depending upon the purpose and cost.

Chairman's Responsibilities. The Chairman of the FCA Board shall be responsible for coordinating the FCA Board's involvement in and responsibilities for the operation of the FCSBA, including developing performance standards and pay scales for the President of the FCSBA and appraising the President's performance with the concurrence of other FCA Board Members, reviewing periodic financial and operating reports, providing procedures as necessary concerning for the FCA staff's relationship with the FCSBA, and reviewing such other matters as the Chairman may deem advisable for the purpose of bringing such matters to the attention of the FCA Board. The Chairman may delegate these responsibilities to one or more FCA staff as he or she deems advisable, except those responsibilities related to pay and performance.

B. FCSBA President

General Signature Authority. As required by Article V, Section 2 of the FCSBA Bylaws, in addition to member certificates, the FCA Board authorizes the President to sign general correspondence and contracts deemed necessary for the administration of Association activities. Check signing and countersigning authorizations are outlined in separate FCA Board Actions.

Duties. The FCSBA President reports to the FCA Board and is generally responsible within the context of governing policies for all activities, necessary to manage FCSBA support to FCA, manage the assets of the FCSBA, understand and consider the interests of the Banks. Specific responsibilities include budget preparation and execution; planning; financial reporting and control; preparation of quarterly cash flow projections; supervision of inventory and supporting schedules for all fixed assets (furniture fixtures and equipment); maintenance of management objectives schedules; supervision of the telecommunications system; the purchase and contracting for all supplies and services; records management; necessary correspondence; public relations activities in consultation with the FCA Office of Congressional and Public Affairs; personnel supervision and evaluation; the leasing and management of all space in the Farm Credit Building; site selection and lease negotiation for all FCA Field Offices; strategic planning; investment management; preparation and administration of all policies and operating procedures; engineering oversight; construction management; and preparation of all monthly, quarterly and annual reports required by the FCA Board. The FCSBA President shall coordinate these activities with the FCA Liaison as appropriate or required.

Standard Operating Procedures. In addition to those duties outlined under Article V, Section 2, of the FCSBA Bylaws and this Policy Statement, the President is authorized to issue Standard Operating Procedures (SOPs), as he or she deems appropriate in an effort to carry out the mission of the FCSBA provided that each SOP is reviewed by the FCA Board in advance. The President shall maintain all SOPs in a manner that reflects current and up-to-date policies and practices. SOPs will be filed with the Secretary to the Board, the FCSBA and others as requested.

Periodic Reports. The President shall render such periodic reports and proposals to the FCA Board and Liaison as may be necessary to facilitate on budgets, assessments, audits, finances, plans, investments, reserve policy and accounting procedures that support the needs of the FCA Board and the Banks as owners of the FCSBA. The President shall normally report at an FCA Board meeting on a quarterly basis. At a minimum, the report shall include:

(1) A cash statement of operations, an explanation of budget variances, and a month-to-date cash reconciliation report.

(2) A summary of the status of reserve accounts and investments including documentation as available demonstrating compliance with investment policies.

(3) A comprehensive Management Objectives tracking report outlining the status of issues and projects resulting from a combination of one or more sources such as audit and examination recommendations, FCA Board directives, as well as management initiatives.

(4) Other matters such as insurance, leasing and contract performance issues which may be timely for the particular reporting period.

Annual Report. The President shall prepare an annual report on the operations of the FCSBA. The draft of the report shall be provided to the FCA Board for its review within approximately 30 days of receiving the final report from the independent auditors. After FCA Board review, the report shall be provided to the Banks and may be provided to others who have an interest in FCSBA affairs. Although other reports to the Banks may be warranted from time to time, the Annual Report shall serve as the primary vehicle for reporting information to the FCS. The report shall include:

(1) A discussion of significant issues and accomplishments.

(2) Audited financial statements and reportable conditions.

(3) A discussion of the previous year's and current year's budget.

(4) A discussion of Basic and Supplemental services provided to FCA by the FCSBA including an estimate of market and actual values of those services.

(5) A discussion of non-budgeted expenditures which have been reimbursed by the FCA.

C. FCA Liaison

Duties. The FCA Director of the Office of Resources Management (or his/her designee) shall serve as the Agency's liaison with the FCSBA. The FCA Liaison facilitates and coordinates the Agency's needs with the FCSBA in such areas as office renovations, internal moves, telecommunications services, and field office support. The FCA Liaison provides an internal control function through the countersigning of certain categories of checks as designated by the FCA Board. Additionally, the FCA Liaison reviews FCSBA proposals which come before the FCA Board and provides counsel regarding issues on which the FCA Board must decide or provide direction. The FCA Liaison is also responsible for assuring that FCA operations, as appropriate, comply with FCSBA policies and practices as well as FCA guidance relating to the FCSBA. Finally, the FCA Liaison shall review monthly cash reconciliation reports as provided by the FCSBA President and report irregularities as appropriate.

D. Annual Audit and Management Controls

Annual Audit and Management Controls Review. As provided by Article IV, Section 9, of the FCSBA Bylaws, the FCSBA shall produce audited financial statements on an annual basis. A review of material internal control procedures shall be included in the audit process on a periodic basis.

E. Financial Management

Budget Philosophy. It is FCA Board policy to ensure that every effort is made to minimize operating expense without jeopardizing the Banks' investment in the assets which are managed. Approved budgets are planned and implemented in consideration of a series of policy objectives as outlined in this statement and always in an effort to balance income and expenses without a positive or negative cash flow.

Budget Development Time Frames. FCSBA budgets are prepared on a calendar year basis. Each June, the FCSBA President shall provide the proposed budget for the next calendar year to the FCA Board for its review and comment. With FCA Board concurrence, the proposed budget may be made available to the Banks for further comment. On or about September 1, the FCSBA President shall provide the final budget proposal to the FCA Board for approval.

Operating Revenues. The FCSBA receives annual operating revenues from (1) Bank assessments, (2) office rental income from private commercial tenants, (3) other income such as fees and vending charges, (4) interest income from operating balances, and (5) reserve account transfers as necessary.

Operating Expenses. Operating expenses are budgeted using the appropriate object classifications as follows, which may be modified with FCA Board approval:

FCA Field Office Rent
Taxes and Contract Services
Maintenance and Repair
Utilities
Salaries and Benefits
Professional and Consulting Fees
Property Management Fees
Other Expenses

As a part of the draft budget proposal to the FCA Board each June, the FCSBA President shall provide an individual expense breakdown for each item within the object class. This breakdown shall include the actual expense from the previous year, the estimated expense for the current year, and the projected expense for the proposed year.

Unanticipated and emergency expenses during the course of the year as well as expenditures beyond amounts approved for object classes may be funded out of the operating reserve subject to FCA Board approval.

Capital expenditures funded by transfers from the component reserve account are shown separately with a breakdown of individual expenditures.

Operating Reserves. In consideration of liquidity needs as well as unanticipated expenses, each approved budget shall include the sum equivalent to 15 percent of the annual operating expense as operating reserves.

Component Reserve Account. To reserve for capital replacement items and repairs to the McLean facility, the FCSBA shall maintain a component reserve account which is separate from operating funds and reserves. The funding for this account shall be initially based on the Capital Reserve Study of August 1992, which is to be ''formally'' updated every 3 years by an independent engineering assessment. The policy objective is to ensure adequate funding, on a net present value basis, to cover up to a ten year capital repair and replacement program to be ''informally'' updated, as necessary, with each approved budget.

Assessments. To ensure the maintenance of minimum ''cash on hand,'' FCSBA assessments are based on Bank assets as of June 30, and issued quarterly consistent with the FCSBA Bylaws. After taking interest, rental, and other revenue into consideration, budgeted annual assessments must be sufficient to fund the operations of the FCSBA, including the ability to hold operating reserves equal to 15 percent of expenses as well as component reserves consistent with FCSBA policy.

Adjustments to assessments can occur subject to FCA Board approval when total yearend ''cash and cash equivalents'' exceed or are below operating and component reserve requirements. Adjustments are normally considered for third quarter assessments and are based upon the previous year's audited financial statements. Earnings, if any, are distributed through this process in lieu of direct payment.

Investments. The FCSBA invests its funds in an effort to achieve maximum yield consistent with liquidity needs and investment safety. Operating reserves and other operating ''cash on hand'' may be invested in short-term money market accounts, certificates of deposits of federally insured institutions, and short-term instruments of the U.S. Government or commercial paper rated P–1 or A–1 by Moodys and Standard and Poors respectively. Operating reserves investment decisions are made by the FCSBA President consistent with this policy.

Component reserves are invested solely in instruments issued by the U.S. Government and agencies of the U.S.

Government. The maturities and amounts of component reserve investments shall be generally consistent with the anticipated liquidity needs of the FCSBA capital replacement and repair program. Component reserve investment decisions will be approved by the FCA Board.

Budgeting for Reimbursable Expenses. The FCA regularly reimburses the FCSBA for telecommunications and other expenditures on a cost recovery basis. Because there is no positive or negative financial impact on the FCSBA, these transactions are handled on a ''net'' basis and thus not included in the budget.

Budget Execution. The FCSBA President shall administer the annual budget as approved by the FCA Board. Necessary expenditures during the course of the year that would exceed the object class budget require approval by the FCA Board. Exceptions to this policy are made in the event of emergency or the funding of accrued employee benefits. Expenditures in these cases will be brought to the FCA Board for approval within 30 days of occurrence. In considering its approval, the FCA Board has the option of either adjusting other object classes, utilizing the operating reserve, or taking other action as it deems appropriate.

F. Contract Management

General. In accordance with Article IV of the FCSBA Bylaws, it is the policy of the FCA Board that all contracts issued on or on behalf of the FCSBA be:

(1) When in excess of $15,000, competitively bid with a minimum of three bids.

(2) When less than $15,000, and more than $2,500, obtained with a minimum of three price quotes.

(3) Generally awarded to the lowest bidder meeting contract specifications except in those instances where the differences in cost are considered negligible relative to a particular benefit offered by a higher bid.

(4) Reviewed and approved by the FCA Board when in excess of the amount of $150,000, or for the purpose of outside auditors, property managers, or special studies that were not approved during the budget process.

(5) Retained in file a minimum of three years.

(6) When possible, bid in conjunction with the budget year.

Exceptions. Notwithstanding the above requirements, the FCA Board has the authority to make exceptions as it deems appropriate to the circumstances. Additionally, competitive bidding is not required if the circumstances warrant immediate resolution or are vendor specific to equipment in which case the FCSBA President will provide the Board with a detailed report of the surrounding circumstances in 30 days.

Contract Timeframes. Recurring contracts are normally for annual terms, however, when deemed cost effective, the FCSBA may allow terms up to three years. Obtaining best and final offers from bidders is encouraged.

Approval Authorization. The President is authorized to approve contracts consistent with these guidelines and the FCSBA SOP. The President may redelegate up to $50,000 of contracting authority to the building property manager.

Contract Performance. The President shall insure that adequate systems are in place to measure, administer, and report on the performance of FCSBA contracts.

G. Asset Management

Personal Property. The FCSBA President shall insure that adequate methodologies and systems are in place to ensure that FCSBA property is effectively accounted for on a periodic basis.

H. The FCSBA as a System Institution

Examination. The FCSBA is examined as provided by the Act. The scope of examination shall be generally consistent with the level of risk deemed associated with the operating practices of FCSBA management.

Assessments for Examination. The FCSBA will be charged annually for assessments consistent with FCA regulation found in 12 CFR 607.4, ''Assessment of Other Institutions.''

Liquidation by System Request. Should the Boards of the Banks determine, pursuant to Article IX of the FCSBA Articles of Association, that the FCSBA should be dissolved and liquidated, the Boards, by appropriate resolution, may request that the FCA Board appoint a receiver to dissolve and liquidate the FCSBA in accordance with the Act and the regulations promulgated thereunder.

I. FCSBA Services to the FCA

Basic Services. The FCSBA provides space to the FCA Headquarters in McLean, Virginia, and leases space on behalf of FCA for its field offices. Basic services provided to the FCA are similar to what is typical of rented office space and include, but are not limited to, such items as utilities, janitorial service, repairs for normal wear and tear, parking and appropriate landscaping as well as amenities which are available to all tenants and have the effect of maintaining property values and/or enhancing rental income.

Supplemental Services. In addition to providing basic services, the FCSBA will, on a case-by-case basis, provide certain supplemental support services related to FCA's housing needs under the following kinds of circumstances:

(1) The FCSBA can provide the service on better terms than the FCA.

(2) The service, if not provided by the FCSBA, could potentially adversely effect the aesthetic or other value of property, systems, building infrastructure, the health and safety of occupants, or the occupancy level of commercial tenants.

(3) The capacity exists for the FCSBA to provide the service within the context of its employee expertise and/or its overall responsibilities to all tenants.

(4) By providing the service, an advantage inures to the benefit of the FCS which would not otherwise occur.

(5) An FCA Board determination that the service will be of particular benefit to the FCA, the FCS or the public.

As deemed necessary, the FCSBA President shall issue SOP(s) prescribing operational or other details of FCSBA services provided to the FCA.

Non-Reimbursable and Reimbursable Services. Whether or not the FCA will reimburse the FCSBA for a supplemental service will generally be determined as follows:

(1) Reimbursement is not required for support provided by the FCSBA when resources are available within FCA Board approved budgets for the FCSBA and one or more of the criteria for supplemental services expenditures outlined above have been met.

(2) Unless otherwise determined by an FCA Board action, supplemental support services requiring resources beyond that available within the FCSBA budget will require reimbursement.

Reimbursements in excess of $10,000 which occur on an ongoing basis will require a written Memorandum of Understanding outlining the terms and conditions of the services provided and reimbursement. One time, or minor recurring reimbursements may be handled by invoice. Reimbursable expenses shall be determined on an actual cost basis or a recognized methodology to achieve the goal of making the FCSBA ''whole'' on the transaction.

Adopted this 7th day of July, 1995 by order of the Board.

Dated: July 13, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration.

[FR Doc. 95–17781 Filed 7–19–95; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–002744–085.
Title: West Coast of South America Agreement.
Parties:
A.P. Moller-Maersk Line
Compania Chilena de Navegacion Interoceania, S.A.
Crowley American Transport, Inc.
Flota Mercante Grancolombiana, S.A.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
South Pacific Shipping Company, Ltd. d/b/a Ecuadorian Line

Synopsis: The proposed amendment revises Article 14(c) (1) and (2) of the service contract provision to remove the requirement that all service contracts, except those designated as ''seasonal'', commence January 1 and terminate December 31 of the same year. The parties have requested a shortened review period.

Agreement No.: 203–011506.
Title: Matson/APL Space Sharing Agreement.
Parties:
American President Lines, Ltd. (''APL'')
Matson Navigation Company, Inc. (''Matson'')

Synopsis: The proposed Agreement would permit APL to charter space from Matson and to coordinate their services. They may also agree to temporarily alter vessel capacity and share other information of mutual concern in the trade between ports and points in the United States including Hawaii and Guam, and Puerto Rico via Pacific U.S. ports and ports in the Far East and Pacific Islands.

Agreement No.: 224–010889–003.
Title: Port of Galveston/Container Terminal of Galveston, Inc. Terminal Agreement.
Parties:
Port of Galveston
Container Terminal of Galveston, Inc.

Synopsis: The proposed amendment clarifies the insurance requirements of the Agreement.

Agreement No.: 201–200063–014.
Title: NYSA–ILA Tonnage Assessment Agreement.
Parties:
New York Shipping Association
International Longshoremen Association

Synopsis: The proposed amendment reduces certain tonnage assessment rates in the Port of New York and New Jersey.

Agreement No.: 224–200087–009.
Title: Port of Oakland/Maersk Pacific Ltd. Terminal Agreement.
Parties:
Port of Oakland (''Port'')
Maersk Pacific Ltd. (''Maersk'')

Synopsis: The proposed amendment provides for Maersk to install, at their cost, manlifts on the Port's Crane's No. X–409 and X–410, in addition, the Port will reimburse a portion of the secondary use revenues from the cranes for the reimbursement of Maersk's installation costs should Maersk cease operations at the Port before the 15-year payoff period for the installation costs.

Agreement No.: 224–200954.
Title: Port of New York & New Jersey/Columbus Line USA, Inc. Container Incentive Agreement.
Parties:
Port Authority of New York & New Jersey (''Port'')
Columbs Line USA, Inc. (''Columbus Line'')

Synopsis: The Agreement provides for the Port to pay Columbus Lines an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Dated: July 17, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–17860 Filed 7–19–95; 8:45 am]

BILLING CODE 6730–01–M

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Requests for information, including copies of the collection of information and supporting documentation, should be directed to Bruce A. Dombrowski, Deputy Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Room 1082, Washington, DC 20573, telephone number (202) 523–5800. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 582

FMC requests an extension of clearance for 46 CFR part 583, which implements Section 23(a) of the Shipping Act of 1984 provisions. The Act requires each non-vessel operating common carrier to furnish the Commission with an acceptable bond, proof of insurance or other surety and that these be available to pay for damages arising from transportation related activities, reparations or penalties. The Commission estimates that approximately 2,100 NVOCCs will file financial responsibility related documents each year. Annual respondent burden for complying with the regulation is 2,100 manhours (1 hour per response). Estimated annual cost to the Federal Government is $18,500; estimated annual cost to respondents is $63,500.

Joseph C. Polking,

Secretary.

[FR Doc. 95–17798 Filed 7–19–95; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 95–09]

AAEL American Africa Europe Line GmbH, v. Virginia International Trade & Investment Group LLC and William W. Joyce III; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by AAEL America Africa Europe Line GmbH (''Complainant'') against Virginia International Trade & Investment Group LLC and William W. Joyce III (''Respondents'') was served June 8, 1995. Complainant alleges that Respondents have violated section 10(a)(1) of the Shipping Act of 1984, 46

U.S.C. app. 1709(a)(1), by failing to pay to complainant ocean freight due on numerous shipments of cargo and, through bad faith and deceitful misrepresentations, inducing complainant to relinquish possessory liens over the cargo.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding office in this proceeding shall be issued by June 8, 1996, and the final decision of the Commission shall be issued by October 9, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 95–17800 Filed 7–19–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Virgil L. Bocker, et al.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

Each notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 3, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Virgil L. Bocker, and Delmar Kampen, both of Kent, Illinois, each to acquire 21.29 percent of the voting shares of Kent Bancshares, Inc., Kent, Illinois, and thereby indirectly acquire Kent Bank, Kent, Illinois.

Board of Governors of the Federal Reserve System, July 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17821 Filed 7–19–95; 8:45 am]

BILLING CODE 6210–01–F

The Colonial BancGroup, Inc., et al.; Acquisition of Company 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.

The applications are 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.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Colonial BancGroup, Inc, Montgomery, Alabama; to acquire Mt. Vernon Financial Corporation, Dunwoody, Georgia, and thereby engage in operating a savings association, § 225.25(b)(9) of the Board's Regulation Y. The proposed activities will be conducted throughout the State of Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. West Bend Bancorp, West Bend, Iowa; to acquire through its *de novo* subsidiary, Security Insurance Inc., West Bend, Iowa, Security Insurance Agency, West Bend, Iowa, and thereby engage in the sale of insurance in a town of less than 5,000 in population, pursuant to §225.25(b)(8)(iii) of the Board's Regulation Y. This activity will take place in West Bend, Iowa.

Board of Governors of the Federal Reserve System, July 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17822 Filed 7–19–95; 8:45 am]

BILLING CODE 6210–01–F

First Empire State Corporation, 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 August 14, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. First Empire State Corporation, Buffalo, New York; to acquire 100 percent of the voting shares of M&T Bank, National Association, Oakfield, New York, a *de novo* bank.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Bancorp, Inc., Lebanon, Virginia; to acquire 100 percent of the voting shares of First Bank and Trust Company of Tennessee, Johnson City, Tennessee, a *de novo* bank.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Ameribank Bancshares, Inc., Hollywood, Florida; to merge with First National Bancshares, Inc., Hollywood, Florida, and thereby indirectly acquire First National Bank of Hollywood, Hollywood, Florida.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Shorebank Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Indecorp Inc., Chicago, Illinois, and thereby indirectly acquire Independence National Bank, Chicago, Illinois, and Drexel National Bank, Chicago, Illinois.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 95.25 percent of the voting shares of Farmers & Merchants Bank of Beach, Beach, North Dakota.

F. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National Corporation of Ardmore, Inc., Ardmore, Oklahoma; to acquire 50.50 percent of the voting shares of Bank of Love County, Marietta, Oklahoma.

G. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Central Texas Bankshare Holdings, Inc., Columbus, Texas; to acquire 12.7 percent of the voting shares of Hill Bancshare Holdings, Inc., Weimar, Texas, and thereby indirectly acquire Hill Bank & Trust Company.

2. Columbus State Bankshare Holdings, Inc., Wimington, Delaware; to acquire 25.4 percent of the voting shares of Hill Bancshare Holdings, Inc., Weimar, Texas, and thereby indirectly acquire Hill Bank & Trust Company.

3. Maedgen & White, Ltd., Lubbock, Texas; to become a bank holding company by acquiring 10.71 percent of the voting shares of Plains Capital Corporation, Lubbock, Texas, which owns 100 percent of the voting shares of Plains National Bank of West Texas, Lubbock, Texas, and to indirectly acquire 100 percent of the voting shares of Friona Bancorporation, Inc., Friona, Texas, which owns 100 percent of the voting shares of Friona State Bank, Friona, Texas.

4. Plains Capital Corporation, Lubbock, Texas; to acquire 100 percent of the voting shares of Friona Bancorporation, Inc., Friona, Texas, which owns 100 percent of the voting shares of Friona State Bank, Friona, Texas.

Board of Governors of the Federal Reserve System, July 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17823 Filed 7–19–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Hearings on FTC Policy in Relation to the Changing Nature of Competition

AGENCY: Federal Trade Commission.

ACTION: Notice of public hearing and opportunity for comment.

SUMMARY: The Federal trade Commission (''FTC'' or ''Commission'') announces that it will hold hearings this fall on whether there have been broad-based changes in the contemporary competitive environment that require any adjustments in antitrust and consumer protection enforcement in order to keep pace with those changes. The core provisions of antitrust and consumer protection law serve as effective tools against the exercise of unrestrained private economic power and the deception and abuse of consumers. Enforcement that results in vigorous competition in domestic markets also best facilitates international competitiveness and advancements in innovation-driven industries. However, in order to help ensure that antitrust and consumer protection law will continue to protect the operation of the free market and unimpeded consumer choice, the FTC will examine whether adaptations in the enforcement of those laws are warranted in light of changes in the nature of global and innovation-based competition.

The Commission anticipates the hearings to address whether any accommodations in the law or enforcement policy are warranted in the following areas in light of any developments in global competition and innovation: (1) the measurement of market power; (2) the ability of firms to enter new markets; (3) treatment of efficiencies in merger and nonmerger areas; (4) treatment of efficiencies in innovation, particularly those resulting from collaboration; (5) failing firms or distressed industries; (6) the impact of antitrust and consumer protection law on small businesses; (7) the relationship of antitrust to intellectual property law; (8) foreclosure, access and efficiency issues related to networks and standards; (9) strategic conduct in the context of innovation-based competition; (10) cross-border consumer protection issues (such as standard setting, product labelling harmonization, and/or technology-related scams); and (11) agency institutional processes (such as quality of evidence and burden of proof; safe harbors; evidence gathering). The hearings will be transcribed and placed on the public record. Any comments received also will be put in the public record. The hearings may cover additional related topics if the Commission determines it would be advisable to do so.

DATES: The hearings will begin in early October, 1995. Specific dates will be provided in a later notice and in press releases. When in session, the hearings will be held at the FTC headquarters, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. The hearings will conclude by the end of the year. All interested parties are welcome to attend. Requests to participate in the hearings should be submitted before August 31, 1995, or earlier if at all possible. Any interested person may submit written comments responsible to any of the topics to be addressed; such comments should be submitted before the end of the hearings.

ADDRESSES: To facilitate efficient review of public comments, all comments should be submitted, if possible in electronic and written form. Electronic submissions should be on either a 5 and ¼ or 3 and ½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs

based on DOS are acceptable. Files from other operating systems should be submitted in ASCII text format.) Submissions should be captioned ''Comments on Hearings on Global Competition and Innovation'' and addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Notice of interest in participating in the hearings also should be addressed in writing to the Office of the Secretary at the above address.

FOR FURTHER INFORMATION CONTACT: Susan DeSanti or Debra A. Valentine, Policy Planning, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Room 503, Washington, D.C. 20580; or by telephone (202) 326–2167 or (202) 326–2390. Electronic Mail Address: susan.desanti @ftc.gov, or debra. valentine @ftc.gov. A detailed agenda for the hearings will be available on the FTC Home Page (http://www.ftc.gov), through various publications, and through Sula Miller at (202) 326–3190.

SUPPLEMENTARY INFORMATION: The Commission is examining its role in enforcing consumer protection and antitrust laws in light of the above issues. The Commission expects that the hearings will provide the information necessary to determine what, if any, adjustment may be desirable. After the hearings, the Commission intends to issue a report, which may indicate changes it intends to adopt or recommend, areas for further study, or coordinated action with the Department of Justice. The Commission has general authority under the FTC Act to interpret its substantive laws through guidelines, advisory opinions, and policy statements.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–17879 Filed 7–19–95; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061995 AND 063095

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Boehringer Ingelheim International, GmbH, Isis Pharmaceuticals, Inc., Isis Pharmaceuticals, Inc	95–1271	06/19/95
Pure Tech International, Inc., Pure Tech International, Inc., Ozite Corporation	95–1529	06/19/95
St. Luke's Health Network, Inc., LifeQuest, Inc., LifeQuest, Inc	95–1756	06/19/95
Trustees of the University of Pennsylvania, Inc., Presbyterian Medical Center Foundation, Presbyterian Medical Center of Philadelphia	95–1799	06/19/95
Joslyn Corporation, Cyberex, Inc., Cyberex, Inc	95–1842	06/19/95
Acadia Partners, L.P., CIGNA Corporation, Quebec Street Investments, Inc	95–1860	06/19/95
Coflexip, S.A., DeepTech International, Inc., FPS Laffit Pincay	95–1862	06/19/95
DeepTech International Inc., DeepTech International, Inc., FPS Laffit Pincay	95–1863	06/19/95
Comstock Resources, Inc., Sonat Inc., Sonat Exploration Co., Crosstex Pipeline, Inc	95–1864	06/19/95
Chieftain International, Inc., Kuwait Petroleum Corporation (a Kuwait corporation), Santa Fe Minerals, Inc	95–1865	06/19/95
Enron Corp., Kuwait Petroleum Corporation (a Kuwait corporation), Santa Fe Minerals, Inc	95–1866	06/19/95
WICOR, Inc., W. Ted Dudley, Hypro Corporation	95–1867	06/19/95
McCown de Leeuw & Co. III, L.P., Mr. Ray A. Wilson, Family Fitness Holding Company, Inc	95–1873	06/19/95
Northwestern Healthcare Network, Northwest Community Healthcare, Northwest Community Healthcare	95–1874	06/19/95
H.R. Lenfest, Tele-Communications, Inc., South Jersey Cablevision Associates	95–1876	06/19/95
Tele-Communications, Inc., H.R. Lenfest, South Jersey Cablevision Associates	95–1877	06/19/95
The Williams Companies, Inc., Texaco Inc., Pekin Energy Company	95–1878	06/19/95
The Williams Companies, Inc., CPC International Inc., Pekin Energy Company	95–1879	06/19/95
E. Stanley Kroenke, c/o ITB Football Company, LLC, Georgia Frontiere, Los Angeles Rams Football Company, Inc	95–1882	06/19/95
Life Science International PLC (a British company), Sundstrand Corporation, Spectronics Instruments, Inc	95–1883	06/19/95
Bernard J. Ebbers, Hill-Behan Lumber Company, Hill-Behan Lumber Company	95–1886	06/19/95
Keystone Holdings Partners, L.T., ITT Corporation, ITT Federal Savings Bank, FSB	95–1888	06/19/95
Petro Source Partners, Ltd., Fremont Group, Inc., Petro Source Investments, Inc	95–1889	06/19/95
MCI Communications Corporation, Darome Teleconferencing, Inc., Darome Teleconferencing, Inc	95–1891	06/19/95
General Motors Corporation, ITT Corporation, ITT Federal Savings Bank, FSB	95–1895	06/19/95
Peter Howard, Home Innovations, Inc., Home Innovations, Inc	95–1896	06/19/95
E.I. du Pont de Nemours and Company, Kerr-McGee Corporation, Kerr-McGee Refining Corporation	95–1898	06/19/95
Integrated Health Services, Inc., IntegraCare, Inc., IntegraCare, Inc	95–1901	06/19/95
Snap-On Incorporated, Edge Diagnostic Systems, Edge Diagnostic Systems	95–1729	06/20/95
Smith & Nephew plc, American Home Products Corporation, Acufex Microsurgical, Inc	95–1754	06/20/95
BI Associates, L.P., Bruno's, Inc., Bruno's, Inc	95–1761	06/20/95
VEBA AG, Albemarle Corporation, Albemarle Corporation	95–1801	06/20/95
Kelso Partners IV, L.P., H. John Douglas, Douglas Broadcasting, Inc.	95–1847	06/20/95
GranCare, Inc., Evergreen Healthcare, Inc., Evergreen Healthcare, Inc	95–1854	06/20/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061995 AND 063095—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Olsten Corporation, Hooper Holmes, Inc., Hooper Holmes, Inc	95–1870	06/20/95
Hooper Holmes, Inc., Olsten Corporation, American Service Bureau, Inc	95–1871	06/20/95
BTR plc, Raymond Roncari, Roncari Industries, Inc	95–1894	06/20/95
Station Casinos, Inc., Frank J. Fertitta, Jr., Texas Gambling Hall & Hotel	95–1902	06/20/95
VIAG AG, Donald L. Blumenthal, Steel Warehousing, Inc	95–1904	06/20/95
Interbrew S.A. (a Belgian company), John Labatt Limited (a Canadian company), John Labatt Limited	95–1915	06/20/95
International Paper Company, Westinghouse Electric Corporation, Westinghouse Electric Corporation	95–1765	06/21/95
International Business Machines Corporation, Lotus Development Corporation, Lotus Development Corporation	95–1872	06/21/95
Schwarz Pharma AG, LEMQ, Key Trust Company of Ohio, N.A., Central Pharmaceuticals, Inc	95–1857	06/22/95
Schwarz Pharma AG, Block Drug Company, Inc., Block Drug Company, Inc	95–1858	06/22/95
Primark Corporation, N.V. Verenigd Bezit VNU, VNU USA, Inc. and Newco, Inc	95–1835	06/26/95
Metropolitan Life Insurance Company, ASKO Deutsche Kaufhaus A.G. (a Germany company), Furr's Supermarkets, Inc	95–1841	06/26/95
Barrett Resources Corporation, Plains Petroleum Company, Plains Petroleum Company	95–1856	06/26/95
Associated Insurance Companies, Inc., The Community Mutual Insurance Company, The Community Mutual Insurance Company	95–1859	06/26/95
Celpage, Inc., Thomas H. Lee Equity Partners, L.P., THL-TPI Holding Corporation and its subsidiary	95–1880	06/26/95
Manor Care, Inc., In Home Health, Inc., In Home Health, Inc	95–1903	06/26/95
Wictor Forss, Ashlawn Energy, Inc., Ashlawn Energy, Inc	95–1905	06/26/95
Henry Schein, Inc., Chemed Corporation, The Veratex Corporation	95–1907	06/26/95
MCI Communications Corporation, The News Corporation Limited, The News Corporation Limited	95–1908	06/26/95
Gerald E. Kimmel (Kevco, Inc.), Service Supply Systems, Inc., Service Supply Systems, Inc	95–1911	06/26/95
Lumbermens Mutual Casualty Company, Westinghouse Electric Corporation, Lexington Homes, Inc	95–1917	06/26/95
Nellcor Incorporated, Puritan-Bennett Corporation, Puritan-Bennett Corporation	95–1918	06/26/95
International Metals Acquisition Corporation, Adage, Inc., Niagara Cold Drawn Corp	95–1921	06/26/95
General Electric Company, ITT Corporation, ITTML, Inc	95–1922	06/26/95
Vencor, Inc., The Hillhaven Corporation, The Hillhaven Corporation	95–1923	06/26/95
K-Tec Associates, L.P., Rockwell International Corporation, Reliance Comm/Tec Corporation	95–1924	06/26/95
American Financial Group, Inc., La Confederation des caisses populaires et d'economie, Laurential Capital Corporation	95–1927	06/26/95
Dura Pharmaceuticals, Inc., Abbott Laboratories, Ross Products Division of Abbott	95–1932	06/26/95
Sara Lee Corporation, Ricardo Cisneros, Spalding & Evenflo Companies, Inc	95–1934	06/26/95
Vestar Equity Partners, L.P., Cabot Corporation, Cabot Safety Corporation	95–1935	06/26/95
Sumner M. Redstone, Okabena Partnership—V–8, Mid-America Entertainment Company	95–1936	06/26/95
Metropolitan Life Insurance Company, Apollo Real Estate Investment Fund, L.P. (Cayman Island), JM/AP Investors I, L.P.	95–1937	06/26/95
McClatchy Newspapers, Inc., The News & Observer Publishing Company, The News & Observer Publishing Company	95–1939	06/26/95
Sara Lee Corporation, Scesaplana Settlement (an irrevocable trust), Spalding & Evenflo Companies, Inc	95–1940	06/26/95
Motorola, Inc., Bracebridge International Limited, Mocel, Inc	95–1944	06/26/95
Code, Hennessy & Simmons II, L.P., George F. King, Kirby Building Systems, Inc	95–1947	06/26/95
KAMAX-Werke Rudolf Kellerman Gmbh & Co. KG, Osterode, G.B. Dupont Co., Inc., G.B. Dupont Co., Inc	95–1948	06/26/95
Tyler Capital Fund, L.P., American Trading and Production Corporation, American Trading and Production Corporation	95–1950	06/26/95
Robert W. Affholder, Insituform Technologies, Inc., Insituform Technologies, Inc	95–1952	06/26/95
Insituform Technologies, Inc., Insituform Mid-America, Inc., Insituform Mid-America, Inc	95–1953	06/26/95
Jerome Kalishman and Nancy F. Kalishman, Insituform Technologies, Inc., Insituform Technologies, Inc	95–1954	06/26/95
La Quinta Inns, Inc., AEW Partners, L.P., La Quinta Development Partners, L.P	95–1955	06/26/95
AEW Partners, L.P., La Quinta Inns, Inc., La Quinta Inns, Inc	95–1956	06/26/95
The Rugby Group Plc, Guarantee Security Life Insurance Co., Pioneer Plastics Corporation	95–1957	06/26/95
Hoechst Aktiengesellschaft, The Dow Chemical Company, Marion Merrell Dow Inc	95–1630	06/27/95
Boral Limited, an Australian Corporation, Isenhour Brick & Tile Company, Inc., Isenhour Brick & Tile Company, Inc	95–1786	06/28/95
PLATINUM technology, inc., Altai, Inc., Altai, Inc	95–1776	06/29/95
James W.F. Brooks, K.S.G., Inc., K.S.G., Inc	95–1906	06/29/95
Summit Ventures III, L.P., Suburban Ostomy Supply Co., Inc., Suburban Ostomy Supply Co., Inc	95–1984	06/29/95
Servico, Inc., Triple T Inns of Pennsylvania, Inc., Beck Summit Hotel Management, L.L.C	95–2007	06/29/95
Furman Selz Investors L.P., Media/Communications Partners Limited Partnership, Double L Broadcasting Limited Partnership	95–1705	06/30/95
Mohammed Al-Amoudi, Castle Energy Corporation, Indian Refining & Marketing Inc., Indian Refining	95–1958	06/30/95
S.A. Louis Dreyfus et Cie, New York Life Insurance Company, New York Life Insurance Company	95–1961	06/30/95
S.A. Louis Dreyfus et Cie, America Exploration Company, American Exploration Company	95–1962	06/30/95
Classic Communications, Inc., Lawrence Flinn, Jr., United Video Cablevision, Inc., Assets	95–1966	06/30/95
RWJ Health Care Corp., Helene Fuld Healthcare, Inc., Helen Fuld Healthcare, Inc	95–1967	06/30/95
GS Capital Partners, L.P., Richard T. Santulli, Executive Jet International, Inc	95–1969	06/30/95
The Rouse Company, The Rouse Company, Santa Monica Place Associates	95–1971	06/30/95
Alliance Entertainment Corp., Birchwood Settlement Trust, INDI Holdings, Inc	95–1974	06/30/95
Guaranty National Corporation, Xerox Corporation, Viking Insurance Holdings, Inc	95–1975	06/30/95
Republic Automotive Parts, Inc., Fred J. Pisciotta, Beacon Auto Parts Company	95–1976	06/30/95
Tele-Communications, Inc., Tele-Communications, Inc., Robin Cable Systems of Tucson and Robin Cable	95–1980	06/30/95
Dean Health Systems, S.C., DeanCare Partnership, The Dean Health Plan, Inc	95–1985	06/30/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061995 AND 063095—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
G. Carl Ball, Alfonso Romo Garza, NEWCO	95–1987	06/30/95
George Ball, Jr., Alfonso Romo Garza, NEWCO	95–1988	06/30/95
The Chase Manhattan Corporation, The Bank of New York Company, Inc., ARCS Mortgage, Inc	95–1992	06/30/95
Cross Country Wireless, Inc., Heartland Wireless Communications, Inc., Heartland Wireless Communications, Inc	95–1993	06/30/95
Heartland Wireless Communications, Inc., Cross Country Wireless, Inc., RuralVision Joint Venture	95–1994	06/30/95
Johnstown America Industries, Inc., Truck Components Inc., Truck Components Inc	95–1995	06/30/95
General Motors Corporation, A.T. Kearney, Inc., A.T. Kearney, Inc	95–1996	06/30/95
General Motors Corporation, A.T. Kearney International, Inc., A.T. Kearney International, Inc	95–1997	06/30/95
Boatman's Bancshares, Inc., Community First Bankshares, Inc., Community First State Bank	95–1998	06/30/95
Hugoton Energy Corporation, Consolidated Oil & Gas, Inc., Consolidated Oil & Gas, Inc	95–1999	06/30/95
First Reserve Secured Energy Assets Fund, Hugoton Energy Corporation, Hugoton Energy Corporation	95–2000	06/30/95
First Reserve Fund V, Limited Partnership, Hugoton Energy Corporation, Hugoton Energy Corporation	95–2001	06/30/95
Comdisco, Inc., Hugoton Energy Corporation, Hugoton Energy Corporation	95–2002	06/30/95
Sumner M. Redstone, Levmark Corp., NDI Video Inc	95–2008	06/30/95
FS Equity Partners III, L.P., Lillian Vernon Corporation, Lillian Vernon Corporation	95–2009	06/30/95
A.L. Ballard, The Prudential Insurance Company of America, Ballard/P Limited Partnership	95–2013	06/30/95
Philip F. Anschutz, Forest Oil Corporation, Forest Oil Corporation	95–2017	06/30/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–17782 Filed 7–19–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Child Welfare Waiver Demonstrations Pursuant to Section 1130 of the Social Security Act (the Act); Titles IV–E and IV–B of the Act; Public Law 103–432

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Public notice.

SUMMARY: This notice amends the Public Notice published in the **Federal Register** on June 15, 1995, by including the mailing address to which proposals must be sent and received by July 31, 1995, to be considered in Round One. Proposals submitted under subsequent deadlines must also be sent to the same address. Administration on Children, Youth and Families, Children's Bureau, Room 2068, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20201, Attn: Michael W. Ambrose.

FOR FURTHER INFORMATION CONTACT: Michael W. Ambrose at (202) 205–8618.

SUPPLEMENTARY INFORMATION: On June 15, 1995, the Administration on Children, Youth and Families published a Public Notice in the **Federal Register** soliciting proposals from State agencies to conduct demonstration projects which involve the waiver of certain requirements of titles IV–B and IV–E, the sections of the Social Security Act which govern foster care, child welfare services, family preservation and support, and related expenses for program administration, training and automated systems.

The address to which these proposals were to be sent was omitted from the Public Notice; and therefore, this amendment clarifies where the proposals must be mailed.

(Catalog of Federal Domestic Assistance Program Numbers 93.645, Child Services-State Grants; 93.658, Foster Care Maintenance; 93.659, Adoption Assistance)

Dated: July 13, 1995.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 95–17890 Filed 7–19–95; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 95F–0163]

Cabot Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cabot Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of high purity furnace black as a colorant for polymers intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by August 21, 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: Vir Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

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 5B4464) has been filed by Cabot Corp., 75 State St., Boston, MA 02109–1806. The petition proposes that the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of high purity furnace black as a colorant for polymers intended for use in contact with food.

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 display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 21, 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: July 5, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–17787 Filed 7–19–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0169]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tri[2(or 4)-C $_{9–10}$-branched alkylphenyl]phosphorothioate as an extreme pressure-antiwear adjuvant in lubricants with incidental food contact.

DATES: Written comments on the petitioner's environmental assessment by August 21, 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: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

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 5B4465) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposes that the food additive regulations be amended in § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) to provide for the safe use of tri[2(or 4)-$C_{9–10}$-branched alkylphenyl]phosphorothioate as an extreme pressure-antiwear adjuvant in lubricants with incidental food contact.

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 display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 21, 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: July 5, 1995

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–17788 Filed 7–19–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0172]

Ciba-Geigy Corp., Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of disodium decanedioate as a corrosion/rust preventative for greases used in lubricants with incidental food contact.

DATES: Written comments on the petitioner's environmental assessment by August 21, 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: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

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 5B4466) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed to amend the food additive regulations in § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) to provide for the safe use of disodium decanedioate as a corrosion/rust preventative for greases used in lubricants with incidental food contact.

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 August 21, 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: July 5, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–17789 Filed 7–19–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0209]

Drug Export; CellCept (Mycophenolate Mofetil) 500 Milligram (mg) Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Syntex Laboratories has filed an application requesting conditional approval for the export of the human drug CellCept (mycophenolate mofetil) 500 mg tablets to the European Union (EU) member countries (Austria, Belgium, Denmark, Germany, Finland, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom) through Switzerland for packaging and labeling.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Syntex Laboratories, 3401 Hillview Ave., P.O. Box 10850, Palo Alto, CA 94303, has filed an application requesting conditional approval for the export of the human drug CellCept (mycophenolate mofetil) 500 mg tablets to the EU member countries (Austria, Belgium, Denmark, Germany, Finland, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom) through Switzerland for packaging and labeling. CellCept (mycophenolate mofetil) is indicated for the prophylaxis of organ rejection and for the treatment of refractory organ rejection in patients receiving allogenic renal transplants. The application was received and filed in the Center for Drug Evaluation and Research on May 22, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 31, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: July 10, 1995.

Betty L. Jones,

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

[FR Doc. 95–17786 Filed 7–19–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0180]

Chiron Vision Corp.; Premarket Approval of Adatomed Silicone Oil OP5000

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Chiron Vision Corp., Irvine, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Adatomed Silicone Oil OP5000. After reviewing the recommendation of the Opthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 4, 1994, of the approval of the application.

DATES: Petitions for administrative review by August 21, 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: Debra Y. Lewis, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2018.

SUPPLEMENTARY INFORMATION: On March 5, 1992, Chiron Vision Corp., Irvine, CA 92718–1903, submitted to CDRH an application for premarket approval of Adatomed Silicone Oil OP5000. The device is an intraocular fluid and is indicated for use as a prolonged retinal tamponade in selected cases of complicated retinal detachments.

On October 28, 1993, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application.

On November 4, 1994, 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 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 August 21, 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: July 5, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–17832 Filed 7–19–95; 8:45 am]

BILLING CODE 4160–01–F

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 53 FR 8978, March 18, 1988) is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

The Office of Training and Communications, Center for Drug Evaluation and Research (CDER) is being established to place stronger emphasis on professional training, and inter- and intra-Center communications. All training and communications functions have been centralized into the new Office.

Under section HF–B, Organization:

1. Delete the subparagraph Office of Management (HFN12), under the Office of the Center Director (HFN1), in its entirety and insert a new subparagraph reading as follows:

Office of Management (HFN12). Monitors the development and operation of planning systems for Center activities and resource allocations and advises the Center Director on Center administrative policies and guidelines and information systems and services.

Directs and counsels Center managers through program evaluation and technological forecasting.

Plans and directs Center operations for financial and personnel management, and office services.

Directs Center organization, management, and information systems.

Manages studies designed to improve processes and resource allocations in the Center.

Advises the Center on contract and grant proposals.

Provides coordination for receipt and distribution of initial drug applications and other related documents.

2. Insert the following new subparagraph, the Office of Training and Communications (HFN13), under the subparagraph titled Office of the Center Director (HFN1).

Office of Training and Communications (HFN13). Prepares, develops, and coordinates Center and Agency responses to drug-related requests under the Freedom of Information Act, Privacy Act, and other statutes.

Provides leadership and direction for all Center internal and external communications.

Plans, coordinates, and evaluates policies, procedures, and programs for the orientation and training of Center staff.

Provides scientific and technical resources and other library services to CDER staff in support of Center and Agencywide needs.

3. Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: July 10, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–17783 Filed 7–19–95; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Institute of Environmental Health Sciences: Opportunity for a Cooperative Research and Development Agreement (CRADA) for Development of Antibodies to the Cancer Metastasis Suppressor Gene KAI1

AGENCY: National Institute of Environmental Health Sciences, National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) seeks an agreement with a company(s) which can pursue commercial development of antibodies to the KAI1, a cancer metastasis suppressor gene (U.S. Patent Application Serial No. 08/430,225). The National Institute of Environmental Health Sciences has also determined that antibodies to this gene can be used in diagnosis of malignant cancers of the prostate and other tissues. A CRADA for the co-development of diagnostic antibodies will be granted to the awardee(s).

ADDRESSES: Proposals and questions about this opportunity may be addressed to Dr. J. Carl Barrett, NIEHS, Mail Drop C2–15, PO Box 12233, Research Triangle Park, NC 27709. Telephone (919) 541–2992; Fax (919) 541–7784; E-mail BARRETT@NIEHS.NIH.GOV.

DATE: Capability statements must be received by NIH on or before September 18, 1995.

SUPPLEMENTARY INFORMATION: The National Institute of Environmental Health Sciences has shown that the KAI1 gene can suppress metastasis of prostate cancer and is downregulated in human malignant prostate cancers. Therefore, it may be of use in distinguishing prostate cancers that will progress and be lethal from nonfatal cancers. The role of this gene in other cancers is currently under investigation. This protein is a transmembrane protein. Antibodies to the extracellular domain of the protein should detect its expression in tissue sections and tumor biopsies and be used in cancer diagnosis and prognosis.

The CRADA is for the development of antibodies to this protein and the development of cancer diagnostic tests.

The awardee will have an option to negotiate an exclusive license to market and commercialize any new antibodies and tests developed within the scope of the research plan.

Role of the NIEHS

1. Provide expression vectors and recombinant protein as antigen for antibody production.
2. Work cooperatively with the company(s) to test antibodies produced for their ability to detect the KAI1 protein and determine its utility in cancer prognosis.

Role of the CRADA Partner

1. Assist in the isolation of recombinant proteins.
2. Develop antisera and monoclonal antibodies to the KAI1 gene.
3. Test the ability of antibodies to detect expression of the protein in histological sections.
4. Develop in cooperation with the NIEHS diagnostic tests for malignant cancers on the basis of KAI1 expression.

Selection criteria for choosing the CRADA partner(s) will include, but will not be limited to, the following:

1. Experience in monoclonal antibody and antisera production.
2. Capability to develop diagnostic tests for screening histological sections.

Dated: July 6, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–17779 Filed 7–19–95; 8:45 am]

BILLING CODE 4140–01–P

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Mr. Arthur J. Cohn, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext 284; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Ultraselective Opioidmimetic Peptides and Pharmacological and Therapeutic Uses Thereof

Lazarus, L.H., Salvadori, S., Temussi, P.A. (NIEHS)
Filed 30 Nov 94
Serial No. 08/347,531

Opioids and opioid receptors mediate a variety of effects in mammalian physiology including the production of analgesia, modification of the secretion of circulating peptide hormones, alteration of body temperature, depression of respiration, gastrointestinal function, and immune system activities. Opioids also have a wide range of therapeutic utilities, such as treatment of opiate and alcohol abuse, neurological diseases, neuropeptide or neurotransmitter imbalances, neurological and immune system dysfunctions, graft refections, pain control, shock and brain injuries. Various subclasses of opioid receptors are implicated in any particular physiological function or disease process. Accordingly, it would be desirable to have opioid drugs that exhibit specificity for one subclass of the receptor so as to avoid undesirable side effects during a therapeutic regimen. This invention provides novel opioidmimetic dipeptides, tripeptides and cyclic peptides which exhibit ultraselective specificity and potency for the δ opiate receptor. Additionally, methods of inducing analgesia and treating drug and alcohol addiction are provided. [*portfolio: Central Nervous System—Therapeutics*]

A Method Of Identifying CFTR-Binding Compounds Useful For Activating Chloride Conductance In Animal Cells

Pollard, H.B., Jacobson, K.B. (NIDDK)
Filed 22 Nov 94
Serial No. 08/343,714 (CIP of 07/952,965 issued as U.S. Patent 5,366,977)

Cystic fibrosis is the most common fatal genetic disease of Caucasians in the world today. The life expectancy of those affected with the disease is approximately 28 years. Cystic fibrosis affects some 30,000 children and young adults in the United States and approximately 24,000 children and young adults in Europe. Cystic fibrosis is caused by mutations in the cystic fibrosis transmembrane regulator (CFTR) gene. Chloride (Cl^-) and sodium transport across epithelial membranes of an individual afflicted with cystic fibrosis is abnormal. Many of the present efforts to combat the disease have focused on drugs that are capable of either activating the mutant CFTR gene product or otherwise causing additional secretion of Cl^- from affected cells. Antagonism of the A_1 adenosine receptor has been shown to result in stimulating Cl^- efflux from cystic fibrosis cells. Many of the drugs currently in use or under development function by antagonizing the A_1 adenosine receptor but lack specificity for the receptor and, thus, produce undesirable side effects. Likewise, antagonism of A_1 adenosine receptors probably will have an additional impact on an animal that is unrelated to the cystic fibrosis affliction. The present invention provides compositions and methods of identifying compositions that overcome these disadvantages, as well as methods of treating cystic fibrosis. The compounds provided activate impaired Cl^- conductance channels and exhibit high potency, low toxicity, and little or no specificity for adenosine receptors. [*portfolio: Internal Medicine—Therapeutics, pulmonary*]

Inhibiting Cell Proliferation By Inhibiting Mitogenic Activity Of Macrophage Migration Inhibitor Factor

Wistow, G.J., Paralkar, V. (NEI)
Filed 16 Nov 94
Serial No. 08/340,826

The control of cell growth is of interest in the understanding of normal physiological activity and pathological conditions such as cancer. Certain mechanisms of cell proliferation in cancer appear to mimic the growth-factor-induced mitogenic pathway. Peptide growth factors act by binding to receptors on the cell surface and inducing gene expression. This invention demonstrates that one of the genes induced by growth factors, macrophage migration inhibitory factor (MIF), is involved in cell proliferation and that inhibiting MIF expression in turn inhibits both peptide-growth-factor-induced and transformed cell proliferation. The invention provides methods for inhibiting cell growth by inhibiting the mitogenic activity of MIF in the cell. Such inhibition can be performed through providing the cell with a nucleic acid that inhibits MIF expression or through inhibiting MIF activity by hindering the binding of MIF to retinoblastoma protein. The invention also provides pharmaceutical compositions having an agent that inhibits the mitogenic activity of MIF in a cell and a pharmaceutically acceptable carrier. This invention would provide a means to inhibit growth factors in cancer cells *in vivo* and thereby prevent

their proliferation. The inhibition of MIF activity *in vitro* is useful to investigate the sequence of events comprising the cell cycle. Issuance of a patent on this invention is currently pending. [*portfolio: Gene-Based Therapies—Therapeutics, oligonucleotide-based therapies, antisense, sequences*]

Cell Tests For Alzheimer's Disease

Alkon, D., Etcheberrigaray, R., Kim, C., Han, Y., Nelson, T. (NINDS)
Filed 26 Sep 94
Serial No. 08/312,202 (CIP of 08/056,456)

Alzheimer's disease represents the fourth leading cause of death in the United States, killing over 100,000 annually, and afflicting some 4 million Americans. Various reports indicate that the incidence of Alzheimer's disease increases with age and estimate that the prevalence of Alzheimer's disease in people over 80 years of age is between 20 and 50%. Under currently available technology Alzheimer's disease can only be presumptively diagnosed by pathological examination of brain tissue during autopsy in conjunction with a clinical history of dementia. The present invention utilizes newly discovered differences between cells from healthy donors and those with Alzheimer's disease. In particular, differences in the levels of a memory associated GTP-binding protein between cells from health donors and Alzheimer's patients are assessed by immunoassay. Thus, the invention provides a quick and reliable test for assessing whether a patient is suffering from Alzheimer's disease. [*portfolio: Central Nervous System—Diagnostics, in vitro, other*]

Allelic Variation Of The Serotonin 5HT2C Receptor

Lappalainen, J., Linnoila, M., Goldman, D. (NIAAA)
Filed 21 Sep 94
Serial No. 08/310,271

An allelic variation of the serotonin 5HT2C receptor that is functionally different from the predominant wild-type receptor. One embodiment of this discovery relates to isolated DNA encoding that serotonin 5HT2C receptor wherein the DNA encodes a serine at amino acid position 23 of the receptor. The isolated DNA may, for example, be provided in a recombinant vector. Preferably the isolated DNA has the nucleic acid sequence of SEQ ID NO:1.

This invention may make it possible to find biochemical and genetic variables that predict vulnerability to psychiatric disorders, including antisocial personality, and therefore predict these behaviors and also facilitate implementation of preventative and therapeutic measures. The patent application is pending, and the technology is available through a non-exclusive license. [*portfolio: Central Nervous System-Research Tools and Reagents, receptors and cell lines*]

Sulfo Derivatives Of Adenosine

Jacobson, K., Maillard, M.C. (NIDDK)
Filed 21 Jul 94
Serial No. 08/278,704 (FWC of 07/914,428)

A newly-developed, novel class of adenosine compounds are valuable for the prevention or treatment of injuries related to oxygen deprivation, or ischemia. Adenosine has numerous physiologic roles in the body including increasing tissue oxygen supply. Certain compounds that bind to adenosine receptors in the body have been found to protect against ischemia-induced tissue injury. Previously, however, adenosine agonists that have been tested for treating or preventing such injuries have caused serious behavioral effects, making them too risky for use in humans. This new class of adenosine agonist are sulfo derivatives of adenosine and do not effectively cross the blood-brain barrier. Thus, they can be used effectively as adenosine agonists—especially in preventing ischemia-induced tissue damage—without the toxic side effects.

Stannylated 3–Quinuclidinyl Benzilates And Methods For Preparing *AQNB

Lee, K.S., He, X–S, Weinberger, D.R. (NIMH)
Filed 19 Apr 94
Serial No. 08/229,837

A unique method for synthesizing tomographic imaging agents has been developed that offers to significantly improve the use of tomographic imaging in studying the brain and other parts of the nervous system. Muscarinic cholinergic receptors (mAChrs) play a vital role in a number of psychological and behavioral responses including sleep, avoidance behavior, learning, and memory. Single-photon emission-computed tomography (SPECT) has emerged as a leading diagnostic tool for diagnosing and researching mAChr activity. At present, the potential of SPECT imaging of muscarinic receptors as a diagnostic and analytical tool has not been fully attained, primarily due to the high cost and difficulty of preparing the tomographic imaging agent *IQNB. This invention overcomes such limitations by halogenating, particularly iodinating, stannylated 3-quinuclidinyl benzilate compounds, which converts them to *AQNB (wherein *A is a halogen). The halogenation of stannylated 3-quinuclidinyl benzilates proceeds in as little as five minutes compared to up to an hour with previous methods. In addition, radiolabeling with this method produces yields of *AQNB as high as 80 percent. [portfolio: Central Nervous System—Research Tools and Reagents; Central Nervous System—Diagnostics]

Method Of Adenovirus-Mediated Cell Transfection

Seth, P., Crystal, R.G., Rosenfeld, M., Yoshimura, K., Jessee, J.A. (NHLBI)

Filed 4 Feb 94

Serial No. 08/191,669

Development of an efficient and less toxic method for adenovirus-mediated cell transfection offers to significantly improve efforts at correcting genetic disorders and other diseases through gene augmentation therapy. Adenoviruses are useful as a vector for gene therapy, since they do not require the host cell proliferation that is necessary to employ retroviral vectors. In addition, adenoviral vectors have low recombination event frequencies. Adenovirus exhibits tropism for the respiratory epithelium, and can infect almost every human tissue including lung, gastrointestinal, liver, brain, salivary glands, kidney, and other tissues. Therefore, adenoviruses are a useful tool in somatic gene therapy of many inheritable and metabolic diseases, particularly those of the lung and gastrointestinal tract. Present approaches for using adenovirus for transfer of nucleic acids are limited in that the specific receptor to the ligand employed (e.g., transferrin) must be present on the cell surface for transfection to be accomplished. Additionally, it was recently discovered that better transfection results are obtained when the DNA is not physically attached to any molecule upon introduction into the cell. This invention overcomes such limitations by incubating the DNA to be transfected with a cationic agent or polycationic liposome and contacting the target cell with the nucleic acids in the presence of adenovirus. Because the nucleic acid(s) is not bound to any molecule capable of effecting its entry into the cell, the transfection is more efficient. Furthermore, no specific ligand need be present for transfection to occur. Issuance of a patent on this invention is currently pending. [portfolio: Gene-Based Therapies—Therapeutics; Gene-Based Therapies—Research Tools and Reagents]

Diagnosing Alzheimer's Disease And Schizophrenia

Merril, C., Johnson, G., Ghanbari, H. (NIMH)

Filed 17 Jun 92

Serial No. 07/904,045

Alzheimer's disease represents the fourth leading cause of death in the United States, killing over 100,000 annually, and afflicting some 4 million Americans. Various reports indicate that the incidence of Alzheimer's disease increases with age and estimate that the prevalence of Alzheimer's disease in people over 80 years of age is between 20 and 50%. Schizophrenia occurs in approximately 1.5% of adults. Over 2.5 million people in the U.S. and nearly 47 million people worldwide suffer from schizophrenia. Under currently available technology Alzheimer's disease can only be presumptively diagnosed by pathological examination of brain tissue during autopsy in conjunction with a clinical history of dementia. In the diagnosis of schizophrenia, the clinician is limited to aberrations of behavior. Although there has previously been no generally accepted laboratory markers for either of these two diseases of the central nervous system it has been discovered that production of certain proteins is increased in acute phase reactions associated with these disorders. The present invention provides methods of diagnosing Alzheimer's disease and schizophrenia by detecting elevated levels of such proteins in a biological sample from a patient either by immunoassay or 2D-gel electrophoresis. [portfolio: Central Nervous System—Diagnostics]

Dated: July 6, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–17780 Filed 7–19–95; 8:45 am]

BILLING CODE 4140–01–P

National Heart, Lung, and Blood Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Race and Gender Differences in Sepsis Mediator Release (Telephone Conference Call).
Date: August 1, 1995.
Time: 1 p.m.
Place: Rockledge II, Room 7204, 6701 Rockledge Drive, Bethesda, Maryland.
Contact Person: Dr. Eric Brown, Rockledge II, Room 7204, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0299.

Purpose/Agenda

To review and evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 14, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–17776 Filed 7–19–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: August 3, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 5210, Telephone Conference.
Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, MD 20892, (301) 435–1176.

Name of SEP: Behavioral and Neurosciences.
Date: August 7, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, MD 20892, (301) 435–1247.

Name of SEP: Behavioral and Neurosciences.
Date: August 8, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, MD 20892, (301) 435–1247.

Name of SEP: Multidisciplinary Sciences.
Date: August 9, 1995.
Time: 9 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, MD 20892, (301) 435–1175.

Name of SEP: Biological and Physiological Sciences.
Date: August 10, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 6154, Telephone Conference.
Contact Person: Dr. David Redmondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, MD 20892, (301) 435–1038.

Name of SEP: Multidisciplinary Sciences.
Date: August 11, 1995.
Time: 12 noon.
Place: NIH, Rockledge II, Room 5104, Telephone Conference.
Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda, MD 20892, (301) 435–1165.

Name of SEP: Biological and Physiological Sciences.
Date: August 11, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 6154, Telephone Conference.
Contact Person: Dr. David Redmondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, MD 20892, (301) 435–1038.

Name of SEP: Clinical Sciences.
Date: August 16, 1995.
Time: 11 a.m.
Place: NIH, Rockledge II, Room 4136, Telephone Conference.
Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, MD 20892, (301) 435–1212.

Name of SEP: Clinical Sciences.
Date: August 21, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 4136, Telephone Conference.
Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, MD 20892, (301) 435–1212.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the

applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 14, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–17775 Filed 7–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Refinement on Clinical Use of New Assays for Direct Detection of Viral Nucleic Acids in Donated Blood, Organs and Tissues (Teleconference Call).
Date: August 1, 1995.
Time: 11 a.m.
Place: 6701 Rockledge Drive, Room 7178, Bethesda, Maryland.
Contact Person: David M. Monsees, Jr., Ph.D., 6701 Rockeledge Drive, Room 7178, Bethesda, Maryland 20892–7924, (301) 435–0270.

Purpose/Agenda

To review and evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 12, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–17777 Filed 7–19–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: August 1, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 5108, Telephone Conference.
Contact Person: Dr. Anthony Carter, Scientific Review Administrator, 6701 Rockledge Drive, Room 5108, Bethesda, MD 20892, (301) 435–1167.

Name of SEP: Microbiological and Immunological Sciences.
Date: August 9, 1995.
Time: 4 p.m.
Place: NIH, Rockledge II, Room 4186.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, MD 20892, (301) 435–1150.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 1995.

Susan K. Feldman,

Committee Management Officer.

[FR Doc. 95–17778 Filed 7–19–95; 8:45 am]

BILLING CODE 4140–01–M

Office of Inspector General

Program Exclusions: June 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of June 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, city, state	Effective date
Program-Related Convictions	
Hill, Russell T., Tierra Verde, FL	07/06/95
Husain, Tasaduq S., Ellicott City, MD	07/06/95
Huynh, Paul T., Seattle, WA	07/18/95
Johnson, Ewart Walter Jr., Louisville, KY	07/06/95
Kaufer, George G., Kingston, PA	07/06/95
Kent, Jimmy A., Louann, AR	07/18/95
Mobley, Angela D., Jacksonville, FL	07/06/95
Motley, Brenda J., Las Cruces, NM	07/06/95
Neese, William D., Marathon, FL	07/06/95
Pacios, Linda, Woburn, MA	07/18/95
Pan, Puthirak, Long Beach, CA	07/18/95
Richardson, Sherry C., Townville, SC	07/06/95
Rood, Robin D., Tierra Verde, FL	07/06/95
Tangi, Ophelia T., Oakland, CA	07/18/95
Thach, Ruong, Long Beach, CA	07/06/95
Turner, Tilley, Hampton, AR	07/18/95
Tyco Clinical Laboratories Inc., Ellicott City, MD	07/06/95
Vargas, Ligaya T., Oakland, CA	07/18/95
Wise, Michelle White, Allen, TX	07/18/95

Subject, city, state	Effective date
Patient Abuse/Neglect Convictions	
Anguiano, Thad, Idaho Falls, ID	07/18/95
Bates, Dorothy Marie, Spencer, OK	07/06/95
Brimmer, Amie, Maysville, NC	07/06/95
Cantu, Aida, Raymondville, TX	07/18/95
Caples, Anthony D., Warren, AR	07/18/95
Davis, Lois, Wynne, AR	07/18/95
Hearvey, Rundal R., Pinedale, CA	07/18/95
Kitson, Robert W., Choctaw, OK	07/18/95
Mask, Lutonia, Spencer, OK	07/06/95
Moore, Joyce M., Hampton, AR	07/18/95
Morris, Lou Vernell, Camden, AR	07/06/95
Newsom, Dena, Longview, TX	07/18/95
Nino, Antonio S., La Grange, CA	07/06/95
Warner, Margaret Denise, Pineville, LA	07/18/95
Williams, Marion, Violet, LA	07/06/95
Williams, Bettie Jenall, Alexandria, LA	07/06/95
Conviction For Health Care Fraud	
Rousey, Fredona, Vicksburg, MS	07/18/95
Shannon, Bertha Mae, Blytheville, AR	07/18/95
Controlled Substance Convictions	
Williams, Ralph Wayne, Hendersonville, TN	07/06/95
License Revocation/Suspension/Surrender	
Allain, Joseph M., Greenwell Springs, LA	07/06/95
Barker, Bruce R., Harlingen, TX	07/18/95
Bromenschenkel, Lynn A., Robbinsdale, MN	07/06/95
Burdo, Kerri, Naugatuck, CT	07/18/95
Dikov, John, Waterbury, CT	07/18/95
Fenske, David M., Southfield, MI	07/06/95
Gabelman, Charles Grover III, New Hartford, NY	07/18/95
Gambee, John E., Eugene, OR	07/18/95
Hudson, Amy, Naugatuck, CT	07/18/95
Kastelic, Robert, Elm Grove, WI	07/06/95
Kowalski, Patricia, Middletown, CT	07/18/95
Lenczyk, Theodore, Newington, CT	07/18/95
McCarty, Clarence A., Monticello, MN	07/06/95
Muir, Cathy L., W Hartford, CT	07/18/95
Patron, Heather, Bridgeport, CT	07/18/95
Paul, Herbert, Monee, IL	07/06/95
Poundstone, Robert B., Westport, CT	07/18/95
Quigley, Brian D., Danbury, CT	07/18/95
Romani, Frank V., Kenosha, WI	07/06/95
Terra, Justin C., Thiells, NY	07/18/95
White, Ellouise A., Alma, WI	07/06/95
Wong, Kai W., Lafayette, CA	07/06/95
Zaki, Omar S., Framingham, MA	07/18/95
Federal/State Exclusion/Suspension	
Bogany, Nelwyn G., Seguin, TX	07/06/95
Castella, Antonio, New York, NY	07/18/95
Koonce, James H., Round Rock, TX	07/06/95
Norris, Judy L., Caldwell, ID	07/18/95
Providing Medically Unnecessary Services	
Brown, Morton	03/29/95
Entity Owned/Controlled By Convicted/ Excluded	
Johnson Medical, Inc., Louisville, KY	07/06/95
Default On Heal Loan	
Bement, Stephen A., St Louis, MO	07/06/95
Bitet, Scott M., Woodhaven, NY	07/18/95
Brown, Douglas K., Claremore, OK	07/06/95
Bruce, Ronald H., Byfield, MA	07/18/95
Clark, Daniel S., Troy, MI	07/06/95
Fawcett, Joe Willis III, Fresno, CA	07/18/95
Fobbs-Pippens, Michel, Atchison, KS	07/06/95
Gearin, Timothy J., Chicoppe, MA	07/18/95
Gordon, Sigismund W. Jr., Southfield, MI	07/06/95
Holsinger, Matthew W., San Mateo, CA	07/06/95
Hultine, Lynn R., Milwaukee, WI	07/06/95
Johnson, Eric D., Victorville, CA	07/18/95
King, Lewis R., Dallas, TX	07/06/95
Meyer, Richard D., Austell, GA	07/06/95
Morgan, Phyllis Jean, Houston, TX	07/06/95
Pinnace, Jeanette L., Ridley Park, PA	07/06/95
Smith, Rhonda L., Kansas City, MO	07/06/95
Soares, Luiz R., Wheaton, IL	07/06/95
Taylor, Gregory P., Corinth, MS	07/06/95
Thomas, Gordon A., Atlanta, GA	07/06/95
Wheeler, Samuel J., Maize, KS	07/06/95
Wibbels, Keith B., Oakhurst, CA	07/18/95
Zoodsma, Kenneth R., Norcross, GA	07/06/95

Dated: July 12, 1995.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 95–17835 Filed 7–19–95; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

National Indian Gaming Commission

ACTION: Notice of proposed appointments to the Commission.

SUMMARY: The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) provides for appointment by the Secretary of the Interior of two associate members of the National Indian Gaming Commission after public notice and an opportunity for comment. Notice is hereby given of the proposed appointment of Thomas J. Foley as an associate member of the Commission.

DATES: Comments must be received by August 21, 1995.

ADDRESSES: Comments should be addressed to: Sharon D. Eller, Director, Division of Personnel Services, Department of the Interior, 1849 C Street NW., Room 5459, Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Sharon D. Eller, (202) 208–6702.

SUPPLEMENTARY INFORMATION: Section 5(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2704(a)) establishes a three-member National Indian Gaming Commission within the Department of the Interior. The Act provides that the Chairman of the Commission is to be appointed by the President with advice and consent of the Senate. The two associate members of the Commission are to be appointed by the Secretary of the Interior (24 U.S.C. 2704(b)(1)). The Act that the Secretary shall publish notice of nominations for the associate member positions in the **Federal Register** and provide an opportunity for public comment (24 U.S.C. 2704 (b)(2)(B)).

Notice is hereby given of the proposed appointment of Thomas J. Foley to be associate member of the Commission for a term of three years.

Mr. Foley served as Ramsey County Attorney, Ramsey County, Minnesota, from January, 1979, through January, 1995. Prior to his election Mr. Foley served as Deputy Commissioner, Administrative and Management Division, Minnesota Department of Corrections, from March 1976 to May 1978. Between 1973 and 1976, Mr. Foley served as a Special Assistant Attorney General, State of Minnesota. His professional activities have included Vice President of the National District Attorneys Association where he served on the Executive Working Group, and as a Representative to the American Bar Association Standards Task Force on Prosecution and Defense Functions.

Mr. Foley is also a member of the Ramsey County Bar Association, Minnesota State Bar Association and the American Bar Association. Mr. Foley holds a Bachelor of Arts from the University of Minnesota (1969), and Juris Doctor from the University of Minnesota Law School (1972). He is the past President and Chairman of the Board, Minnesota County Attorney's Association.

Persons wishing to comment on this proposed appointment may submit written comments to the address identified above. Comments must be received by the date indicated above, which is 30 days from the date of publication of this notice.

Dated: July 18, 1995.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–18014 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[ES–930–05–4111–11–241A; ARES 46225]

(Arkansas): Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease ARES 46225, Miller County, Arkansas, was timely filed and accompanied by all required rentals and royalties accruing from January 1, 1995, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent. Payment of $500 in administrative fees and a $125 publication fee has been made.

The Bureau of Land Management is proposing to reinstate the lease, effective January 1, 1995, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above. This is in accordance with section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)).

FOR FURTHER INFORMATION CONTACT: Gina A. Goodwin at (703) 440–1534.

Dated: July 11, 1995.

Carson W. Culp, Jr.,

State Director.

[FR Doc. 95–17795 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–GJ–M

[AZ–933–05–5410–00–A023; AZA 27169]

Arizona, Conveyance of Federally-Owned Mineral Interests

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: Pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719), the segregation on the following lands is extended for Stewart Title & Trust, Trustee under Trust Number 3411 (AZA 27169):

Gila and Salt River Meridian, Arizona

T. 20 S., R. 13 E.,
Sec. 12, N½N½, SE¼NW¼, N½SE, SE¼ SE¼.

Containing 320 acres.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated from the mining and the mineral leasing laws. The segregation shall terminate upon issuance of a patent, upon final rejection of the application, or 2 years from the publication date, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Evelyn Stob, Land Law Examiner, Arizona State Office, P.O. Box 16563, Phoenix, AZ 85011–6563, (602) 650–0518.

Dated: July 14, 1995.

Mary Hyde,

Acting Chief, Lands and Minerals Operations Section.

[FR Doc. 95–17838 Filed 7–12–95; 8:45 am]

BILLING CODE 4310–32–P–M

[UT–942–1430–01; U–74445]

Proposed Disclaimer of Interest; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has received an application for a Disclaimer of interest for accreted lands along the Virgin River in Washington County, Utah. This notice provides a public comment period for the Disclaimer of Interest.

DATES: Comments should be received by October 18, 1995.

ADDRESSES: Comments should be sent to the State Director, Utah State Office, PO. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Karl Fridberg, Utah State Office, (801) 539–4101.

SUPPLEMENTARY INFORMATION: The following described land has been found suitable for issuance of a disclaimer of interest pursuant to the provisions of section 315 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2770, 43 U.S.C. 1718).

Salt Lake Meridian, Utah

T. 42 S., R. 15 W.,
Beginning at a point which lies S14°10′31″ E 990.51 feet and S 35°00′00″ E 26.59 feet from the North quarter corner of Section 27, Township 42 South, Range 15 West, Salt Lake Base and Meridian, said point being on the Northerly meander line survey of the Virgin River, approved September 3, 1870 and running:
thence N 60°05′52″ E 283.61 feet;
thence S 16°26′11″ E 86.27 feet;
thence S 53°09°16″ W 329/92 feet;
thence S 64°45′27″ W 417.46 feet;
thence N 81°52′29″ W 113/28 feet;
thence S 61°20′26″ W 203.09 feet;
thence S 28°35′41″ W 101.94 feet;
thence S 56°22′17″ W 261.26 feet;
thence S 65°36′25″ W 214.43 feet;
thence S 59°43′11″ W 253.11 feet;
thence S 39°08′28″ W 132.22 feet;
thence S 28°19′08″ W 300.08 feet;
thence N 0°22′20″ W 45.10 feet;
thence N 28°59′10″ E 451.17 feet;
thence N 60°05′52″ E 1556.56 feet to the point of beginning.

Contains ±3.55 acres.

The public is hereby notified that comments may be submitted to the State Director at the address shown above within the comment period identified above. Any adverse comments will be evaluated by the State Director who may modify or vacate this action and issue a final determination. In absence of any action by the State Director, this notice will become the final determination of the Department of the Interior and a disclaimer of interest may be issued 90 days from the publication of this notice.

Tery Catlin,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 95–17894 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–00–M

[CA–018–1990–02]

Recreation Management; Proposed Supplementary Rules; California

ACTION: Proposed supplementary rules.

SUMMARY: This notice proposes the establishment of Supplemental Rules for the management of recreational suction dredging only on Public Lands and associated waters that are withdrawn from mineral entry. These rules would apply to all mineral withdrawn lands administered by the Folsom Resource Area.

Casual use mineral hunting is allowed without a permit in the above defined areas. Casual use mineral hunting is defined as removing gold from the ground using gold pans, sluice boxes, hand shovels, metal detectors, or picks. Casual use mineral hunting does not include any activity using suction

dredges, machinery, water pumps, or explosives.

The use of any suction dredge or water pump (power sluicing) is allowed with a Special Recreation Permit issued by the Bureau of Land Management, Folsom Resource Area. Using machinery to remove rock and soil above the water level of a river or stream, commonly referred to as ''highbanking'', is not allowed. Permits will not be issued for areas designated wild rivers under the Wild and Scenic Rivers Act.

Any persons camping in areas open to camping must comply with the established 14 day camping limit published in the **Federal Register** on October 26, 1983. Exceptions to this established rule will be only with a Special Recreation Permit authorizing the holder to camp longer than 14 days.

Persons holding a Special Recreation Use Permit who fail to follow the stipulations shall have the permit revoked by the Authorized Officer.

No person shall:

1. Operate or possess a suction dredge or water pump (power sluice) without a valid Special Recreation Permit. The definition of possess includes having a suction dredge in the water or on the shore adjacent to water.

2. Remove soil or rock above the water level with any machinery (commonly referred to as ''highbanking'').

3. Camp over the established 14-day limit without having a valid Special Recreation Use Permit.

4. Operate or possess a suction dredge or water pump (power sluice) in violation of California permit requirements or California established seasons. Supplemental Rule Number 4 shall apply to all public lands administered by the Folsom Resource Area Office.

Any person who fails to comply with these Supplemental Rules may be subject to fines up to $100,000 and/or imprisonment not to exceed 12 months. These penalties are specified by Title 43 of the United States Code, section 303 and Title 18 of the United States Code, section 3623.

DATES: Comments should be submitted on or before August 21, 1995. Comments postmarked after August 21, 1995, may not be considered in the decision making process in the final rulemaking.

ADDRESSES: Comments should be sent to: Area Manager, Bureau of Land Management, 63 Natoma Street, Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT: Deane Swickard, 916–985–4474.

SUPPLEMENTARY INFORMATION: Public Lands withdrawn from mineral entry are currently unavailable for recreational mineral hunting by the public. The recreational gold hunter who wishes to suction dredge or gold pan must now locate an area open for mineral entry that is free from claims. This process is very cumbersome to the person who wishes to engage in this recreational activity. Opening some of the withdrawn lands to the recreational gold hunter will greatly increase the opportunities.

The public has expressed a need for places to gold pan and suction dredge without the burden of mining claims. This Supplemental Rule will make available rivers for the recreational gold hunter.

Authority for Supplemental Rules are contained in Title 43 Code of Federal Regulations, subpart 8364.1.

Deane K. Swickard,

Area Manager.

[FR Doc. 95–17796 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–40–M

[CA–018–1220–00]

Recreation Management; Proposed Supplementary Rules; California

ACTION: Proposed supplementary rules.

SUMMARY: This notice proposes the establishment of supplemental rules for the management of public lands along the Middle Fork of the Consumnes River, Folsom Resource Area, Bakersfield District, California. The following rules would apply to Public Land located adjacent to Mt. Aukum Road, El Dorado County, California; specifically, Township 9 North, Range 12 East, Section 19 and Township 9 North, Range 11 East, section 24 of the Mt Diablo meridian

1. No person shall camp overnight. Camp overnight is defined as the use, construction, or taking possession of public lands using tents, shacks, lean-tos, vehicles, huts, blankets, or sleeping bags.

2. No person shall build, attend, maintain, or use a campfire. Campfire is defined as a controlled fire occurring out of doors, used for cooking, branding, personal warmth, lighting, ceremonial, or aesthetic purposes.

3. No person shall possess or consume alcoholic beverages. Alcoholic beverages are defined as beer, wine, distilled spirits, or any other beverage as defined as such by California law.

4. No person shall park or leave a motor vehicle between the hours of 10:00 o'clock PM and 6:00 o'clock AM.

Any person who fails to comply with these supplemental rules may be subject to fines of up to $100,000 and/or imprisonment not to exceed 12 months. These penalties are specified by Title 43 of the United States Code, section 303 and Title 18 of the United States Code, section 3623.

Federal, state, and local law enforcement officers and emergency services personnel, while performing official duties, are exempt from these supplemental rules.

DATES: Comments should be submitted on or before August 21, 1995. Comments postmarked after August 21, 1995, may not be considered in the final rulemaking decision process.

ADDRESSES: Comments can be mailed to the Area Manager, Bureau of Land Management, 63 Natoma Street, Folsom, CA. 95630.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, Telephone 916–985–4474.

SUPPLEMENTARY INFORMATION: This area has a history of an unusual number of law enforcement incidents. Both the BLM and the El Dorado Sheriff's Department receives a large number of complaints from the public concerning activities occurring in this area. These activities became such a concern to the adjacent residents that they organized a public meeting with county and BLM officials. The purpose of these rules are to allow appropriate use of the public lands and provide for the protection of the public and the resources.

Authority for supplemental rules is contained in Title 43 of the Code of Federal Regulations, subpart 8364.1.

D.K. Swickard,

Resource Area Manager.

[FR Doc. 95–17797 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–40–M

[OR–014–95–1610–00:G5–161]

Notice of Availability, Klamath Falls Resource Area; Record of Decision, Resource Management Plan, and Rangeland Program Summary for the Klamath Falls Resources Area of the Lakeview District, Oregon

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (40 CFR 1500.2), and the Federal Land Policy and Management Act of 1976, (43 CFR part 1610 [g]), the Department of the Interior, Bureau of Land Management, Klamath Falls Resource Area of the Lakeview District provides notice of availability of the Record of Decision (ROD), Approved

Resource Management Plan (ARMP), and Rangeland Program Summary (RPS) for the Klamath Falls Resource Area of the Lakeview District. The ARMP will provide the framework to guide land and resource allocations and management direction for the next 10 to 20 years in the Klamath Falls Resource Area of the Lakeview District. This ARMP supersedes the applicable portions of the existing Lost River and Jackson-Klamath management framework plans and other related documents for managing BLM-administered lands and resources in the subject area. The Klamath Falls Resource Area of the Lakeview District is responsible for management of approximately 212,000 acres of partially forested public land and 21,000 acres of non-federal surface ownership with federal mineral estate in Klamath County, just east of the Cascade Range in southern Oregon.

ADDRESSES: Copies of the ARMP/ROD/RPS are available upon request by contacting the Klamath Falls Resource Area of the Lakeview District, Bureau of Land Management, 2795 Anderson Ave., Bldg. 25, Klamath Falls, Oregon 97603. The telephone number is (503) 883–6916. This document has been sent to all those individuals and groups who were on the mailing list for the Klamath Falls Resource Area Proposed Resource Management Plan/Final Environmental Impact Statement. The full supporting record for the approved Klamath Falls Resource Area RMP is also available for inspection in the Klamath Falls Resource Area office, at the office given above. Copies of the draft and final EISs are also available for inspection in the public room at the BLM Oregon/Washington State Office, 1515 S.W. 5th St., Portland, Oregon 97201; and Klamath County library, at 126 S. 3rd St., Klamath Falls, Oregon during normal operating hours.

FOR FURTHER INFORMATION CONTACT: A. Barron Bail, Area Manager, Klamath Falls Resource Area office, Phone (503) 883–6916.

SUPPLEMENTARY INFORMATION: The Klamath Falls Resource Area ARMP/ROD/RPS is essentially the same as the Klamath Falls Resource Area Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS). Virtually no changes to the proposed decisions have been made, however some clarifying language has been made in response to 9 protests the BLM received on the PRMP/FEIS, several comment letters, and as a result of ongoing staff review. Seven alternatives that encompass a spectrum of realistic management options were considered in the planning process. The final plan is a mixture of the management objectives and actions that, in the opinion of the BLM, best resolve the issues and concerns that originally drove the preparation of the plan and also meet the plan elements or adopt decisions made in the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (or Northwest Forest Plan/ROD). The Northwest Forest Plan/ROD was signed by the Secretary of the Interior who directed the BLM to adopt it in its Resource Management Plans for western Oregon. Further, those decisions were upheld by the United States District Court for the Western District of Washington on December 21, 1994.

The overall objective of the plan is to manage the resources in the Klamath Falls Resource Area on an ecosystem basis. Within that ecosystem management framework, the proposed final resource management plan would maintain or improve water quality through a system of Riparian Reserves and best management practices. To contribute to biological diversity, standing trees, snags, and dead and down woody material would be retained.

Ecosystem Management and Forest Products Production

The BLM-administered lands are allocated to Riparian Reserves, Late-Successional Reserves, and General Forest Management Areas. An Aquatic Conservation Strategy will be applied to all lands and waters under BLM administration. An allowable sale quantity for commercial forest products is established.

Ecosystem Management and Livestock Grazing

Grazing management levels, seasons of use, and monitoring guidelines are established. The process for monitoring, evaluating, and amending or revising the plan is described.

Recreation

Management would provide for a wide variety of recreation opportunities, with particular emphasis on enhancement of opportunities for dispersed recreation activities including hunting, fishing, and hiking, as well as providing outdoor recreation activities in areas that are both close to population centers and accessible by vehicles.

Areas of Critical Environmental Concern

The ARMP/ROD designates four new areas of critical environmental concern with the restrictions noted below:

Area name	Acres	Vegetation harvest	ORV use	Mining location	Mineral leasing	Rights-of-way
Miller Creek	2,000	R	P	R	R	R
Yainax Butte	720	R	R	R	R	NC
Upper Klamath River	4,960	R	R	R	R	R
Old Baldy	520	P	P	P	R	P

NC=No Change from existing situation
R=Use is allowed but with restrictions
P=Use is prohibited

The Miller Creek area is designated an area of critical environmental concern to maintain, protect, and/or restore natural processes, wildlife, and scenic values. The area would not be available to planned timber harvest. Livestock grazing would be restricted. Mineral leasing would be subject to no surface occupancy. The area would be closed to off-highway vehicle use (except Round Valley Road area).

The upper Klamath River area, from rim to rim, is designated an area of critical environmental concern to maintain, protect, and/or restore historic, cultural, scenic, fisheries, and wildlife populations and habitat. The

area would not be available for planned timber harvest. Off-highway vehicle use would be limited to designated roads. Grazing would continue at or near current levels. Mineral leasing would be subject to no surface occupancy. The area would not be available for hydroelectric development. The area would be managed for semi-primitive motorized recreation opportunities.

The Yainax Butte area is designated an area of critical environmental concern to maintain, protect, and/or restore natural process and systems. The area would not be available for planned timber harvest. The area would be open to livestock grazing, but could be fenced if necessary to protect plant communities. Off-highway vehicle use would be limited to existing roads. Mineral leasing would be subject to no surface occupancy. The area would be managed for semi-primitive motorized recreation opportunities.

The Old Baldy area is designated an area of critical environmental concern/ research natural area to preserve, protect, and/or restore natural processes or systems. The area would not be available for timber harvest, firewood, or salvage sales. The area would be closed to off-highway vehicle use. The area would remain free of cattle use. Mineral leasing would be subject to no surface occupancy and closed to mineral entry. The area would be managed for semi-primitive motorized recreation opportunities.

Wild and Scenic Rivers

The Secretary of the Interior designated the 11.0 miles of the upper Klamath River as scenic under section 2(a)(ii) of the National Wild and Scenic Rivers Act on September 22, 1994. There is currently litigation over the Secretary's designation. The same river segment was found suitable for designation under section 5 of the National Wild and Scenic Rivers Act in the September 1994, Klamath Falls Resource Area Proposed Resource Management Plan/ Final Environmental Impact Statement and that finding is affirmed, with appropriate management direction for the BLM administered lands, in the Klamath Falls ARMP/ROD. An additional 23.2 miles of rivers, in five segments of four creeks, that were found eligible for designation and studied by the BLM are found not suitable for designation.

Off-Highway Vehicles

The ARMP/ROD makes the following designations for OHV management in the Klamath Falls Resource Area: 102,000 acres will be open; 105,600 acres will be restricted to designated existing roads and trails and/or seasonally closed; and 4,300 acres will be closed to all use, except for specified administrative or emergency uses. The closed areas include 3 acres of the Pacific Crest National Scenic trail, 1,800 acres of administratively withdrawn areas [such as the Lower Klamath Hills wildlife area, Spencer Creek, and progeny test sites], and 2,520 acres in various ACECs. In addition, the ARMP/ ROD provides for road closures to meet ecosystem management objectives. Such closures may be permanent or seasonal, and by use of signs, gates, barriers or total road de-construction and site restoration.

Land Tenure Adjustment

The ARMP/ROD identifies 186,000 acres of BLM administered lands which will be retained in public ownership, 3,000 acres of BLM lands which may be considered for exchange under prescribed circumstances and 23,000 acres of BLM lands which may be available for sale or disposal under other authorized processes. The ARMP also provides criteria for the acquisition of lands, or interests in lands, where such acquisition would meet objectives of the various resource programs. The plan allocates 840 acres as right-of-way exclusion areas and 56,000 acres as right-of-way avoidance areas.

Special Recreation and Visual Resource Management Areas

The plan identifies 4 new or existing Special Recreation Management Areas. They are the Hamaker Mountain SRMA (1,200 acres), the Stukel Mountain SRMA (12,000 acres), the Pacific Crest National Scenic trail SRMA (40 acres), and the Klamath River SRMA (7,400 acres). The plan allocates from 450 to 1,220 acres of BLM administered lands for 15 to 50 existing or potential recreation sites. The plan also allocates lands for 4 to 22 existing or potential trails, totaling 8 to 118 miles. The plan also identifies management objectives for four visual resource management classifications.

Mineral and Energy Resource Management

Approximately 206,600 acres or 98 percent of BLM administered lands remain open to mineral location, and 211,700 acres or almost 100 percent are open to energy and mineral leasing and mineral material disposal.

Dated: July 7, 1995.

Scott R. Florence,

Acting District Manager.

[FR Doc. 95–17840 Filed 7–19–95; 8:45 am]

BILLING CODE 1610–00–P

[OR–080–95–6350–00–G5–161]

Availability of the Resource Management Plan and Record of Decision, Salem, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the resource management plan and record of decision for the Salem District of the Bureau of Land Management, Salem, Oregon.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (40 CFR 1550.2), and the Federal Land Policy and Management Act of 1976, (43 CFR 1610.2 (g)), the Department of the Interior, Bureau of Land Management (BLM), Salem District provides notice of availability of the resource management plan (RMP) and record of decision (ROD) for the Salem District. In addition to describing the decisions, the RMP/ROD provides the framework to guide land and resource allocations and management direction for the next 10 to 20 years in the Salem District. This RMP supersedes the existing Westside Salem and Eastside Salem management framework plans for managing approximately 398,100 acres of mostly forested land and 27,800 acres of non-federal surface ownership with federal mineral estate administered by the Bureau of Land Management in thirteen northwestern Oregon counties.

ADDRESSES: Copies of the RMP/ROD are available upon request by contacting the Salem District Office, Bureau of Land Management, 1717 Fabry Road S., Salem, OR 97306. This document has been sent to all individuals and groups who were on the mailing list for the Salem District Proposed Resource Management Plan(RMP)/ Final Environmental Impact Statement (EIS). The full supporting record for the RMP/ EIS is available for inspection in the Salem District Office at the address shown above. Copies of draft RMP/EIS and proposed RMP/final EIS are also available for inspection in the public room on the 7th floor of the BLM Oregon/Washington State Office, 1515 SW Fifth Street, Portland, OR and public libraries within the Salem District.

FOR FURTHER INFORMATION CONTACT: Bob Saunders, Salem District Office, Bureau of Land Management. He can be reached by telephone number at 503–315–5978 or by FAX at 503–375–5622.

SUPPLEMENTARY INFORMATION: The Salem District RMP/ROD is essentially the same as the Salem District Proposed RMP and Final EIS. Virtually no

changes to the proposed decisions have been made, except for some clarifying language in response to the protests BLM received on the Salem District proposed RMP/ final EIS and as a result of ongoing staff review. The clarifying language concerns:

—Revisions intended to strengthen the link between the RMP and the 1994 Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (or Northwest Forest Plan/ROD).

—Revisions that incorporate guidelines issued by the Regional Ecosystem Office since the issuance of the 1994 record of decision named above. Such guidelines may clarify or interpret the 1994 Record of Decision.

Seven alternatives that encompass a spectrum of realistic management options were considered in the planning process. The final plan is a mixture of the management objectives and actions that, in the opinion of the BLM, best resolve the issues and concerns that originally drove the preparation of the plan and also meet the plan elements or adopt decisions made in the Northwest Forest Plan/ROD. The Northwest Forest Plan/ROD was signed by the Secretary of the Interior who directed the BLM to adopt it in its resource management plans for western Oregon. Further, those decisions were upheld by the United States District Court for the Western District of Washington on December 21, 1994.

Ecosystem Management and Forest Product Production: The RMP/ROD responds to the need for a healthy forest ecosystem with habitat that will support populations of native species (particularly those associated with late-successional and old-growth forests). It also responds to the need for a sustainable supply of timber and other forest products that will help maintain the stability of local and regional economies, and contribute valuable resources to the national economy on a predictable and long-term basis. BLM-administered lands are primarily allocated to Riparian Reserves, Late-Successional Reserves, General Forest Management Area, Connectivity/ Diversity Blocks, and an Adaptive Management Area. An Aquatic Conservation Strategy will be applied to all lands and waters under BLM jurisdiction. A process for monitoring, evaluating and amending or revising the plan is described.

Timber: Approximately 40,600 acres will be managed for timber production. The allowable sale quantity will be 5.7 million cubic feet (34.8 million board feet). To contribute to biological diversity, standing trees, snags, and down dead woody material will be retained.

Special Areas: The RMP/ROD would continue the designation of 21 special areas (i.e., areas of critical environmental concern, research natural areas, outstanding natural areas, an environmental education area, and a scenic corridor) and designate nine new special areas. The RMP/ROD designates or redesignates the following special areas with the noted restrictions.

Name	Acres	OHV. desig.	Leas. min.	Loc./Sal. min.	Timber harvest
A.J. Dwyer	5	Limited	Open—NSO	Closed	No.
Scenic Area: Carolyn's Crown	261	Closed	Open—NSO	Closed	No.
ACEC/RNA: Crabtree/Shafer Creek	961	Limited	Open—NSO	Closed	No.
ACEC/RNA/ONA: Elk Creek	1,577	Closed	Open—NSO	Closed	No-primary zone. Yes-secondary zone [1].
ACEC: Forest Peak	134	Closed	Open—NSO	Closed	No.
ACEC/RNA: Grass Mtn	726	Closed	Open—NSO	Closed	No.
ACEC/RNA: High Peak/Moon Cr	1,538	Closed	Open—NSO	Closed	No.
ACEC/RNA:					
Larch Mtn	183	Closed	Open—NSO	Closed	No.
Env. Ed. Site					
Little Grass Mtn	45	Closed	Open—NSO	Closed	No.
ACEC/ONA: Little Sink	81	Closed	Open—NSO	Closed	No.
ACEC/RNA: Lost Prairie	58	Closed	Open—NSO	Closed	No.
ACEC: Marys Peak	104	Limited	Open—NSO	Closed	No.
ACEC/ONA: Middle Santiam	108	Closed	Open—NSO	Closed	No.
Terrace ACEC: Nestucca River	1,062	Limited	Open—NSO	Closed	No.
ACEC: North Santiam	31	Closed	Open—NSO	Closed	No.
ACEC: Rickreall Ridge	177	Closed	Open—NSO	Closed	No.
ACEC: Saddleback Mtn	151	Closed	Open—NSO	Closed	No.
ACEC/RNA: Sandy River Gorge	400	Closed	Open—NSO	Closed	No.
ACEC/ONA: Sheridan Peak	299	Closed	Open—NSO	Open—AR.	Yes [1].
ACEC: Soosap Meadows	343	Closed	Open—NSO	Closed	No.
ACEC: The Butte	40	Closed	Open—NSO	Closed	No.
ACEC/RNA: Valley-of-the-Giants	51	Closed	N/A [2]	N/A [2]	No.
ACEC/ONA: Walker Flat	10	Limited	Open—NSO	Closed	No.
ACEC: White Rock Fen	51	Closed	Open—NSO	Closed	No.
ACEC: Wilhoit Springs	170	Limited	Open—NSO	Closed	No.
ACEC:					
Willamette River	76	Closed	Open—NSO	Closed	No commercial parcels timber.
Williams Lake	98	Limited	Open—NSO	Closed	No.
ACEC: Yampo	13	Limited	Open—NSO	Closed	No.
ACEC: Yaquina Head	106	Limited	Open—NSO	Closed	No commercial timber.
ACEC/ONA:					

[1] Thinning in timber up to 110 years old.
[2] Mineral resources not federally administered.
ACEC = Area of Critical Environmental Concern.
RNA = Research Natural Area.

ONA = Outstanding Natural Area.
NSO = No Surface Occupancy.
AR = Additional restrictions.
N/A = Not applicable.

All potential areas of critical environmental concern (ACEC) meet the bureau ACEC criteria of relevance and importance.

Wild and Scenic Rivers: Six river segments (aproximately 39 miles) found eligible for designation and studied by BLM are found not suitable for designation. Segments of the Nestucca River and the Molalla River (approximately 28 miles) have been determined to be administratively eligible for further consideration for designation as components of the National Wild and Scenic Rivers System under recreational river classifications. All administratively suitable or eligible (pending further study) river segments will be managed under BLM interim management guidelines pending further legislative or administrative consideration, as applicable. The supporting records for the RMP/ROD include the analyses of river or stream segments.

Off-Highway-Vehicle (OHV) Use: The RMP/ROD makes the following designations for OHV management in the district: approximately 129,000 acres are designated ''open''; 229,200 acres are designated ''limited'' (i.e., vehicle use of existing or designated roads and trails will be allowed) ; and 39,000 acres are designated ''closed'' to all vehicle use, except for specified administrative or emergency uses. The closed areas include wilderness, administratively withdrawn areas, such as seed orchards and progeny test sites, and various special areas. In addition, the RMP/ROD provides for road closures to meet ecosystem management objectives. Such closures may be permanent or seasonal, and will be implemented by use of signs, gates, barriers, or total road deconstruction and site restoration.

Land Tenure Adjustment: The RMP/ROD identifies approximately 160,200 acres of BLM-administered land to be retained in public ownership; 228,000 acres to be considered for exchange under prescribed circumstances; and 9,900 acres to be considered for sale or disposal under other authorized processes. The RMP provides criteria for the acquisition of lands, or interests in lands, where such acquisition would meet objectives of the various resource programs. The plan allocates approximately 24,300 acres as right-of-way exclusion areas and 251,700 acres as right-of-way avoidance areas.

Special Recreation and Visual Resource Management Areas: The RMP/ROD identifies seven special recreation management areas (SRMA), including seven existing areas (Fishermen's Bend, Nestucca River, Quartzville Creek, Salmon River, Sandy River, Table Rock, and Yaquina Head) and seven new areas (Little North Santiam River, Marys Peak, Mill Creek, Molalla River/Table Rock, Mt. Hood Corridor, North Fork Siletz River, and Yellowstone). The existing SRMAs total approximately 13,900 acres and the new SRMAs total approximately 70,800 acres. The RMP/ROD allocates approximately 1,400 acres of BLM-administered lands for 33 existing and potential recreation sites. The plan also identifies 19 existing and potential trails, totaling approximetly 178 miles. Management guidance for four visual resource management classifications is also established.

Mineral and Energy Resource Management: Most BLM-administered lands will remain available for mineral leasing and location of mining claims, but 6,200 acres are or will be closed to leasing for oil and gas and geothermal resources, and 22,100 acres are or will be closed to location of claims.

Van Manning,

Salem District Manager.

[FR Doc. 95–17908 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–33–P

[UT–067–05–1990–04; B43 CFR Part 1600]

Notice of Intent; Amendment to Resource Management Plan; San Rafael Resource Area, Price, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This notice is to advise the public that the Bureau of Land Management (BLM) is proposing to amend the San Rafael Resource Management Plan (RMP) approved May 24, 1991, to address the impacts of mining law administration activities in Emery County, Utah. The amendment will also address land exchanges within the resource area.

DATES: For a period of 30 days from date of publication of this notice in the **Federal Register**, interested parties may submit comments on the issues to be addressed in the subsequent Environmental Analysis.

FOR FURTHER INFORMATION CONTACT: Penny Dunn, Area Manager, San Rafael Resource Area, 900 North 700 East, Price, Utah 84501. Existing planning documents and information are available at the above address or telephone (801) 637–4584. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the San Rafael RMP, which includes lands in Emery County. The proposed amendment would address the impacts of exploration and mining of locatable minerals such as gypsum, gold, and uranium. The existing plan does not address mining impacts of sufficient scope to cover current and future activity. An environmental analysis will be prepared to assess the impacts or the best projected development scenario and alternatives. In addition, the proposed amendment will address land exchanges which would enable the BLM to meet the goals and objectives set forth in the San Rafael RMP. The existing plan does not address a full spectrum of exchange opportunities. An environmental analysis will be prepared to assess the impacts of anticipated exchange proposals.

Dated: July 6, 1995.

Katherine Kitchell,

District Manager.

[FR Doc. 95–17837 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–DQ–P

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Filing was effective at 10:00 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Acting Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E–2845, Sacramento, CA 95825, 916–979–2890.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Mount Diablo Meridian, California

T. 27 N., R. 14 E.,—Dependent resurvey, and subdivision of fractional section 15, (Group 1064) accepted April 10, 1995, to meet certain administrative needs of the BLM, Susanville District, Eagle Lake Resource Area.

T. 32 N., R. 6 W.,—Dependent resurvey, corrective dependent resurvey, and subdivision of section 24, (Group 1039) accepted May 1, 1995, to meet certain administrative needs of the U.S. Forest Service, Shasta-Trinity National Forest.

T. 22 S., R. 13 E.,—Dependent resurvey and subdivision of certain sections, (Group 1087) accepted May 2, 1995, to meet certain administrative needs of the BLM, Bakersfield District, Hollister Resource Area.

T. 32 N., R. 5 W.,—Supplemental plat of the NE ¼ of section 14, accepted June 22, 1995, to meet certain administrative needs of the BLM, Ukiah District, Redding Resource Area.

T. 19 N., R. 6 W.,—Supplemental plat of the NW ¼ of section 5, accepted June 23, 1995, to meet certain administrative needs of the BLM, Ukiah District, Clear Lake Resources Area.

T. 19 N., R. 6 W.,—Supplemental plat of the NW ¼ of section 24, accepted June 23, 1995, to meet certain administrative needs of the BLM, Ukiah District, Clear Lake Resource Area.

San Bernardino Meridian, California

T. 1 N., R. 19 W.,—Dependent resurvey and subdivision of fractional section 31, (Group 1130) accepted April 10, 1995, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T. 22 N., R. 7 E.,—Dependent resurvey, and subdivision of section 31, (Group 1157) accepted April 10, 1995, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 8 N., R. 2 W.,—Supplemental plat of section 3, accepted April 14, 1995, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 7 N., R. 15 W.,—Supplemental plat of the NW ¼ of section 26, accepted April 29, 1995, to meet certain administrative needs of the U.S. Forest Service, Angeles National Forest.

T. 7 N., R. 5 W.,—Supplemental plat of sections 2, 3, 4, and 6, accepted April 28, 1995, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 9 N., R. 2 W.,—Supplemental plat of sections 22, 23 and 24, accepted April 28, 1995, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 1 N., R. 20 W.,—Dependent resurvey and subdivision of fractional sections 35 and 36, (Group 1111) accepted April 28, 1995, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T. 1 N., R. 18 E.,—Dependent resurvey and metes-and-bounds survey of Tract 37, (Group 1229) accepted May 8, 1995, to meet certain administrative needs of the BLM, California Desert District, Needles Resource Area.

T. 17 S., Rgs. 5 and 6 E.,—Dependent resurvey and subdivision of sections, (Group 1212) accepted May 24, 1995, to meet certain administrative needs of the BIA, Southern California Agency.

T. 7 N., R. 15 W.,—Supplemental plat of the NW ¼ of section 26, accepted May 31, 1995, to meet certain administrative needs of the U.S. Forest Service, Angeles National forest.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: July 11, 1995.

Lance J. Bishop,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 95–17793 Filed 7–20–95; 8:45 am]

BILLING CODE 4310–40–M

[NM–950–05–1420–00]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on August 16, 1995.

New Mexico Principal Meridian, New Mexico

T. 5 N., R. 10 W., Accepted May 25, 1995, for Group 913 NM.

Tierra Amarilla Grant, Rio Arriba County, Accepted May 25, 1995, for Group 904 NM.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: July 10, 1995.

John P. Bennett,

Team Leader, Branch of Cadastral Survey/ Geo Science.

[FR Doc. 95–17794 Filed 7–20–95; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–804653

Applicant: Forth Worth Zoological Park, Ft. Worth, TX.

The applicant requests a permit to import blood samples from wild and captive-held Grand Cayman iguana (*Cyclura nubila lewisi*) from the National Trust for the Cayman Islands, Cayman Islands for enhancement of the survival of the species through scientific research.

PRT–804339

Applicant: San Antonio Botanical Gardens, San Antonio, TX.

The applicant requests a permit to import seeds and cuttings (up to 50 each) of Walker's manioc (*Manihot walkerae*) collected from the wild in Minicipal San Fernando in Tamaulipas, Mexico, to increase the genetic diversity of the captive population, thereby enhancing the propagation and survival of the species.

PRT–804567

Applicant: Vargas Productions, North Hollywood, CA.

The applicant requests a permit to export and re-import a captive-born Asian elephant (*Elephas maximus*) to Water Land Marine World, Cali, Columbia for the purpose of enhancing the survival of the species through conservation education.

PRT–804559

Applicant: Zoological Society of Philadelphia, Philadelphia, PA.

The applicant requests a permit to import two captive-born male giant otter (*Pteronura brasiliensis*) from the Hagenbeck Tierpark, Hamburg, Germany for the purpose of enhancing the survival of the species through conservation education, scientific research and captive propagation.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–690038

Applicant: The Alaska Science Center, Anchorage, AK.

Type of Permit: Take and Import for scientific research.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 200.

Summary of Activity to be Authorized: The applicant has requested renewal and amendment of the permit for take activities to include: chemically immobilize, ear-tag, tattoo, paint-mark, remove tooth, blood sample, measure, weigh, collect samples of blubber, skin, and claw shavings, fit up to 50 bears with a radio telemetry device, (including surgically implantation of a satellite transmitter on male bears, only), measure bio-electrical impedance, recapture and release, and; to import biological samples from legally acquired polar bear for the purpose of scientific research.

Source of Marine Mammals for Research/Public Display: North and Northwest coast of Alaska, pack and fast-ice of the Beaufort, Bering, and Chukchi Seas), and import of samples from Canada, Greenland, Norway, and Russia.

Period of Activity: October 1, 1995 to October 31, 2000.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 14, 1995.

Mary Ellen Amtower,

Acting Chief Branch of Permits, Office of Management Authority.

[FR Doc. 95–17815 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–55–P

U.S. Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below will be submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 208 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092, telephone (703) 648–7343.

Title: State Water Research Institute Program, 30 CFR 401

Abstract: Respondents supply information on eligibility for Federal grants to support water-related research and provide performance reports on accomplishments achieved through use of such funds. This information allows the agency to determine compliance with the objectives and criteria of the grant program.

Bureau Form Number: None

Frequency: Annually

Description of Respondents: State water research institutes.

Annual Responses: 108

Annual Burden Hours: 9072

Bureau Clearance Officer: John Cordyack (703) 648–7313.

Dated: July 4, 1995.

Robert M. Hirsch,

Chief Hydrologist.

[FR Doc. 95–17836 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Intent to Revise Concession Policy

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to revise concession policy.

SUMMARY: On January 17, 1995, the National Park Service (NPS) published for public comment in the **Federal Register** proposed amendments to certain concession policies. Two of these policy amendments have been adopted under separate notice. The remaining policy amendment proposed to eliminate the exemption from franchise fee computation of gross receipts generated by the sale of Native American handicrafts. In reviewing comments received on this proposal, NPS noted that the notice incorrectly limited this exclusion to Native American handicrafts, although the Standard NPS Concession Contract refers to ''genuine United States Indian and native handicraft.''

Because this is a much broader category than indicated in the January 17, 1995, **Federal Register** notice, NPS is publishing a revised policy amendment for comment. Although not required by law to seek public comments on this policy amendment, NPS will consider all comments received in a timely manner in its final decision on this matter. Comments on this policy amendment submitted in response to the January 17, 1995, **Federal Register** notice will also be retained and considered. Respondents to that notice are also invited to amend or expand their comments as a result of this revision.

COMMENT DATE: August 21, 1995.

ADDRESSES: Comments should be made to Robert Yearout, Chief, Concessions Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

SUPPLEMENTARY INFORMATION: For many years, NPS has had a policy which excludes from franchise fee computation the proceeds to concessioners generated by the sale of United States Indian and native handicrafts. The purpose of the policy

was to encourage the sale of such handicrafts by making their sale more profitable to concessioners. However, experience has shown that concessioners generally are not encouraged to stock and sell more United States Indian and native handicrafts as a result of this policy than they would in its absence. Consequently, the exemption from franchise fees constitutes a windfall to concessioners with no overriding benefits to United States Indian or native handcrafters.

According to a recent report from the Department of the Interior Inspector General, this exemption reduced NPS franchise fee revenues by over $2.7 million from 1988 through 1992 from 55 concessions in 43 parks. In addition, the Inspector General criticized NPS for not adequately monitoring merchandising procedures with respect to sale of United States Indian and native handicrafts and stated that NPS personnel often did not have the expertise to verify handicraft authenticity. The Inspector General recommended the elimination of the policy of exempting sales of United States Indian and native handicrafts from franchise fee calculations.

For these reasons, NPS intends to eliminate this exemption from the Standard NPS Concession Contract and to remove it from Chapter 10 of NPS Management Policies.

Dated: July 3, 1995.

John Reynolds,

Acting Director, National Park Service.

[FR Doc. 95–17916 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–70–P

Revision of Certain Concession Policies

AGENCY: National Park Service, Interior.

ACTION: Revision of certain concession policies.

SUMMARY: The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park System. NPS is undertaking a review of its policies concerning concession management activities. Pending completion of a full review, NPS has amended certain specific policies regarding concession contracts as follows: (1) Its current system for determining concessioner franchise fees by eliminating a policy which indicates that a concessioner's franchise fee usually should not exceed 50 percent of the concessioner's pre-tax, pre-franchise fee profit; and (2) revising portions of the NPS rate approval system. NPS had also proposed an amendment to eliminate the policy that franchise fees should not be collected with respect to the sale of Native American handicrafts. However, due to a technical oversight, NPS has determined that it is appropriate to seek additional comments on this policy proposal under a separate notice to assure that all potentially affected parties have an adequate opportunity to comment.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Yearout, Chief, Concessions Division, National Park Service, PO Box 37127, Washington, DC 20013–7127, Tele. (202) 343–3784.

SUPPLEMENTARY INFORMATION: On January 17, 1995, NPS published for public comment in the **Federal Register** proposed amendments to the concession policies described above. Although not required by law to seek public comments on these policy amendments, NPS wished to afford all potentially affected or interested parties an opportunity to comment before making its final decisions on these matters.

NPS received 11 comments concerning their proposal to amend certain management policies. Eight of these comments came from NPS concessioners or associated companies, two from associations representing groups of NPS concessioners, and one comment from an interested environmental organization.

Analysis of Comments

The following is an analysis of comments received on the two policy proposals NPS is adopting under this notice.

1. Franchise Fees

With respect to the elimination of the policy which indicates that a concessioner's franchise fee usually should not exceed 50 percent of the concessioner's pre-tax, pre-franchise fee profit (the 50 percent policy), the majority of those commenting opposed this proposal. This opposition was based on their belief that this change is contrary to the intent of the Concession Policy Act of 1965 and that elimination of the policy would remove needed safeguards from the franchise fee process. Franchise fees would rise, they believe, to inappropriate levels and the subsequent reduced profits would adversely impact services to the visitor, the availability of funds for needed maintenance and improvements, and the incentive to actively participate in the bidding process.

According to statute, franchise fees are to be based on the probable value of the privileges granted by the particular authorization in question, but are secondary to the protection and preservation of the areas and of providing adequate and appropriate services to visitors at reasonable rates. Of primary importance to this process, the statute also requires that franchise fees must be consistent with a reasonable opportunity for the concessioner to realize a profit on the investment.

The 50 percent policy was originally intended as a ''shorthand'' mathematical approximation of the upper limit on franchise fees and was not intended to obstruct the assignment of probable value fees. As this formula had neither an empirical nor theoretical basis, the results of analyses have shown that this 50 percent policy can restrict the assignment of probable value fees and, therefore, does not function in the manner intended. This change in policy simply removes the use of the faulty mathematical approximation and leaves the remaining aspects of the franchise fee process in place. The statutory mandate of a reasonable opportunity for profit in coordination with the probable value determination process provides a powerful safeguard against arbitrary fees. As such, the fears of inappropriately rising fees and bankrupt concessioners would not be possible given these procedural checks and balances.

There were also comments that this change was unnecessary due to the increased professionalism of National Park Service employees and because the current policy allows the setting of fees above this limit. It is this increased professionalism that allows the National Park Service to eliminate this arbitrary and fundamentally unsound policy and still assure concessioners a reasonable opportunity for profit as required by statute. Furthermore, while the policy was originally intended to be used as a guideline to aid in the setting of franchise fees, it has often been interpreted by various parties to the fee setting process as a firm cap. This view has led to confusion and the setting of fees below the probable value of the authorizations involved. The elimination of this policy will end this confusion. Finally, one commenter indicated that the elimination of the 50 percent policy could adversely impact small concessioners if adequate safeguards do not exist. It was suggested that the 50 percent policy be retained for those concessioners under $1 million in annual gross receipts and that safeguards be established to include the

provision that individual concessioner cash needs be taken into account in the fee process, that 5-year averages be used to lessen the weight of abnormal years, and that fixed fee percentages cannot be applied across the board to all concessioners.

While experience has shown that the 50 percent policy has been more of a problem with larger concessioners, it still can result in the application of less than probable value franchise fees for smaller concessioners. In other words, the arbitrary 50 percent policy does not meet statutory requirements for any size of concessioner. Moreover, the suggested safeguards presently exist in the current franchise fee determination system. It should also be noted that in order to secure additional safeguards for the smallest concessioners, concessioners under $100,000 in annual gross receipts pay only 2 percent of gross receipts, and this policy would be unaffected by this change.

One commenter strongly supported the NPS proposal.

In consideration of the foregoing, the 50 percent policy is eliminated.

2. Rate Approval System

With regard to the proposal to amend existing guidelines to make clear that allowing an interim rate schedule is discretionary, 2 commenters expressed concern that tour operators and individual travelers are asking for rates and booking travel well over a year in advance, and the current rate approval system places NPS concessioners at a disadvantage in addressing these advance requests. Current procedures regarding the honoring of rates, contained in Chapter 29 of NPS–48 allow concessioners to accept deposits for individual reservations without securing the rates for the facility or service reserved if the confirmation notice states in bold print that ''Rates are subject to change without notice and are not guaranteed.'' NPS believes that this concept can be applied to increase rates as a result of increased costs.

One commenter objected to the change of the word ''should'' to ''may''. NPS regards this change in wording as a matter of clarification rather than a change in policy. The previous wording was not considered by NPS to limit discretion in the approval of interim rate schedules. The word change does not preclude a rate increase. If NPS determines that an interim rate schedule is justified, it will be approved.

With regard to the elimination of the interim appeal right of concessioners regarding the selection of comparables, 5 commenters objected to this proposal. In addition, one commenter added that delaying the appeal until the whole process had run its course would defeat the real justice of an appeal. It should be noted that the approval of rates and the appeal process applies to all rates, interim or otherwise. NPS recognizes that the selection of comparables plays an integral part in approving rates. However, the crux of the issue is the rate that NPS approves. Any appeal will center on the approved rate and the manner in which it was determined. The selection of comparables may be a part of a rate appeal. However, the existing language would permit a concessioner to appeal on the selection of comparables, and if this proved unsuccessful, to then appeal the approved rate. Conversely, if a concessioner's appeal of an approved rate were unsuccessful, it could then appeal on the basis of the comparables selected. The intent of the amended language is to remove this duplicative appeal tier. NPS believes that the approved rate and the selection of comparables are part of the entire rate approval process, and should not be treated as separate processes for the purpose of appeals. NPS also feels that combining appeals for approved rates and selection of comparables will significantly expedite the entire rate appeal process.

One commenter supported the changes in the rate approval system.

In consideration of the foregoing, the rate approval system policy amendments are adopted.

Dated: July 3, 1995.

John Reynolds,

Acting Director, National Park Service.

[FR Doc. 95–17917 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–70–P

Development Concept Plan and Environmental Impact Statement for the Front Country, Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent.

TITLE: Development Concept Plan and Environmental Impact Statement for the Front Country, Denali National Park and Preserve, Alaska.

SUMMARY: The National Park Service (NPS) is preparing a development concept plan (DCP) and accompanying environmental impact statement (EIS) for the front country of Denali National Park and Preserve. The purposes of the DCP/EIS are to formulate a comprehensive plan for the Denali front country and to evaluate the impacts of alternative development scenarios for the area. The proposed action and alternatives will be developed from public input and comment received at public scoping meetings. Public scoping meetings will be held in Anchorage, Fairbanks, Cantwell, and Healy in the fall of 1995.

The Denali front country is defined to include the Riley Creek entrance/headquarters area and the Denali Park Road corridor to Wonder Lake. The anticipated demand for future uses of these areas has prompted the NPS to initiate this DCP/EIS to address the full scope of existing and potential uses in the front country.

Primary issues that the Denali Front Country DCP/EIS will address are visitor use, environmental constraints, park operations and management concerns, and interrelationships with adjacent areas. Visitor use issues include increasing demand, changing use patterns, visitor experience, access, transportation systems, services, and facilities. Environmental constraints consist primarily of natural and cultural resources, such as limited groundwater supply, unstable permafrost soils, wetlands, important wildlife habitat, historic structures, and aesthetics. Operational and management concerns include the amount and location of seasonal and permanent housing, location and amount of administrative offices, support facilities, and road maintenance standards. Adjacent area concerns include location of facilities and services outside of the park, the ability of adjacent areas to accommodate future development needs, and coordination of access networks.

The EIS will be prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 et seq.) and its implementing regulations at 40 CFR part 1500. The NPS will prepare the EIS in conjunction with preparation of the Denali Front Country DCP.

Interested groups, organizations, individuals and government agencies are invited to comment on the plan at any time. The draft DCP/EIS is anticipated to be available for public review in the spring of 1996. Public meetings will be scheduled in the McKinley Park/Healy area, Fairbanks and Anchorage, Alaska, after release of the draft DCP/EIS. The final EIS is expected to be released in the fall of 1996.

FOR FURTHER INFORMATION CONTACT: Steve Martin, Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Alaska 99755. Telephone (907) 683–2294.

Dated: July 10, 1995.

Marcia Blaszak,

Acting Field Director.

[FR Doc. 95–17893 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–70–P

Final Environmental Impact Statement/ General Management Plan Joshua Tree National Park, California; Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared a final environmental impact statement (FEIS) that describes and analyzes the effects of a proposed and two alternative General Management/Development Concept Plans for Joshua Tree National Monument, Riverside and San Bernardino Counties, California. The approved plans will guide park management over the next 15 years.

The plans selected (*Alternative A*) would improve visitor contact facilities and services at each of the three main entrances and a visitor center would be developed for the west entrance. Opportunities for Wilderness and trail experiences would be expanded. Wayside exhibits and interpretive programs would be updated and expanded. Facilities in existing developed areas would be replaced or redesigned to improve resource protection, aesthetics, and efficiency. Campground locations and capacities are basically unchanged, but campsites would be redesigned. Picnic facilities and day use parking would be expanded somewhat, primarily in already-disturbed areas. Research and resource monitoring and management programs would be increased to enhance resource protection. Management of Wilderness would be enhanced through an array of planned actions that reduce threats to Wilderness by removing incompatible uses and development.

Two alternatives were evaluated: *Alternative B—No Action* would continue current management strategies with no changes in visitor and park support facilities or programs; *Alternative C—Minimum Requirements* would rehabilitate deteriorated facilities in their current locations. Capacities of camp areas and day use parking areas would be unchanged, while the number of picnic sites would be slightly increased. The primary visitor center would remain at the Oasis of Mara.

The draft environmental impact statement and plans (DEIS) were released for public review pursuant to a notice of availability published in the **Federal Register** on August 25, 1994. During the comment period ending November 7, 1994, 144 written comments were received. Thirty-eight persons attended public meetings held on September 14 and 15, 1994. The FEIS incorporates minor modifications and clarifications in response to some comments, although no significant new issues or concerns were surfaced.

SUPPLEMENTARY INFORMATION: The no-action period on this FEIS will extend for 30 days from the date the Notice of Availability is published by the Environmental Protection Agency in the **Federal Register**.

For copies of the FEIS, or for further information, please contact: Superintendent, Joshua Tree National Park, 74485 National Monument Drive, Twentynine Palms, California, 92277, or via telephone at (619) 367–7511.

Dated: June 26, 1995.

Patricia L. Neubachen,

Field Director, Pacific West Field Area.

[FR Doc. 95–17637 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–70–P

Availability of the Final General Management Plan/Implementation Plan Alternatives/Environmental Impact Statement for Lake Chelan National Recreation Area, Washington

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared a Final General Management Plan/ Implementation Plan Alternatives/ Environmental Impact Statement (GMP/ Plans/FEIS) that describes and analyzes a proposal and four alternatives that meet immediate and long-term needs at Lake Chelan National Recreation Area for future management and use of Lake Chelan National Recreation Area, as required by the consent decree that was approved and entered on April 22, 1991, in the United States District Court for the Western District of Washington (Civil Case No. C–89–1342D).

The Draft General Management Plan/ Implementation Plan

Alternatives/Environmental Impact Statement (GMP/Plans/DEIS) was released for public review on August 26, 1994 (59 FR 165), and the public comment period closed November 1, 1994. During this comment period, three public hearings were held and written comments were also received. The GMP/Plans/FEIS contains responses to the comments received and modifications to the document as needed in response to the comments.

Under the proposed action, which was developed in response to public and agency comments on the GMP/ Plans/DEIS, the National Park Service would not manipulate the Stehekin River nor remove or manipulate woody debris except to protect public roads and bridges. The active sand, rock, and gravel borrow pit would be maintained at less than or equal to its current size. Fire suppression, prescribed natural fire, management-ignited prescribed fire, and selective manual fuel reductions would provide more effective fire protection. Firewood would be provided at fair market value, and there would be no guaranteed cordage per year. The airstrip would remain open. Land protection would emphasize high flood influence areas, wetlands, riparian areas, and high visual sensitivity areas. Under the no-action/ minimum requirements alternative, river erosion and flooding would be controlled only to protect life, health, public roads, and bridges. Where feasible, federal lands would be treated with prescribed fire to reduce fuels. Firewood would be obtained from harvesting 1-acre woodlots. The airstrip would remain open. Land protection would emphasize wetlands, shoreline characteristics, high scenic quality, water quality, visitor access, restriction of unsightly development, and development on areas with gradients greater than 20%. Under alternative A, new river shoreline or bank protection structures would be prohibited. The mining of sand, rock, and gravel would be prohibited within the valley. Natural ignitions would be suppressed on the valley floor for the protection of human life and property. Woodlot cutting of firewood would stop immediately. The airstrip would be closed and restored to natural conditions. The Stehekin Valley road between the Landing and Cottonwood Camp would be converted to a trail. All NPS and concession housing and maintenance facilities would be substantially reduced and located at the Landing. Land protection would involve acquisition, on a willing seller/willing buyer basis, or by eminent domain authority, of all private lands within the recreation area. Under alternative B, riverbank protection structures would be allowed if no adverse environmental impacts would result. Mining of sand, rock, and gravel in the valley would be prohibited. Fire and forest fuels would be managed to restore or replicate the natural role of fire. Firewood would be provided at fair market value instead of a set permit fee. There would be no guarantee of firewood cordage per year. The airstrip

would be closed. Land protection would emphasize high flood influence areas, wetland, riparian areas, and high visual sensitivity areas. Under alternative C, protection of public or private improvements threatened by river erosion and flooding would be allowed. The size of the borrow pit would remain constant. Selective manual forest fuel reduction techniques would be used to reduce hazard forest fuel loadings. Firewood would be supplied from administrative wood and natural selection ecoforestry selective cutting from a designated area. The airstrip would be managed by the National Park Service for emergency use only. Land protection would emphasize high flood influence areas, wetlands, and high visual sensitivity areas.

Major impact topics assessed for the proposed action and alternatives include natural and cultural resources and the socioeconomic environment, including the local and regional economy.

SUPPLEMENTARY INFORMATION: The no-action period on this final plan and environmental impact statement will end 30 days after the Environmental Protection Agency has published a notice of availability of the GMP/Plans/FEIS in the **Federal Register**. For further information, contact: Superintendent, North Cascades National Park Service Complex, 2105 State Route 20, Sedro Woolley, WA 98284–1799; telephone (360) 856–5700.

Copies of the GMP/Plans/FEIS will be available at North Cascades National Park Service Complex Headquarters, as well as the following locations: Office of Public Affairs, National Park Service, Department of the Interior, 1849 C Street NW., Washington, DC; National Park Service, Seattle System Support Office, 909 First Ave., Seattle, WA; Stehekin Ranger Station, Lake Chelan National Recreation Area, National Park Service, Stehekin, WA; Chelan Public Library, Chelan, WA; Government Publications, Suzzallo Library, University of Washington, Seattle, WA; and Government Documents, Main Public Library, 100—4th Ave., Seattle, WA.

Dated: July 10, 1995.

Rory D. Westberg,

Superintendent, Columbia Cascades System Support Office, National Park Service.

[FR Doc. 95–17892 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–70–M

Availability and 30-day Comment Period on an Environmental Assessment for a proposed Exchange of Interests in Lands between the National Park Service and Georgetown University

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of an environmental assessment and a 30-day comment period.

SUMMARY: This notice announces the availability of an environmental assessment for a proposed exchange of interests in lands between the National Park Service and Georgetown University.

Written comments on the EA should be received no later than August 21, 1995. A 30-day no action period will follow this comment period and end on September 20, 1995. Written comments on the EA should be submitted to Mr. Robert Stanton; Field Director, National Capital Area; 1100 Ohio Drive SW., Washington, DC 20242.

Copies of the EA are available for review between the hours of 9 a.m. and 4 p.m., Monday through Friday at the following locations: Office of Stewardship and Partnerships; National Capital Area; National Park Service; 1100 Ohio Drive SW., room 201; Washington, DC 20242; and Chesapeake & Ohio Canal National Historical Park Headquarters, Sharpsburg, Maryland 21782. A limited number of copies of the EA are available on request from Mr. Glenn DeMarr, Office of Stewardship and Partnerships, room 201; 1100 Ohio Drive SW., Washington, DC. Inquiries should be directed to Mr. Glenn DeMarr at the above address or on (202) 619–7027.

SUPPLEMENTARY INFORMATION: This proposal is for the exchange of interests in lands between the National Park Service and Georgetown University. The National Park Service intends to obtain from Georgetown University, fee interest in an inholding containing mature, native vegetation and wildlife located within the Chesapeake & Ohio Canal National Historical Park. In exchange, the National Park Service will convey to Georgetown University, a fee interest in another tract in the already developed portion of the waterfront of the Georgetown section of the C&O Canal National Historical Park.

The primary purposes of the proposed exchange are: (1) To allow the National Park Service to acquire and thereby preclude from development, a largely undisturbed inholding featuring mature trees and native vegetation and wildlife, and avoid the disruption of adjacent parkland from regular recreational activities of Georgetown University that could occur on this tract; and (2) consistent with National Park Service studies and regional planning, to provide for placement of a non-motorized boating facility in furtherance of the recreational mandate of the C&O Canal National Historical Park Act, on property with less developed natural features.

By acquiring Georgetown University's tract of land, the National Park Service can ensure that the tract will remain in its present undeveloped condition, consistent with long-term planning for the area. Placement of a non-motorized boating facility on the other tract conforms with the conclusions reached in prior recreational boating studies.

Dated: July 14, 1995.

Terry R. Carlstrow,

Acting Field Director, National Capital Area.

[FR Doc. 95–17891 Filed 7–19–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–3 (Sub-No. 119X)]

Missouri Pacific Railroad Company; Abandonment Exemption; in Sebastian, Franklin, and Logan Counties, AR

[Docket No. AB–3 (Sub-No. 1X)]

Fort Smith Railroad Company; Discontinuance of Service Exemption in Sebastian, Franklin, and Logan Counties, AR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Missouri Pacific Railroad Company and discontinuance of service by Fort Smith Railroad Company over 31.03 miles of rail line (part of the line known as the Paris Branch) between milepost 522.39, east of Fort Chaffee, AR, and the end of the track at milepost 553.42, near Paris, AR, in Sebastian, Franklin, and Logan Counties, subject to environmental and standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 19, 1995. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

filed by July 31, 1995. Petitions to stay must be filed by August 4, 1995. Requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) and requests for interim trail use/rail banking under 16 U.S.C. 1247(d) must be filed by August 9, 1995. Petitions for reopening must be filed by August 14, 1995.

ADDRESSES: Send pleadings, referring to Docket Nos. AB–3 (Sub-No. 119X) and AB–387 (Sub-No. 1X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Petitioners' representatives: Daniel A. LaKemper, General Counsel, Fort Smith Railroad Company, 1318 South Johanson, Peoria, IL 61607, and Joseph D. Anthofer and Jeanna L. Regier, Missouri Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's Decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: July 6, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–17855 Filed 7–19–95; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on July 11, 1995, three proposed consent decrees in *United States* v. *Joseph M. Blosenski, Jr., et al.,* Civ. A. No. 93–1976, were lodged with the United States District Court for the Eastern District of Pennsylvania. The complaint in this action seeks recovery of costs and injunctive relief under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. §§ 9606, 9607(a). This action involves the Blosenski Landfill Superfund Site in West Caln Township, Pennsylvania.

Under the first proposed Consent Decree, the ''Generator Decree'', twenty (20) settling defendants are required to implement future work at the Site and pay past costs of approximately $3.175 million. In addition, this Consent Decree resolves the United States' penalty claims against two of these defendants. The second consent decree, the ''Blosenski Decree'', is a ''cash-out'' decree which requires a payment of $1.1 million and resolves the United States' cost and penalty claims against Joseph M. Blosenski, his wife Ada Blosenski and related corporations. The third decree, the ''Barry Decree'' is also a ''cash-out'' decree which requires a payment of $5,000 and resolves the United States' cost claims against Alexander Barry.

The Department of Justice will receive comments relating to these proposed consent decrees for a period of thirty days from the date of publication of this notice. 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, DC 20044, and should refer to *United States* v. *Joseph M. Blosenski, Jr. et al.,* DOJ Reference No. 90–11–2–556A.

The proposed consent decrees may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut St., Philadelphia, PA; the Region III office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pa.; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of each proposed decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, the specific decree involved, and enclose a check in the amounts as follows: Generator Decree—$27.00, Blosenski Decree—$7.75, and Barry Decree—$6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Section Chief Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 95–17841 Filed 7–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act

In accordance with 42 U.S.C. § 9622(d), 42 U.S.C. § 6973(d), and 28 CFR 50.7, notice is hereby given that on July 11, 1995, a proposed consent decree in *United States of America* v. *Coakley Landfill, Inc., et al.,* Civil Action No. 95–339M, was lodged with the United States District Court for the District of New Hampshire. The United States' complaint sought injunctive relief and recovery of response costs under the Comprehensive Environmental Response, Compensation, Liability Act (''CERCLA'') and the Resource Conservation and Recovery Act (''RCRA''), against Coakley Landfill, Inc., Ronald Coakley, Neil Coakley, Deborah Broza, and Patricia Case in regard to the Coakley Landfill Superfund Site in the Towns of North Hampton and Greenland, New Hampshire. The consent decree provides that the defendants will pay $686,927.00 to the Superfund for response costs incurred and to be incurred by the U.S. Environmental Protection Agency (''EPA''), $89,261.00 to the U.S. Department of the Interior (''DOI'') for natural resource damages, and $66,212.00 to the State of New Hampshire for response costs incurred and to be incurred by the State, plus interest. The consent decree also provides that the defendants will provide access to and institutional controls on property they own at the Site in connection with response actions at the Site. The Consent Decree includes a covenant not to sue by the United States under Sections 106 and 107 of the CERCLA, 42 U.S.C. §§ 9606 and 9607, and under Section 7003 of RCRA, 42 U.S.C. § 6973.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Coakley Landfill, Inc., et al.,* D.J. Ref. 90–11–2–678A. 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 office of the United

States Attorney, 55 Pleasant St., Rm. 312, Concord, New Hampshire 03301 and at the Region I office of the Environmental Protection Agency, One Congress St., Boston, Massachusetts 02203. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G St. NW., 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, 1120 G St., NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost) payable to the ''Consent Decree Library.''

Bruce S. Gelber,

Acting Chief Environmental Enforcement Section Environment & Natural Resources Division.

[FR Doc. 95–17842 Filed 7–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that on July 11, 1995, a proposed settlement agreement was lodged with the United States Bankruptcy Court for the Northern District of Ohio at Canton in *In re SiMETCO, Inc.*, Case No. 93–61772. The proposed settlement agreement settles an amended proof of claim filed by the United States on behalf of the United States Environmental Protection Agency (EPA) relating to costs incurred and to be incurred by the United States pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9607, at the Hylebos Waterway Problem Areas of the Commencement Bay Nearshore/Tideflats Superfund Site (''CB N/T Site'') in Pierce County, Washington.

SiMETCO filed a voluntary petition for reorganization under chapter 11 of the Bankruptcy Code on September 17, 1993 in the United States District Court for the Northern District of Ohio. The United States filed an amended proof of claim on behalf of EPA in the Simetco bankruptcy on July 13, 1994, for unreimbursed environmental responses costs which have been and which will be incurred in the future by the United States under Section 107 of CERCLA, 42 U.S.C. § 9607. The claims relate to costs incurred and to be incurred by the United States at the Hylebos Waterway Problem Areas of the CB N/T Site.

Under the proposed settlement agreement, EPA's claim shall be allowed as an Unsecured Claim in the amount of $510,000, and paid in accordance with the Debtor's Plan of Reorganization that was confirmed on December 7, 1994. In consideration of the payments made by the Debtor under the settlement agreement, the United States covenants not to sue the Debtor pursuant to Sections 106 and 107 of CERCLA for response actions or response costs relating to the Hylebos Waterway Problem Areas of the CB N/T Site.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *In re SiMETCO, Inc.* D.J. Ref. No. 90–11–2–726A.

The proposed settlement agreement may be examined at the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101. A copy of the settlement agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $2.25 (25 cents per page reproduction cost) payable to the ''Consent Decree Library.''

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–17843 Filed 7–19–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated May 18, 1995, and published in the **Federal Register** on May 25, 1995, (60 FR 27790), Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Methadone (9250)	II
Morphine (9300)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 14, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–17889 Filed 7–19–95; 8:45 am]

BILLING CODE 4410–09–M

Barney Rubenstein, M.D.; Revocation of Registration

On December 28, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Barney Rubenstein, M.D. of San Antonio, Texas (Respondent), proposing to revoke his DEA Certificate of Registration, BR0775291, and deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent was no longer authorized to handle controlled substances in the State of Texas. 21 U.S.C. 823(f) and 824(a)(3).

By letter dated January 26, 1995, Respondent waived a hearing in this matter and, in the alternative, submitted a written statement regarding his position as to the facts and law involved in this matter pursuant to 21 CFR 1301.54. The Deputy Administrator hereby enters his final order based upon the investigative file and Respondent's written statement in accordance with 21 CFR 1301.57.

Review of the investigative file indicates that Respondent's DEA Certificate of Registration and Texas Controlled Substances Registration were surrendered on January 23, 1982, in accordance with a stipulated agreement between Respondent and the Texas State Board of Medical Examiners (the Board), because of questionable prescribing practices. On October 28, 1986, after a hearing, the Board removed all sanctions against Respondent and recommended that he reapply for a

Texas Controlled Substances Registration and DEA registration. Respondent's application for DEA registration was approved on January 26, 1987.

In April of 1992, DEA investigators in San Antonio received information that Respondent was authorizing prescriptions for hydrocodone (Schedule III), Tussionex (Schedule III) and other non-controlled medications for himself and members of his family in violation of Texas law. DEA informed the Board of Respondent's prescribing practices.

On September 27, 1993, Respondent entered into an Agreed Order, effective October 10, 1993, with the Board whereby Respondent's medical license was suspended, with such suspension stayed for a seven year probationary period. As a condition of probation, Respondent cannot ''possess, administer, dispense or prescribe any controlled substances, except that Respondent may possess and self-administer those controlled substances prescribed to him by another physician for a legitimate and therapeutic purpose.'' Pursuant to this restriction, Respondent is no longer authorized to handle controlled substances within the State of Texas.

Respondent's written statement argues that his DEA Certificate of Registration should not be revoked because the Agreed Order did not require him to surrender either his DEA registration number or his Texas controlled substances registration number. However, despite the fact that the Agreed Order did not require Respondent to surrender his DEA registration, the terms of the order specifically prohibit Respondent from handling controlled substances. DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to dispense controlled substances by the state in which he proposes to practice. See *Lawrence R. Alexander,* M.D., 57 FR 22256 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Robert F. Witek, D.D.S.*, 52 FR 4770 (1987). Therefore, because Respondent is no longer authorized to handle controlled substances in the State of Texas, the Deputy Administrator cannot permit him to maintain a DEA Certificate of Registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BR0775291, previously issued to Barney Rubenstein, M.D., be, and it is hereby, revoked, and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective August 21, 1995.

Dated: July 14, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–17784 Filed 7–19–95; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–057)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 21, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0082), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Cost of Contractor Facilities.
OMB Number: 2700–0082.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Business or other for profit, Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 300.
Total Annual Responses: 300.
Hours Per Request: 1.
Total Annual Burden Hours: 300.
Abstract-Need/Uses: For contracts over $1,000,000, offerors are required to provide additional information on the costs of facilities and the alternatives (lease or purchases) considered.

Dated: July 13, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–17845 Filed 7–19–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–058)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 21, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0080), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Uncompensated Overtime.
OMB Number: 2700–0080.

Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Business or other for profit, Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 657.
Total Annual Responses: 657.
Hours Per Request: 4.
Total Annual Burden Hours: 2,628.
Abstract-Need/Uses: For contracts over $500,000, uncompensated overtime information is used to evaluate offerors' proposals to determine (i) whether a contractor will be able to hire and retain qualified individuals, (ii) whether uncompensated overtime hours will be properly accounted, and (ii) the validity of the proposed uncompensated hours.

Dated: July 13, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–17846 Filed 7–19–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–060)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 21, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code, JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0054), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Contract Modifications, NASA FAR Supplement Part 18–43.
OMB Number: 2700–0054.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Business or other for profit, Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 91.
Total Annual Responses: 182.
Hours Per Request: 50.
Total Annual Burden Hours: 9,100.
Abstract-Need/Uses: Contractors submit proposals in response to change orders.

Dated: July 13, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–17848 Filed 7–19–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–059)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 21, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0085), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: NASA Acquisition Process—Bids and Proposals for Contracts With An Estimated Value More Than $500,000.
OMB Number: 2700–0085.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Business or other for profit, Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 657.
Total Annual Responses: 657.
Hours Per Request: 1,250.
Total Annual Burden Hours: 821,250.
Abstract-Need/Uses: Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission.

Dated: July 13, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–17847 Filed 7–19–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–061)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 21, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Androtta, NASA Agency Clearance Officer, Code JT,

NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0049), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Financial Monitoring and Control.
OMB Number: 2700–0049.
Type of Request: Extension.
Frequency of Report: Annually.
Type of Respondent: Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 591.
Total Annual Responses: 26,008.
Hours Per Request: 11.46.
Total Annual Burden Hours: 297,920.
Abstract-Need/Uses: Financial recordkeeping and reports are required to ensure proper accountability for and use of NASA-provided funds.

Dated: July 13, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–17849 Filed 7–19–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–062]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 21, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0048), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Patents.
OMB Number: 2700–0048.
Type of Request: Extension.
Frequency of Report: Annually.
Type of Respondent: Not-for-profit institutions.
Number of Respondents: 7,130.
Total Annual Responses: 7,130.
Hours Per Request: 10.
Total Annual Burden Hours: 71,300.
Abstract-Need/Uses: Reports regarding patents are required to comply with statutes and implementing regulations.

Dated: July 13, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–17850 Filed 7–19–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–063]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 21, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0047), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Property Management and Control.
OMB Number: 2700–0047.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 591.
Total Annual Responses: 4,478.
Hours Per Request: 36.49.
Total Annual Burden Hours: 163,406.
Abstract-Need/Uses: Property records and reporting are required to ensure appropriate utilization, safekeeping, accountability and control for items provided by NASA or acquired with NASA-provided funds.

Dated: July 13, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–17851 Filed 7–19–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–064]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 21, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you

should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0004), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Report on NASA Subcontracts.
OMB Number: 2700–0004.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: Business or other for profit, Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 126.
Total Annual Responses: 9,450.
Hours Per Request: .25.
Total Annual Burden Hours: 2,363.
Abstract-Need/Uses: This report enables NASA to evaluate the extent to which its subcontracting program is attaining its stated purpose to distribute its procurements as widely as possible, in order to encourage a board national base of research capability, to assist small business, small disadvantaged business, and to aid labor surplus areas.

Dated: July 13, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–17852 Filed 7–19–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–065]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 21, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0007), (2700–0010), (2700–0039), (2700–0086), (2700–0087), (2700–0088), (2700–0089), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Radioactive Material Transfers Receipt—Authority—10 CFR Chapter 1, U.S. Nuclear Regulatory Commission Rules and Regulations.
OMB Number: 2700–0007.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Business or other for profit, Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 50.
Total Annual Responses: 500.
Hours Per Request: .5.
Total Annual Burden Hours: 290.
Abstract-Need/Uses: The Nuclear Regulatory Commission has authorized NASA to use radioactive material at temporary job sites throughout the U.S. for research and development purposes as well as launching of space vehicles. This report furnishes NASA with the necessary records on the possession, location, and use of radioactive material.

Title: Patent License Report.
OMB Number: 2700–0010.
Type of Request: Extension.
Frequency of Report: Annually.
Type of Respondent: Business or other for profit, Individuals or households.
Number of Respondents: 100.
Total Annual Responses: 100.
Hours Per Request: 0.5.
Total Annual Burden Hours: 50.
Abstract-Need/Uses: NASA grants patent licenses for the commercial use of NASA-owned inventions. Each licensee is required to annually report its activities in commercializing the inventions and the amount of royalties due to NASA.

Title: Application for a Patent License.
OMB Number: 2700–0039.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Business or other for profit, Individuals or households.
Number of Respondents: 25.
Total Annual Responses: 25.
Hours Per Request: 6.
Total Annual Burden Hours: 150.
Abstract-Need/Uses: Pursuant to 35 U.S.C. 209 applicants for a license under a NASA patent must submit specific information in support of their request for a patent license. The information submitted is used to determine whether the license should be granted.

Title: NASA Acquisition Process—Purchase Orders for Goods and Services With a Value of $25,000 or Less.
OMB Number: 2700–0086.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Business or other for profit, Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 319,276.
Total Annual Responses: 319,276.
Hours Per Request: .625.
Total Annual Burden Hours: 199,538.
Abstract-Need/Uses: Information is collected to evaluate bids; offers; quotes submitted to NASA for the award of purchase orders for goods and services.

Title: NASA Acquisition Process—Bids and Proposals for Contracts With An Estimated Value Less Than $500,000.
OMB Number: 2700–0087.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Business or other for profit, Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 15,694.
Total Annual Responses: 15,694.
Hours Per Request: 240.
Total Annual Burden Hours: 3,766,560.
Abstract-Need/Uses: Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission.

Title: NASA Acquisition Process—Reports Required Under Contracts With A Value Less Than $500,000.
OMB Number: 2700–0088.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Business or other for profit, Not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 4,875.
Total Annual Responses: 146,250.
Hours Per Request: 30.
Total Annual Burden Hours: 2,925,000.
Abstract-Need/Uses: Reporting requirements under NASA contracts to effectively manage and administer and

ensure compliance with the terms of the contract.

Title: NASA Acquisition Process—Reports Required Under Contracts With A Value More Than $500,000.

OMB Number: 2700–0089.

Type of Request: Extension.

Frequency of Report: As required.

Type of Respondent: Business or other for profit, Not-for-profit institutions, State, Local or Tribal Government.

Number of Respondents: 709.

Total Annual Responses: 35,450.

Hours Per Request: 30.

Total Annual Burden Hours: 1,063,500.

Abstract-Need/Uses: Reporting requirements under NASA contracts to effectively manage and administer and ensure compliance with the terms of the contract.

Dated: July 14, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–17853 Filed 7–19–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–66]

National Environmental Policy Act; Cassini Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA has prepared and issued a final environmental impact statement (FEIS) for the proposed Cassini mission. This planned action would involve the preparation for the implementation of the Cassini mission, including, but not limited to, launch of the Cassini spacecraft, its cruise to Saturn, and a variety of scientific operations and investigations focused on Saturn and its rings and satellites.

DATES: NASA will take no final action on the proposed Cassini mission before August 21, 1995, or 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's (EPA's) notice of availability of the Cassini FEIS, whichever is later.

ADDRESSES: The FEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW., Washington, DC 20546.

(b) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler beforehand at 407–867–2468 so that arrangements can be made.

In addition, the FEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(c) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4191).

(d) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3047).

(e) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(f) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5011).

(g) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).

(h) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).

(i) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2902).

(j) NASA, Marshall Space Flight Center, AL 35812 (205–544–5252).

(k) NASA, Stennis Space Center, MS 39529 (601–688–2164).

Copies of the FEIS are available by contacting Dr. Peter B. Ulrich, at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: Dr. Peter B. Ulrich, 202–358–0290.

SUPPLEMENTARY INFORMATION: The FEIS considers and analyzes the alternatives associated with the proposed Cassini mission and their related environmental impacts. NASA's baseline proposed action and preferred alternative would involve the launch of the Cassini spacecraft from Cape Canaveral Air Station, Florida, using a Titan IV (Solid Rocket Motor Upgrade)/Centaur. The primary launch opportunity is in October 1997, with contingency launch opportunities in December 1997 (secondary) or March 1999 (backup). The primary launch opportunity would place the spacecraft into a 6.7-year Venus-Venus-Earth-Jupiter-Gravity-Assist Trajectory to Saturn. The preferred alternative would use three radioisotope thermoelectric generators for onboard electrical power, and radioisotope heater units to control the thermal environment of the spacecraft and its components.

Comments on the Cassini draft environmental impact statement (DEIS) had been solicited from Federal, State and local agencies, organizations and members of the general public through: (a) Notices published in the **Federal Register**—NASA notice on October 20, 1994 (59 FR 52995) and EPA notice on October 21, 1994 (59 FR 53164); and (b) direct mailings to interested parties.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 95–17854 Filed 7–19–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

DATES: July 29, 1995 from 9 a.m.–11 a.m.

ADDRESSES: Radisson Hotel, Lake Champlain Room, 60 Battery Street, Burlington, Vermont 05041.

FOR FURTHER INFORMATION CONTACT: William C. Noxon, Public Information Officer, 1850 M Street, NW., Suite 270, Washington, DC 20036. Telephone: (202) 632–0952.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel, a bipartisan panel of governors, members of the Administration, members of Congress and state legislators, was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the National Education Goals adopted by the President and Governors in 1989.

The meeting of the Panel is open to the public. The agenda includes: A discussion of recommendations on (1) academic standards; (2) methods to fill national and state data reporting gaps; (3) adoption of indicators to be used in measuring the teacher education and professional development, and parental participation Goals; and (4) a presentation to the winners to the ''Most Promising Practices Competition on Strong Families, Strong Schools'' co-sponsored by Scholastic, Inc., Apple Computer, Inc., and the National Education Goals Panel.

Dated: July 11, 1995.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 95–17820 Filed 7–19–95; 8:45 am]

BILLING CODE 4010–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Presenting Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting Advisory Panel (Presenting Networks/Organizations A Section) to the National Council on the Arts will be held on August 7–11, 1995. This panel will be held from 9:00 a.m. to 5:30 p.m. on August 7; from 9:00 a.m. to 7:00 p.m. on August 9–10; and from 9:00 a.m. to 5:00 p.m. on August 11, in Room M 14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

Portions of this meeting will be open to the public on August 7 from 4:30 p.m. to 5:30 p.m. and from 2:00 p.m. to 5:00 p.m. on August 11, for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 4:30 p.m. on August 7; from 9:00 a.m. to 7:00 p.m. on August 9–10; and from 9:00 a.m. to 2:00 p.m. on August 11 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: July 14, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–17791 Filed 7–19–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: August 15, 1995; 8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA 22240.

Type of Meeting: Closed.

Contact Person: William Weigand, Associate Program Director, Biochemical Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 17, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–17886 Filed 7–19–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: August 17, 1995; 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA 22240.

Type of Meeting: Closed.

Contact Person: William Weigand, Associate Program Director, Biochemical Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 17, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–17887 Filed 7–19–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: August 15, 1995; 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 565, Arlington, VA 22240.

Contact Person: Gilbert B. Devey, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5

U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 17, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–17888 Filed 7–19–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation #1194.

Date and Time: August 10, 1995, 8 a.m.–5 p.m.

Place: Arlington Renaissance Hotel/Ballston, 950 North Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Warren DeVries, Dr. Kesh Narayanan, Dr. Pius Egbelu, Dr. Christina Gabriel, Dr. George Hazelrigg, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Environmentally Conscious Manufacturing (ECM) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 17, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–17883 Filed 7–19–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Geosciences Committee of Visitors; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Geosciences (#1755).

Date and Time: August 2, 3, & 4, 1995; 8 am–5 pm.

Place: Room 380, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Ian D. MacGregor, Section Head, Special Projects Section, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1553.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Education and Human Resources Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 17, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–17885 Filed 7–19–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Instrumentation & Instrument Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Advisory Panel for Instrumentation & Instrument Development (#1215).

Date and Time: August 2–4, 1995, 8:30 a.m.–5 p.m.

Place: NSF, 4201 Wilson Boulevard, Arlington, VA, Rm. 370.

Type of Meeting: Closed.

Contact Person: John Cross, Program Director, Biological Instrumentation and Instrument Development, Room 615, National Science Foundation, Telephone: (703) 306–1472.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Instrumentation and Instrument Development proposals for Multi-User Biological Sciences as part of the selection process for award.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 17, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–17884 Filed 7–19–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 70–1151]

Finding of No Significant Impact and Notice of Opportunity for a Hearing Renewal of Special Nuclear Material License SNM–1107; Westinghouse Electric Corporation Commercial Nuclear Fuel Division Columbia Fuel Fabrication Facility Columbia, SC

The U.S. Nuclear Regulatory Commission is considering the renewal of Special Nuclear Material License SNM–1107 for the continued operation of the Westinghouse Electric Corporation, Commercial Nuclear Fuel Division, Columbia Fuel Fabrication Facility (CFFF) located in Columbia, South Carolina.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of the license to continue manufacturing low-enriched nuclear fuel for a period of 10 years. The current license authorizes CFFF to receive, possess, use, and transfer special nuclear material in accordance with 10 CFR Part 70. CFFF is not requesting any changes to the authorized activities at the site. Principal activities at CFFF include the chemical conversion of uranium hexafluoride (UF_6) to uranium dioxide (UO_2) powder by the Ammonium Diuranate (ADU) Process or Integrated Dry Route (IDR); fabricating the UO_2 powder into pellets; loading the pellets into fuel rods and final fuel assembly; and scrap recovery operations.

The Need for the Proposed Action

CFFF is one of several facilities in the United States which fabricate fuel assemblies for light-water cooled nuclear reactors (LWR). As long as the current demand for nuclear energy continues, the production of the fuel must keep pace. Because the applicant is a major supplier of fuel for LWRs, denial of the license renewal for this facility would necessitate expansion of similar activities at another existing fuel fabrication facility or the construction and operation of a new plant.

Environmental Impacts of the Proposed Action

Effluent Monitoring

Gaseous, liquid, and solid effluents are produced from manufacturing operations at CFFF. The effluents may contain small quantities of ^{234}U, ^{235}U, ^{238}U, ammonia (NH_3), calcium fluoride (CaF_2), and hydrofluoric (HF) gas. An

effluent monitoring program is in place at the facility to ensure releases to the environment are within Federal and State regulations and are also as low as is reasonably achievable (ALARA).

Gaseous exhausts from the controlled area are routed through High Efficiency Particulate Air (HEPA) filtration to remove entrained uranium particulates prior to discharge to the environment. Exhausts containing chemicals or uranium in soluble form are passed through aqueous scrubbers, preceding the HEPA filters. Each release stack is equipped with an isokinetic probe that continuously draws a sample through a fiberglass filter paper. The filter paper is changed daily and analyzed for uranium levels. Gaseous effluents are also sampled and analyzed for ammonia and fluoride.

The State of South Carolina has issued an air quality permit authorizing the use of the incinerator, boilers, and emergency diesel generators. The current permit expired on January 31, 1995. However, prior to expiration, Westinghouse submitted an application for renewing this permit and they are negotiating with the State over the terms of the new permit.

Liquid process wastes are treated in the Waste Treatment Facility (WTF) and then pumped to the Congaree River via a 4-inch pipeline. Waste treatment for the removal of uranium, ammonia, and fluorides consists of filtration, flocculation, lime addition, distillation, and precipitation in a series of holding lagoons. Compliance with Federal and State release limits for radioactive material in the liquid effluent is assured by passing the waste stream through on-line monitoring systems or by manual sampling and analysis on a batch basis. A review of the data indicates that radioactive liquid discharges have been within Federal regulations.

Site sanitary sewage is treated in an extended aeration package plant prior to discharge, either directly or through a polishing lagoon. The discharge effluent is chlorinated, and mixed with treated liquid process waste at the facility lift station.

Liquid process wastes and site sanitary sewage is combined and then passed through a final aerator, followed by pH adjustment as required and subsequently pumped to the Congaree River.

The WTF (advanced wastewater treatment) system provides additional uranium removal from major liquid waste streams. Other small waste streams are batch collected in quarantine tanks, sampled, and analyzed prior to discharge to the WTF. Other miscellaneous contaminated liquid wastes, from sources such as laboratory drains and controlled area sinks, are discharged directly to a contaminated waste disposal system where they are collected, filtered, sampled, analyzed, and released to the WTF lift station. Wastes processed through the WTF are continuously sampled at the point of discharge. The samples are composited and each day's composite is then resampled and analyzed for gross alpha and gross beta activity.

The State of South Carolina reissued a National Pollutant Discharge Elimination System (NPDES) permit to Westinghouse authorizing discharge from the sanitary and process wastewater streams to the Congaree River. The previous permit expired on January 31, 1994. The current permit is based on the Anti-Backsliding Rule on existing permit limits, Best Professional Judgement (BPJ), and water quality considerations. Due to the Anti-Backsliding Rule none of the parameter limits were increased. However, based on BPJ and water quality considerations, the limits for ammonia, fluoride, fecal coliforms were decreased. In addition, an acute toxicity test requirement was added to the current permit.

A review of the NPDES permit data indicates that, for the most part, the licensee has complied with the permit limitations with the exception of the biological toxicity test. The licensee is working on methods to ensure compliance with this test.

Low-level contaminated wastes are stored in a Waste Storage Area. Prior to transfer to this area, contaminated items are visually inspected to ensure that no accumulation of radioactive material is present and are then surveyed and released in accordance with the appropriate contamination limits.

Solid wastes are sorted as combustible and noncombustible and are placed in specially designated collection containers located throughout the work area. The wastes consist of paper, wood, plastics, metals, floor sweepings, and similar materials which are contaminated by or contain uranium. Following a determination that the wastes are sorted properly, the contents are transferred to a waste processing station located in the Contaminated Control Area.

Materials that are suited for thorough survey may be decontaminated for free-release, or re-use, in accordance with the provisions of the license. Most combustible wastes are packaged in compatible containers, assayed for grams ^{235}U, and stored to await incineration. Noncombustible wastes and certain combustible wastes are packaged in compatible containers, compacted when appropriate, gamma scanned to verify the uranium content, and placed in storage to await shipment for recovery or disposal. Contaminated wastes are shipped to a licensed burial facility.

Environmental Monitoring

The environmental media sampled for the environmental monitoring program at CFFF includes air, vegetation, groundwater, surface water, and soil. The program is designed to ensure compliance with State and Federal regulations and to assess the impact to the environment from site operations. Sample data for the period 1984 through 1994 were reviewed to determine if plant operations were impacting the environment.

Ambient air samples are collected at four locations onsite. The air samplers run continuously with the sample being collected on a particulate filter. This filter is changed weekly and, after the appropriate decay period, analyzed for gross alpha activity. Ambient air monitoring data indicate releases to the environment have been within regulatory limits.

Soil is collected from the four ambient air monitoring locations within the vicinity of the facility. The samples are analyzed for gross alpha and beta.

A review of the sampling data demonstrates that there is no indication of uranium accumulating in the soil at the sampling locations.

The soil was also analyzed for fluoride. Annual average fluoride values range from 0.1 ppm to 440 ppm. The annual average fluoride levels since 1992 have been less than 1 ppm. There is no indication that fluoride is accumulating in the soil.

Vegetation samples are collected from the four ambient air sampling locations. Samples are analyzed for gross alpha and gross beta. A review of the data indicates that there is no uptake of radioactive material in the vegetation.

The vegetation is also analyzed for fluoride. Annual average fluoride values range from 0.2 ppm to 3340 ppm. The annual average fluoride levels since 1992 have been less than 1 ppm. There is no indication of fluoride accumulating in the vegetation.

Surface water samples are collected from three locations onsite and three locations on the Congaree River. These samples are collected quarterly and analyzed for gross alpha and gross beta. A review of the surface water data from 1984 through 1994 indicates that liquid effluent discharges from the facility are not adversely impacting the onsite surface water or the Congaree River.

Groundwater is collected quarterly from 10 sampling wells onsite to comply with NRC requirements. These samples are analyzed for gross alpha, gross beta, and ammonia. Based on a review of the data from 1984 through 1994, there appears to be no radiological impact to the groundwater from plant operations.

Groundwater samples are also analyzed for pH, ammonia, fluoride, nitrate, and conductivity. Three of the wells near the lagoons have elevated nitrate levels. However, samples from wells adjacent to Sunset Lake and the swamp indicate nitrate levels less than detectable levels.

An EPA team visited the facility in early 1989 to perform a site screening investigation which would evaluate past hazardous waste handling practices and groundwater contamination. This screening identified volatile organic contamination in the groundwater on the plant site. In 1992, Westinghouse conducted an investigation to further document the problem, and with input from South Carolina Department of Health and Environmental Control (SCDHEC) developed a work plan to study the contaminated area. The study indicated that the plume consisted of perchlorethylene, trichlorethylene, and their degradation products. A remedial design plan was developed and submitted to the State of South Carolina for review and approval. Phase I of the plan was implemented during the first quarter of 1995.

Fish samples are collected annually from the Congaree River downstream of the plant discharge. The samples are analyzed for gross alpha and gross beta activity and isotopic uranium. A review of the data from 1984 through 1995 indicates that no uptake of radioactive material by the fish is occurring.

Sediment is collected annually from the Congaree River near the plant discharge to the river. Samples are analyzed for gross alpha, gross beta, and fluoride. The data from 1984 through 1994 have been reviewed and there is no indication of radioactive material concentrating and accumulating at the sample location.

Radiological Impacts From the Proposed Action

The radiological impact from site operations was assessed by calculating the dose to the nearest resident and to the local population. Based on the information supplied by the licensee, the nearest resident resides in the northwest sector, approximately 500 meters from the facility. The dose of the nearest resident was calculated using EPA's COMPLY code, Screening Level 4, which is the most conservative of the four levels, and guidance from NRC Regulatory Guide 1.109, ''Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I.'' Screening Level 4 uses site specific meteorological information and assumes the resident produces his own milk, meat and vegetables at home.

The Total Effective Dose Equivalent (TEDE) to the nearest resident from licensed operations is 0.03 millirem/year. The natural background radiation in the vicinity of Columbia, South Carolina is about 117 millirem/year. NRC regulations limit the dose to a member of the public from licensed operations to 100 millirem/year. EPA limits the dose received by a member of the public from licensed operations to 25 millirem/year.

Based upon 1990 census information, approximately 823,000 people live within a 50-mile radius of the facility. The dose to the population within the 50-mile radius of the facility would be 96,600 person-rem from the natural background of the area. The dose to the population within the 50-mile radius from licensed operations at the facility would be 0.29 person-rem.

Alternatives to the Proposed Action

Alternatives include the proposed action of renewing the license application or denying the renewal request. The alternative of license renewal would result in the continued operation of the facility for a specific period of time. The environmental impact of the proposed action will be discussed in this assessment.

The alternative of denying the renewal request would result in the facility having to cease operations and begin decontamination and decommissioning activities. The environmental impact of the alternative of denying the license renewal would be the elimination of effluents discharged to the air and water at the CFFF site. However, denial of the license renewal would necessitate expansion of similar activities at an existing facility or construction and operation of a new facility. Because the environmental impacts would be transferred from one location to another, there would be no net benefit to the alternative of denying the license renewal. However, denying the renewal request would be considered only if public health and safety and environmental issues could not be resolved to the satisfaction of the NRC.

Agencies and Persons Consulted

South Carolina Department of Health and Environmental Control, Industrial & Agricultural Wastewater Division, Bureau of Water Pollution Control. There are no objections to the license renewal of the facility.

South Carolina Department of Health and Environmental Control, Office of Environmental Quality Control, Bureau of Air Quality Control. There are no objections to the license renewal of the facility.

Documents used to prepare the Environmental Assessment:

1. Westinghouse Electric Corporation, Application for Renewal of Special Nuclear Material License No. SNM–1107, April 30, 1990.

2. Westinghouse Electric Corporation, Application for Renewal of Special Nuclear Material License No. SNM–1107, April 30, 1995.

3. E.K. Reitler, Westinghouse Electric Corporation, letter to Elaine Keegan, U.S. Nuclear Regulatory Commission, February 20, 1995.

4. Roger Fischer, Westinghouse Electric Corporation, letter to Elaine Keegan, U.S. Nuclear Regulatory Commission, May 5, 1995.

5. U.S. Nuclear Regulatory Commission, ''Environmental Impact Appraisal of the Westinghouse Nuclear Fuel Columbia Site (NFCS) Commercial Nuclear Fuel Fabrication Plant,'' April 1977.

6. U.S. Nuclear Regulatory Commission, ''Environmental Assessment for Renewal of Special Nuclear Material License No. SNM–1107,'' NUREG–1118, May 1985.

7. U.S. Fish and Wildlife Services, Endangered and Threatened Species of the Southeast United States (The Red Book), 1992.

Conclusion

The staff concludes that the impact to the environment and to human health and safety from manufacturing nuclear fuel at this facility has been minimal. The results from the environmental monitoring program indicate no significant impact has occurred to the environment as a result of site operations. Liquid and airborne effluents released to the environment meet all Federal release criteria. The total effective whole body dose received by the maximally exposed individual meets both NRC and EPA regulations.

However, the staff has determined, to enhance effluent and environmental monitoring programs, the following recommendations should be incorporated as license conditions pending renewal of the license:

1. The staff recommends that the licensee notify the NRC if the conditions of the NPDES permit are revised or if the permit is revoked.

2. The staff recommends additional vegetation sampling be conducted when the gross alpha activity exceeds 15 pCi/gram.

3. The staff also recommends the licensee develop and implement action levels for the environmental samples.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License SNM–1107. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street N.W., Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); and on the licensee (Westinghouse Electric Corporation, Commercial Nuclear Fuel Division, Drawer R, Columbia, SC 29250), and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings.''

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 12th day of July 1995.

For the Nuclear Regulatory Commission.

Robert. C. Pierson,

Chief, Licensing Branch Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 95–17825 Filed 7–19–95; 8:45 am]

BILLING CODE 7590–01–P

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.161, ''Evaluation of Reactor Pressure Vessels with Charpy Upper-Shelf Energy Less than 50 Ft-lb,'' describes general procedures acceptable to the NRC staff for evaluating reactor pressure vessels when the Charpy upper-shelf energy falls below the 50 ft-lb limit specified in NRC's regulations.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted 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. The NRC staff's response to public comments received on the draft version of this guide (DG–1023, issued in September 1993) are available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Office of Administration, Attention: Distribution and Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by fax at (301)415–2260. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, MD, this 26th day of June 1995.

For the Nuclear Regulatory Commission.

David L. Morrison,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 95–17824 Filed 7–19–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21204; 811–5948]

Financial Square Trust; Notice of Application

July 14, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Financial Square Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on June 23, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 8, 1995, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicant, 4900 Sears Tower, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a Massachusetts business trust. On October 17, 1989, applicant field a notice of registration on Form N–8A pursuant to section 8(a) of the Act. Also on October 17, 1989, applicant field a registration statement under section 8(b) of the Act and under the Securities Act of 1933 on Form N–1A to register an indefinite number of shares. Applicant's registration statement was declared effective on February 28, 1990, and applicant commenced its initial public offering shortly thereafter.

2. On October 25, 1994, the board of trustees of applicant and the board of trustees of Goldman Sachs Money Market Trust (the ''Acquiring Fund''), respectively, approved an Agreement and Plan of Reorganization (the ''Reorganization'') providing for the transfer of all the assets of each series of the applicant, the Prime Obligations Fund, the Government Fund, the Treasury Obligations Fund, the Money Market Fund, and the Tax-Free Money Market Fund, to newly-created corresponding series of the Acquiring Fund in exchange for units of beneficial interest of each such series of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the board of trustees of applicant, including the trustees who are not interested persons, and the board of trustees of the Acquiring Fund, including the trustees who are not interested persons, concluded that the Reorganization would be in the best interests of their respective investment companies and that the interests of their respective shareholders or unitholders would not be diluted as a result.

3. The proxy statement was filed with the SEC, and such proxy statement was distributed to applicant's shareholders on November 17, 1994. At a special meeting of shareholders held on December 16, 1994, the shareholders of applicant approved the Reorganization.

4. As of December 28, 1994, applicant had outstanding 5,976,415,234 shares having an aggregate net asset value of $5,976,415,234. On December 28, 1994, pursuant to the Reorganization, applicant transferred all the assets of each of its series to the corresponding series of the Acquiring Fund. Immediately thereafter, applicant liquidated and distributed *pro rata* to the shareholders of each of its series the units of beneficial interest that it received of each corresponding series of the Acquiring Fund. Each shareholder of each series of applicant received units of the corresponding series of the Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of his or her investment in applicant. No brokerage commissions were incurred in connection with the Reorganization.

5. Goldman Sachs Asset Management, the adviser of both applicant and the Acquiring Fund, assumed all expenses relating to Reorganization.

6. Applicant has no security holders, assets, debts, or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

7. Applicant intends to file a document on or about August 1, 1995 with the Office of the Secretary of State of the Commonwealth of Massachusetts to effect the termination of applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17858 Filed 7–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21203; 812–9118]

SunAmerica Series Trust, et al.; Notice of Application

July 14, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: SunAmerica Series Trust, Anchor Series Trust, SunAmerica Equity Funds, SunAmerica Income Funds, and SunAmerica Money Market Funds, Inc.

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) granting an exemption from section 17(e) and rule 17e–1.

SUMMARY OF APPLICATION: Applicants seek an exemption to permit each ''Fund,'' as defined below, to use certain affiliated persons of affiliated persons (''second-tier affiliates'') of the Fund as brokers in connection with certain principal transactions, and to pay commission, fees, or other remuneration to such brokers without complying with the monitoring and recordkeeping requirements set forth in rule 17e–1. Each broker would be a second-tier affiliate of the Fund solely by reason of subadvisory relationships with other Funds.

FILING DATES: The application was filed on July 13, 1994, and amended on February 8, 1995, April 24, 1995, and July 12, 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 August 8, 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 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, 733 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants are Massachusetts business trusts or Maryland corporations and are registered under the Act as open-end management investment companies. Applicants offer securities in one or more series. A ''Fund'' is a present or future portfolio of applicants or of any other registered investment company that in the future (a) is in the same ''group of investment companies,'' as defined in rule 11a–3, and (b) either (i) is advised by SunAmerica Asset Management Corp.

(''SAAMCo'') or an entity controlling, controlled by, or under common control with SAAMCo, or (ii) has its shares distributed by SunAmerica Capital Services, Inc. (''SACS'') or an entity controlling, controlled by, or under common control with SACS. SAAMCo serves as investment adviser of each Fund.

2. Shares of SunAmerica Series Trust are not offered directly to the public but rather are issued and redeemed only in connection with investments in and payments under certain variable annuity contracts issued by Anchor National Life Insurance Company (''Anchor National''), a California stock life insurance company and a wholly-owned subsidiary of Sun Life Insurance Company. The following serve as subadvisers of the series of SunAmerica Series Trust: Alliance Capital Management L.P., Goldman Sachs Asset Management (''GSAM''), Goldman Sachs Asset Management International (''GSAM International''), Phoenix Investment Counsel, Inc., Provident Investment Counsel, Morgan Stanley Asset Management, Inc., and Selected/Venture Advisers, L.P.

3. Shares of Anchor Series Trust also are not offered directly to the public but rather are issued and redeemed only in connection with investments in and payments under certain variable annuity contracts issued by Anchor National, Phoenix Home Life Mutual Insurance Company, First SunAmerica Life Insurance Company, and Presidential Life Insurance Company. Wellington Management Company serves as subadviser to all of the series of Anchor Series Trust.

4. Shares of the other applicants are offered to the public on a continuous basis through SACS, an indirect wholly-owned subsidiary of Anchor National and an affiliated person of SAAMCo. GSAM International, AIG Asset Management, Inc., and SAAMCo serve as subadviser to distinct components of SunAmerica Global Balances Fund, a series of SunAmerica Equity Funds.

5. Applicants request an exemption that would permit each Fund to use an ''Eligible Broker,'' as defined below, as broker in connection with the sale of securities to or by such Fund on a securities exchange. An Eligible Broker is a subadviser of one or more Funds that are not parties to the transactions, conducts advisory and brokerage operations through the same legal entity, and is a second-tier affiliate of the Fund engaging in the transaction solely because it subadvisers one or more other Funds. An Eligible broker is not an affiliated person of the Fund engaging in the transactions, or a second-tier affiliate of the Fund engaging in the transactions other than by reason of subadvising one or more of the other Funds. The requested relief would permit the Fund engaging in the transaction to pay commissions, fees, or other remuneration to the Eligible Broker without complying with the requirements set forth in rules 17e–1(b)(3) and 17e–1(c).

6. GSAM, a subadviser to one or more of the Funds, is a separate operating division of Goldman Sachs & Co. (''Goldman Sachs''), a general partnership that is a registered broker-dealer. Thus, GSAM is not a separate legal entity from the brokerage operations of Goldman Sachs. As the only subadviser that conducts advisory and brokerage operations through the same legal entity, Goldman Sachs is currently the only entity that satisfies the definition of an Eligible Broker.

Applicants' Legal Analysis

1. Section 17(e)(2)(A) provides in relevant part that it shall be unlawful for any affiliated person of a registered investment company, or an affiliated person of such a person, acting as broker in connection with the sale of securities to or by such company, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds the usual and customary broker's commission if the sale is effected on a securities exchange.

2. Section 2(a)(3) defines ''affiliated person'' of another person as including a person controlling, controlled by, or under common control with such other person, and when such other person is an investment company, the investment adviser thereof. Applicants assert that the Funds may be affiliated persons of each other by reason of being under the common control of SAAMCo. A subadviser is an affiliated person of the Fund or Funds that it subadvises, and a second-tier affiliate of each other Fund. When such a subadviser conducts brokerage operations via the same legal entity, the brokerage component also is a second-tier affiliate of the Funds not subadvised by the subadviser. Consequently, transactions involving a Fund that are brokered by an Eligible Broker are subject to section 17(e)(2).

3. Rule 17e–1 provides that, for purposes of section 17(e)(2)(A), a commission, fee, or other remuneration shall be deemed as not exceeding the usual and customary broker's commission, if certain specified procedures are followed. These procedures include the requirement in rule 17e–1(b)(3) that a registered investment company's board of directors, including a majority of disinterested directors, determines, no less frequently than quarterly, that all transactions effected pursuant to the rule comply with procedures reasonably designed to provide that the brokerage commission is consistent with the standards set forth in the rule. The procedures also include the requirement in rule 17e–1(c) that the investment company maintain and preserve certain written records about each transaction effected pursuant to the rule.

4. Applicants submit that section 17(e) was designed to address the concern raised in section 1(b)(2), where Congress determined that the national public interest and the interests of investors are adversely affected when investment companies are organized, operated, managed, or their portfolio securities are selected, in the interest of brokers. Applicants further submit that Congress in fashioning section 17(e)(2) intended that a broker affiliated with an investment company receive only the ordinary stock exchange brokerage commission, and that Congress sought to eliminate any risk of self-dealing.

5. Applicants assert that the contemplated transactions raise no possibility of self-dealing or any concern that the Funds would be managed in the interest of the Eligible Brokers. A subadviser who recommends that an Eligible Broker act as broker to a particular transaction would neither lose nor gain financially on the basis of whether or not the transaction benefits the Eligible Broker, because the subadviser's only pecuniary interest in the transaction is its advisory fee, which is based on net assets under management. In addition, a subadviser has a fiduciary obligation to execute securities transactions for the Fund in such a manner that the Fund's total cost or proceeds in each transaction is the most favorable under the circumstances. Accordingly, the subadviser would have no interest in benefitting Goldman Sachs or any future Eligible Broker at the expense of the Funds or Funds it subadvises.

6. Applicants submit that under the circumstances the monitoring and recordkeeping provisions of rule 17e–1 would be unduly burdensome to the Funds if each subadviser must monitor brokerage transactions with a broker-dealer that has no affiliation with such subadviser. They further submit that Funds might elect not to select Goldman Sachs as broker in order to avoid the rule's requirements. Applicants believe that the situations contemplated by the relief are similar to the arms-length bargaining that normally prevails when an investment adviser acts on behalf of an investment company, and that it

would not be imprudent to trust the subadviser's judgment in these situations.

7. Section 6(c) provides that the SEC may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the proposed transactions meet these standards.

Applicants' Condition

Applicants agree that the requested order is subject to the condition that, with respect to any brokerage transactions conducted in reliance on the requested order, Applicants will comply with all of the provisions of rule 17e–1 except those of rule 17e–1 (b)(3) and (c).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17859 Filed 7–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35972; File No. 10–101]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Application for Registration as a National Securities Exchange by the United States Stock Exchange, Inc.

July 14, 1995.

Pursuant to Section 19(a) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(a), notice is hereby given that on May 23, 1995, the United States Stock Exchange, Inc. (''USSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 2 to its Application for Registration as a national securities exchange.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Amendment No. 2 makes changes to the proposed rules for the USSE. First, the amendment changes the definition of ''Preferenced Public Agency Order'' to state that the USSE's electronic system (the ''System'') would automatically match a dealer with a public agency order transmitted by the dealer to the System unless the dealer matches the order with another public agency order before transmitting the order to the System or there is a public agency order on the USSE electronic book that would be matched with the order. Previously, the rule indicated that the dealer would enter a contra-side order for its own account for the purpose of trading with a preferenced public agency order.

Second, the amendment clarifies that the System does not enter ''Auto-Quotes'' for individual dealers. Rather, if there were no dealer bids or offers for a security at a particular time, the System would disseminate on Auto-Quote for that security to the national market system. An Auto-Quote is defined in the USSE Rules as a quote by the System programmed to calculate a price equal to one minimum variation away from the Intermarket Trading System best bid or offer and programmed to be a size equal to 100 shares. The amendment also states that the obligation to honor an Auto-Quote would rotate among dealers on a trade-by-trade basis.

Finally, the amendment clarifies that the minimum size obligation for USSE dealers only would be satisfied by quotations entered into the System as principal. Under certain circumstances, therefore, the proposed USSE rules would require that dealers quote as principal for at least 500 shares in addition to any orders that they might be representing as agent in the USSE System.

You are invited to submit written data, view and arguments concerning Amendment No. 2 to the USSE's Application for Registration with thirty days of the date of publication of this notice in the **Federal Register**. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 10–101.

The USSE's submission explains the operation of the proposed Exchange in more detail. Copies of the submission, all subsequent amendments, all written statements with respect to the application that are filed with the Commission, and all written communications relating to the application 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17857 Filed 7–19–95; 8:45 am]

BILLING CODE 8010–01–M

[1] The Application for Registration and Amendment No. 1 thereto were published in Securities Exchange Act Release No. 35709 (May 5, 1995), 60 FR 26752 (May 8, 1995).

SMALL BUSINESS ADMINISTRATION

[License Number 01/71–0360]

Zero Stage Capital V, Limited Partnership; Application for a Small Business Investment Company to Admit An Additional Investor as a Limited Partner

Under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661, et seq.), Zero Stage Capital V, Limited Partnership (''the Licensee''), at 101 Main Street, Cambridge, Massachusetts 02142, has filed with the Small Business Administration (''the SBA'') pursuant to 13 C.F.R. 107.102 (1995) an amendment to its license application.

It is proposed that the Licensee will admit a new private limited partner, STV, Ltd. (''STV''). STV proposes to invest $10.0 million. The admission of STV would increase the Licensee's private capital from $12.7 million to approximately $23 million.

STV is a newly established foreign entity. According to the Licensee, STV's major initial limited partner investor is the Husain Group, a family owned company in Saudi Arabia. The Husain Group of companies has been in the electronics business for 31 years. It has three U.S. subsidiaries and three in Saudi Arabia. Mr. Ishtiaq Husain is the founder of the Husain Group. In addition to Mr. Husain, the other key people in the Husain Group are all family members. They are as follows: Shaheen Husain, Tarig Husain, Khalid Husain, Yasmein Husain and Javed Husain. Ms. Shaheen Husain is the Managing Director of STV. She is also the Director of New Ventures of the Husain Group and President of Advanced American Electronics, Inc. which has its principal office in Cambridge, Massachusetts.

The execution of the Licensee's above proposal will not cause a change in the Licensee's management or operations. Zero Stage Capital Company, Inc. (''ZSCC''), the Licensee's General Partner, will continue to serve as the Licensee's Investment Advisor and none

of the principals or partners from STV will become a partner in ZSCC.

Notice is hereby given that any person may, no later than 15 days from the date of publication of this Notice, submit written comments on the Licensee's proposal. Any such communication shall be addressed to the Associate Administrator for Investment, Small Business Administration, 409 Third Street SW., Suite 6300, Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in Cambridge, Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 14, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–17868 Filed 7–19–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Corporate Flight Management, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 95–7–21, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find Corporate Flight Management, Inc., fit, willing, and able to provide commuter air service under 49 U.S.C. 41738.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Delores King, Air Carrier Fitness Division (X–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2343.

Dated: July 14, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–17912 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–62P–M

Office of International Transportation and Trade; Meeting

ACTION: Notice.

SUMMARY: This notice announces that the Department of Transportation (DOT) will be hosting a public briefing regarding the North American Free Trade Agreement's (NAFTA) Land Transportation Standard Subcommittee (LTSS).

SUPPLEMENTARY INFORMATION: The Department of Transportation announces that it will be hosting a public briefing on Tuesday, July 25, 1995 from 10:00 a.m. to 12:00 p.m. The purpose of the briefing is to provide a status report on the work of the Land Transportation Standards Subcommittee (LTSS) and the Transportation Consultative Group (TCG) decisions made at the plenary session held in Vancouver, British Columbia, June 26–29, 1995. The U.S. chairperson, Mr. Arnold Levine, Director of the Office of International Transportation and Trade, will provide an overview of the meetings. The chairs of each LTSS/TCG Working Group will also report on the progress of their individual working group meeting and they will be available to answer questions. If you wish to attend, please contact Ronâle Taylor at (202) 366–2892 by close of business Friday, July 21, 1995.

FOR FURTHER INFORMATION CONTACT: David DeCarme, Chief, Maritime, Surface and Facilitation Division, Office of International Transportation and Trade, Office of the Secretary, at (202) 366–2892.

ADDRESSES: Briefing will be held at the Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 3328, Washington, DC 20590.

Dated: July 14, 1995.

Arnold Levine,

Director, Office of International Transportation and Trade.

[FR Doc. 95–17910 Filed 7–17–95; 3:25 pm]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Capital Airport, Springfield, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at the Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 21, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Chicago Airports District Office, 2300 E. Devon Avenue, Room 260, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert O'Brien Jr., Director of Aviation of the Springfield Airport Authority at the following address: Springfield Airport Authority, Capital Airport, Springfield, IL 62707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Springfield Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, P.E., Assistant Manager, Chicago Airports District Office, 2300 E. Devon Ave, Room 260, Des Plaines, IL 60018, (703) 294–7435. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 16, 1995, the FAA determined that the application to use the revenue from a PFC submitted by Springfield Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 5, 1995.

The following is a brief overview of the application:

Level of the PFC: $3.00

Actual charge effective date: June 1, 1992

Estimated charge expiration date: February 1, 2006

Total PFC to be used in this application: $64,172

Brief description of proposed project(s): Rehabilitate taxiway ''A'', widen

Runway 4/22, acquire land, FAR Part 107.14 Modifications.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Springfield Airport Authority.

Issued in Des Plaines, Illinois on July 14, 1995.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–17904 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Request To Amend an Approved Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport, Chicago, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on a request to amend an approved PFC application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to impose and use the revenue from a PFC at Chicago O'Hare International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 21, 1995.

ADDRESSES: Comments on this request may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 258, Des Plaines, IL 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David R Mosena, Commissioner of the City of Chicago Department of Aviation at the following address: O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 258, Des Plaines, IL 60018, (708) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application to impose and use the revenue from a PFC at Chicago O'Hare International Airport under the provisions of the Aviation Safety and Capacity Expansion act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 9, 1995, the FAA received the request to amend the application to impose and use the revenue from a PFC submitted by the City of Chicago Department of Aviation within the requirements of section 158.37(b) of Part 158. The FAA will approve or disapprove the amendment no later than October 7, 1995.

The following is a brief overview of the request. Proposed increase in the total estimated PFC revenue: From $481,806,170 to $484,035,066. Proposed altered description of approved project: Permanent Noise Monitoring has increased its number of permanent noise monitoring locations from between 24 to 36 to approximately 50. The revised project will also access and analyze data received from the FAA Air Traffic Control Tower for development of improved noise mitigation strategies.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

Any person may inspect the request in person at the FAA office listed above and at the FAA regional Airports office located at 2300 East Devon Avenue, Room 258, Des Plaines, IL 60018.

Issued in Des Plaines, Illinois on July 14, 1995.

Ben De Leon,

Manager, Planning/Programming Branch Airports Division Great Lakes Region.

[FR Doc. 95–17905 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Chicago Midway Airport, Chicago, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 21, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago, Airports District Officer, 2300 East Devon Avenue, Room 258, Des Plaines, IL 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David R. Mosena, Commissioner of the City of Chicago Department of Aviation at the following address: O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 258, Des Plaines, IL 60018, (708) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 10, 1995, the FAA determined that the application to impose a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 7, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Actual charge effective date: September 1, 1993

Proposed charge expiration date: July 1, 2007

Total estimated PFC revenue:
$275,946,489
Brief description of proposed projects:
Midway Terminal Development.
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on July 14, 1995.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–17906 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at University of Illinois—Willard Airport, Champaign, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the University of Illinois—Willard Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 21, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 E. Devon, Room 260, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Louis Midiri, Airport Manager of the University of Illinois—Willard Airport at the following address: University of Illinois—Willard Airport, Institute of Aviation, Savoy, Illinois 61874.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the University of Illinois—Willard Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, Assistant Manager, Chicago Airports District Office, 2300 E. Devon, Room 260, Des Plaines, Illinois 60018, (708) 294–7434. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the University of Illinois—Willard Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 16, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the University of Illinois—Willard Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 5, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date:
November 1, 1995

Proposed charge expiration date:
November 1, 1998

Total estimated PFC revenue:
$1,184,250

Brief description of proposed project(s):
Reimbursement for local share of Part 107 security plan, Reimbursement for local share of high-speed snow broom, Reimbursement for acquisition of snow broom, Reimburse local funds for design and construction of snow removal equipment building, Phase 1 reconstruction of Runway's 18/36 and 14R/32L, Reimbursement of local share for PFC administration, Acquire snow removal equipment, Reimburse advance plans for the construction of 14L/32R, and Phase 2 reconstruction of Runway 14R/32L.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi/Commercial Operators

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the University of Illinois—Willard Airport.

Issued in Des Plains, Illinois on July 14, 1995.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–17907 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

[CGD 95–060]

Differential Global Positioning System; Brunswick, Maine: Environmental Assessment and Finding

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared a programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for its activating a broadcast site of the Differential Global Positioning System (DGPS) service at Brunswick, Maine. The EA concludes that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. This Notice announces the availability of the EA and FONSI and solicits comments on them.

DATES: Comments must be received on or before August 21, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: CWO Roger Hughes, United States Coast Guard Navigation Center, at (703) 313–5889. Copies of the EA and FONSI may be obtained by calling Mr. Hughes, or by faxing a request to him at (703) 313–5920. Copies of the EA—without enclosures—may also be obtained on the Electronic Bulletin Board System (BBS) at the Navigation Information Service (NIS) in Alexandria, Virginia, at (703) 313–5910. For information about the BBS, call the watchstander of NIS at (703) 313–5900.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit comments on the EA and FONSI, which are available as stated in the previous two paragraphs. It may revise the EA and the FONSI in view of the comments. If it does, it will announce their availability

in revised form by a later notice in the **Federal Register**.

Background

As required by Congress, the Coast Guard is preparing to install the equipment necessary to implement DGPS service in the northeastern United States. DGPS uses a new radionavigation technique that improves upon the 100-meter accuracy of the existing Global Positioning System to provide an accuracy of 8 to 20 meters. For vessels, this degree of accuracy is crucial for precise electronic navigation in harbors and their approaches: It will reduce the number of groundings, collisions, personal injuries, fatalities, and spills of hazardous cargo resulting from such incidents.

After extensive study, the Coast Guard has chosen a site at Naval Air Station (NAS) Brunswick, Maine, instead of the originally planned site at Bass Harbor Lighthouse, Maine, as a site for installation of DGPS equipment. Significant concerns had been raised about installing the equipment at Bass Harbor Lighthouse with regard to the impact on people visiting the adjacent Acadia National Park and to the scenic value of the Lighthouse itself. But DGPS signals will be transmitted in the marine-radiobeacon frequency band—283.5 to 325 KHz—using less than 25 watts' effective radiated power. Signals transmitted at these low frequencies and this low power have not been found harmful even to the immediate environment.

Proposed Installation at NAS Brunswick

(a) Site—NAS Brunswick, near the town of Brunswick, already accommodates radio antennas and other electronic equipment.

(b) Radiobeacon antenna—The Coast Guard will install a 90-foot guyed antenna with an accompanying ground plane. A ground plane for this antenna consists of around 120 radials, each of 6-gauge copper wire, buried 6 inches or less below the soil and projecting from the base of the antenna. The best length for a radial is 300 feet; but the actual length may be shorter, with little or no loss of efficiency, to make the radials fit within the boundaries of the property. Whenever it can, the Coast Guard will bury the radials by the cable-plow method so as to minimize disturbance of the soil.

(c) DGPS antennas—The Coast Guard will mount six receiving antennas, none higher than 18 inches or broader in base-diameter than 24 inches, on top of an existing building. These antennas support the primary and backup reference receivers and the integrity monitors.

(d) Equipment shelter—The Coast Guard will house the DGPS equipment inside an existing building.

(e) Utilities—The Coast Guard will use available commercial power as the primary source for the antennas, the DGPS equipment, and the other electronic equipment. It will use a telephone line run to the site for operating and monitoring from off the site.

Finding

The Coast Guard has determined that implementing DGPS service at NAS Brunswick will neither have a significant impact on the quality of the human environment nor require preparation of an Environmental Impact Statement.

Dated: July 17, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–17876 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD–95–059]

National Environmental Policy Act Environmental Assessments for the Second, Fifth, and Ninth Coast Guard Districts' Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969; the Council of Environmental Quality Regulations; and the Coast Guard National Environmental Policy Act (NEPA) Implementing Procedures, the Coast Guard gives notice of the availability of Environmental Assessments (EA's) and proposed Findings of No Significant Impacts (FONSI's) for public review. The EA's and proposed FONSI's have been prepared for marine event permitting in the Greater Mississippi Drainage by the Second Coast Guard District; marine event permitting in the Mid-Atlantic Seaboard by the Fifth Coast Guard District; and marine event permitting in the Great Lakes by the Ninth Coast Guard District.

DATES: Comments must be received on or before August 21, 1995.

ADDRESSES: Comments, questions, or requests for copies of the EA's and proposed FONSI's should be sent to Gary Nelson, U.S. Coast Guard Civil Engineering Unit, room 2179, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060. The comments will be available for inspection and copying at the address listed above. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Gary Nelson, U.S. Coast Guard, Civil Engineering Unit, (216) 522–3934 ext. 635.

SUPPLEMENTARY INFORMATION:

Proposed Action

The preparation and announcement of EA's and proposed FONSI's on marine event permitting for the Second, Fifth, and Ninth Coast Guard Districts.

Alternatives

Not permitting the marine events was the only alternative identified.

Coordination

In accordance with the National Environmental Policy Act, as amended and Coast Guard policy, the Coast Guard encourages all interested or affected parties to participate in the public review process. This process includes public participation to integrate information regarding public needs and concerns into the environmental document. Comments should specifically describe environmental issues or topics which the commentator believes the document should address.

Discussion of Announcement

These EA's and proposed FONSI's address the impact of permitting several marine events for festivals, parades, swimming competition, paddling, rowing, floating, windsurfing, sailing races over 50 or 100 craft, fireworks displays, water-skiing, fishing tournaments, powerboat races, and air shows. During 1995 and each year thereafter the Coast Guard proposes to permit these events within the Districts.

The Coast Guard issues Marine Event Permits pursuant to 33 U.S.C. 1233 as set out in the authority citation for all of 33 CFR Part 100. Marine Event Permits represent a federal agency action subject to review procedures established to implement the National Environmental Policy Act (NEPA). In a Notice of Final Agency Procedures published in (59 FR 38654; July 29, 1994) the Coast Guard revised its procedures and policies concerning certain agency actions which it has determined would have no significant individual or cumulative effects on the human environment. In accordance with the National Environmental Policy Act, these actions are categorically excluded from the requirement for

additional analysis needed to prepare an EA or an Environmental Impact Statement (EIS). The revised procedures do not identify many types of activities as the event types which qualify as a categorically excluded action under ''Routine Approvals of Regatta and Marine Parade permits''. Therefore, these EA's and proposed FONSI's are written in order to comply with our procedures for NEPA implementation.

Drafting Information: The drafter of this announcement is Gary Nelson, U.S. Coast Guard, Civil Engineering Unit, Cleveland, Ohio.

Dated: July 13, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–17877 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 95–29; Notice 2]

Decision That Nonconforming 1984 and 1985 Rolls Royce Camargue Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1984 and 1985 Rolls Royce Camargue passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1984 and 1985 Rolls Royce Camargue passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1984 and 1985 Rolls Royce Camargue), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register** (July 20, 1995).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1984 and 1985 Rolls Royce Camargue passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 1, 1995 (60 FR 21236) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–122 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1984 and 1985 Rolls Royce Camargue passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1984 and 1985 Rolls Royce Camargue passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 17, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–17829 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–31; Notice 2; Docket No. 95–32; Notice 2]

Decision That Nonconforming 1994 BMW 520i 4-Door Sedan and 1994 Mercedes-Benz S320 Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1994 BMW 520i 4-Door Sedan and 1994 Mercedes-Benz S320 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1994 BMW 520i 4-Door Sedan and 1994 Mercedes-Benz S320 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor

vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to decide whether 1994 BMW 520i 4-Door Sedan and 1994 Mercedes-Benz S320 passenger cars are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as follows:

Vehicle	Notice date and cite
1994 BMW 520i 4-Door Sedan.	May 1, 1995 (60 FR 21240).
1994 Mercedes-Benz S320.	May 1, 1995 (60 FR 21239).

The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are as follows:

Vehicle	Vehicle eligibility No.
1994 BMW 520i 4-Door Sedan.	VSP–119
1994 Mercedes-Benz S320 ...	VSP–120

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that:

1. A 1994 BMW 520i 4-Door Sedan not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1994 BMW 525i 4-Door Sedan originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards; and

2. A 1994 Mercedes-Benz S320 (Model ID 140.033) passenger car not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1994 Mercedes-Benz S320 passenger car originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 17, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–17830 Filed 7–19–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 11, 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: 1545–0062.

Form Number: IRS Forms 3903 and 3903–F.

Type of Review: Revision.

Title: Moving Expenses and Foreign Moving Expenses.

Description: Internal Revenue Code (IRC) section 217 requires itemization of various allowable moving expenses. Forms 3903 and 3903–F are filed with Form 1040 by individuals claiming employment related moves. The data is used to help verify that the expenses are deductible and that the deduction is computed correctly.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,607,278.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 3093	Form 3903–F
Recordkeeping	33 min	20 min.
Learning about the law or the form	7 min	6 min.
Preparing the form	13 min	13 min.
Copying, assembling, and sending the form to the IRS	20 min	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,607,278 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., 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. 95–17866 Filed 7–19–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 13, 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.

U.S. Customs Service (CUS)

OMB Number: 1515–0110.

Form Number: None.

Type of Review: Extension.

Title: Declaration by Person Who Performed the Processing of Goods Abroad.

Description: The declaration by the foreign shipper is necessary to ensure that the merchandise qualifies for reduced duties under HTSUS 9802.00.60. Failure to provide this information would hamper Customs efforts to collect the proper amount of duty. The foreign processor provides the details of the processing performed abroad.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/ Recordkeepers: 730.

Estimated Burden Hours Per Respondent/Recordkeeper: 46 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 2,260 hours.

Clearance Officer: Norman Waits (202) 927–1551, U.S. Customs Service, Printing and Records Management Branch, room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.

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. 95–17865 Filed 7–19–95; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

July 13, 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: 1512–0292.

Recordkeeping Requirement ID Number: ATF REC 5120/1.

Type of Review: Extension.

Title: Letterhead Applications and Notices Relating to Wine.

Description: Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,650.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 825 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. 95–17864 Filed 7–19–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

July 13, 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: New.

Form Number: IRS Forms 4996.

Type of Review: New collection.

Title: Electronic/Magnetic Media Filing Transmittal for Wage and Withholding Tax Returns.

Description: Form 4996 allows reporting agents to identify tax returns submitted on magnetic tapes or electronic transmissions. The reporting agent's signature is the signature of the ''composite return'' as required by Internal Revenue Regulations 31.6011(a)–8. Reporting agents are persons or organizations that submit tax returns or federal tax deposits on magnetic tape or via telecommunications.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 170 hours.

OMB Number: 1545–0188.

Form Number: IRS Form 4868.

Type of Review: Revision.

Title: Application for Automatic Extension of Time To File U.S. Individual Income Tax Return.

Description: Form 4868 is used by taxpayers to apply for an automatic 4-month extension of time to Form 1040, Form 1040A, or Form 1040EZ. This form contains data used by the Service to determine if a taxpayer qualifies for the extension.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 5,572,999.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 26 min.
Learning about the law or the form: 13 min.
Preparing the form: 17 min.
Copying, assembling, and sending the form to the IRS: 10 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 6,130,299 hours.

OMB Number: 1545–0097.

Form Number: IRS Form 1099–S.

Type of Review: Revision.

Title: Proceeds From Real Estate Transactions.

Description: Form 1099–S is used by the real estate reporting person to report proceeds from a real estate transaction to the IRS.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 75,000.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 727,023 hours.

OMB Number: 1545–1058.

Form Number: IRS Form 8655.

Type of Review: Revision.

Title: Reporting Agent Authorization for Magnetic Tape/Electronic Filers.

Description: Form 8655 allows a taxpayer to designate a reporting agent to file certain employment tax returns electronically or on magnetic tape, and to submit Federal tax deposits. This form allows IRS to disclose tax account information and to provide duplicate copies of taxpayer correspondence to authorized agents. Reporting agents are persons or organizations preparing and filing magnetic tape or electronic equivalents of federal tax returns and/or submitting federal tax deposits.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 10,000 hours.

OMB Number: 1545–1345.

Regulation ID Number: CO–99–91 Final (T.D. 8490).

Type of Review: Extension.

Title: Limitations on Net Corporate Operating Loss.

Description: This regulation modifies the application of the segregation rules under section 382 in the case of certain issuances of stock by a loss corporation. This regulation provides that the segregation rules do not apply to small issuances of stock, as defined, and apply only in part to certain other issuances of stock for cash.

Respondents: Business or other for-profit, Farms.

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: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., 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. 95–17867 Filed 7–19–95; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Congress-Bundestag Youth Exchange Program

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop programs to administer the Congress-Bundestag Youth Exchange Program (CBYX). Since this is a bilateral agreement, Germany is also holding a simultaneous open competition to select the German counterpart organizations that will administer the program in Germany.

The Congress-Bundestag Youth Exchange Program (CBYX), known in Germany as the Parlamentarisches Patenschafts-Programm (PPP), is an official exchange program of the Congress of the United States, administered by the U.S. Information Agency, and the German Bundestag (Parliament), administered by PB4. The actual number of participants selected each year is dependent on the amount of funding made available by the U.S. Congress and the German Bundestag. The program provides a full scholarship for an academic year experience of living and studying in the host country. Part of the exchange involves students aged 16–18, who live with host families, attend high school (''Gymnasium'' in Germany) and participate in community life. Other components involve young professionals and vocational school graduates. Each government provides funding through grant awards for the costs of recruiting, selecting, orienting, and debriefing of its nationals; their international airfare; and most hosting costs. The final determination of exchange numbers for each academic year is made in the preceding December when representatives of both governments hold annual discussions. Participants are chosen according to procedures and criteria established by each government.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through legislation.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–96–9. Please refer to title and number in all correspondence or telephone calls to USIA.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday September 1, 1995. Faxed documents will not be accepted, nor will documents postmarked September 1, 1995, be received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

Selection decisions will be made by December 31, 1995, in coordination with the Government of Germany, which will simultaneously select the German counterpart organizations that will administer the program in Germany. Final budgets, based on guidance to be provided by the Agency, will be required from the selected organizations by October 30, 1996.

Duration: Organizations that are successful in this competition will be awarded grants in FY 1997 to administer the exchange for academic year 1997–98 and will also be eligible for grants in FY 1998, 1999, and 2000. No grant funds may be expended until the grant agreement is signed. The initial grant periods will be from January 1, 1997 to July 31, 1998.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact the Office of Citizen Exchanges, E/PE, Room 220, United

States Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–5319, fax (202) 619–4350, internet {CMINER@USIA.GOV}, to request a Solicitation Package, which includes award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please direct inquiries and correspondence to USIA Program Officer, Christina Miner. Interested applicants should read the complete Federal Register announcement before addressing inquiries to Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and *8* copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/P–96–9, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit to E/XE the ''Executive Summary,'' ''Proposal Narrative,'' and ''Budget'' sections of each proposal on a 3.5″ diskett, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

There are four parts to the Congress-Bundestag Youth Exchange Program (CBYX):

1. *Administration Component:* One grant will be awarded to an organization to administer the recruitment and selection process on behalf of, and in cooperation with, the other grantee organizations. It will be responsible for preparing and distributing informational material, student selection criteria and applications to a wide audience including all public and private secondary schools, the media, and key networks such as the American Association of Teachers of German. Innovative methods of publicizing the program are welcome, within funding limitations. The organization will screen all written applications and identify a group of semi-finalists that reflects population distribution by state. In order to generate a roster of finalists the grantee will work with other organizations to assemble and coordinate state selection committees to interview semi-finalists. It will handle the notification of these finalists and work with the other organization in processing their files. The grantee will also set up and maintain a master list of all high school student participants and prepare a list of the Congressional representatives from whose districts the students are selected. The grantee will prepare a similar list of German participants and the Congressional districts in which they are hosted. Finally, it will work with the other grantee organizations in the preparation of general briefing materials, updated biannually, for use by all CBYX participants. The award may not exceed $348,000.

In addition the grantee organization will be responsible for securing insurance for the German students. Coverage must include the following:

Illness and Accident Coverage

* Physician—Any
* Hospital—Any
* Treatment and care—Unlimited
* Specialist to sickbed—Unlimited
* Medication—Unlimited
* Prosthesis—Unlimited
* Private Nurse—Unlimited
* Chiropractors/Podiatrist—Unlimited if recommended by physician
* Dental care due to accident—Unlimited
* Emergency dental care—$800 maximum
* Psychiatric care—$600 maximum

Except in cases of extreme emergency, approval is needed before surgery.

Travel Cost

* Related to treatment—Unlimited
* Post sickness room and board while not at usual place of residence—Unlimited
* Repatriation of sick insured—Unlimited
* Repatriation of remains—Unlimited

Indemnity in Case of Accident

* Death—$10,000
* Dismemberment—$500 to $2,000 according to scale
* Disability resulting from accident—$100,000 maximum
* Disfigurement—$20,000 maximum
* Burial expenses outside home country—$7,500 maximum

Exclusions

1. Medical care required due to ''cause majeure''.
2. Suicide, self-inflicted injuries, injuries due to fights.
3. Treatments that are the result of accidents occurred while driving any motorized vehicle are excluded, except when applying to minors participating in an organized high school program, while learning to drive an automobile according to the laws of the state and the rules of the sponsoring entity. This will apply only to four-wheeled automobiles and insurer will act always and only as secondary insurer.
4. Travel as crew on any aircraft or boat and travel on non-commercial flights.
5. Any type of drug-related treatment.
6. Preexisting conditions, even if not diagnosed, or incubating diseases.
7. Routine and preventive medicine, such as sport physicals, vaccinations, tests, etc.
8. Venereal diseases, elective termination of pregnancy, pregnancy, childbirth, AIDS.
9. Prostheses of any type, including glasses and contact lenses, except in case of accident.
10. Orthodontic and major dental care, fillings and root canals, except in case of accident.
11. Any psychological or psychiatric treatment over the limit.
12. Eating disorders.
13. Plastic surgery and aesthetic treatments, including acne and wart removal.
14. High risk sports and those normally not accepted as leisure sports, and sports practiced professionally.
15. Chiropractors, podiatrists and similar practitioners, unless their services are prescribed by a physician (MD).
16. Treatments not accepted as normal by the medical profession.
17. Criminal acts and fraud by insured or his/her accomplices.

Any policy, plan, or contract secured to fill the above requirements must, at a minimum, be:

(1) Underwritten by an insurance corporation having an A.M. Best rating of ''A−'' or above, and Insurance Solvency International, Ltd. (ISI) rating of ''A−i'' or above, a Standard & Poor's Claims-paying Ability rating of ''A−'' or above, a Weiss Research, Inc. rating of

B+ or above, or such other rating as the Agency may from time to time specify; or

(2) Backed by the full faith and credit of the government of the exchange visitor's home country.

2. *High School Component:* Approximately 300 U.S. and 300 German students will participate annually. The American organization is responsible for the following: Final processing of the students; pre-departure orientation; travel arrangements; debriefing and follow-up for the U.S. students; arrival orientation for the German students; placement of German students in schools; selection and orientation of host families; domestic U.S. travel arrangements; supervision and counseling; arrangements for a two-day visit to Washington, D.C.; and re-entry training. The Washington program, which is designed to introduce the participants to the federal government, may be subcontracted out by the grantee. Both the pre-departure orientation and the debriefing should take place in Washington, D.C. and include CBYX students only.

The grantee handles all administrative and logistical matters, including in-country travel. Any language training for Americans will be the responsibility of the German partner organization and covered by German funds. German students are expected to be fluent in English. Therefore, language training will be unnecessary for them. Organizations may include other program elements in their proposals, but should bear in mind that funding is limited.

Organizations may bid on one or more lots of 30 U.S./30 German students. A maximum of five U.S. organizations will be selected for grants in this category.

Any organization competing for the high school component must be designated by USIA as a Teenager Exchange Visitor Program Sponsor.

3. *Young Professional Component:* One organization will be awarded a grant to administer this component. The U.S. organization will be responsible for the following: The recruitment and selection of approximately 60 young American men and women ages 18–24, who will study and participate in an internship during the exchange year in a field related to their career interest; their pre-departure orientation (approximately 3 days); and international travel arrangements. The organization will be expected to work closely with its German partner to monitor the progress of the U.S. participants and to resolve problems should they arise. The grantee will also be responsible for arranging and monitoring all program activities for approximately 80 young German professionals ages 18 to 24 during their stay in the U.S. It will conduct a two- or three-day arrival orientation; arrange their placement in colleges and practicums (internships); recruit, screen and orient host families; make arrangements for the group's visit to Washington for a three-day cultural and educational program; provide supervision and counseling of the participants as needed; and handle all administrative and logistical matters including in-country travel. Any language training for Americans will be the responsibility of the German partner organization. Organizations may include other program elements in their proposals, bearing in mind that funding is limited.

Each German participant will be placed in a two or four-year college for full-time study, a minimum of 12 credit hours, for one semester. The grantee may need to arrange for English classes for those participants whose English is inadequate. To save costs, the organization is encouraged to seek tuition waivers and cost-sharing with cooperating colleges. Each participant will have a full-time practicum or internship in his/her professional field for the second half of the program year. Each practicum should be based on a prospectus of the specific skills and functions that will be mastered, and it should include a structured learning component that enables the participant to gain a perspective on the overall operation of the firm.

A stipend for some meals, incidentals and reasonable local transportation expenses may be included in the budget, but the stipend should be substantially reduced or eliminated during the second half of the program when the firms or agencies hosting the practicums provide an allowance for living expenses. The current stipend is approximately $225 per month. Where possible, hosting arrangements should be found that do not require subsidization.

4. *Vocational Component:* One grant will be awarded to an organization to administer the program component designed for 20 American vocational school graduates. The organization is responsible for recruiting and selecting men and women ages 18–20 who will complete vocational school studies prior to departure for Germany. The grantee is encouraged to work with vocational educational offices at the state level in addition to administrators of secondary schools with vocational education in their curriculum in the selection process. The grantee will conduct a pre-departure orientation and, at the conclusion of the program, a debriefing. The grantee will work with its partner in Germany, which is responsible for the following (funded by the German Government): arrival orientation, up to two months of language training, family and school placement, arrangements for a practicum in the participants' field, counseling and support, excursions, and administration including insurance.

Insurance: Insurance for German participants in the U.S. will be provided by the administrative organization. Insurance for U.S. students will be provided by the German government.

Citizenship: Americans traveling under this program must be U.S. citizens.

Application Procedures: To be eligible for consideration in this competition an organization must:

1. Be legally incorporated and have a legally incorporated affiliate in Germany.

2. Have a not-for-profit status, as determined by the Internal Revenue Service; the German affiliate must also be not-for-profit (''gemeinneutzige'').

3. Be financially solvent, have demonstrated track record of responsible fiscal management and be able to meet the accounting and reporting requirements for Agency grants.

4. Have four years' experience in conducting long-term exchange programs (of at least nine months' duration) between the United States and Germany.

5. Have well-established national volunteer and host family networks to carry out various aspects of the program; regional representatives must be situated in such a way to handle expeditiously any problems that arise regarding host family accommodations, schooling and language problems, or difficulties concerning internships.

Funding

The organization must submit a comprehensive line item budget. Costs for U.S. and German students are to be listed separately. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations should be familiar with grant regulations described in OMB circulars A110, A122, and A133.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The grant recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost

participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A100, Attachment E. Cost Sharing and Matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

The recipient's proposal shall include the cost of an audit that: (1) complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) complies with AICPA Codification of Statements on Auditing Standards AU Section 551, ''Reporting on Information Accompanying the Basic Financial Statements in Auditor-Submitted Documents,'' where applicable. When USIA is the largest direct source of Federal financial assistance—i.e. the cognizant Federal Agency—and indirect costs are charged to Federal grants, a supplemental schedule of indirect cost computation is required. The audit costs shall be identified separately for: (1) audit of the basic financial statements, and (2) supplemental reports and schedules required by A–133.

USIA's Office of Inspector General has provided supplemental guidance for conducting A–133 audits and recovery of related audit costs in a separate ''Dear Colleague'' letter dated January 24, 1995.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Proposal Submission Instructions. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency budget and contract office, as well as the USIA Office of Western European and Canadian Affairs and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to their conformance with the objectives and considerations already stated in this RFP and the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation.

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the program's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/ institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies)

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about December 31, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: July 14, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–17880 Filed 7–19–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 139

Thursday, July 20, 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

''FEDERAL REGISTER'' NUMBER: 95–17370.

PREVIOSLY ANNOUNCED DATE AND TIME: Thursday, July 20, 1995, at 10:00 a.m., Meeting Open to the Public.

The following item has been postponed to the meeting of Thursday, July 27, 1995:

AOR 1995–17—National Association of Realtors by counsel, Ralph W. Holmen.

DATE AND TIME: Tuesday, July 25, 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, July 27, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinions:
AOR 1995–17
National Association of Realtors by Counsel, Ralph W. Holmen.
AOR 1995–21
Larson for Life for U.S. Senate Committee by Peter B. Crary, Treasurer.
AOR 1995–22
Democratic Congressional Campaign Committee by counsel, Robert F. Bauer and B. Holly Schadler.
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. 95–18047 Filed 7–18–95; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m., Thursday, July 27, 1995.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

STATUS: The entire meeting on Thursday, July 27, 1995 will be open to the public.

MATTERS TO BE CONSIDERED:

A. Federal Home Loan Bank of Atlanta Proposal to Certify Virginia Housing Development Authority as a Nonmember Mortgagee.

B. Federal Home Loan Bank Resales with Members.

C. Affordable Housing Program: Approval of Action Plan.

D. Federal Home Loan Bank Modernization Act.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–18062 Filed 7–18–95; 3:46 pm]

BILLING CODE 6725–01–M

Corrections

Federal Register

Vol. 60, No. 139

Thursday, July 20, 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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35944; File No. SR-Amex-95-26]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Options and Long-Term Options on the Morgan Stanley High Technology 35 Index and Long-Term Options on a Reduced-Value Morgan Stanley High Technology 35 Index

Correction

In notice document 95–17203 beginning on page 36167 in the issue of Thursday, July 13, 1995, in the third column, the release number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–224–AD; Amendment 39–9286; AD 95–13–06]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric Model CF6-80C2 Series Engines or Pratt & Whitney Model PW4000 Series Engines

Correction

In rule document 95–15300 beginning on page 33338 in the issue of Wednesday, June 28, 1995, make the following correction:

§ 39.13 [Corrected]

On page 33342, in the first column, in § 39.13, in airworthiness directive 95–13–06, pargraph (c), in the table, in the first column, the last entry should read ''92–24–51''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circular 570; 1995 Revision]

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies

Effective July 1, 1995.

Correction

In notice document 95–16154 beginning on page 34436 in the issue of Friday, June 30, 1995, make the following correction:

On page 34442, in the second column, in the 7th line, under the heading, Hartford Fire Insurance Company, ''$130,418,000.'' should read ''$310,418,000.''.

BILLING CODE 1505–01–D

Federal Register

Thursday
July 20, 1995

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Labeling of Food for Human Consumption; Foods for Special Dietary Use and Disclaimer ''Useful Only In Not Promoting Tooth Decay'': Final Rule

Sugar Alcohol and Dental Caries; Health Claims: Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 91N–384L, 91N–0384, and 84N–0153]

RIN 0905–AD08

Food Labeling: Label Statements on Foods for Special Dietary Use; ''Useful Only in Not Promoting Tooth Decay'' Disclaimer

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; denial of request for a hearing; confirmation of effective date; denial of requests for a stay of effective date and for reconsideration.

SUMMARY: The Food and Drug Administration (FDA) is denying the requests for a hearing on the objections to its final rule that amended the regulations on foods for special dietary use to conform them to the requirements of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). After reviewing the objections to the amendment and the request for a hearing, the agency has concluded that the objections do not raise an issue of material fact that justifies granting a hearing or revoking the agency's action. Nor have they convinced the agency that it is appropriate for it to revoke its action. The agency also received requests for a stay of the effective date of the final rule and for reconsideration of the decision concerning the use of the ''Useful Only in Not Promoting Tooth Decay'' disclaimer for ''sugar-free'' foods. FDA is denying these requests. FDA is confirming the effective date of the final rule.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS–151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Introduction

Prior to 1993, FDA regulated ''no-'' and ''low-calorie'' foods as foods for special dietary use under part 105 (21 CFR part 105). FDA had promulgated § 105.66 to provide for label statements on products for reducing or maintaining caloric intake or body weight. Terms such as ''low calorie,'' ''reduced calorie,'' and ''sugar free,'' which could be used to highlight foods useful in the maintenance or reduction of body weight, were included in this section.

Over time, however, more and more people have become concerned with healthier eating and have begun to follow the suggestion in Dietary Guidelines for Americans to maintain a healthy weight. Consequently, terms such as ''low'' or ''reduced calories'' and ''sugarless'' have come to be used on foods intended for consumption by the general population. As such, these terms have lost their special significance in the labeling of foods intended solely for special dietary uses. Accordingly, FDA came to see that these terms should be defined under the 1990 amendments as nutrient content claims.

In the **Federal Register** of November 27, 1991 (56 FR 60421), the agency published a document entitled ''Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms'' (hereinafter referred to as the nutrient content claims proposal). In that document, FDA proposed to define terms that describe the caloric level in a food and related sugar claims, terms which had been regulated as special dietary use claims in §§ 105.66 and 101.60 (21 CFR 101.60), as nutrient content claims.

In particular, FDA proposed to define the terms ''low calorie,'' ''reduced calorie,'' ''sugar free,'' and ''no added sugar'' in § 101.60. Because the definitions of these terms in § 105.66 would be redundant, and because these terms would no longer be necessary as special dietary use claims, FDA proposed in the nutrient content claims proposal to revise § 105.66 (c), (d), and (f) to reference the appropriate paragraphs in § 101.60. At the same time, FDA proposed in § 101.60(o)(8) to permit sugarless chewing gums to bear sugar free claims provided that the label also bear, when the food is not low or reduced calorie, a statement such as ''Not a reduced calorie food,'' ''Not a low calorie food,'' ''Not for weight control,'' or ''Useful Only in Not Promoting Tooth Decay.'' The agency also noted that it planned to reevaluate the determination of usefulness in not promoting tooth decay of gums sweetened with sugar alcohols (56 FR 60421 at 60437).

FDA tentatively concluded, however, that there was a significant portion of § 105.66 that remained appropriate for regulating foods that are for special dietary use. Such foods are those specifically represented or purported to be useful as part of a weight control plan, as opposed to those that are simply represented as being low or reduced in calories (although such products can be useful in reducing or maintaining body weight). The agency proposed to retain those provisions in § 105.66.

Numerous comments that responded to the nutrient content claims proposal supported the continued allowance of the statement ''Useful Only in Not Promoting Tooth Decay'' in proposed § 101.13(o)(8) on the label of chewing gums that claim to be ''sugar free.'' However, at least one comment suggested that only the statements ''not a reduced calorie food'' and ''not a low (free) calorie food'' were appropriate. The comment specifically suggested that FDA should disallow the statement ''useful only in the prevention of tooth decay'' with ''sugar free'' claims. The comment also implied that FDA should disallow the statement ''not for weight control'' with ''sugar free'' (58 FR 2302 at 2325, January 6, 1993).

Based upon its review of the comments, FDA determined that there was no compelling reason to disallow the statement ''not for weight control.'' However, the agency concluded that the statement ''Useful Only in Not Promoting Tooth Decay'' should not be allowed because it is an unauthorized health claim; that is, it is a statement that characterizes the relationship of a nutrient (i.e., the sugar alcohol used in the product) to a disease (i.e., dental caries). Further, the agency deleted, as unnecessary, the exemption in proposed § 101.13(o)(8) that would have allowed a ''sugar free'' claim on chewing gums containing sugar alcohols and the statement about not promoting tooth decay, because the agency had decided not to define sugar alcohols as ''sugars.'' Therefore, FDA deleted the proposed paragraph (o)(8) from the final rule adopting § 101.13. The final rules effecting this change, entitled ''Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food'' (58 FR 2302) (hereinafter referred to as the nutrient content claims final rule) and ''Food Labeling: Label Statements on Foods For Special Dietary Use'' (58 FR 2427) (hereinafter referred to as the special dietary use final rule), published in the **Federal Register** of January 6, 1993.

II. Amendment to Section 105.66

A. *Objections and Requests for a Hearing*

Following publication of the special dietary use final rule, a manufacturer, a trade association, and a ''working group'' of manufacturers filed timely objections to the rule revising § 105.66(f)

by removing the statement ''Useful Only in Not Promoting Tooth Decay'' from those statements that can be used in conjunction with a ''sugar free'' claim. They requested a formal evidentiary hearing on their objections. Two other manufacturers submitted general comments, and a professional association resubmitted, as comments to the special dietary use final rule, comments that it had filed regarding the November 27, 1991, proposed rules on food labeling.

The provision of § 105.66(f) that was the subject of the objections was adopted under section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)). Section 701(e)(1) of the act provides that any person adversely affected by a regulation issued under that section may file objections, specifying with particularity the provisions of the order ''deemed objectionable, stating reasonable grounds therefor'' and may request a public hearing based upon such objections. Under section 701(e) of the act, objections and a request for a hearing on a particular regulation act to automatically stay or delay the effective date of the action to which objections are raised (section 701(e)(2) of the act). Thus, the revision to § 105.66(f) that would remove the statement ''Useful Only in Not Promoting Tooth Decay'' from those statements that can be used in conjunction with a ''sugar free'' claim was automatically stayed as of February 5, 1993.

B. *Standards for Granting a Hearing*

FDA may deny a hearing request if the objections to the regulation do not raise genuine and substantial issues of fact that can be resolved at a hearing. Specific criteria for determining whether a hearing has been justified are set forth in 21 CFR 12.24(b). A hearing will be granted if the material submitted shows that: (1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law; (2) the factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions; (3) the data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate; (4) resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commissioner concludes that the action would be the same even if the factual issues were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal; and (5) the action requested is not inconsistent with any provision in the act or any regulation in this chapter particularizing statutory standards. The proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

A party seeking a hearing is required to meet a ''threshold burden of tendering evidence suggesting the need for a hearing.'' *Costle* v. *Pacific Legal Foundation,* 445 U.S. 198, 214–215 (1980) reh. den., 445 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Wescott & Dunning, Inc.,* 412 U.S. 609, 620–621 (1973). An allegation that a hearing is necessary to ''sharpen the issues'' or to ''fully develop the facts'' does not meet this test. *Georgia Pacific Corp.* v. *U.S. E.P.A.,* 671 F.2d 1235, 1241 (9th Cir. 1982). If a hearing request fails to identify any factual evidence that would be the subject of a hearing, there is no point in holding one. In judicial proceedings, a court is authorized to issue summary judgment without an evidentiary hearing whenever it finds that there are no genuine issues of material fact in dispute and a party is entitled to judgment as a matter of law. (See Rule 56, Federal Rules of Civil Procedure.) The same principle applies in administrative proceedings.

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact concerning which a meaningful hearing might be held. *Pineapple Growers Association* v. *FDA,* 673 F.2d 1083, 1085 (9th Cir. 1982). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing. *Dyestuffs and Chemicals, Inc.* v. *Flemming,* 271 F.2d 281 (8th Cir. 1959), cert. denied, 362 U.S. 911 (1960). FDA need not grant a hearing in each case where an objector submits additional information or posits a novel interpretation of existing information. (See *United States* v. *Consolidated Mines & Smelting Co.,* 455 F.2d 432 (9th Cir. 1971).) In other words, a hearing is justified only if the objections are made in good faith, and if they ''draw in question in a material way the underpinnings of the regulation at issue.'' *Pactra Industries* v. *CPSC,* 555 F.2d 677 (9th Cir. 1977) (see also *Community Nutrition Institute* v. *Young,* 773 F.2d 1356 (D.C. Cir. 1985)). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy. (See *Citizens for Allegan County, Inc.* v. *FPC,* 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC,* 256 F.2d 233, 240 (5th Cir.), cert. denied, 358 U.S. 872 (1958).)

In summary, a hearing request should present sufficient credible evidence to raise a material issue of fact, and the evidence must be adequate to resolve the issue as requested and to justify the action requested.

C. *Analysis of Objections and Request for a Hearing and Related Comments*

1. The three objectors and one of the comments stated that the agency had not provided adequate notice or opportunity for comment on its decision to remove the provision providing for the use of the statement ''Useful Only in Not Promoting Tooth Decay.'' The objectors presented a number of arguments as support. First, two of the objectors stated that all of the previous proposals related to the final rule implied that the agency was going to retain the phrase ''Useful Only in Not Promoting Tooth Decay.'' Secondly, one objector stated that the meaning of the agency's statement in the nutrient content claims proposal that it planned at some point to reevaluate its earlier determination regarding sugar-free products was at least ambiguous. The other two objectors stated that this statement only served to alert interested persons that FDA may decide in the future to propose revisions to the rule allowing use of the statement ''Useful Only in Not Promoting Tooth Decay'' but that such revisions could have gone in either direction. These objectors concluded that the decisions to delete § 105.66(f) and to subject the phrase ''Useful Only in Not Promoting Tooth Decay'' to the requirements of health claims were in no sense logical outgrowths of FDA's November 1991 proposal.

In considering the objection that the agency did not provide adequate notice and opportunity for comment in its actions revoking the provision for the phrase ''Useful Only in Not Promoting Tooth Decay,'' it is important to understand exactly what FDA did in the nutrient content claims proposal. FDA was not merely proposing to carry forward the provisions of the ''sugar free'' claim unchanged from the existing regulations. Rather, FDA was proposing to find that a fundamental change in the character of this claim had been worked

by the 1990 amendments; i.e., it had changed from a special dietary use claim that was directed at a limited segment of the population to a nutrient content claim directed to the general population. Thus, FDA was not merely proposing to change the location of the provisions on this claim. It was asking whether the ''sugar free'' claim is an appropriate nutrient content claim, and whether it is appropriate to retain the qualifiers that had been used to clarify this claim.

The question that the objectors' arguments raise is whether the agency's decision that the ''Useful Only in Not Promoting Tooth Decay'' statement is a health claim, under the requirements of the 1990 amendments, and that it cannot be used as a qualifier of the nutrient content claim, is the logical outgrowth of the proposal. In *Chocolate Manufacturers Association* v. *Block*, 755 F.2d 1098, 1105 (4th Cir. 1985), the Fourth Circuit said that the question that the logical outgrowth test raises is whether the final rule materially altered the issues involved in the rulemaking; that is, whether the final rule substantially departed from the terms or substance of the proposed rule.

In its final decision on the ''Useful Only in Not Promoting Tooth Decay'' statement, FDA was acting well within the scope of the proposed rule. The issue in the proposal was whether ''sugar free'' and its qualifiers constituted an appropriate nutrient content claim, and that is the issue that the agency decided in the final rule.

The key point in considering the adequacy of the notice that FDA provided is the fact that FDA never specifically raised the question of whether the ''Useful Only in Not Promoting Tooth Decay'' qualifier could be considered to be a health claim. The question that, thus, must be considered is whether this omission was sufficiently significant as to provide a basis for concluding that the agency did not give proper notice.

This question is answered by *International Harvester Co.* v. *Ruckelshaus*, 478 F.2d, 615, 632 n.51 (D.C. Cir. 1973). In Footnote 51, the court stated:

> As we have stated in an analogous context of rule-making proceedings before the Federal Communications Commission, where petitioners have argued that the Commission was ''changing the rules in the middle of the game'' when it took into consideration factors not specifically indicated in its Section 4(a) notice under the Administrative Procedure Act, 5 U.S.C. § 1001(a), ''[s]urely every time the Commission decided to take account of some additional factor it was not required to start the proceedings all over again. If such were the rule the proceedings might never be terminated.'' *Owensboro On the Air* v. *United States*, 104 U.S. App. D.C. 391, 397, 262 F.2d, 702, 708 (1958); *Logansport Broadcasting Corp.* v. *United States*, 93 U.S. App. D.C. 342, 346, 210 F.2d, 24, 28 (1954).

Thus, the agency need not have mentioned the specific factor on which it ultimately relied in the proposal as long as the basic issue remained the same, which it did.

In the nutrient content claims proposal, FDA was raising the question of whether particular statements are appropriate to be made as nutrient content claims for food products. With respect to one such statement, ''Useful Only in Not Promoting Tooth Decay,'' several comments were received in support of, and one comment in opposition to, retention of this statement as part of the ''sugar-free'' claim. FDA's decision was that this statement was not a nutrient content claim. Thus, the objectors' arguments that an adequate notice and opportunity for comment were not provided, and that the final rule was not the logical outgrowth of the proposal, are without merit.

2. In arguing that the agency had not provided adequate notice and an opportunity for comment, one objector referred to a statement by the agency concerning the persuasiveness of data in supporting the noncariogenicity of sugar alcohols (polyols) that appeared in the final rule entitled ''Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label'' (hereinafter referred to as the ''mandatory nutrition labeling final rule'') (58 FR 2079 at 2099). The firm also pointed to other statements made by FDA in reference to health claims and its intentions regarding sugar alcohols that the objector claimed evidenced that FDA's action was motivated by doubts about the validity of the ''Useful Only in Not Promoting Tooth Decay'' claim.

Nowhere did FDA say, as the objector implies, that it became aware of new data casting doubt about the noncariogenic properties of sugar alcohols. What the agency did say was that it wanted to ensure that the statement continued to be valid. It is clear, however, that the agency's final action on the ''Useful Only in Not Promoting Tooth Decay'' statement was not motivated by any concern about the continuing validity of the claim. It was based solely on the legal conclusion about the status of the claim that the agency reached after reconsidering whether to continue to provide for use of the statement in light of the comments that were submitted (see 58 FR 2302 at 2326). Thus, the objector's argument that there was no suggestion that FDA had become aware of new information casting doubt on the noncariogenic attributes of sugarless products is simply beside the point.

3. The objectors argued that the statement ''Useful Only in Not Promoting Tooth Decay'' has a long history of use, and that its history of use was as a disclaimer and not as a claim. The objectors argued that, as a disclaimer, the phrase is an integral part of the nutrient content claim ''sugar free'' and, thus, under the provisions of the last sentence of section 403(r)(1) of the act (21 U.S.C. 343(r)(1)), i.e., ''a claim subject to clause (A) is not subject to clause (B),'' cannot be treated as a health claim.

Before the passage of the 1990 amendments, how the statement ''Useful Only in Not Promoting Tooth Decay'' had been used may have had some significance in determining whether to permit its continued use. However, the agency had to review the use of the statement in view of the changed circumstances effected by the new law. Under section 403(r)(1)(B) of the act, a claim that characterizes the relationship of any nutrient which is of the type required in section 403(q)(1) or (q)(2) of the act to be in the label or labeling of a food to a disease or a health-related condition is a health claim. The statement on tooth decay meets both elements of this definition. Sugar alcohols are a category of nutrients for nutrition labeling purposes (see 21 CFR 101.9(c)(6)(iii)), and tooth decay is a disease. Thus, no matter how this claim has been used, the agency must pay attention to the law as it is now written, and the law says that if such a statement appears on the food label, it will misbrand the food unless authorized by FDA under section 403(r)(3) of the act. The agency was merely recognizing what the law requires on its face in saying in the nutrient content claims final rule that the phrase ''Useful Only in Not Promoting Tooth Decay'' is a health claim. It does not meet the definition of nutrient content claim because it does not provide any information that constitutes a nutrient content claim; i.e., that characterizes the level of any nutrient.

4. The objectors also argued that the phrase ''Useful Only in Not Promoting Tooth Decay'' is an integral, indispensable part of the nutrient content claim that provides important information to help the consumer understand the intent of the ''sugar free'' claim. In making this argument, the objectors relied on the history of the

''sugar free'' claim as a special dietary use claim, and the fact that section 403(j) of the act on foods for special dietary use says such food is misbranded ''unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Secretary determines to be, and by regulation prescribes as, necessary in order fully to inform purchasers of its value for such uses.''

Assuming that section 403(j) of the act is relevant to how a nutrient content claim is defined, what the objectors do not recognize or deal with is the fact that section 403(j) of the act is a grant of discretion to the Secretary (''as the Secretary determines'') with regard to what information is necessary to inform consumers of the value of a food for special dietary use. FDA must exercise its discretion in accordance with the law, however. Section 403(r)(1)(B) of the act on its face makes the statement ''Useful Only in Not Promoting Tooth Decay'' a health claim and not a nutrient content claim or an indispensable part of a nutrient content claim. Thus, the act, as revised by the 1990 amendments, precludes the agency from treating this statement in any other way than as a health claim. Thus, the agency's discretion under section 403(j) of the act (and, given the agency's decision to treat ''sugar free'' as a nutrient content claim, under section 403(r)(1)(A) of the act) is limited by section 403(r)(1)(B) of the act. ''Useful Only in Not Promoting Tooth Decay'' simply is not available for use as part of a nutrient content claim.

5. The objectors argued that, because ''Useful Only in Not Promoting Tooth Decay'' had not been viewed as a drug claim, it is not a health claim. The objectors stated that there has never been any indication during the use of the statement that it constituted a drug claim.

FDA believes that this argument misinterprets the intent of the 1990 amendments and is without merit. The fact that, under section 201(g)(1) of the act (21 U.S.C. 321(g)(1)), a claim that is authorized under section 403(r)(3) or 403(r)(5)(D) of the act would not subject a food to regulation as a drug has apparently somehow created the incorrect impression that the process for authorizing a health claim for a food is an alternative to obtaining approval for a drug claim. There is nothing in either section 201(g)(1) or section 403(r) of the act that either states or implies that health claims are claims that would be drug claims if not authorized by the agency. The fact that an authorized health claim will not make a food product a drug does not mean that an unauthorized health claim will.

In contrast to a drug claim, a health claim provides information about how diet can help reduce a person's risk of developing certain diet-related diseases. The ''Useful Only in Not Promoting Tooth Decay'' statement does exactly what a health claim is supposed to do. It tells the consumer that including foods sweetened with sugar alcohols in his or her diet will affect his or her risk of developing dental cavities. (The question of the scientific validity of this claim is addressed in a proposal published elsewhere in this issue of the **Federal Register**.) Thus, there is nothing in the act that would preclude regulating ''Useful Only in Not Promoting Tooth Decay'' as a health claim. Quite the contrary, the act compels that this claim be regulated as such a claim.

6. A comment from a manufacturer noted that the date for submission of objections to the final rule provided that objections must be submitted by December 10, 1992, rather than being 30 days after the date of publication in the **Federal Register** (i.e., February 4, 1993). The letter contained no specific objections concerning the content of the final rule.

The error identified in the comment occurred in the ''Objections'' section of the special dietary use final rule (58 FR 2427 at 2430). The caption **DATES** at the beginning of the document listed the correct date of February 5, 1993, for the submission of objections and requests for hearing. Additionally, FDA published a document in the **Federal Register** of April 1, 1993 (58 FR 17104), correcting the reference to December 10, 1993. FDA is not aware of any difficulty presented to objectors by the presence of the incorrect date in the special dietary use final rule. Therefore, it finds nothing in their comment that would warrant further action by the agency.

D. *Conclusions on Objections and Request for a Hearing*

Under part 12 (21 CFR part 12), a request for a hearing shall be granted if there is a genuine and substantial issue of fact. The arguments presented by the various objectors did not present any genuine and substantial issues of fact. Accordingly, having fully considered the issues raised by the objectors in regards to the special dietary use final rule, FDA finds that they have no merit and is hereby denying the requests for a hearing.

III. Amendment to Section 101.60

A. *Request for a Stay of Effectiveness*

A trade association and a ''working group'' of manufacturers independently submitted the same joint petition requesting that the agency stay the effectiveness of the issuance of § 101.60(c) while the specific issues raised in their joint petition are being reconsidered. They also asked for a stay of any administrative action by FDA under its determination that ''Useful Only in Not Promoting Tooth Decay'' is an unauthorized health claim. Finally, they asked that FDA issue an affirmative statement on enforcement policy with respect to the disclaimer during the period of May 8, 1993, to May 8, 1994.

FDA provides in part 10 (21 CFR part 10) of its regulations that an interested person may request that the agency stay the effective date of any administrative action (§ 10.35).

The agency is responding to the various requests for reconsideration in this document. Because FDA has determined that a hearing need not be held on the amendments to § 105.66 and that there is no basis for reconsideration of the decision and regulations in question, the question of a stay pending reconsideration is moot. However, FDA notes that the new provisions of § 105.66(f) were stayed automatically by the operation of section 701(e) of the act upon the filing of objections to the special dietary use final rule. Additionally, the agency notes that it has refrained administratively from taking any action pending its resolution of the objections and requests for a hearing. Also, under its enforcement discretion, the agency plans no regulatory action on the use of the phrase ''Useful Only in Not Promoting Tooth Decay'' pending its final action on the proposal published elsewhere in this issue of the **Federal Register** in response to the health claim petition that has been submitted for sugar alcohols.

B. *Request for Reconsideration*

A trade association of manufacturers and a ''working group'' of manufacturers independently filed a joint petition for reconsideration of the agency's decision ''concerning the use of the 'useful only in not promoting tooth decay' disclaimer for 'sugar free' foods.'' The petitioners requested reconsideration of the agency's decisions to: (1) Remove existing § 105.66(f) from the republished rules governing the labeling of foods for special dietary uses; (2) add new § 101.60(c) without including ''Useful Only in Not Promoting Tooth Decay'' as a permitted disclaimer, where appropriate for caloric sugar free products; and (3) take the position in the preamble to the nutrient content claims regulation that this disclaimer represents an unauthorized health

claim. The petitioners made the same arguments in support of their request for reconsideration that they made in support of their objections to the agency's actions and determinations concerning the phrase ''Useful Only in Not Promoting Tooth Decay'' (see discussion in section II of this document).

Under § 10.33(b), an interested person may request reconsideration of all or part of a decision of the agency. The agency may grant a petition for reconsideration when it determines that reconsideration is in the public interest and in the interest of justice. The agency shall grant a petition for reconsideration in any proceeding if it determines that all of the following apply: (1) The petition demonstrates that relevant information or views contained in the administrative record were not previously or not adequately considered; (2) the petitioner's position is not frivolous and is being pursued in good faith; (3) the petitioner has demonstrated sound public policy grounds supporting reconsideration; and (4) reconsideration is not outweighed by public health or other public interests.

The agency has discussed in section II of this document its findings with respect to each of the arguments presented in the petitions for reconsideration. The arguments presented by the petitions do not identify any information that was not properly considered or that raises a genuine issue of fact. Accordingly, finding that they are without merit, FDA is denying the petitions for reconsideration of its decision concerning the statement ''Useful Only in Not Promoting Tooth Decay.'' Further, the agency notes that the petition for reconsideration is now moot based upon the submission by the petitioners of a health claim petition concerning the noncariogenicity of sugarless food products sweetened with sugar alcohols, and the agency's tentative decision discussed elsewhere in this issue of the **Federal Register**, to grant that petition.

Dated: July 7, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–17502 Filed 7–19–95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 101

[Docket No. 95P–0003]

Food Labeling: Health Claims; Sugar Alcohols and Dental Caries

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to authorize the use, on food labels and in food labeling, of health claims on the association between sugar alcohols and the nonpromotion of dental caries. In addition, FDA is proposing to exempt sugar alcohol-containing foods from certain provisions of the health claims general requirements regulation. FDA is proposing these actions in response to a petition filed by the National Association of Chewing Gum Manufacturers, Inc., and an ad hoc working group of sugar alcohol manufacturers (hereinafter referred to as the petitioners).

DATES: Written comments by October 3, 1995. The agency is proposing that any final rule that may issue based upon this proposal become effective 30 days following its publication.

ADDRESSES: 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: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5916.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Nutrition Labeling and Education Act of 1990

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the most notable aspects of the 1990 amendments was that they confirmed FDA's authority to regulate health claims on food labels and in food labeling. As amended by the 1990 amendments, section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)) provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with the procedures and standards contained in regulations adopted by FDA.

Under section 403(r)(3)(B)(i) of the act, the Secretary of Health and Human Services (and, by delegation, FDA) shall promulgate regulations authorizing such claims only if he or she determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.

Section 403(r)(3)(B)(ii) and (r)(3)(B)(iii) of the act describes the information that must be included in any claim authorized under the act. The act provides that the claim shall be an accurate representation of the significance of the substance in affecting the disease or health-related condition, and that it shall enable the public to comprehend the information and understand its significance in the context of the total daily diet. Finally, section 403(r)(4)(A)(i) of the act provides that any person may petition FDA to issue a regulation authorizing a health claim.

The 1990 amendments, in addition to amending the act, directed FDA to consider 10 substance-disease relationships as possible subjects of health claims.

B. FDA's Response

In the **Federal Register** of January 6, 1993 (58 FR 2478), FDA adopted a final rule that implemented the health claim provisions of the act. In that final rule, FDA adopted § 101.14 (21 CFR 101.14). The regulation sets out the circumstances in which a substance is eligible to be the subject of a health claim (§ 101.14(b)), adopts the standard in section 403(r)(3)(B)(i) of the act as the standard that the agency will apply in deciding whether to authorize a claim about a substance-disease relationship (§ 101.14(c)), sets forth general rules on how authorized claims are to be made in food labeling (§ 101.14(d)), and establishes limitations on the circumstances in which claims can be made (§ 101.14(e)). The agency also adopted § 101.70 (21 CFR 101.70), which establishes a process for petitioning the agency to authorize health claims about a substance-disease relationship (§ 101.70(a)) and sets out the types of information that any such petition must include (§ 101.70(d)). These regulations became effective on May 8, 1993.

In addition, FDA conducted an extensive review of the evidence on the 10 substance-disease relationships listed in the 1990 amendments. FDA has authorized claims that relate to 8 of these 10 relationships.

The present rulemaking on sugar alcohols and dental caries represents the first rulemaking that FDA has conducted in response to a health claim petition.

C. History of Sugar Alcohol Labeling

In a set of findings of fact and a tentative order on label statements for special dietary foods that the agency issued on July 19, 1977 (42 FR 37166), FDA addressed the issue of the use of the terms ''sugar free,'' ''sugarless,'' and ''no sugar.'' The agency stated that consumers may associate the absence of sugar in a product with weight control and with foods that are low calorie or that have been altered to reduce calories significantly. At that time, FDA viewed foods intended to be useful in maintaining or reducing calorie intake or body weight as foods for special dietary use, that is, as foods intended for supplying particular dietary needs that exist by reason of a physical, physiological, pathological, or other condition.

Evidence had been introduced at a public hearing in the 1977 rulemaking to show that the ''sugarless'' claim is useful to identify foods like chewing gum, which is in sustained contact with the teeth, in which the use of a sweetener other than a fermentable or cariogenic carbohydrate may not promote tooth decay. The secretary of the American Dental Association's Council on Dental Therapeutics supported the importance of advertising and labeling sugarless chewing gum and mints as noncariogenic, in the sense that they did not contribute to the development of dental caries (Ref. 80).

In the final rule on label statements for special dietary foods published in the **Federal Register** of September 22, 1978 (43 FR 43248), FDA required a statement that a food is not low calorie or calorie reduced (unless it is in fact, a low or reduced calorie food) when a ''sugar free,'' ''sugarless,'' or ''no sugar'' claim is made for the food. The agency decided to allow ''useful only in not promoting tooth decay'' as an alternative statement to accompany such claims. The agency stated that the statements that the food is not low calorie or not useful for weight control, as well as ''useful only in not promoting tooth decay,'' were needed because the

term ''sugar free'' meant only that the food was sucrose free. A ''sugar free'' food could contain other fermentable carbohydrates. Thus, the information about the effect of sugar alcohol-containing foods on the risk of developing dental caries was originally placed on the food label primarily to clarify that the product was not necessarily useful in weight control, not to highlight the effect of sugar alcohol on dental caries production.

In the **Federal Register** of November 27, 1991 (56 FR 60421), in response to the 1990 amendments, FDA published a proposed rule entitled ''Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms'' (the nutrition labeling general principles proposal). In that document, FDA recognized that developments in nutrition science had established that the focus of nutrient content claims for providing dietary guidance had shifted from special populations with particular conditions to the general population (see 56 FR 60421). Therefore, in the nutrition labeling general principles proposal, FDA proposed to treat several claims that had been subject to regulation in § 105.66 (21 CFR 105.66) as special dietary use claims as nutrient content claims for the general population. To eliminate redundancy in the regulations and to conform § 105.66 to the 1990 amendments, FDA proposed to define these claims in part 101 (21 CFR part 101) and to remove them from part 105 (21 CFR part 105). Specifically, FDA proposed to adopt definitions for terms such as ''low calorie'' and ''reduced calorie,'' for other comparative calorie claims, and for sugar claims under section 403(r)(2) of the act and to codify them in § 101.60. It also proposed to delete these claims from § 105.66.

In the **Federal Register** of January 6, 1993 (58 FR 2302), FDA published its final rules on nutrient content claims. FDA adopted definitions for claims for the calorie content of foods in § 101.60 (58 FR 2302 at 2415). FDA defined claims regarding the sugars content of a food, e.g., ''sugar free,'' ''free of sugar,'' ''no sugar,'' in § 101.60(c). In addition, FDA published a final rule that deleted these claims from § 105.66 (58 FR 2427).

However, based on its consideration of comments on the use of the statement ''useful only in not promoting tooth decay'' to qualify the ''sugarless'' claim, FDA concluded that the statement was actually an unauthorized health claim (58 FR 2302 at 2326). The claim is a health claim because it characterizes the relationship of a substance (sugar alcohols) to a disease (dental caries).

In the nutrient content claim general principles proposal (56 FR 60421 at 60437), the agency stated that it intended to reevaluate the usefulness of chewing gums sweetened with sugar alcohols in not promoting tooth decay. The agency stated that the data supporting the claim were over 20 years old and requested that new data be submitted in accordance with the final rule on health messages. In the nutrient content claim final rule, FDA stated that it had received data on the validity of a claim about this nutrient-disease relationship, and that it would make a determination on whether to authorize a claim in accordance with the final rule on health claims (58 FR 2302 at 2326).

On February 5, 1993, under the procedure established in section 701(e) of the act (21 U.S.C. 371(e)), a group of sugar alcohol manufacturers submitted an objection to the revocation of § 105.66(f) (Ref. 2) and asked for a hearing on their objection. At the same time, the group petitioned for reconsideration of the agency's decision and for a stay of any administrative action by FDA pursuant to the determination announced in the preamble of the nutrient content claims rules that ''useful only in not promoting tooth decay'' is an unauthorized health claim.

Filing objections to the revocation of § 105.66(f) stayed the effect of the final rule as a matter of law. FDA's response to these objections and to the petitions is set forth elsewhere in this issue of the **Federal Register**.

In the **Federal Register** of August 18, 1993 (58 FR 44036), FDA published technical amendments to the health claim regulations in response to comments that the agency received on the implementation final rule that was published with the other final rules that responded to the 1990 amendments in January of 1993 (see 58 FR 2066, August 18, 1993). One of the comments stated that if a petition were submitted for the claim ''Useful Only in Not Promoting Tooth Decay,'' virtually none of the sugar-free products on the market would be eligible to bear the claim based on the requirements of a subsection of health claims general principles regulation, § 101.14(e)(6). FDA acknowledged that certain food products of limited nutritional value that have been specially formulated relative to a specific disease condition, such as dental caries, may be determined to be appropriate foods to bear a health claim (58 FR at 44036). The agency commented that it was its intention to deal with such situations within the regulations authorizing specific health claims. Therefore, FDA amended § 101.14(e)(6) to state that:

> Except for dietary supplements or where provided for in other regulations in part 101, subpart E, the food contains 10 percent or more of the Reference Daily Intake or the Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

II. Petition for the Noncariogenicity of Sugarless Food Products Sweetened With Sugar Alcohol

A. Background

On August 31, 1994, the petitioners submitted a health claim petition to FDA requesting that the agency authorize a health claim on the relationship of sugar alcohols (i.e., xylitol, sorbitol, mannitol, maltitol, lactitol, isomalt, hydrogenated starch hydrolysates, and hydrogenated glucose syrups) in sugarless foods to dental caries (Ref. 1). On September 15, 1994, FDA sent the petitioners a letter stating that study reports that are needed to support the petition, and that are required for a health claim petition under § 101.70, were not included in the petitioners' submission. The agency stated that no further action would be taken until that information was received (Ref. 3).

On September 27, 1994, the petitioners filed an amendment to their petition submitting the required information. On October 7, 1994, the agency sent the petitioners a letter acknowledging receipt of the additional information and stating that the agency had begun its scientific review of the petition (Ref. 4).

In this document, the agency will consider whether a health claim on the relationship between sugar alcohols and dental caries is justified under the standard in section 403(r)(3)(B)(i) of the act and § 101.14(c) of FDA's regulations. In addition, the agency will consider the petitioners' request that the agency provide in any regulation authorizing a claim that foods sweetened with sugar alcohols be exempt from the requirement in § 101.14(e)(6). The following is a review of the health claim petition.

B. Preliminary Requirements

1. The Substances That Are the Subjects of the Petition

Sugar alcohols are a class of organic compounds that contain chains of carbon atoms that bear two or more hydroxyl groups and have only hydroxyl functional groups (Ref. 1). The hydroxyl groups replace ketone or aldehyde groups that are found in sugars (§ 101.9(c)(6)(iii)). The specific sugar alcohols that are the subject of this petition are xylitol, sorbitol, mannitol,

maltitol, maltitol syrup, maltitol solution, isomalt, lactitol, and mixtures of sugar alcohol substances, i.e., hydrogenated glucose syrup (HGS) and hydrogenated starch hydrolysate (HSH) products.

Xylitol is a monosaccharide polyhydric alcohol with a 5-carbon backbone. It occurs naturally in fruits (e.g., plums, strawberries, and raspberries) and vegetables (e.g., cauliflower and endive) (Refs. 82 and 83). Xylitol is made commercially by the hydrogenation of D-xylose.

Sorbitol is a monosaccharide polyhydric alcohol with a 6-carbon backbone. It is found naturally in many types of berries and fruits and in seaweeds and algae (Ref. 82). Sorbitol is made by hydrogenation of glucose.

Mannitol is also a 6-carbon, monosaccharide polyhydric alcohol. It occurs widely in nature in plants (e.g., pumpkins, mushrooms, onions, beets, celery, and olives), algae, and fungi. Like sorbitol, mannitol is made commercially by the hydrogenation of glucose.

Maltitol is a disaccharide alcohol (4–D-glucopyranosyl-D-sorbitol) with a 12-carbon backbone. It is produced commercially by hydrogenation of maltose.

Lactitol is also a disaccharide alcohol (β-D-galactopyranosyl D-sorbitol) with a 12-carbon backbone. It is produced by hydrogenation of lactose (Ref. 84).

HSH and HGS are mixtures of sugar alcohols manufactured by hydrogenation of corn starch or glucose syrups. The composition of the sugar alcohols in the final product will depend on the manufacturing process. Therefore, HSH and HGS products from different manufacturers may contain different proportions of the same sugar alcohols. One HSH product, under the trade name ''Lycasin,'' was first produced in Sweden by hydrogenation of potato starch. The Swedish product contained a mixture of sorbitol, maltitol, maltotrititol, and hydrogenated dextrines of various molecular weights. When the manufacturing process was moved to France in the 1970's, the production process was also changed (Ref. 85). The French product, ''Lycasin 80/55,'' was made from the hydrogenation of corn starch and contained 6 to 8 percent sorbitol, 50 to 55 percent hydrogenated disaccharides, 20 to 25 percent trisaccharides, and 10 to 20 percent hydrogenated polysaccharides (Ref. 75). Lycasin 80/55, or HSH 80/55, is less fermentable and produces less acid than the Swedish product (Ref. 85).

Isomalt, also known by the commercial name ''Palatinit,'' is an equimolar mixture of the disaccharide alcohols of ∝-D-glucopyranosyl-D-sorbitol and ∝-D-glucopyranosyl-D-mannitol. It is produced by treating sucrose with enzymes, followed by hydrogenation of the resulting mixture.

2. The Substances are Associated With a Disease for Which the U.S. Population is at Risk

Dental caries is recognized in *The Surgeon General's Report on Nutrition and Health* (Surgeon General's report) as a disease or health-related condition for which the United States population is at risk (Ref. 7). The overall prevalence of dental caries imposes a substantial burden on Americans. Of the 13 leading health problems in the United States, dental diseases rank second in direct costs (Ref. 7).

Based on this fact, FDA tentatively concludes that sugar alcohols meet the requirement in § 101.14(b)(1).

3. The Substances Are Food

Sugar alcohols are used as replacements for simple and complex sugars as sweeteners and bulking agents in foods (Ref. 1). Thus sugar alcohols are consumed for their taste and for their effect as a stabilizer and thickener (21 CFR 170.3(o)(28)). Therefore, FDA tentatively concludes that these substances satisfy the preliminary requirements of § 101.14(b)(3)(i).

4. The Substances Are Safe and Lawful

Several of the sugar alcohols that are the subject of this proceeding are currently listed in FDA's food additive and generally recognized as safe (GRAS) regulations, i.e., xylitol (21 CFR 172.395), mannitol (§ 180.25 (21 CFR 180.25)), and sorbitol (§ 184.1835 (21 CFR 184.1835)). Moreover, GRAS affirmation petitions have been submitted for each of the remaining substances, i.e., maltitol (GRASP 6G0319), maltitol syrups (HGS syrups) (GRASP 3G0286), isomalt (GRASP 6G0321), lactitol (GRASP 2G0391), HSH (GRASP 5G0304) and HSH syrups (GRASP 1G0375).

The agency notes that these GRAS affirmation petitions are under consideration and that any positive action resulting from this proposed rule should not be interpreted as an indication that the agency has affirmed those uses of the sugar alcohols as GRAS. Such determinations can only be made after the agency has completed its review of the GRAS petitions. A preliminary review of the GRAS affirmation petitions reveals that they contain significant evidence supporting the safety of these substances.

The agency also points out, however, that some concerns about the safety of sugar alcohols do exist. For example, in a filing notice for the affirmation of the GRAS status of lactitol (58 FR 47746, September 10, 1993), FDA stated that ''the agency's notice of filing of GRASP 2G0391 should not be interpreted either as a determination, preliminary or otherwise, that the issue of Leydig cell tumors has been resolved or that lactitol qualifies for GRAS affirmation.'' Also, by notice in the **Federal Register** of December 13, 1994 (59 FR 64207), the agency announced the filing of a food additive petition (FAP 4A4412) to amend the interim food additive status of mannitol to permit an alternate method of manufacture. In this notice, the agency pointed out concerns about data from studies on mannitol that demonstrate a significant incidence of benign thymomas, and an abnormal growth of thymus gland tissue, in female rats fed mannitol. In addition, the safety of sugar alcohols has been examined by the Federation of American Societies for Experimental Biology (FASEB) (Ref. 90), as well as internationally by the Joint Expert Committee on Food Additives (Ref. 91). The agency also notes that two of the sugar alcohols that are listed in FDA's food additive and GRAS regulations, i.e., mannitol (§ 180.25) and sorbitol (§ 184.1835), require a warning label regarding laxation if daily consumption of these sugar alcohols is expected to exceed 20 grams (g) per day for mannitol and 50 g per day for sorbitol. Nothing in this proposal alters these requirements.

Based on the totality of the evidence, the agency is not challenging, at this time, the petitioner's position that the use of sugar alcohols is safe and lawful. Although FDA tentatively concludes that the petitioner has satisfied the requirements of § 101.14(b)(3)(ii), the agency requests comments on its tentative conclusion.

III. Review of Scientific Evidence

A. Introduction

The development of dental caries is the result of an interaction between sugars (and other fermentable carbohydrates, such as refined flour) and oral bacteria in a suitable environment (Ref. 71). Microorganisms, and *Streptococcus mutans* (*S. mutans*) in particular, in dental plaque metabolize available dietary sugars, producing acid and sticky polysaccharides that adhere to the tooth as plaque. Acid produced from rapid and complete fermentation of sugars creates an acid environment within the

plaque, characterized by a pH of usually less than 5.0, that is capable of demineralizing tooth enamel and causing a carious lesion.

Studies designed to measure the cariogenicity of a food assess the potential to cause caries if it is consumed in a standard way by a highly susceptible subject (Ref. 8). The methods used to measure cariogenic potential include long-term controlled human caries trials, in vivo and in vitro plaque pH measurement, demineralization and remineralization techniques, and rat caries models (Refs. 8 through 11). Because long-term clinical caries trials are difficult to conduct, an integration of the plaque pH, animal caries, and demineralization methodologies has been recommended as the best measure for establishing the cariogenic potential of a food (Ref. 12). Experts recommend, however, that these methods be used with appropriate controls, such as sucrose, to assess experimental results (Ref. 13).

Plaque acidity studies are useful in providing evidence on the effects of many microbial and physiological factors on the cariogenic potential of foods (Ref. 78). An acidic plaque environment at the tooth surface, specifically a pH of less than 5.5, suggests microbial fermentation of a substrate resulting in microbial growth, plaque and acid production, and promotion of carious lesions from enamel decalcification. Factors that can modify these effects include the presence of promoters or inhibitors in food products that affect bacteria growth, the nature of the acids produced as a result of bacterial metabolism of food carbohydrates (Ref. 78), intraplaque buffering, and the pH of mixed saliva (Ref. 74).

B. Review of Scientific Evidence

1. Evidence Considered in Reaching the Decision

The petitioners submitted scientific evidence on the various sugar alcohols and their effects on plaque, plaque pH, and dental caries. This evidence included human (in vivo and epidemiological), animal, and in vitro studies regarding the association between consumption of sugar alcohols from chewing gum and other foods and plaque pH, acid production, plaque quantity and quality, bacteria levels, and the incidence of caries. The petition included four tables that summarized the information for: (1) Human plaque and demineralization, (2) bacteriological studies, (3) animal experiments, and (4) human longitudinal and field studies. A fifth table provided a summary of review articles.

In addition to the information submitted by the petitioner, the agency considered other studies and reviews, such as the reports on health aspects of sugar alcohols by the Life Sciences Research Office (LSRO) and the FASEB (Refs. 14 through 16). The agency also considered the results of additional human epidemiological studies on caries incidence and demineralization; studies of animal caries; and in vitro plaque pH studies.

2. Criteria for Selection of Human Studies

The criteria that the agency used to select pertinent studies were that the studies: (1) Present data and adequate descriptions of study design and methods; (2) be available in English; (3) provide daily intakes of the sugar alcohol or enough information to estimate their daily intakes; (4) include in vivo or in vitro assessment of the changes in plaque pH or plaque acid production; (5) for intervention studies on caries development, be of no less than 2 years (yr) in duration; and (6) be conducted in persons who generally represent the healthy United States' population (adults or children).

In selecting human studies for review, the agency decided that only those studies investigating the use of sugar alcohols in chewing gums and other foods, including mouth rinses that would be representative of beverages, were appropriate for review. The agency excluded studies that were published in abstract form because they lacked sufficient detail on study design and methodologies, and because they lacked necessary primary data. In selecting animal and in vitro studies for review, the agency chose those studies that measured caries development, plaque pH, or acid production from plaque bacteria.

3. Criteria for Evaluating the Relationship Between Sugar Alcohols and Human Dental Caries

The subject of the petitioned health claim is the nonpromotion of dental caries by sugar alcohol-containing foods, especially chewing gum and confectioneries. To support this claim, there needs to be significant scientific evidence to show that the sugar alcohol or sugar alcohol mixture, e.g., HSH, makes no contribution to the progression of dental carious lesions in humans. It would be difficult, if not impossible, to design and execute a study that would directly address this issue because such a study would require a control group that consumed foods containing no sugars, fermentable carbohydrates, or sugar alcohols.

In the absence of studies that directly evaluate the nonpromotion of dental caries by sugar alcohol-containing foods, the agency gave the greatest weight to those studies that evaluated in vivo the acidogenic potential of plaque and plaque pH of sugar alcohols and sucrose in representative food systems (e.g., confectioneries and solutions). These in vivo measures can provide specific information about the effect of sugar alcohols in the oral environment and, more specifically, about the effect of sugar alcohols on pH at the interface between dental plaque and tooth surfaces. The more acidic the environment on the tooth surface, the greater the chance for enamel demineralization and caries formation.

The agency also considered in vitro studies that measured plaque pH and acid production of sugar alcohols in solution, and long-term caries trials that evaluated caries development in a population using foods containing sugar alcohols and sucrose. Studies investigating in situ the demineralization or remineralization of enamel as a result of the action of sugar alcohols on human dental plaque were considered as supporting evidence by the agency.

C. Human Studies

1. Evaluation of Human Studies

FDA evaluated the results of studies against general criteria for good experimental design, execution, and analysis. The criteria that the agency used in evaluating these studies included appropriateness of subject selection criteria; adequacy of the description of the subject's oral health before intervention; extent of evaluation of subject's type of dental plaque (i.e., sticky or nonsticky, thick or thin); methods of plaque collection; adequacy of methods used to assess study endpoints (e.g., in vivo versus in vitro assessment of plaque pH); and other study design characteristics, including randomization of subjects, appropriateness of controls, report of attrition rates (including reasons for attrition), frequency of snack or substance consumption, recognition and control of confounding factors (for example, the subject's use of fluoride during the test period), and appropriateness of statistical tests and comparisons. The agency also considered it desirable if information on treatment and control diets, the sugar alcohol content of the test substance, and daily sugar alcohol and nutrient intakes was available.

A review of the studies evaluating the effect of sugar alcohols on plaque pH and acid production and of the in vitro microbiological studies is provided in Table 1. Table 2 provides a review of epidemiological studies evaluating the incidence of dental caries and studies on demineralization and remineralization.

2. Summary of Evidence Relating Sugar Alcohol and Plaque pH or Acid Production

Bibby and Fu (Ref. 38) measured human plaque pH in vitro using 0.1-, 1.0-, or 10-percent solutions of the following sweeteners: Sucrose, HSH, mannitol, isomalt, xylitol, isomaltulose, sorbose, saccharin, and aspartame. Results showed the lowest plaque pH was attained with sucrose (1- and 10-percent solution: pH less than 5.0). Plaque pH decreased with increasing concentrations of isomalt, sorbitol, mannitol, and HSH. The lowest pH attained for isomalt was about 5.6, for sorbitol 5.82, for mannitol 5.22, and for HSH about 5.0. Negligible acid production was measured from aspartame, saccharin, and xylitol. Solution mixtures of xylitol (5 to 20 percent) and sucrose (10 percent) were fermented to the same low pH as sucrose alone. Thus, the presence of xylitol in a sucrose and xylitol mixture did not affect acid production in plaque from sucrose.

The results of this study support the contention that xylitol does not promote dental caries by lowering plaque pH below 5.5. However, the results for sorbitol, mannitol, isomalt, and HSH do not support a ''nonpromotion'' claim. The results suggest that when higher concentrations of these sweeteners are present in food, the plaque pH may reach a level that will promote decalcification of dental enamel.

Birkhed and Edwardsson (Ref. 39) measured plaque pH and acid production of human plaque samples in solutions of mannitol, xylitol, maltitol, sorbitol, French HSH, Swedish HSH, fructose, and glucose syrups. Results showed that plaque pH in the presence of xylitol, maltitol, mannitol, and French HSH increased or slightly decreased from baseline (pH remaining at 6.8 or above). Sorbitol showed a slight decrease in plaque pH, but the final pH attained was about 6.0. The other sweeteners, including Swedish HSH, depressed plaque pH below pH 6 over the 30-min (min) test period. The results of this study showed that mannitol and xylitol produced no plaque acid compared to sucrose. Maltitol and sorbitol produced plaque acid at rates that were 10 to 30 percent of that of sucrose. French HSH produced 20 to 40 percent and Swedish HSH 50 to 70 percent of the acid produced by sucrose.

Birkhed et al. (Ref. 40) measured acid production in vitro and plaque pH changes in vivo over a 30-min period following a 30-second(s) mouth rinse with 10-percent glucose or sorbitol solutions. To determine whether plaque microorganisms can adapt to the presence of sorbitol, i.e., use it as a source of energy like sucrose, with repeated exposure to the sugar alcohol, investigators measured plaque pH and acid production at the end of a 6-week (wk) period. During the 6-wk period, each subject rinsed their mouth six times per day for approximately 2 min at a time with a 10-percent sorbitol solution. At the end of 6 wk, plaque pH was again measured for a 30-min period following a mouth rinse with glucose and sorbitol. The study results showed acid production in the presence of sorbitol, before adaptation, to be 11.3 percent of that from glucose. After the adaptation period, plaque acid production from sorbitol increased to 30 percent of the glucose rate. After the adaptation period to sorbitol, the glucose rinse produced mean plaque pH values that were higher than before the adaptation period. The differences in plaque pH, however, were only significant at 2 and 5 min following the rinse.

Overall results of this study suggest that sorbitol produces very little plaque acid. Mean plaque pH values after sorbitol adaptation in the presence of the 10-percent sorbitol rinse showed only a slight decrease from the baseline value. The differences in mean plaque pH, compared to baseline, at 5, 10, 20, and 30 min following the rinse were significant. The authors noted that the fermentability of sorbitol was more pronounced after the adaptation period than before.

Birkhed et al. (Ref. 41) studied the effects on in vivo plaque pH and in vitro acid production from HSH (Swedish HSH), maltitol, sorbitol, and xylitol. Subjects in each group sucked on two lozenges a day, containing 0.5 g of one of the four sweeteners and 0.5 g of gum arabic, four times daily between meals (total of eight lozenges per day) for 3 months (mo). Changes in plaque pH over a 30-min period were measured in each of the sugar alcohol groups after a 30-s mouth rinse with a 50-percent solution containing the same sweetener as the lozenge. The rinse was used 1 wk before and 1 wk after the lozenge period. A control group consumed no lozenges but rinsed with each of the four sweeteners. At least 1 wk separated each mouth rinse experiment. Acid production activity (APA) from dental plaque suspended in glucose and each of the four sugar alcohols was determined 1 wk before and 1 wk after the 3-mo consumption period.

The results with HSH showed that although plaque pH values differed before and after the lozenge period, differences were not statistically significant, and that the lowest plaque pH attained was above 6.0. In the maltitol group, plaque pH before the lozenge period was higher than the pH following the lozenge period. Differences at 2, 10, and 30 min were statistically significant. However, there were no significant differences in plaque pH at any time compared to baseline. The lowest plaque pH recorded was about 6.9. Plaque pH in the xylitol group changed very slightly, remaining around pH 7. Plaque pH in the sorbitol group was higher before than after the lozenge period. Differences in pH at times 0 to 20 min and 0 to 30 min before compared with after the test period were statistically significant ($p<0.05$). Final plaque pH values after the 30-min test period were between 6.7 and 7.0. There were no significant differences in plaque pH between the test and control groups using any of the test rinses.

Comparing the APA results for each sweetener with those for glucose showed that HSH was 56 percent of that of glucose 1 wk before the lozenge period and 59 percent of that of glucose 1 wk after the lozenge period. The APA for maltitol compared to glucose was 26 percent (before) and 32 percent (after), sorbitol was 15 percent (before) and 18 percent (after), and xylitol was 0 percent at both time periods. Differences before and after each 3-mo lozenge period were not statistically significant for any of the sugar alcohols.

The results of this study suggest that even though there is some acid production from HSH, maltitol, and sorbitol, the effect on plaque pH in vivo is not detrimental to tooth enamel.

Frostell (Ref. 42) evaluated the effect on plaque pH of sugar solutions and different types of candy and foods. Although the focus of this study was not sugar alcohols, the investigators used sorbitol and HSH as a comparison to sucrose in some of the experiments. Plaque was collected prior to the test period, and its pH was determined. Subjects then rinsed with a test solution or ate a piece of candy or other food being tested. Plaque was collected after 2, 5, 10, 20, and 30 min and its pH was again measured. Sweeteners tested included a sucrose rinse (concentrations from 0.05 to 50 percent), sorbitol tablets (2 g sorbitol), sugar tablets (containing

glucose and sucrose), HSH candy, sugar candies (with sucrose, dextrose, and maltose), marmalades (60-percent HSH or sucrose), and sugar-sweetened sponge cakes, ginger cakes, marshmallows, and chocolates. Results with the sucrose rinses showed that plaque pH decreased with increasing concentrations of sucrose.

Comparing the effects on plaque pH between the sorbitol and sucrose candies results showed that in the sorbitol group's plaque pH increased from about 6.5 (baseline) to 6.9 before returning to baseline. Plaque pH decreased in the sucrose group from 6.5 (baseline) to about 6.0. After 10 min, the pH in the sucrose group slowly increased to about 6.3. Differences in plaque pH between the sorbitol candy and sucrose candy groups were significant at all time periods. In the HSH candy group, plaque pH was significantly higher than that in the group consuming sucrose candy. Differences were significant at all time periods. The lowest plaque pH in the HSH group was above pH 6.3. The group consuming marmalade with HSH experienced a drop in plaque pH to about 6.0 (from 7.0) after 5 min, followed by a gradual increase to a final pH of about 6.5. The group consuming sucrose marmalade experienced a plaque pH of about 5.3 after 5 min, followed by a gradual increase in pH to about 6.0.

Toors and Herczog (Ref. 43) evaluated in vivo plaque pH and in vitro fermentability of an experimental (nonsucrose) licorice in a pooled plaque-saliva mixture. Fermentability (i.e., acid production) of the test substrates was expressed as a percentage of the sucrose licorice. Plaque was collected from 12 volunteers on the day after they consumed 10 pieces of the candy. In vivo plaque pH was measured during and after consumption of licorice by means of pH telemetry. Substrates used in the above tests included sucrose licorice, the experimental licorice, components of the experimental licorice (including sorbitol, potato starch derivative, soy flour, and others), xylitol, hydrogenated potato starch (HPS) (a type of HSH), and a white bread suspension. Results showed the fermentability of the test substrates to be as follows: Potato starch derivative (82 percent), soy flour (75 percent), sorbitol (12 percent), experimental licorice (68 percent), xylitol (5 percent), HPS (60 percent), and white bread suspension (79 percent). In vivo plaque pH results showed sucrose licorice with a minimum plaque pH of about 5.0, experimental licorice with a minimum plaque pH of about 5.5, and a sucrose rinse with a plaque pH of about 4.5.

The results of this study show that food ingredients like soy flour can contribute to the cariogenicity of a food regardless of the presence of a sugar alcohol.

Gallagher and Fussell (Ref. 44) compared the in vitro fermentability of xylitol and other sugar alcohols with sucrose in dental plaque. Plaque collected from adults and children of different ages was incubated in broth culture. Acid production was measured as pH. The control media contained no added carbohydrates.

The results of acid production measurements showed that sucrose was significantly more acidogenic compared to the control and xylitol. Differences were significant. There was no significant difference in acid production between the control groups and the xylitol groups.

Gehring and Hufnagel (Ref. 45) described intra- and extraoral pH measurements of dental plaque. Six adult men and women rinsed for 2 min using one of seven test substances followed by intraoral plaque pH measurements after 3, 4, 5, 7, 9, 13, 17, 21, 27, and 32 min. For the extraoral test, visible plaque was removed, suspended in distilled water, and the pH measured at 3, 5, 7, 9, 11, 15, and 25 min after subjects rinsed with test substances. Test substances included 20 percent solutions of glucose, sucrose, fructose, HSH, mannitol, isomalt, sorbitol, sorbose, or xylitol.

The results of the intraoral plaque pH measurements showed only slight pH decreases within 5 min after administration of xylitol and mannitol, with a return to baseline measures at the end of the 32-min test period. Sorbitol, HSH, isomalt, and sorbose reached a minimum pH just below 6.0 after 5 min followed by a slight increase to about pH 6.1 to 6.4 at the end of the test period. Sucrose, glucose, and fructose showed a minimum pH value of about 4.6 to 4.7 (after 5 min) with an increase to about pH 5.3 to 5.5 at the end of 32 min. Minimum plaque pH by extraoral measurements were higher than the pH according to intraoral measurements. Sucrose, glucose, and fructose minimum pH values ranged from about 5.0 to 5.7 after 5 min and increased to about 5.6 to 6.0 after 32 min. Other pH values were not given. The authors attribute the differences in intra- and extraoral plaque pH measurements to methods in handling plaque removal and the influence of saliva substances.

Havenaar et al. (Ref. 46) evaluated in vitro acid formation from oral bacteria in the presence of sugar substitutes and the influence of xylitol on glucose in growing cultures of *S. mutans*. Fresh isolates of *Streptococci* and other strains were obtained from caries free and caries active subjects. Acid production in 1-percent solutions of glucose (control), sorbose, sorbitol, xylitol, lactitol, maltitol, and HSH was determined by incubating the sweetener in phenol red broth containing oral bacteria. A color change indicated acid formation. Changes in pH was measured after subculturing *S. mutans* in each of the sweeteners, after frequent subculturing in each sweetener to obtain adapted strains of *S. mutans*, and after subculturing the adapted strains once in glucose and resubculturing in the sweetener. Growth of *S. mutans* and pH measurements were also measured in a glucose broth with and without added xylitol.

The results showed no acid production from xylitol or sorbose and acid production from sorbitol, lactitol, and HSH. The authors stated that *S. mutans* slowly fermented maltitol. Results also showed no change in pH with xylitol and a moderate drop in pH to about 6 to 6.5 (actual values not given) with maltitol, sorbitol, lactitol, and HSH after 120 min. Adaptation by *S. mutans* to the sweeteners resulted in a marked increase in fermentation, with final pH values dropping to about 4.5 to 5.5. After one subculturing of the adapted strain in glucose, *S. mutans* lost most of its ability to ferment the sweeteners. The addition of small amounts of xylitol to glucose broth somewhat inhibited acid production from *S. mutans*, but it had no effect on final pH attained.

Jensen (Ref. 47) measured interproximal plaque pH in subjects using five different HSH's and sorbitol and sucrose as controls. Four subjects rinsed with a 5 milliliter (mL) portion of the test solution for 60 min. Plaque pH was then monitored for 30 min. Following the pH measurements, the subject rinsed their mouth with distilled water and chewed paraffin for about 5 min to bring oral pH back to resting levels. The test was repeated with each subject using each of the four test solutions.

The results showed that plaque pH for all test substances remained above pH 6.0 over the 30-min test period. Plaque pH using the sorbitol rinse was similar to that using the test substances. Using the sucrose rinse resulted in plaque pH measurements of approximately 4.0 to 4.1. The identity of the test substances was not provided in this unpublished study. Results indicate that the HSH solutions used in this study were

significantly less acidogenic than sucrose and no different than sorbitol.

Maki et al. (Ref. 48) compared acid production in vivo from isomaltulose, sorbitol, xylitol, and sucrose (control) in human dental plaque. Dental plaque was collected from 12 individuals and incubated with phosphate buffer. After endogenous acid production was measured, a 1-percent solution of the test substance in the same buffer was added, and acid production measured again.

The results showed no acid production in the presence of xylitol. Compared to sucrose (100-percent acid production), acid production from sorbitol was 1 percent. The authors noted that the percent acid production from sorbitol may vary considerably among individuals and with the amount of exposure to sorbitol.

Park et al. (Ref. 49) measured interproximal plaque pH in five subjects after consuming one of three snacks alone or one of three snacks followed by a single mint containing sorbitol (94 percent) or a sorbitol and xylitol blend (79 percent and 15 percent, respectively). When mints were used, they were consumed 3 min following ingestion of the sweet snack. Snacks tested included a sandwich cookie, cupcake, and granola bar. A randomized block design was used to administer the test products and mints (see Table 2 for further details). The lowest plaque pH attained after consuming the three test products without mints ranged from 4.02 to 4.16. When the sorbitol mint was consumed following the test product, mean plaque pH values increased and ranged from 4.68 to 5.04. When the sorbitol and xylitol mint was consumed following consumption of the test products, mean plaque pH increased to a range of 5.32 to 5.60. Differences in mean plaque pH values between the mint products differed significantly when the mints were used after the granola bar and cupcake challenges. There was no significant difference in mean plaque pH between the sorbitol (5.04) and the sorbitol and xylitol mint (5.60) products when these products were used after the sandwich cookie challenge.

The results show that consumption of a sugarless mint reduced the acidogenicity of the test snacks, although final pH values remained below pH 5.5 in all but one test. The authors attributed the results of this study to the stimulatory effects on salivary flow by sugar alcohols. Increasing salivary flow increases the buffering capacity of saliva, thus reducing the acidogenic potential of a variety of snack foods. The authors also attributed the additional buffering effects of the sorbitol and xylitol mint to the presence of xylitol and its potential benefits in reducing plaque microbial activity. Without a sucrose-containing mint as a comparison, however, the influence of sugar alcohols on saliva production cannot be adequately assessed.

Söderling and coworkers (Ref. 50) investigated the effect on dental plaque of chewing gums that contained either xylitol, sorbitol, or a mixture of xylitol and sorbitol and compared the results with those obtained with subjects who used sucrose gums. Twenty-one subjects (adults, ages 19 to 35 yr) who were not habitual gum chewers were randomly assigned to chew gum containing either xylitol, sorbitol, or a blend of the two sugar alcohols for 2 wk. Subjects chewed 10 pieces of gum per day for an intake of either 10.9 g xylitol, 10.9 g sorbitol, or 10.9 g xylitol and sorbitol (8.5 g xylitol and 2.4 g sorbitol). The control group was made up of seven habitual sucrose gum users. Subjects maintained their usual diets and oral hygiene except just before to clinic visits. Interdental plaque pH was collected, and the resting plaque pH determined. Plaque pH was measured at 2, 5, 10, 15, and 20 min after an oral rinse containing the same sugar alcohols as used in the gum. Afterward, subjects rinsed with water and chewed a piece of paraffin for 1 min to expedite removal of sugar alcohols from the mouth. Baseline pH was again measured, followed by a mouth rinse with 10 mL of 10-percent sucrose. Plaque pH was again determined.

The results from using gum for 2 wk showed no significant changes in resting plaque pH in the xylitol and xylitol and sorbitol groups, whereas the use of sorbitol gum was associated with a lower pH. Final plaque pH values after use of sorbitol gum were significantly lower than baseline values, but all final values remained above pH 6.0.

Birkhed and Skude (Ref. 51) evaluated, among other tests, the APA from glucose, soluble starch, and Swedish HSH in dental plaque. Eleven adults were instructed to avoid oral hygienic procedures for 2 days. No dietary changes were required. At the end of 2 days, plaque was collected. The APA was determined from 3-percent solutions of glucose, boiled soluble starch, and HSH. The APA was also determined in increasing concentrations (0.003 to 12 percent weight per volume (w/v)) of starch and HSH.

The results showed significantly lower ($p<0.001$) APA from soluble starch (75.7 percent) and HSH (61.5 percent) compared to glucose (99.7 percent). The APA from HSH was also significantly lower ($p<0.01$) than that from soluble starch. The range of optimum acid production for both substrates was 0.03 to 6 percent. The authors noted that Swedish HSH is more fermentable than French HSH, which contains less high molecular weight hydrogenated saccharides than Swedish HSH.

Grenby et al. (Ref. 76) evaluated the dental properties of lactitol compared to five other bulk sweeteners, i.e., sucrose, glucose, sorbitol, mannitol, and xylitol, in vitro using a standardized mixed culture of dental plaque microorganisms. Sweeteners were incubated for 24 hours (h) in media containing a 1-percent solution of one of the six sweeteners. Plaque microorganisms were also incubated in media containing the sweeteners with segments of intact surfaces or with segments of pulverized dental enamel. The demineralization action of the acid produced by microbial fermentation was assayed by calcium and phosphorous analyses.

The greatest amount of acid production and lowest pH (significantly different than the sugar alcohols) were reported with sucrose and glucose (pH of 4.0 to 4.3). Lactitol and xylitol showed only slight changes in pH and acid production over the 24 h (final pH of 6.1 to 6.3); whereas sorbitol and mannitol showed slight changes in pH during the first 12 h ($pH \geq 6$), then gradually decreased to a final pH of 4.6 to 5.1 after 24 h.

The results of the demineralization test showed highly significant differences ($p<0.001$) between sucrose and glucose and the sugar alcohols. The reductions in calcium and phosphorous dissolving in sorbitol was approximately 80 to 85 percent, mannitol 63 to 69 percent, and lactitol and xylitol 94 to 98 percent compared to mineral loss in the presence of glucose.

3. Summary of Evidence Relating Sugar Alcohol and Dental Caries: Long-Term Studies

Möller and Poulsen (Ref. 20) determined the effect of long-term chewing of sorbitol chewing gum on the incidence of dental caries, plaque, and gingivitis. The sorbitol chewing gum contained calcium phosphate which acts as a buffer in saliva to help maintain pH and aid remineralization. Two groups of children, ages 8 to 12 yr of age, from two different schools in Denmark took part in this 2-yr study. Group 1 chewed one piece of sorbitol-containing gum three times a day, after meals. Group 2 chewed no gum and

served as the control. At the start of the study, subjects in group 1 had more decayed and filled toothsurfaces than the control group; however, the differences were not statistically significant.

The results showed that the sorbitol group had a significantly lower incidence of dental caries compared to the control after 2 yr. The control group, which did not chew gum, did not experience the same salivary stimulation from the chewing of gum, nor did they have an equivalent source of calcium phosphate. These are large confounders in this study. The authors noted a number of factors that could contribute to the observed results, such as the sorbitol content of the chewing gum, reduced consumption of sugar-containing sweets, intra-examiner variability, and other unknown conditions.

Bánózcy et al. (Ref. 21) evaluated the effect of sorbitol-containing sweets on the caries increment of children aged 3 to 12 yr, in a clinical longitudinal study planned for 3 yr. The test group consumed 8 g of sorbitol per day between meals, while the control group consumed a similar amount of sucrose-containing sweets.

The results showed that mean decayed, missing, or filled (DMF) values for teeth in the sorbitol group were 1.09, 0.90, and 1.18 in the first, second, and third yr, respectively. The sucrose group had mean DMF values of 2.61, 1.86, and 1.13 for the first, second, and third yr, respectively. The differences in caries increments were significant ($p<0.001$) in the first and second yr but not in the third yr. The authors noted that the lack of significance in the third yr may be attributed somewhat to a lack of subject compliance since the children in the sorbitol group traded sweets with the sucrose group, in addition to other factors. Results of this study indicate that sorbitol is less cariogenic than sucrose.

Kandelman and Gagnon (Ref. 22) reported on the incidence and progression of dental caries in school children after 12 mo of a 2-yr study using xylitol in chewing gum. The subjects were 433 children, ages 8 to 9 yr old, from 13 elementary schools, and were from low socioeconomic areas with a high caries rate. The children were assigned to one of three groups: A control group that received no chewing gum and chewed no gum while at school, a test group that received gum containing 15-percent xylitol and 50-percent sorbitol (XYL15), and a second test group that received gum containing 65-percent xylitol (XYL65). Students were not randomly assigned to groups. Rather, an entire class was assigned to one of the three groups. The XYL65 group consumed 3.4 g xylitol per day, and the XYL15 group consumed 0.8 g per day.

The results showed significantly lower net progression of decay (NPD) (i.e., the difference in the number of reversals from the progressions of decay for each child) in the XYL65 group (1.25) than in XYL15 group (1.87) ($p< 0.05$), and each xylitol group had significantly ($p<0.001$) lower NPD than the control. The decayed, missing, filled surfaces (DMFS) increment was also significantly lower in the xylitol groups compared to the control. There was no significant difference in DMFS between the gum groups. Results of this study suggest that chewing gum containing xylitol or a blend of xylitol and sorbitol provided more benefits for teeth than not chewing gum at all.

Rekola (Ref. 23) compared the progression of incipient carious lesions on buccal smooth surfaces in subjects participating in the 2-yr Turku sugar study (Ref. 24). Subjects consumed either a diet containing sucrose or one with almost complete replacement of sucrose products with xylitol-containing products. The progression of carious lesions were assessed by use of color dental photographs of the right and left sides and of the front of maxillary and mandibular teeth.

The results showed that the sucrose group had a significant tendency for increased size of carious lesions over the 2-yr period compared to the group consuming xylitol ($p<0.01$). The white spot lesions in the xylitol group were significantly smaller than those in the sucrose group.

Rekola (Ref. 25) quantified changes in the size of approximal carious lesions in subjects after 2 yr of almost complete substitution of dietary sucrose with xylitol (Ref. 23). Bitewing radiographs were taken during the 2-yr study. In this study, the radiographs were projected onto a planimetry plate so that the area of the lesions could be determined. The sizes of the lesions at the different time periods were compared, and the rate of caries progression was also compared. At the beginning of the study, there was no difference in the mean size of carious lesions between groups. The size of the approximal lesions, i.e., lesions that were neither filler nor overlapping at 0 and 24 mo, in the sucrose group increased significantly ($p<0.001$) over 2 yr compared to the lesions in the xylitol group. The lesion size in the xylitol group remained virtually unchanged.

The authors reported a trend towards decreasing lesion size in canines and first molars compared to molars and second premolars in the xylitol group. This trend was not observed in the sucrose group. Results of these studies support the observation that xylitol is less cariogenic than sucrose.

In a World Health Organization (WHO) field trial in Hungary (Ref. 26), the effects of a partial substitution of sucrose for xylitol in the diets of 689 institutionalized children, ages 6 to 11 yr, were examined. The xylitol group used fluoride dentifrice and consumed no more than 20 g of xylitol per day in chewing gum, chocolate, hard candy, and wafers. The fluoride group received fluoride in dentifrice, water, and milk, but consumed no xylitol products. The control group received no fluoride treatment and consumed no xylitol-containing products. After 3 yr, the xylitol group had a statistically significant ($p<0.001$) lower incidence of caries compared to the control and fluoride groups. The authors noted that results from this study were obtained under conditions where caries prevalence and incidence were still high. Results of this study support the observation that xylitol-containing products are less cariogenic than sucrose-containing products.

In a 2-yr substudy (Ref. 28) of the WHO xylitol field studies in Hungary (Ref. 26), Scheinin and coworkers assessed the caries increment with systemic fluoride (fluoride group) and restorative treatment only (control group). This study differed from the 3-yr study primarily in baseline differences. Children entering the institutions during the first yr of the 3-yr study were included in this substudy.

The substudy showed similar favorable results with xylitol compared to the control. The caries increment was 3.8 in the xylitol group, 4.8 in the fluoride group, and 6.0 in the control group. The differences in caries increment between the xylitol group and the other two groups were significant ($p<0.001$). Results again supported a lower incidence of caries when xylitol is substituted for sucrose in the diet.

In a WHO field trial in Thailand and French Polynesia (Ref. 29), the usefulness of a fluoride rinse, fluoridated sucrose chewing gum, and fluoridated xylitol (51 percent) and sorbitol gum in controlling dental caries was evaluated in children over a 3-yr period. In French Polynesia, a fourth group used nonfluoridated chewing gum sweetened with xylitol (51 percent) and sorbitol. Approximately 250 children at each of the ages 6 to 7 yr, 9 to 10 yr, and 12 to 13 yr were examined. The 12- to 13-yr age group was intended to provide data for

comparison with the 9- to 10-yr old group, who would be ages 12 to 13 yr at the end of the study.

The results from the Thailand study showed that the fluoridated xylitol and sorbitol gum group had lower decayed, missing, and filled teeth (DMFT) and DMFS scores than either the fluoride rinse group or the fluoridated sucrose gum group. Results from the French Polynesia study showed that the subjects started with much higher DMFT and DMFS mean scores initially than the subjects in Thailand. Although the results with the fluoride gum sweetened with the sugar alcohols were better than any of the other treatments, the overall caries incidence in this population is very high. The presence of fluoride in the chewing gums confounds the results of the sugar alcohols. The authors describe this study population as a community experiencing an increase in the prevalence of the disease. This study group does not reflect the general population of the United States.

In another WHO field trial, Kandelman and coworkers (Ref. 30) evaluated the effects of xylitol intervention on dental caries in French Polynesian children, ages 7 to 12 yr. Of 746 subjects enrolled in this 32-mo study, 468 completed the study. Subjects in the xylitol groups consumed 20 g of xylitol daily in various food products, such as chewing gum, hard candy, chocolate, and gumdrops. The control group received no xylitol-containing products.

The results showed significantly reduced caries increment rate by 37 percent to 39 percent in the xylitol groups compared to the controls. This study was neither randomized nor blinded. Results support the observation that xylitol-containing products are less cariogenic than the sucrose-containing products.

Frostell and coworkers (Ref. 31) determined the effect on caries increment in children, ages from 2½ to 4 yr, of substituting HSH for sucrose in candy. During this 1½- to 2½-yr study, subjects in the test group consumed candies made with HSH and chewing gum made with sorbitol. The control group consumed sucrose candies and gum. Investigators monitored the intake of candies by use of coupons which the parents used at local stores to buy the candy. An analysis of the coupons used showed that parents of the children in the test group used a smaller number of coupons than the parents of the children in the control group. Based on inquiries, the investigators discovered that the parents of the subjects in the HSH group had also given the children other candy in addition to HSH candy. The consumption of HSH candy was reported from 50 to 75 percent of the total candy consumption.

The results showed no significant differences in caries scores after 1½ to 2½ yr with HSH candy consumption compared to sucrose candy consumption. When investigators analyzed the data of those children whose parents consumed the correct candy for their group, the differences in caries increment between the groups were still not significant but showed a trend towards a lower incidence of caries in the HSH group. The results of this study were confounded by poor compliance, inter-examiner variability, lack of blinding, and inconsistent results and do not support significant dental benefits from the use of HSH.

Glass (Ref. 32) evaluated the cariogenicity of sorbitol chewing gum with regular use by children, ages 7 to 11 yr old, living in a nonfluoride area. In this 2-yr study subjects were randomly assigned to either a no-chewing group (control) or to the one which chewed gum twice daily. Subjects in the gum group were provided two sticks of gum daily for use at school and four sticks of gum for use at home when school was not in session.

The results showed that over the 2-yr study period, mean caries increments were 4.6 new decayed and filled (DF) surfaces for the sorbitol gum group (n=269) and 4.7 new DF surfaces for the no-gum group (n=271). The difference between the groups was not statistically significant. Although the results of this study suggest that adding sorbitol-containing gum to the diet did not result in any additional dental caries, the effect of chewing gum per se on the incidence of dental caries was not considered.

4. Summary of Evidence Relating Sugar Alcohol and Dental Caries: Short-Term Studies

Ikeda et al. (Ref. 33) evaluated the cariogenicity of maltitol and a polysaccharide alcohol using an intraoral cariogenicity test (ICT) and rat tests. Most of the details of the methods used in the ICT were not provided, making the results difficult to interpret. Bovine enamel fragments were extraorally dipped in 3-percent solutions of sucrose (control), maltitol, or the polysaccharide alcohol for 1 min every day. After 1 wk, hardness was measured. The higher the value for hardness means a softer enamel and a greater loss of enamel.

The results showed a decalcification score for maltitol of 1.66 compared to a score of 2.70 for sucrose. These differences were significant. In the animal study, one group was provided a feed with 26-percent maltitol and 30-percent starch, a second group was provided a feed with sucrose instead of maltitol, and a third group consumed a diet without sucrose. Results showed a caries score of 45.8 for the sucrose group, 3.2 for the maltitol group, and 5.2 for the no-sucrose group. Differences between the sucrose group and the other groups were statistically significant.

Yagi (Ref. 34) evaluated the effects of maltitol on changes in enamel hardness. Enamel decalcification was measured using an ICT with a denture containing two bovine enamel slabs. Four subjects wore the dentures for 7 days. Each day, one enamel slab was exposed to a 3-percent maltitol solution and the other to a 3-percent sucrose solution. Enamel hardness was measured at the end of the wk.

The results showed that the average change in hardness compared to pretreatment levels for the enamel in maltitol was 1.47 micrometers compared to 3.35 micrometers for the enamel in sucrose. Differences between the two measurements were significant. The authors noted that there were considerable differences in individual responses to sucrose and maltitol. They attributed these differences to the oral environment (e.g., plaque bacteria and quality and quantity of saliva). However, general observations were that sucrose causes significant loss of enamel, as evidenced by changes in enamel hardness, compared to the effect of maltitol on tooth enamel.

Leach et al. (Ref. 35) evaluated in situ the effect on remineralization of artificial caries-like lesions in human enamel with sorbitol. Ten adult subjects wore cast bands containing enamel on one lower first molar tooth for two 3-wk periods during which they continued to use normal oral hygiene procedures. Artificial caries lesions were made in each enamel slab and covered with gauze to encourage the formation and accumulation of plaque on the enamel surface. Subjects were given snack foods (chocolate bar, raisins, cream-filled wafers, and cream-filled, iced cupcake) and instructed to consume one each morning and afternoon between meals. During the first experimental period, subjects chewed, for 20 min each, five sticks per day of commercial sugarless gum after meals and snacks. The gum was sweetened primarily with sorbitol and small amounts of mannitol, HGS, and aspartame. During the second experimental period, snacks were consumed but without chewing gum (control).

The results showed statistically significant ($p<0.001$) remineralization during both experimental periods compared to the original lesion. The difference between the remineralization with and without gum was also significantly different ($p<0.01$), indicating overall promotion of remineralization by gum chewing. The authors attributed the remineralization during the nongum period to the presence of gauze used with the intraoral device to collect plaque. The gauze could have concentrated calcium and phosphates from the diet in plaque and fluoride from dentifrice. It is not known what effects the duration and timing of the gum chewing had on the results. Without a comparison to sucrose-containing gum and a nonsweetened gum, it is not possible to evaluate the effect of chewing gum for 20 min.

Rundegren et al. (Ref. 36) evaluated in situ the effect on demineralization of sucrose substitutes in a 4-wk test. Intraoral devices containing bovine enamel mounted on acrylic blocks were used with group 1. Partial dentures with enamel slabs were used with group 2. Sweeteners tested included 10 percent solutions of sucrose, maltitol, and HSH. Sucrose was used as the positive control, and 0.9-percent solution of sodium chloride was used as a negative control. Subjects immersed the test sites of their appliances in the test sweetener four times a day for a 10-min period. Plaque was collected at the end of 4 wk and plated to determine the content of *S. mutans*. The degree of demineralization was measured by evaluating changes in microhardness of the enamel. The buffering capacity of whole saliva was evaluated weekly by measuring final pH in a mixture of 1 mL of saliva and 3 mL of sodium chloride.

The results showed a higher degree of demineralization overall in the adults (ages 56 to 59 yr) using the partial dentures compared to students (age 19 yr) using an intraoral device. Results from the test ($n=4$) of enamel microhardness in HSH versus sodium chloride suggest that HSH does not contribute to demineralization, and that measured changes in microhardness reflected the background of fermentable carbohydrates in the diet. Comparing the differences in microhardness of enamel slabs between the sucrose and HSH diets and the sucrose and maltitol diets showed that sucrose results in significant demineralization compared to the sugar alcohols.

Creanor et al. (Ref. 37) evaluated the effect of chewing gum for 20 min on in situ enamel lesion remineralization compared to a fluoridated dentifrice. Artificial enamel lesions were created in vitro in sound human enamel and mounted for wearing just opposite the lower first and second molars. Baseline mineral contents were measured. Subjects used a fluoridated dentifrice twice daily and maintained their regular diets. Six subjects chewed five sticks of chewing gum containing sorbitol and some HGS and aspartame after each meal and snack. The gum was chewed for 20 min in order to minimize any deleterious effects of sucrose. Six other subjects received no gum and served as the control. At the end of 7 wk, the test subjects became the control group, and the control subjects became the new test group. The new test group then chewed sucrose-containing gum for 7 wk.

The results showed that after using sugar-free gum for 7 wk, the degree of mineral loss for the enamel corresponded to a remineralization value of 18.2 percent. After 7 wk of chewing sucrose gum, the percent remineralization was calculated to be 18.3 percent. The difference between the sorbitol and sucrose gum groups was not significant. Results of this study suggest that chewing gum for 20 min, regardless of the sweetener, can be beneficial to dental health.

A common problem in studies evaluating the dental health benefits of sugar alcohol-containing chewing gum is the absence of an appropriate control group. Most of the studies that have been done use a control group that does not chew gum. Ideally, to evaluate the relationship of sugar alcohol-sweetened chewing gum in not promoting dental caries, the control group would chew an unsweetened gum product. Such a group is needed to take into consideration the effects of chewing gum itself on the endpoint measure, e.g., plaque pH or plaque acid production. Chewing gum is known to stimulate saliva, which can help neutralize oral acids, raise plaque pH, and help to promote enamel remineralization in some circumstances. It would be considered unethical by standards in the United States to use a control group that chews sucrose-containing gum and, as a consequence, puts the subjects at risk of dental disease, in order to compare the incidence of dental caries to that from a sugar alcohol-containing gum.

The few long-term caries field trials that were submitted with this petition show how multiple problems in the execution of clinical studies can easily confound the results. Problems often include subject compliance, reporting and control of dietary intake, selection of appropriate control foods, inter- and intraexaminer variability, subject attrition, and inability to blind the study. The majority of these trials compared sucrose consumers to individuals who had partial or complete substitution of sugar alcohols for sucrose. The results consistently demonstrated significantly fewer caries in the group consuming sugar alcohols than in the group consuming sucrose.

Although the relationship between some of the sugar alcohols and promotion of dental caries has not been well studied in humans, it is becoming increasingly evident that sugar alcohols, when substituted for sucrose and other fermentable carbohydrates, may provide important dental health benefits for the consumers of those products.

D. Animal Studies

FDA reviewed over 20 animal studies investigating the effects of sugar alcohol consumption on the incidence of dental caries or on the acidogenic potential of dental, *S. mutans*, or mixed oral microorganisms. Most of the animal studies that have been done to test the effect of sugar alcohols on the incidence of caries were programmed feeding studies using weanling rats. The animals were usually divided into groups and fed diets containing different test sweeteners. The control diets were either a basal diet with no carbohydrate sweeteners or sugar substitutes or a basal diet with added sucrose. The test diets were administered over a period of weeks, increasing the sugar substitute concentration slowly to allow the animals time to adapt to the specific sweetener and to minimize the severity of diarrhea, a side effect of sugar alcohol consumption that increases with increasing concentration of the sugar alcohol.

Investigators also evaluated the general health and growth of the animals during the experimental period. Many animals, and rats in particular, do not like the taste of sugar alcohols and, therefore, will eat less of the test diet and increase their intake of water. Most investigators monitored the animals' total dietary intake to ensure that consumption patterns were similar between the control and test animals.

A potential confounding factor in these studies is the effect of total food and water intake on caries development. If animals consume less of a sugar alcohol diet compared to the control animals consuming a sucrose diet, any significant differences in caries incidence may actually be attributable to the differences in food and water consumption and not to an effect of the sugar substitute. Some studies reported a lower survival rate in animals on the

sugar alcohol diets. This finding made interpretation of the results more difficult because of uneven group sizes.

In order to promote the cariogenic process, the animals were inoculated with either mixed strains of plaque bacteria or purified strains of *S. mutans* and other microorganisms found in dental plaque. Experimental periods lasted, on the whole, for 60 to 70 days. These periods included the time given for the animals to adapt to the test diets.

Havenaar et al. (Ref. 52) fed *S. mutans* inoculated rats one of six diets 18 times a day: The basal diet plus 50-percent starch, or the basal diet plus 30-percent starch and 20 percent of either sucrose, HSH's, xylitol, sorbitol, or L-sorbose. In a second experiment, the rats were fed the same diets 14 times a day and alternated with the basal diet containing 20-percent sucrose and 10-percent glucose (four times a day). In both experiments, the starch, HSH, xylitol, and L-sorbose groups showed significantly less fissure lesions than the sorbitol and sucrose groups. The sorbitol group showed significantly less fissure caries in the mandibular molars with respect to the severity of the lesions compared to the sucrose group.

Havenaar et al. (Ref. 53) in five successive experiments, fed rats ad libitum on diets containing sucrose or HSH 80/55. In each experiment, the rats were inoculated with plaque from rats in the previous experiment (Ref. 52). Results showed that compared to sucrose, HSH was relatively noncariogenic. The incidence of fissure caries in the mandibular molars for rats consuming 20-percent sucrose was 13.1, whereas the fissure caries incidence in rats consuming 20-percent HSH was 1.5 to 2.5 ($p<0.001$).

Havenaar et al. (Ref. 54) evaluated the usefulness of diets for testing the caries promoting or inhibiting properties of sugar substitutes. The investigators fed two groups of rats experimental diet 2000 containing 50-percent sucrose and 14-percent starch or 50-percent sucrose, 9-percent starch, and 5-percent xylitol for a period of 42 days. Results showed no significant differences in caries incidence between the sucrose starch, the xylitol group and the sucrose and starch group. In another experiment animals were fed diet SSP 20/5 containing 20-percent sucrose, 5-percent glucose, and 25-percent starch or 20-percent sucrose, 5-percent glucose, 20-percent starch, and 5-percent xylitol for a period of 66 days. Results showed the xylitol, sucrose, and starch group to have significantly fewer caries (12.3 caries versus 14.8) compared to the sucrose, starch, and glucose group.

Havenaar and coworkers (Ref. 55) fed one group of rats a basal diet containing 20-percent sucrose, 5-percent glucose, and 25-percent starch. The test group received the basal diet with 20-percent starch and 5-percent xylitol and fluoride. After 54, 75, or 96 days, rats were crossed over to the other diet for an additional 21 to 42 days. Results showed that the xylitol group had significantly fewer fissure caries than the sucrose group. The authors also reported that the longer the experimental period, the more severe the caries, irrespective of the presence of xylitol. After crossover, total numbers of caries did not change, but the xylitol group showed significantly fewer initial lesions compared with the mean caries incidence in the sucrose group on day 54.

Grenby and Colley (Ref. 56) fed a control group of rats a cariogenic diet containing 46-percent sucrose and fed two test groups the same cariogenic diet either with 20 percent of the sucrose replaced with xylitol, sorbitol, mannitol, or wheat starch (experiment A). The animals consuming sorbitol and mannitol did not remain healthy during the experiment, so this part of the experiment was terminated. The animals consuming xylitol also experienced difficult health effects at first but later improved and were returned to the 20-percent xylitol diet. In experiment B there were only two diets: A cariogenic diet with 46-percent sucrose and an experimental diet with 10 percent of the sucrose in the diet replaced with xylitol.

In experiment A, significantly fewer caries were experienced only in the group consuming the sucrose and xylitol diet compared to the control group. In experiment B, the level of caries was high for both the sucrose group and the sucrose and xylitol group. The overall caries scores were not significantly different.

Karle and Gehring (Ref. 57) evaluated the effect of sugar alcohols and sucrose on both xerostomized (salivary glands removed) and nonxerostomized rats. The control group consumed a basal diet without sweetener. Test groups received the basal diet plus sucrose, xylitol, isomalt, or other sweeteners. Sweetener concentrations were increased over a 3-wk period to a level of 30 percent of the diet. The xerostomized rats had more caries with all substances than the nonxerostomized rats. Sucrose was shown to be the most cariogenic sweetener, and xylitol the least cariogenic, in the nonxerostomized rats. Both the xylitol and isomalt groups had significantly fewer caries than the sucrose group.

Mühlemann and coworkers (Ref. 58) compared the cariogenicity of diet 2000 (containing 64-percent wheat flour) to the same diet containing xylitol or sorbitol (15 percent and 25 percent of the flour replaced) or sucrose (15 percent and 25 percent of the flour replaced). Sweetener mixtures containing 15-percent sucrose and 15-percent xylitol or sorbitol and 25-percent sucrose and 25-percent xylitol or sorbitol were also substituted for the flour ingredient of the basal diet. The rats consuming diets with 15- and 25-percent sucrose experienced 17.3 and 17.8 smooth surface caries, respectively. Rats consuming animal chow with 15-percent xylitol or sorbitol experienced 0.0 and 1.9 smooth surface caries, respectively. The caries score for the control group was 4.9. The highest number of fissure caries (11.3) occurred in the 25-percent sucrose group. The control group had 5.1 lesions. Substituting xylitol (25 percent) in the diet resulted in fewer caries (0.2) compared to the control, but differences were not significant. Twenty-five percent sorbitol in the diet produced a caries score of 2.8.

Shyu and Hsu (Ref. 59) evaluated the cariogenicity of 10-percent xylitol, mannitol, sorbitol, and sucrose in rats fed a plain basal diet. A control group was fed the basal diet without sweetener. Caries evaluations were made on the 45th and 90th days of feeding. The xylitol group had 86 percent fewer caries (significant) compared to the sucrose group and 76 percent fewer caries than the control. The mannitol group experienced 70 and 51 percent fewer caries than the sucrose and control groups, respectively. The sorbitol group experienced 48 and 14 percent fewer caries than the sucrose and control groups, respectively.

Bramstedt et al. (Ref. 60) evaluated the cariogenicity of isomalt, xylitol, and sucrose in 60 rats divided into five groups. The control diet was a basic diet containing half synthetic feed. Another control group received a special basic diet containing no low molecular weight carbohydrates. The test groups received the basic diet with increasing doses of sweetener up to 30 percent of the diet. The sucrose group had a significantly higher number of caries than either of the sugar alcohol groups. The group consuming the special basic diet had the lowest incidence of caries. There were no significant differences in the number of caries between the basic diet, xylitol, and isomalt groups, although the isomalt group showed a slightly higher incidence of caries.

Izumiya et al. (Ref. 61) fed rats 10 or 20 percent by weight of sweeteners in

feed. Rats consuming a dietary feed containing 10-percent maltitol had significantly fewer caries than the sucrose group. Details of this study and the results were not given in this reference.

Gehring and Karle (Ref. 62) evaluated the cariogenic properties of isomalt, in comparison to those of sucrose and xylitol in the basal diet of conventional and gnotobiotic (i.e., specially reared laboratory animals in which the microflora are specifically known) rats. The final concentration of sweetener in the feed was 30 percent. A second experiment was performed using isomalt, xylitol, sorbitol, and sucrose in chocolate. The basal diet constituted 40 percent of the total diet, and the chocolate constituted 60 percent. The isomalt group had significantly fewer caries than the sucrose group, and the xylitol group had significantly fewer caries than the isomalt group. The second experiment showed significant differences in caries experience after the T (initial caries lesions) and B (advanced caries) stages between the sucrose and sorbitol chocolate groups, the sorbitol and isomalt chocolate groups, and also between the isomalt and xylitol chocolate group. The order of cariogenicity of the test substances was sucrose greater than (>) sorbitol > isomalt > xylitol > control. An in vitro microbiological experiment was performed to test acid production capacity of plaque microorganisms in 10 percent solutions of isomalt, glucopyranosido mannitol (GPM), glucopyranosido sorbitol (GPS), sorbitol, mannitol, sucrose, and fructose. GPS and GPM are the two components that make up isomalt. Sucrose produced acid rapidly and had the greatest acid formation. Sorbitol and mannitol produced acid slowly, and isomalt and its two components had practically no acid production in vitro.

Karle and Gehring (Ref. 63) evaluated the cariogenicity of isomalt in rats. Six groups of rats received the basic diet without low molecular weight carbohydrates in addition to xylitol, sorbose, isomalt, lactose, and sucrose. The control group received only the basic diet. Sweetener concentrations were increased slowly up to 30 percent by weight of the basic feed. The highest number of fissure caries were caused by sucrose (about 33) followed by lactose (25), isomalt (about 13), sorbose (about 12), xylitol (about 7) and the control (5). Differences in caries incidence between the sucrose and the other groups were significant.

Larje and Larson (Ref. 64) fed rats a caries diet, diet 2000, to which various sweeteners were added. The caries diet, containing 56 percent sucrose, was used as a control ration. Sucrose substitutes used in at least one of the experiments included glucose, fructose, mannitol, sorbitol, potato starch, starch/sucrose mixtures, or HPS (contains sorbitol and hydrogenated dextrins). In the first experiment each group was fed diet 2000 for a few days, then they were changed to one of the diets containing a sucrose substitute. Each test diet was fed for 7 out of every 14 days followed by rotation back to the control diet. The diets were changed every 2 or 3 days according to a predetermined schedule. A second experiment was designed to determine the effect of feeding the sucrose diet after the period of bacterial implantation on diets containing sucrose substitutes. The animals consumed one of the test diets the first week while being inoculated with *S. mutans,* followed in the final 7 wk by the control diet containing sucrose. A third experiment was designed to determine the effect of feeding sucrose and sucrose-substitute diets intermittently after the period of bacterial implantation on the sucrose diet. The animals consumed diet 2000 the first wk, followed in the final 7 wk by diets containing the sugar substitutes.

The results of the first experiment showed significantly ($p<0.001$) fewer smooth surface caries with all sugar alcohols, potato starch, dextrose, and hydrogenated starch compared to the sucrose group. Significantly ($p<0.05$) fewer sulcal caries were experienced in the groups receiving mannitol, sorbitol plus starch, potato starch, and HPS compared to the sucrose group. The authors observed that in all of the experiments, every group in which sucrose was restricted, whether by dietary substitution or by shortened feeding periods, developed significantly fewer caries on smooth surfaces compared to the sucrose control animals. The animals in the mannitol, sorbitol plus starch, and sorbitol groups consumed less food during the test period compared to the sucrose controls. The authors stated that food consumption and weight gains were directly related to the incidence of caries.

The results of experiment 2 showed significantly ($p<0.001$) fewer smooth surface caries in groups fed hydrogenated starch, potato starch, dextrose, fructose, sorbitol plus starch, dextrose plus fructose compared to the sucrose group. Groups receiving HPS, fructose, and sorbitol plus starch experienced significantly ($p<0.001$) fewer sulcal caries compared to the sucrose group.

The results of experiment 3 showed significantly ($p<0.001$) fewer smooth surface caries in groups receiving potato starch, fructose, sorbitol plus starch, dextrose plus fructose, dextrose, and hydrogenated starch compared to the sucrose group. The overall results showed that reducing the exposure to sucrose results in fewer carious lesions.

Mühlemann (Ref. 65) tested the effects of topical applications of sugar substitutes on caries incidence and bacterial agglomerate formation in rats receiving a cariogenic diet containing 20-percent sucrose. Sweeteners tested (50 percent w/v) included the following: Sucrose, mannitol, GPS, GPM, isomalt, sorbitol, maltitol, and French HSH. Three control groups were used: (1) One group received the cariogenic diet (20-percent sucrose) and no topical applications, (2) the second group received a topical application of water with the cariogenic diet, and (3) the third group was treated topically with chlorhexidin digluconate (0.5 percent) as a positive control. Topical solutions were applied five times a day for 23 days.

Among the carbohydrates treatments, the isomalt, GPS, and GPM groups had the lowest incidence of fissure and smooth surface caries. The differences, however, between the caries incidence in these three groups and the other test groups were not statistically significant. The incidence of caries in the chlorhexidine control group was statistically significantly lower than all treatment groups. The control groups receiving no application and water both experienced slightly more caries than the sugar alcohol groups. Results of these studies suggest that in the presence of a cariogenic diet, topical application of mannitol, isomalt, sorbitol, maltitol, or HSH does not affect the promotion by sucrose of dental caries in rats.

Ooshima et al. (Ref. 66) evaluated the cariogenicity of maltitol in rats infected with *S. mutans.* Animals were divided into 12 groups. Group A received a control diet containing 56-percent wheat flour. Groups B through L received the same diet as the control group but had portions of the wheat flour replaced with one of the test substances. The sweeteners tested were as follows: 10-percent maltitol plus 46-percent wheat flour (group B), 20-percent maltitol plus 36-percent wheat flour (group C), 10-percent sucrose plus 46-percent wheat flour (group D), 10-percent sucrose plus 10-percent maltitol plus 36-percent wheat flour (group E), 20-percent sucrose plus 36-percent wheat flour (group F), 20-percent sucrose plus 20-percent maltitol plus

16-percent wheat flour (group G), 24-percent sucrose plus 32-percent wheat flour (group H), 24-percent sucrose plus 16-percent maltitol plus 16-percent wheat flour (group I), 28-percent sucrose plus 28-percent wheat flour (group J), 28-percent sucrose plus 12-percent maltitol plus 16-percent wheat flour (group K), or 40-percent sucrose plus 12-percent wheat flour (group L).

The results of this study showed that the maltitol did not induce dental caries in groups B and C compared to the wheat flour alone (group A). Groups A, B, and C experienced significantly ($p<0.001$) fewer caries than the sucrose group (group L). Groups D through I and K reported significantly ($p<0.001$ and $p<0.01$, respectively) fewer caries than group L. There was no significant difference in caries score between group J (equal parts sucrose and wheat flour) and group L. Thus, this study suggests that replacing sucrose with less cariogenic sweeteners or wheat flour results in fewer dental caries in rats.

Tate et. al. (Ref. 67) reported on the correlations between progressive caries and sugar intake in hamsters inoculated with S. *mutans.* Animals were fed a diet with 10-percent sucrose (group 1), 20-percent sucrose (group 2), 10-percent sucrose plus 10-percent maltitol (group 3), 10-percent sucrose plus 10-percent coupling sugar (group 4), 10-percent maltitol (group 5), or 10-percent coupling sugar (group 6). Group 2 experienced the most caries. There was no significant difference in caries score between group 1 and groups 3 and 4. Groups 5 and 6 had significantly ($p<0.01$) fewer caries than groups 1 or 2. This reference did not provide sufficient details regarding the methodology and analysis of results for purposes of evaluating the weight of the results.

Leach and Green (Ref. 68) fed two groups of rats a basal diet supplemented with sucrose plus 3-percent xylitol or 6-percent xylitol. The control group consumed the basal diet with sucrose. In experiment 1, rats were continuously fed the same diet during the experimental period. In experiment 2, rats were fed diets alternating between the control diet one day and the test diet the next day. In experiment 1, rats fed the sucrose and 6-percent xylitol mixture had significantly ($p<0.02$) fewer fissure caries than the control. There were no significant differences in the xylitol mixture groups. In experiment 2, both xylitol mixture diet groups had significantly ($p<0.001$) fewer fissure caries than the control. There were no significant differences among the xylitol mixture groups.

Mukasa (Ref. 69) evaluated the cariogenicity of maltitol and SE58 in rats. Product SE58 is a highly purified corn starch treated with enzyme and hydrogenated. It contains 20- to 25-percent sorbitol, 20- to 30-percent maltitol, 15- to 25-percent maltotrititol, and 30- to 40-percent maltopentaitol. In experiment one, three groups of rats were fed diet 2000 containing either 56-percent sucrose, maltitol, or SE58, among other ingredients. Because the rats consuming the maltitol and SE58 diets experienced serious growth problems, experiment one was discontinued. In experiment two, the level of all sweeteners in diet 2000 was reduced to 26 percent, with the remaining 30 percent as added corn starch. The sucrose group had a mean fissure caries score of 31.5 and a smooth surface caries score of 14.1. The maltitol group had 3.1 fissure caries and no smooth surface caries. The SE58 group had 4.6 fissure caries and 0.5 smooth surface caries. Differences between the sucrose group and each sugar alcohol group were significant.

Van der Hoeven (Ref. 70) evaluated the cariogenicity of isomalt in rats. Test diets consisted of a base diet containing 16-percent sucrose and 44-percent wheat flour and a base diet with 16-percent isomalt and 44-percent wheat flour. The control diet consisted of 60-percent wheat flour and no added sweetener. Diets were offered ad libitum over a period of 14 wk. Results showed increasing incidence of dentinal fissure lesions in the sucrose group (wk 2 = 4; wk 14 = 14 lesions) and almost no caries in the isomalt group (wk 2 = 0; wk 8 = 4; wk 14 = 1 lesion). There was no difference in the incidence of caries between the isomalt and the control groups.

Van der Hoeven (Ref. 73) evaluated the cariogenicity of lactitol in program-fed rats. The sweetener was incorporated into a powdered diet, described by Havenaar et al. (Ref. 54), consisting of a basic part (50 percent), wheat flour (25-percent), and test substance (25-percent). Lactitol was compared with sorbitol, xylitol, sucrose, and a control with wheat flour in addition to the basic part. The animals received 9 g of diet divided into 18 portions of 0.5 g each per day. The animals on the xylitol and sorbitol diets were reported to experience reduced weight gains and a reduced appearance of the fur. None of the animals suffered from diarrhea.

There were significantly fewer caries in the xylitol, lactitol, sorbitol, and wheat flour groups compared to the sucrose group. The incidence of caries in the lactitol and sorbitol groups was slightly, but not significantly, higher than in the wheat flour group. The incidence of caries was lowest in the xylitol group.

In a twofold experiment using caries-active rats, Grenby and Phillips (Ref. 77) evaluated: (1) The cariogenicity of lactitol, sucrose, and xylitol at a level of 160 g per (/) kilogram (kg), a level stated to approximate the average sucrose content of the diet in developed countries, and (2) the cariogenicity of lactitol in a sweet biscuit compared to a sucrose-sweetened biscuit. In the first experiment, the sweetener was incorporated into a laboratory chow containing white flour, skim milk powder, liver powder, and a vitamin-mineral supplement. In the second part of the experiment, biscuits, containing 166 g of lactitol/kg, were incorporated into the animal chow for a final concentration of lactitol of 110 g/kg. Animals were fed the diets for a period of 8 wk. Experiment 1 showed highly significant differences in caries score, total number of lesions, and severity of lesions in the sugar alcohol groups compared to the sucrose controls. The sugar alcohol groups had very few caries, and differences between groups were not significant. The animals in both the xylitol and lactitol groups required several weeks to adapt to the diets, showing increased water intake and decreased food intake. Because of poor physical condition, only 11 of the 22 rats in the xylitol group completed the full 8-wk test. Animals on the sucrose diet were significantly heavier than the sugar alcohol animals.

Results of the second test showed highly significant differences between the lactitol- and sucrose-biscuits groups in all caries parameters. The average caries score for the lactitol group was less than one per animal. Weight gains, however, were consistently lower, and water intake increased in the lactitol group.

The results of the above animal studies show that animals fed sugar alcohols in animal chow had fewer and less extensive caries than animals fed sucrose. The studies also show that, in general, rats do not eat as much of a sugar alcohol-containing diet as a sucrose-containing diet and, therefore, tend to gain less weight and have more physiological problems.

E. Summary of Human and Animal Studies

1. Xylitol

In its 1978 review of the studies on xylitol, FASEB concluded that xylitol appeared to be noncariogenic in studies evaluating the effect of sucrose

replacement with xylitol and in studies evaluating the effect of partial replacement of sucrose with xylitol in chewing gum (Ref. 14). However, FASEB concluded that it was essential that these studies be replicated by other workers in order to confirm the observations and conclusions.

Rekola (Refs. 23 and 25) conducted a followup assessment of results from the 2-yr Turku sugar study evaluating the progression of incipient carious lesions and lesion sizes on buccal smooth surfaces with dietary substitution of xylitol for sucrose. In the 2-yr Turku sugar study, dietary xylitol was almost completely substituted for sucrose. Subjects were assigned to groups based on individual preference. Rekola examined color dental photographs, taken during the 2-yr study, of 33 subjects in the sucrose group and 47 subjects in the xylitol group. The xylitol group showed significantly smaller white spot lesions and had a significantly lower caries score compared to the sucrose group.

Results of several more recent human caries studies (Refs. 22, 26, and 28 through 30) reported significantly fewer caries in the xylitol group compared to the sucrose group. Kandelman and Gagnon (Ref. 22) reported significantly less NPD and incidence of DMFT in school children chewing three sticks per day of xylitol gum (3.4 g) or xylitol and sorbitol gum (0.9 g xylitol and 2.4 g sorbitol) compared to the nongum control group. Results of xylitol field studies in Hungary (Refs. 26 and 28), French Polynesia (Refs. 29 and 30), and Thailand (Ref. 29) conducted by WHO showed lower caries incidence and caries increment rate in children consuming xylitol and sorbitol in chewing gum (Ref. 29) and xylitol in other snack foods (Ref. 30) compared to a nonsugar alcohol group. However, results of the gum study in French Polynesia and Thailand (Ref. 29) were confounded by the presence of fluoride in the gums tested. In addition, the prevalence and incidence of dental caries in these population groups were high and increasing and do not reflect the general healthy population of the United States.

The effect of xylitol on acid production or plaque pH was studied in ten studies (Refs. 38, 39, 41, 43 through 46, 48, 50, and 76). In nine of these (Refs. 38, 39, 41, 43 through 46, 48, and 50), xylitol was found to result in negligible to no acid production with little to no change in plaque pH. Similarly, results showed no significant effect of xylitol on resting plaque pH. Plaque pH from exposure to xylitol was always significantly higher than that of sucrose or glucose.

Twelve animal studies (Refs. 52, 54, 56 through 60, 62, 63, 68, 73, and 77) evaluated the effects of xylitol on dental caries in rats or hamsters. Eight of these (Refs. 52, 57 through 60, 62, 63, and 77) used a test diet that contained only one sweetener, either sucrose or xylitol. In all of these studies, there were significantly fewer caries reported in animals consuming the basal diet with xylitol compared to sucrose controls. The incidence of caries was also significantly less in the xylitol group compared to animals consuming isomalt (Ref. 63) and sorbitol (Ref. 52). The concentrations of xylitol in the test diets ranged from 10 percent up to 30 percent by weight.

Results of the animal studies evaluating the effect of xylitol in diets containing sucrose (Refs. 54, 56, 68, and 73) showed mixed results depending on the concentrations of sucrose and xylitol in the test diets. Havenaar et al. (Ref 54) showed no significant difference in caries in animals consuming a diet with sucrose and 5-percent xylitol, but a significant difference in caries when the sucrose was lowered to 20-percent of the diet and xylitol 5-percent. Grenby and Colley (Ref. 56) reported a high caries level in animals consuming either a diet containing 46-percent sucrose or 36-percent sucrose and 10-percent xylitol. The caries score was significantly lower in rats consuming a diet with 26-percent sucrose and 20-percent xylitol compared to the 46-percent sucrose diet. An in vitro microbiological test showed no acid production by S. *mutans* from xylitol. Van der Hoeven (Ref. 73) reported significantly fewer caries in rats consuming a diet with 25-percent xylitol compared to the rats consuming a basic diet with 25-percent sucrose. The xylitol group also had fewer caries than the wheat flour control group.

2. Sorbitol

In its March 1979, review of sorbitol in health and disease (Ref. 15), FASEB reviewed available animal and human studies regarding the cariogenicity of sorbitol. FASEB concluded that the weight of evidence from animal studies suggests that sorbitol is less cariogenic than sucrose, fructose, glucose, and dextrin. Based on the human studies published in the early to mid-1970's, FASEB noted that the results do not provide definitive data on the effect of sorbitol on the caries process. It noted that the results of studies on plaque pH suggest that sorbitol is slowly fermented to plaque pH levels of about 6. It also said that some studies have provided evidence of adaptation of oral flora after long-term use of sorbitol-containing products. FASEB noted that a human population that regularly consumes sorbitol-containing foods, such as jams and jellies, baked goods, or other food products, has not been identified and studied to establish whether sorbitol significantly alters the carious process.

Two studies submitted with the petition evaluated the cariogenicity of sorbitol in chewing gum (Refs. 20 and 32), and one study (Ref. 35) evaluated the effect of sorbitol in chewing gum on demineralization of enamel. Möller and Poulsen (Ref. 20) reported an increased number of sound tooth surfaces and a smaller caries increment rate in children consuming sorbitol gum containing calcium phosphate compared to the control group that did not consume chewing gum. However, the presence of calcium phosphate, which acts as a buffer in saliva to help reduce its acidity, and the absence of gum chewing in the control group, confound these observations.

Glass (Ref. 32) reported no significant differences in the number of DF surfaces or teeth in children using sorbitol chewing gum for 2 yr compared to a no-gum group. This study, however, did not consider the effect of chewing gum per se on dental caries.

Leach et al. (Ref. 35) conducted an intraoral test in subjects fitted with bands containing human enamel with artificial white spot lesions. The subjects consumed sucrose-containing snacks. During one of the test periods, the subjects chewed gum containing sorbitol with small amounts of mannitol, HGS, and aspartame, for 20 min at a time after each meal and snack. The study showed significantly more remineralization during the sorbitol gum period compared to baseline and the no-gum (sucrose) period. Results of this study are confounded, however, because of the duration (i.e., 20 min) and timing (i.e., immediately after meals and snacks) of the gum chewing. In addition, the effect of sorbitol alone cannot be determined because of the presence of other sugar alcohols and aspartame in the test gum.

Bánóczy et al. (Ref. 21) reported a significantly lower caries increment in children consuming sorbitol-containing sweets between meals compared to children consuming sucrose-containing sweets between meals over a 2-yr period. Differences between groups were not significant during the third yr of this study, however, the authors attributed the lack of significance during the third yr to the trading of sweets between groups.

Twelve studies evaluated changes in plaque pH after exposure to sorbitol-sweetened mouth rinses (Refs. 39 through 41, 45, and 47), solutions (Refs. 38, 46, and 76), tablets (Ref. 42), mints (Ref. 49), chewing gum (Ref. 50), and licorice (Ref. 43). Plaque pH changes in the presence of sorbitol decreased from baseline pH but remained approximately at or above a pH of 6.0 (Refs. 39 through 42, 45 through 47, and 50). Bibby and Fu (Ref. 38) reported progressively decreasing plaque pH values in vitro with increasing concentrations of sorbitol in a concentrated plaque suspension. Only slight decreases in pH were reported in 0.1- to 1.0-percent solutions. In the presence of a 10-percent sorbitol solution, plaque pH dropped to about 5.8. Grenby et al. (Ref. 76) reported a pH of about 6.0 after 12 h and a final pH in vitro of about 4.6 after 24 h of incubating concentrated plaque with 10-percent sorbitol. The results of these studies suggest that higher concentrations of sorbitol may lead to further decreases in plaque pH to a level that may become detrimental to tooth enamel (i.e., at or below pH 5.5).

Park et al. (Ref. 49) found that use of sorbitol mints or mints with a blend of sorbitol and xylitol helped reduce the acidogenic potential of certain snack foods, although final pH values remained low. Toors and Herczog (Ref. 43) showed that plaque pH is affected by more than the sweetener component of a food. Results of plaque pH in vivo with an experimental licorice, containing sorbitol, soy flour, and potato starch derivative among other ingredients, showed a minimum pH of about 5.5. A sucrose-containing licorice used in this study lowered plaque pH to about 5.0. The fermentability of both the potato starch derivative (82 percent) and soy flour (75 percent) contributed to the observed changes in plaque pH in the experimental licorice. The fermentability of sorbitol in the experimental licorice was 12 percent.

Five studies (Refs. 39 through 41, 43, and 48) measured the APA of plaque with sorbitol. In all cases, sorbitol was fermented slowly with a reported range of acid production of 10 to 30 percent compared to sucrose or glucose. The higher acid production rate (i.e., 30 percent) was attributed to adaptation to sorbitol by *S. mutans* and other plaque microorganisms capable of fermenting carbohydrates. Havenaar et al. (Ref. 46) also reported a marked increase in fermentation of sorbitol and other sugar alcohols after multiple subculturing of plaque microorganisms with the sugar alcohol. However, the investigators reported that adaptation to sorbitol and other sugar alcohols was lost after subculturing once in glucose.

Results of animal studies evaluating sorbitol (Refs. 35, 52, 58, 59, 62, 64, and 73) showed significantly fewer caries in the sorbitol group than in the sucrose group. However, use of sorbitol resulted in more caries compared to animals consuming other sugar alcohols, such as xylitol and HSH (Refs. 52, 64, and 73). The concentration of sorbitol in these studies ranged from 10 percent up to 56 percent.

3. Mannitol

In its August 1979, review of mannitol in health and disease, FASEB (Ref. 16) reviewed available animal and human studies regarding the effect of mannitol on acid production, plaque pH changes, and changes in microhardness of bovine enamel in an ICT. It noted that human plaque studies in vivo or in vitro found that plaque pH decreases from 0 up to 1.0 units over a 30-min test period. FASEB concluded that the results were consistent with the results of animal experiments showing that mannitol, in the absence of adaptation of the oral microflora, is less cariogenic than sucrose.

Bibby and Fu (Ref. 38) measured in vitro plaque pH changes, over a 20-min incubation period, in the presence of increasing concentrations of mannitol (0.1-, 1.0-, and 10-percent concentrations) in a concentrated plaque suspension. Results showed that plaque pH decreased with increasing concentrations of mannitol. Final plaque pH values were 5.67, 5.54, and 5.22, respectively. Similar plaque pH values were reported by Grenby et. al. (Ref. 76). Results of the Grenby study showed that a 1-percent solution of mannitol, when incubated for 24 h with concentrated plaque and pieces of a human molar tooth, resulted in slight acid production and pH decrease over a 12-h period, but that after 24 h, the final pH was about 5.1. However, results from an in vitro demineralization test showed very little loss of calcium and phosphorus, significantly less than the loss of minerals with glucose.

Results of other studies, however, show that mannitol results in little change to plaque pH. Birkhed and Edwardsson (Ref. 39) reported only slight changes in plaque pH following use of a mouth rinse with a concentrated solution of mannitol. In addition, they reported an acid production rate from mannitol in dental plaque suspension of 0 percent compared to sucrose (100 percent). Gehring and Hufnagel (Ref. 45) used intraoral measurements to evaluate the effect of sugar alcohols on plaque pH. Results of plaque exposed to a 20-percent mannitol solution showed the minimum pH obtained was slightly above 6.0. The plaque samples in these two studies were not concentrated as they were in the study by Bibby and Fu (Ref. 38) or by Grenby et al. (Ref. 76), which may account for the differences in plaque pH values reported for mannitol solutions. The results of one other in vitro microbiological study, with 10-percent mannitol and an incubation time of 48 h (Ref. 62), support the observation that mannitol is fermented very slowly, resulting in little acid production and small pH changes.

Animals fed mannitol (Refs. 59 and 64) or maltitol (Refs. 66, 67, and 69) showed significantly fewer caries compared to animals fed sucrose diets. The concentrations of the sugar alcohols in these studies ranged from 10 to 56 percent. An in vitro microbiological study (Ref. 62) showed that a 10-percent solution of mannitol was fermented very slowly.

4. Maltitol

Three studies (Refs. 33, 34, and 36) measured the effects on enamel decalcification of maltitol and sucrose solutions using an ICT with bovine enamel fragments adhered to a partial denture. Ikeda and coworkers (Ref. 33) showed significantly more decalcification in the presence of sucrose as compared to maltitol. Additional rat caries tests were in agreement with the results of the ICT. Rats fed a diet with maltitol had significantly fewer caries than the sucrose group. In this study maltitol was almost noncariogenic. Yagi (Ref. 34) reported significantly harder enamel after exposure to maltitol than after exposure to sucrose. Lack of details in this study, however, make it difficult to completely interpret the results. Rundegren (Ref. 36) reported significantly less enamel demineralization with maltitol compared to sucrose. The authors associated the changes that they observed in enamel hardness in the maltitol group with the effects of other dietary carbohydrates and not maltitol. Sucrose was found to exert an effect on enamel hardness that is not related to the effects of other dietary carbohydrates.

Three studies (Refs. 39, 41, and 46) evaluated plaque pH or acid production in maltitol. Birkhed and Edwardsson (Ref. 39) measured in vitro acid production and pH changes in human dental plaque following the use of various sweeteners in a mouth rinse. The results with maltitol showed an acid production rate of 10 to 30 percent

of that of sucrose. Changes in plaque pH in the presence of maltitol showed only a slight decrease from baseline pH (about pH 6.9).

Birkhed et al. (Ref. 41) measured in vivo pH changes in human dental plaque after subjects consumed lozenges sweetened with various sweeteners for 3 mo and then rinsed with a mouth rinse sweetened with the same sweetener as in the lozenge. A sucrose mouth rinse was also used by each sweetener group. Results with maltitol showed small, but some significant, changes in plaque pH compared to baseline pH (about pH 7.0) over the 30-min test period. The lowest plaque pH recorded, however, was about pH 6.8. In vitro acid production with maltitol was found to be about 26 to 32 percent of glucose.

Havenaar et al. (Ref. 46) measured changes in pH and acid production in vitro in growing cultures of oral bacteria obtained from caries active and caries free subjects. Results showed that a 1 percent solution of maltitol was slowly fermented to acid by plaque bacteria. Cell suspensions of *S. mutans* in maltitol showed pH decreased from a baseline of about pH 7.0 to about pH 6.5. Adaptation of *S. mutans* by frequent subculturing in maltitol showed a marked increase in fermentation by *S. mutans*. However, the ability to ferment the sugar alcohol was lost after one subculturing of the adapted strain in glucose.

5. Lactitol

Havenaar et al. (Ref. 46) showed that a 1 percent solution of lactitol was fermented by *S. mutans* and *Actinomyces*. Cell suspensions of *S. mutans* in lactitol showed pH decreased from a baseline of about pH 7.0 to about pH 6.5 or above after a 2-h incubation period. Adaptation of *S. mutans* by frequent subculturing in lactitol showed a marked increase in fermentation by *S. mutans* to give a plaque pH of about 5.0. However, the ability to ferment the sugar alcohol was lost after one subculturing of the adapted strain in glucose. Grenby et al. (Ref. 76) showed that a 1-percent solution of lactitol, when incubated for 24 h with human plaque and pieces of a human molar tooth, resulted in slight acid production and a final pH of about 6.3 and almost no loss of calcium and phosphorus from tooth enamel.

Results of two animal studies (Refs. 73 and 77) showed that substitution of lactitol for sucrose in laboratory chow resulted in significantly fewer caries in the lactitol group compared to the sucrose group. The lactitol group (Ref. 73) experienced slightly, but not significantly, more caries than the xylitol group and the wheat flour control group and fewer caries than the sorbitol group. There was no significant difference between the caries score in animals fed lactitol-containing or xylitol-containing chow (Ref. 77). There were significantly fewer caries in animals fed lactitol-containing biscuits compared to the sucrose biscuit group (Ref. 77). The average caries score in the lactitol biscuit group was less than one per animal.

6. Isomalt

Two studies investigated the effects on plaque pH with isomalt (Refs. 38 and 45). Bibby and Fu (Ref. 38) measured pH changes in fresh plaque from adult volunteers with increasing concentrations of isomalt. Results showed that as the concentration of the sugar alcohol increased, the pH of the plaque decreased. The range of plaque pH values reported for isomalt was from 6.6 (0.1 percent solution) to approximately 5.7 (10-percent solution). Gehring and Hufnagel (Ref. 45) reported a minimum plaque pH of about 6.0 after 5 min with isomalt. This value increased gradually over the next 27 min to about pH 6.3. As discussed above, the methods and type of dental plaque must be considered when comparing the results of these studies.

Results of animal studies with concentrations of isomalt from 16 to 30 percent of the rat diet showed significantly fewer caries compared to sucrose diets (Refs. 57, 60, 62, 63, 65, and 70). The caries incidence was high in xerostomized rats consuming either sucrose or isomalt (Ref. 57). The isomalt group of nonxerostomized rats, however, had significantly fewer caries than the sucrose group.

7. HGS and HSH

Frostell et al. (Ref. 31) studied the effect on caries increment in children of substitution of HSH for sucrose in candy. The results of this study are confounded for a number of reasons (see Table 2) and do not support a significant dental benefit from the use of HSH candies in place of sucrose-containing candies.

Rundegren et al. (Ref. 36) measured enamel hardness in the presence of sucrose, sodium chloride, or HSH using an ICT. The investigators reported significantly less enamel demineralization with HSH. The results of the study were that only sucrose promoted demineralization over and above the effect of dietary carbohydrates. The authors attributed the demineralization measured in the presence of HSH to the effect of dietary carbohydrates.

Eight studies measured plaque pH changes from exposure to HSH in solutions (Refs. 38 and 46), rinses (Refs. 39, 41, 45, and 47), and candy (Refs. 42 and 43). Bibby and Fu (Ref. 38) showed that as the concentration of HSH increased, plaque pH decreased. The lowest plaque pH value (10-percent solution of HSH) obtained was about 5.0. Havenaar et al. (Ref. 46) showed that a 1-percent solution of HSH was fermented by *S. mutans* and Actinomyces. Cell suspensions of *S. mutans* in HSH showed a pH decrease from a baseline of about pH 7.0 to about pH 6.5. Adaptation of *S. mutans* by frequent subculturing in HSH showed a marked increase in fermentation by *S. mutans* to give a plaque pH of slightly below 6.0. However, the ability to ferment the sugar alcohol was lost after one subculturing of the adapted strain in glucose.

Birkhed and Edwardsson (Ref. 39) measured plaque pH in vitro following the use of a mouth rinse containing Swedish or French HSH. French HSH appeared to have little effect on plaque pH. Plaque pH values remained slightly below or at 7.0. Swedish HSH showed a decrease in plaque pH within 5 to 10 min to just less than pH 6.0. Over the remaining 20 min, the pH increased to just over 6.0. Birkhed et al. (Ref. 41) measured pH changes in human dental plaque after subjects consumed lozenges sweetened with Swedish HSH for 3 mo and then rinsed with a mouth rinse sweetened with Swedish HSH. Plaque pH was also measured after a sucrose mouth rinse. The results of the study showed that HSH resulted in a drop in plaque pH in all tests; however, the minimum pH values reached were above 6.0. Gehring and Hufnagel (Ref. 45) reported an intraoral plaque pH change with a HSH rinse (20 percent solution) from about pH 6.6 to about 5.6.

Jensen (Ref. 47) showed interproximal plaque pH values from five different HGS rinses were statistically significantly different compared to the sucrose control. Differences between the HGS test solutions and a sorbitol control were not significantly different. The minimum pH values obtained with the HGS solutions were above pH 6.0. Composition of the HGS test substances was not provided.

Frostell (Ref. 42) reported a slight decrease in vitro plaque pH (from about 6.7 to about 6.5) after subjects consumed HSH candy. After consuming a sucrose lozenge, plaque pH decreased to about 5.8. A sucrose solution resulted in a minimum plaque pH of about 5.3. Toors and Herczog (Ref. 43) showed that plaque pH is affected by more than the sweetener component of a food. Results

of plaque pH in vivo with an experimental licorice, containing soy flour, HPS, and potato starch derivative among other ingredients, showed a minimum pH of about 5.5. The fermentability of the HPS (60 percent), potato starch derivative (82 percent) and soy flour (75 percent) contributed to the observed changes in plaque pH in the experimental licorice.

Acid production in vitro was reported in two studies (Refs. 39 and 51). Birkhed and Edwardsson (Ref. 39) reported an acid production rate from French HSH of 20 to 40 percent and from Swedish HSH of 50 to 70 percent compared to glucose syrups. Birkhed and Skude (Ref. 51) reported significantly lower acid production rates (i.e., slower rate of fermentation) from a 3 percent solution of Swedish HSH (61.5 percent) compared to glucose (99.7 percent). The investigators also reported that HSH was metabolized significantly more slowly than soluble starch.

Results of animal studies evaluating the effect of HSH showed the sweetener to be relatively noncariogenic compared to sucrose (Refs. 52, 53, 64, and 69). Differences in the incidence of caries between the sucrose and HSH groups were significant.

IV. Decision To Propose a Health Claim Relating Sugar Alcohols To the Nonpromotion of Dental Caries

FDA limited its review of the scientific evidence relating sugar alcohols and dental caries to those studies evaluating changes in plaque pH, plaque acid production, decalcification or remineralization of tooth enamel, and the incidence of dental caries with sugar alcohols. FDA considered these limitations to be appropriate because previous Federal government and other authoritative reviews had focused on these areas (Refs. 14 through 16), and the majority of research efforts to date have focused on these areas.

FDA tentatively concludes that, based on the totality of publicly available scientific evidence regarding the relationship among sugar alcohols, plaque pH, and dental caries, there is significant scientific agreement to support the relationship between the use of xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, HSH, HGS, or a combination of these sugar alcohols and the nonpromotion of dental caries. Thus, it appears that use of a health claim relating the use of sugar-alcohol containing products to dental caries will be useful in helping consumers identify food products consumption of which will not promote the development of dental caries.

A. Xylitol

In its 1978 review of the xylitol studies, FASEB concluded that xylitol appeared to be noncariogenic in studies evaluating the effect of sucrose replacement with xylitol and in studies evaluating the effect of partial replacement of sucrose with xylitol in chewing gum (Ref. 14).

The agency reviewed over 15 studies published since the FASEB report that evaluated the relationship between xylitol and dental caries, plaque pH, and acid production. Overall results from the human caries field trials (Refs. 26 and 28) suggest that substitution of xylitol-containing foods and chewing gums for sucrose-containing foods and chewing gums is associated with a lower incidence of dental caries. Plaque pH and acid production studies further support this result. In both in vivo and in vitro studies, xylitol had negligible to no effect on plaque pH or plaque acid production. In some instances, xylitol increased plaque pH above the mean baseline value, suggesting that xylitol may truly be nonpromotional of dental caries. The results of over 10 animal studies confirm the observations from clinical and in vitro studies. Substituting xylitol (from 10 to 30 percent) for sucrose in a basic laboratory chow resulted in significantly fewer dental caries. FDA tentatively concludes that the overall results from human and animal studies strongly support the observation that xylitol does not promote acid production in plaque and, therefore, does not promote dental caries.

B. Sorbitol

In its 1979 report on sorbitol, FASEB concluded that the weight of evidence from animal studies suggests that sorbitol is less cariogenic than sucrose and other fermentable sugars (Ref. 15). The report noted that the results of human plaque studies show that sorbitol does not lower plaque pH below 5.5, the pH of plaque where decalcification may begin. FASEB concluded that it could be assumed that sorbitol may have similar relative cariogenic properties in humans as observed in animals.

The agency reviewed over 10 clinical studies with sorbitol published since the FASEB report. Subjects consuming sorbitol-containing sweets between meals experienced fewer dental caries than those consuming sucrose-containing sweets. Plaque pH and acid production studies consistently show that sorbitol is slowly fermented by plaque microflora and by *S. mutans* in particular. However, results show that plaque acid did not decrease pH to levels associated with incipient enamel decalcification (i.e., approximately at pH 5.5 or below). There is some evidence that suggests that long-term, uninterrupted use of sorbitol results in adaptation by *S. mutans* and other plaque microorganisms and, therefore, in more acid production. However, there are no human caries trials to show whether such adaptation results in a change in the incidence of dental caries. There is some evidence to show that adaptation may be lost in the presence of other sugars.

The results of six animal studies confirmed the observations from human studies. The incidence of caries in animals consuming diets containing sorbitol was significantly less than the caries incidence in animals consuming diets containing sucrose. FDA tentatively concludes that the overall results from human and animal studies show that oral bacteria cannot be sustained in the presence of sorbitol, and that changes in acidity are within a range that is safe for tooth enamel.

C. Mannitol

In its 1979 report on mannitol, FASEB concluded that results of acid production, plaque pH changes, and changes in microhardness of bovine enamel were consistent with the results of animal experiments indicating that mannitol, in the absence of adaptation of the oral microflora, is less cariogenic than sucrose (Ref. 16). One study evaluated plaque pH with mannitol in a concentrated plaque suspension in vitro (Ref. 38). One and ten percent solutions of mannitol resulted in a plaque pH of 5.5 or below. Contrary to these results, however, three studies showed only slight acid production and small changes in plaque pH to a value not below pH 6.0 from mannitol (Refs. 39, 45, and 76). Likewise, there was little evidence of demineralization from mannitol in vitro (Ref. 76). Two rat studies, in which mannitol was substituted for sucrose in animal chow, showed significantly fewer caries with the mannitol diet (Refs. 59 and 64). FDA tentatively concludes that the overall results from both human and animal studies support the claim that mannitol does not promote dental caries.

D. Maltitol

Results of three ICT's showed significantly less decalcification with maltitol than sucrose. Additional plaque pH studies showed that maltitol is fermented very slowly (acid production of 10 to 30 percent) compared to sucrose and is associated with small plaque pH changes from resting baseline values.

Four animal studies confirmed that maltitol was significantly less cariogenic than sucrose. FDA tentatively concludes that the overall results from both human and animal studies support the claim that maltitol does not promote dental caries.

E. Isomalt

The agency reviewed two plaque pH studies evaluating the acidogenic potential of isomalt. Results with 10 percent isomalt showed a minimum in vitro plaque pH of 5.7. An intraoral test with a 20 percent solution of isomalt reported a minimum pH of about 6.0. Results of five animal studies consistently showed that isomalt was significantly less cariogenic than sucrose. FDA tentatively concludes that the overall results show that isomalt does not lower plaque pH below 5.5 and does not promote dental caries.

F. Lactitol

Two in vitro plaque pH studies showed that lactitol produced little acid and only slight changes in plaque pH from resting baseline values. Results of two animal studies are consistent with these results and showed lactitol to be significantly less cariogenic than sucrose. The cariogenicity of lactitol was not significantly different than xylitol. FDA tentatively concludes that the overall results support the claim that lactitol does not promote dental caries.

G. Hydrogenated Starch Hydrolysates and Hydrogenated Glucose Syrups

In an ICT, a solution of HSH resulted in significantly less demineralization than sucrose. The investigators attributed the observed demineralization with HSH to an effect of other dietary components. The effects of sucrose on enamel demineralization, however, were noted to be over and above the effect of other dietary components.

Seven studies evaluating the effect of HSH on plaque pH showed inconsistent results in final pH values reported. The differences in results are attributed to the source of the HSH. HSH is manufactured by hydrolyzing a source of food grade starch (usually potato or corn starch) with acid or an enzyme to a mixture of sugars and dextrins of various glucose lengths (i.e., glucose syrups). The hydrogenated mixture contains sorbitol, maltitol, maltitriol, maltotrititol, and hydrogenated dextrins of various molecular weights (Ref. 79). The percentage of each component sugar alcohol in the final substance depends on the manufacturing process and controls. The two major forms of HSH (i.e., one manufactured in Sweden and the other in France) used in the studies reviewed gave dramatically different results in plaque pH and acid production tests. The Swedish version, which has a higher percentage of higher molecular weight, fermentable polysaccharides than the French version, produced plaque pH values of 5.5 to 6.0 and an acid production of 50 to 70 percent compared to sucrose. The French version produced final plaque pH values above 6.0 and an acid production rate of 20 to 40 percent of sucrose. Results with HGS of unidentified composition showed minimum plaque pH values all above 6.0. Results of 4 rat studies support the observations that HSH (source not identified) is significantly less cariogenic than sucrose. FDA tentatively concludes that the overall results support the claim that HSH and HGS do not promote dental caries.

Based on its review of the scientific evidence, the agency noted that the HSH and HGS sugar alcohol mixtures may vary in their acidogenic response in dental plaque. For example, HSH manufactured in Sweden usually gave a lower plaque pH response than the French version of HSH. This variation in acidogenic response has been attributed to the differences in the chemical composition of these substances. HSH and HGS are not well defined chemical substances as are xylitol and sorbitol. Instead, the sugar alcohol compositions of these substances will vary depending on the manufacturing process. Therefore, the agency is asking for comments on how to determine whether sugar alcohol mixtures, such as HSH, when used in a food whose label bears a dental caries health claim, are in compliance with any final rule resulting from this proposal.

V. Decision To Propose An Exemption From § 101.14(E)(6) For Chewing Gum and Confectioneries

Section 101.14(e)(6) provides, as stated above, that except for dietary supplements or where provided for in other regulations in part 101, subpart E, to be eligible to bear a health claim, a food must contain 10 percent or more of the reference daily intake or the daily reference value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed before there is any nutrient addition.

The petition states that products containing sugar alcohols often will not be able to satisfy the requirement of § 101.14(e)(6) because the products utilizing sugar alcohols are largely chewing gum and confectioneries, none of which are a significant source of any nutrients. The petition states that the use of these products in lieu of traditional sugar-based confectionery would be consistent with public health recommendations, and that the health claim statement, ''useful only in not promoting tooth decay,'' is an important and useful message for consumers in making decisions on which foods to purchase.

FDA has tentatively determined that there is significant public health evidence to support providing an exemption to § 101.14(e)(6) for sugar alcohol-containing foods, e.g., chewing gums, hard candies, and mints. In the Surgeon General's Report (Ref. 7), dental caries is recognized as an important and widespread public health problem in the United States. Although dental caries among children are declining, the overall prevalence of the condition imposes a substantial economic burden on American health care costs. The Surgeon General's report states that of the 13 leading health problems in the United States, dental disorders rank second in direct costs (Ref. 7).

The role of sugars, and of sucrose in particular, in the etiology of dental caries is well established. Caries-producing bacteria can readily metabolize a range of simple sugars (e.g., sucrose, glucose, fructose) to acids that can demineralize teeth. The unique role of sucrose, however, is related to its ability to be used by *S. mutans*, the primary etiologic agent in coronal caries, and other oral bacteria to form extracellular polymers of glucose or fructose that adhere firmly to tooth surfaces (Ref. 7).

The Surgeon General's report recommends several types of intervention to help reduce the risk of dental caries. The diet-related factors include the use of fluoridated drinking water and control of sugars consumption. In this regard, the Surgeon General's report recommends that those who are particularly vulnerable to dental caries, especially children, should limit their consumption and frequency of use of foods containing relatively high levels of sugars.

FDA agrees that limiting the amount of sugars in the diet is one important approach to help reduce the risk of dental caries. Sugar alcohols can be used to replace dietary sugars in food by providing sweetness and usefulness as bulking agents. Sugar alcohol-containing chewing gum and confectioneries, such as hard candies and mints, are specifically formulated without dietary sugars. Although these foods have little or no nutritional value,

they are an important alternative to sucrose-containing snacks. Therefore, FDA tentatively finds that the use of health claims on the label of sugar alcohol-containing products will facilitate compliance with dietary guidelines that recommend a reduced intake of dietary sugars to reduce the risk of dental caries. Moreover, the sugar alcohol and dental caries health claim, if authorized, will apply in large measure, although not entirely, to snack foods that do not play a fundamental role in structuring a healthy diet.

Section 101.14(e)(6) was included in FDA's regulations to ensure that those foods that bear a health claim are useful in structuring a healthy diet. Usually usefulness in structuring a healthy diet derives from the vitamin, mineral, protein, or fiber content of the food. In this case, however, FDA tentatively finds that the replacement of dietary sugars with sugar alcohols will help reduce the risk of dental caries and thus will help to facilitate compliance with the dietary guidelines. In recognition of the special character of the foods involved, FDA tentatively concludes that it is appropriate to exempt these food products from § 101.14(e)(6). Therefore, in new § 101.80(c)(1), FDA is proposing to exempt sugar alcohol-containing food products from the provisions of paragraph 101.14(e)(6).

VI. Description And Rationale For Components Of Health Claim

A. Relationship Between Sugar Alcohols and Dental Caries

In proposed § 101.80(a), FDA describes the relationship between sugar alcohols and dental caries. Dental caries is a multifactorial disease, characterized by the demineralization of the surface of tooth enamel by acid-forming organisms in dental plaque. It is well established that the relationship between sugars consumption and dental caries is one of cause and effect within the multifactorial context (Refs. 71 and 72). The role of sucrose in the etiology of dental caries is related to its ability to be metabolized by oral bacteria into extracellular polymers that adhere firmly to the tooth surfaces, at the same time forming acids that can demineralize tooth enamel (Ref. 7). The extracellular polymers that adhere to tooth surfaces (i.e., plaque) facilitate the further attachment of additional plaque to teeth and the proliferation of bacteria. Although saliva can help neutralize plaque acids and influence the attachment of oral bacteria to the tooth surface (Ref. 7), it has limited access to the acids generated at the tooth surface beneath the plaque.

Diets in the United States tend to be high in sugars. Although there has been a decline in the prevalence of dental caries in the United States, there has been no decline in the consumption of sugars. Furthermore, the incidence of dental caries is still widespread (Ref. 7).

Sugar alcohols are used as sweeteners and bulking agents to replace dietary sugars in foods. Because of their composition, sugar alcohols are not as fermentable by plaque bacteria as sucrose and are, therefore, less cariogenic than dietary sugars. Replacing dietary sugars with sugar alcohols helps to maintain dental health.

B. Significance of Sugar Alcohols in the Caries Process

As explained in section IV of this document, based on the totality of the publicly available evidence, FDA has tentatively concluded that there is significant scientific agreement among experts qualified by training and experience to evaluate such claims that there is adequate scientific evidence to conclude that the sugar alcohols xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, HSH, and HGS are less cariogenic than sucrose and do not promote dental caries. In proposed § 101.80(b), FDA discusses the significance of the relationship between sugar alcohols and dental caries.

Sugar alcohols have been shown in human and animal studies to be nonfermentable (i.e., xylitol) or slowly fermentable (i.e., sorbitol, maltitol, mannitol, isomalt, lactitol, HSH, and HGS) by *S. mutans* and other acid-forming microorganisms in dental plaque. Human studies have shown a reduced rate of acid production in plaque and, in some studies, a reduced incidence of dental caries from the use of sugar alcohol-containing products.

C. Nature of the Claim

In new § 101.80(c)(1), FDA is proposing that all requirements of § 101.14 be met except, as explained above, that sugar alcohol-containing foods are exempt from § 101.14(e)(6).

Under § 101.14(d)(3), nutrition labeling in accordance with § 101.9 must be provided on the label or labeling of any food for which a health claim is made. Therefore, if FDA adopts this proposed regulation, the labeling of the amount of sugar alcohol in a serving will have to be declared on the nutrition label in accordance with § 101.9(c)(6)(iii) when a claim is made on the label or in labeling about sugar alcohols and dental caries.

In new § 101.80(c)(2)(i), FDA is proposing to authorize a health claim on the relationship between sugar alcohols and the nonpromotion of dental caries. This action is consistent with the agency's review of the scientific evidence, which showed that, although sugar alcohols are slowly fermented by *S. mutans* and can form some acid, they do not contribute to the promotion of dental caries.

In new § 101.80(c)(2)(i)(A), the agency is proposing to require that in describing the relationship between sugar alcohols and dental caries, the claim states ''does not promote,'' ''useful in not promoting,'' or ''expressly for not promoting'' dental caries. FDA finds that these terms accurately describe the relationship between sugar alcohol consumption and dental caries.

In new § 101.80(c)(2)(i)(B), the agency is proposing to require that the terms ''dental caries'' or ''tooth decay'' be used in specifying the disease. These terms are commonly used in dental and dietary guidance materials and are familiar to consumers.

Under § 101.14(d), a health claim must be complete, truthful, and not misleading. It must enable the public to comprehend the information provided and to understand the relative significance of such information in the context of a total daily diet. In addition, a health claim may not attribute any specific degree of reduction in risk of disease from consumption of the product.

In recognition of these general requirements, and in light of the fact that both environmental and genetic factors, as well as eating behaviors, all affect a person's risk of developing dental caries (see proposed § 101.80(a)(1)), FDA is proposing in § 101.80(c)(2)(i)(C) that for packages that have a total surface area available for labeling of 15 or more square inches, the claim must state that dental caries depends on many factors.

FDA is aware that many sugar alcohol-containing chewing gum and confectionery products have a total surface area available for labeling of less than 15 square inches, however. Such a small area would preclude the use of a health claim that included all of the required elements. Many of these products, packaged in small packages, have used the claim ''useful only in not promoting dental caries'' on their labels for more than 15 years. Because of the potential dental health benefits to consumers resulting from a positive action on this proposal and given the unique history of this claim, the agency tentatively finds that continued use of an abbreviated claim on packages with less than 15 square inches of surface area will not be misleading or confusing

to consumers of these products. However, the agency continues to believe that the fact that dental caries are multifactorial in their etiology is fundamental to an understanding of the claim. Therefore, the agency tentatively concludes that this fact is a material fact, and that it must be disclosed on packages with space available for labeling of 15 or more square inches. In § 101.80(c)(2)(i)(D), given the unique circumstances surrounding this claim, FDA is proposing to exempt packages with a total surface area available for labeling of less than 15 square inches from the provisions of § 101.80(c)(2)(i)(C).

In proposed § 101.80(c)(2)(i)(E), FDA states that the claim must not attribute any degree of nonpromotion of dental caries to the use of the sugar alcohol-containing food. Based on the agency's review of human and animal studies in this document, none of the studies provide a basis for determining the percent reduction in risk of dental caries from consuming sugar alcohol-containing foods. This requirement is also consistent with the general requirements for health claims in § 101.14(d), and those health claims authorized under part 101, subpart E.

D. Nature of the Food

In § 101.80(c)(2)(ii)(A), FDA is proposing to require that the food bearing this health claim meet the requirement in § 101.60(c)(1)(i) with respect to sugars content, that is, qualify to bear the claim ''sugar free.'' This requirement is consistent with the scientific evidence showing that foods with a mixture of sugar alcohols and sugars are still acidogenic (Ref. 38) and cariogenic (Refs. 52, 55, and 56, for examples).

In new § 101.80(c)(2)(ii)(B), the agency is proposing that the sugar alcohols be limited to xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, HSH, HGS, or a combination of these. This requirement reflects the available scientific evidence on the sugar alcohols and their effects on the promotion of dental caries.

Sugar alcohols in combination with high intensity sugar substitutes, such as aspartame and saccharin, are also used to replace sucrose. The agency notes that under proposed § 101.80(c)(2)(ii)(A) and (c)(2)(ii)(B), a sugar alcohol and dental caries claim could appear on a food that contains a combination of sugar alcohols and high intensity sweeteners but no sugars. The agency notes that high intensity sweeteners are not considered fermentable by oral bacteria (Ref. 75).

The agency is not specifying a level of sugar alcohols in the food product because these ingredients are being used as a substitute for sugars. Therefore, the amount of the substance required is that needed to achieve a desired level of sweetness.

In new § 101.80(c)(2)(ii)(C), the agency is proposing that to qualify to bear a claim, the sugar alcohol-containing food, when tested for its effects on plaque pH using in vivo methods, must not lower plaque pH below 5.7. Based on the agency's review of the scientific evidence, foods that lowered plaque pH below 5.5 were contributing to an acidic environment in the mouth that is detrimental to tooth enamel. Although a ''critical'' plaque pH has not been defined, changes in pH to a minimum that is above 5.5 are generally considered above the level where enamel decalcification would be promoted (Refs. 8, 75, 86, and 87).

In its review of the scientific evidence, the agency noted that sugar alcohol-containing chewing gum and confectioneries, such as mints, that do not contain fermentable carbohydrates, did not lower plaque pH below 5.5. However, in one study that evaluated the cariogenic potential of an experimental licorice that contained soy flour, the soy flour was shown to be highly fermentable and dropped plaque pH to below 5.5 (Ref. 43). The agency is concerned that use of sugar alcohols in a food product that contains an ingredient, such as refined flour, that would cause plaque pH to drop below 5.5 would thus cause the food to be cariogenic.

In the Swiss ''zahnschonend'' program, if a food does not promote a drop in plaque pH, using intraoral plaque pH telemetric tests, below 5.7 by bacterial fermentation either during consumption or up to 30 min later, the food is considered ''safe for teeth'' and may be labeled as such (Ref. 75). The intraoral plaque pH telemetric test is an in vivo method that measures the acidogenicity of foods and dietary patterns. Based on experience and experimentation, foods judged by the Swiss program to be safe for teeth are those that have been shown not to promote dental decay in animal or human model systems (Ref. 75).

In this proposed rule, FDA is proposing to require in § 101.80(c)(2)(ii)(C) that to be eligible to bear the claim, the food product not lower plaque pH below 5.7, based on in vivo measurements, during the time food is consumed and for up to 30 min after the food is consumed. The agency is proposing a more conservative value than pH 5.5 because such a value gives assurance that, consistent with the health claim, the food will not promote dental caries.

The methods that have been described as the most suitable for assessing plaque acidity of dietary constituents in humans are indwelling electrode systems, such as the intraoral plaque pH telemetric test used in the Swiss program (Refs. 8 and 75). ICT's (Ref. 88), which incorporate enamel blocks into dental appliances for the production of carious lesions when used in combination with intraoral plaque pH telemetry, are also good methods for assessing changes in plaque pH in response to food. The agency is asking for comments on whether establishing a minimum plaque pH that is measured in vivo during consumption and up to 30 min following consumption is a reasonable approach to use to determine whether a sugar alcohol-containing food, other than sugar alcohol-containing chewing gum and confectioneries, that contains other carbohydrate ingredients is in compliance with any final rule resulting from this proposal.

E. Optional Information

FDA is proposing in new § 101.80(d)(1), consistent with the regulations that have authorized other health claims, that health claims about the relationship between sugar alcohols and dental caries may provide additional information that is drawn from proposed § 101.80 (a) and (b).

In new § 101.80(d)(2), the agency is proposing that when referring to sucrose, the claim may use the term ''sucrose'' or ''sugar.'' The use of either of these terms is consistent with FDA's regulation that affirms that use of this substance is GRAS (§ 184.1854).

FDA is proposing in § 101.80(d)(3), consistent with the health claims that it has already authorized under part 101, subpart E, to allow manufacturers to provide additional information about risk factors associated with the development of dental caries. Although sugars consumption and infection with *S. mutans* are often identified as the cause of dental caries, there are several risk factors that play significant roles in the etiology of this disease (Ref. 71). These factors include frequent consumption of sucrose or other fermentable carbohydrates, presence of oral bacteria capable of fermenting sugars, length of time sugars are in contact with the teeth, lack of exposure to fluoride, individual susceptibility, socioeconomic and cultural factors, and characteristics of tooth enamel, saliva, and plaque (Refs. 7, 71, and 89).

F. Model Health Claims

In proposed § 101.80(e), FDA is providing model health claims to illustrate the requirements of new § 101.80. FDA emphasizes that these model health claims are illustrative only. If the agency authorizes claims about the relationship between sugar alcohols and dental caries, manufacturers will be free to design their own claim so long as it is consistent with § 101.80(c).

VII. Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because it enables firms to make claims that they would otherwise be prohibited from making, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

IX. Effective Date

FDA is proposing to make these regulations effective 30 days after the publication of a final rule based on this proposal.

X. Comments

Interested persons may, on or before October 3, 1995, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. 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.

XI. 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. Drozen, Melvin S., ''Health claim petition regarding the noncariogenicity of sugar alcohols,'' August 31, 1994.

2. Drozen, Melvin S., ''Objections and request for a hearing by Working Group of sugar alcohol manufacturers to the revocation of 21 C.F.R. section 105.66(f),'' Docket No. 91N–384L, Dockets Management Branch, FDA, Rockville, MD.

3. Saltsman, Joyce J., CFSAN, FDA, Letter to Melvin S. Drozen, September 15, 1994.

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5. Drozen, Melvin S., Letter to FDA, November 15, 1994.

6. Saltsman, Joyce J., CFSAN, FDA, Memorandum of telephone conversation, December 8, 1994.

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18. Working Group Consensus Report, ''Human plaque acidity,'' *Journal of Dental Research,* 65:1530–1531, 1986.

19. Working Group Consensus Report, ''Demineralization/remineralization,'' *Journal of Dental Research,* 65:1532–1536, 1986.

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List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 is revised to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. New § 101.80 is added to subpart E to read as follows:

§ 101.80 Health claims: dietary sugar alcohols and dental caries.

(a) *Relationship between dietary sugar alcohols and dental caries.* (1) Dental caries, or tooth decay, is a disease caused by many factors. Both environmental and genetic factors can affect the development of dental caries. Risk factors include tooth enamel crystal structure and mineral content, plaque quantity and quality, saliva quantity and quality, individual immune response, types and physical characteristics of foods consumed, eating behaviors, presence of acid producing oral bacteria, and cultural influences.

(2) The relationship between dietary sugars consumption and tooth decay is well established. Sucrose is one of the most, but not the only, cariogenic sugar in the diet. Bacteria found in the mouth are able to metabolize sugars producing acid and forming dental plaque. Prolonged exposure of the tooth enamel to acids from dental plaque causes tooth enamel to demineralize, or decay. Frequent between-meal consumption of sugary foods, particularly foods that easily stick to the teeth, can cause tooth decay.

(3) U.S. diets tend to be high in sugars consumption. Although there has been a decline in the prevalence of dental caries in the United States, per capita consumption of sugars has not declined, and the disease remains widespread throughout the population. Federal government agencies and nationally recognized health professional organizations recommend decreased consumption of sugars.

(4) Dietary sugar alcohols can be used to replace dietary sugars in food. Sugar alcohols are significantly less cariogenic than dietary sugars. Thus, replacing dietary sugars with sugar alcohols helps to maintain dental health.

(b) *Significance of the relationship between sugar alcohols and dental caries.* Sugar alcohols do not promote

dental caries because they are slowly metabolized by bacteria to form some acid. The rate and amount of acid production is significantly less than that from sucrose and does not cause the loss of important minerals from tooth enamel.

(c) *Requirements.* (1) All requirements set forth in § 101.14 shall be met, except that sugar alcohol-containing foods are exempt from section § 101.14(e)(6).

(2) Specific requirements. (i) *Nature of the claim.* A health claim relating sugar alcohols and the nonpromotion of dental caries may be made on the label or labeling of a food described in (c)(2)(ii) of this section, provided that:

(A) The claim shall state ''does not promote,'' ''useful in not promoting,'' or ''expressly for not promoting'' dental caries.

(B) In specifying the disease, the claim uses the following terms: ''dental caries'' or ''tooth decay.''

(C) For packages with a total surface area available for labeling of 15 or more square inches, the claim shall indicate that dental caries depends on many factors.

(D) Packages with a total surface area available for labeling of less than 15 square inches are exempt from paragraph (C) of this section.

(E) The claim shall not attribute any degree of nonpromotion of dental caries to the use of the sugar alcohol-containing food.

(ii) *Nature of the food.* (A) The food shall meet the requirement in § 101.60(c)(1)(i) with respect to sugars content.

(B) The sugar alcohol in the food shall be xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, or a combination of these.

(C) The sugar alcohol-containing food shall not lower plaque pH below 5.7 by bacterial fermentation either during consumption or up to 30 minutes after consumption, as measured by in vivo tests.

(d) *Optional information.* (1) The claim may include information from paragraphs (a) and (b) of this section, which describe the relationship between diets containing sugar alcohols and dental caries.

(2) In referring to sucrose, the claim may use the term ''sucrose'' or ''sugar.''

(3) The claim may identify one or more of the following risk factors for dental caries: Frequent consumption of sucrose or other fermentable carbohydrates; presence of oral bacteria capable of fermenting sugars; length of time sugars are in contact with the teeth; lack of exposure to fluoride; individual susceptibility; socioeconomic and cultural factors; and characteristics of tooth enamel, saliva, and plaque.

(e) *Model health claim.* The following model health claims may be used in food labeling to describe the relationship between sugar alcohol and dental caries.

(1) For packages with total surface area available for labeling of less than 15 square inches:

(i) Useful only in not promoting tooth decay;

(ii) Does not promote tooth decay; and

(iii) [This product] does not promote tooth decay.

(2) For packages with total surface area available for labeling of 15 or more square inches:

(i) Tooth decay is a disease caused by many factors including frequent between meal consumption of sugary foods. [Name of sugar alcohol] does not promote tooth decay.

(ii) [Reserved].

Dated: July 7, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

Note: The following tables will not appear in the annual Code of Federal Regulations.

BILLING CODE 4160–01–P

Table 1.-- Sugar Alcohols and Plaque pH, Acid Production

Study	Study Design	Subjects	Methods	Results	Comments
Bibby and Fu, 1985 (Ref. 38)	Study to evaluate in vitro method for determining plaque pH	Adult volunteers	Fresh plaque was collected from adult volunteers who had suspended oral hygiene for 24 to 48 hours (hr) and who had not eaten for 2 hr prior to plaque removal. Plaque was connected to pH meter and strip chart recorder. Methods described in detail in the study. Sweeteners used were: HSH (mostly SOR), SOR, MANN, isomaltulose, ISO, sorbose, X, saccharine (SACC), and aspartame (ASP). All but SACC and ASP were prepared as 0.1, 1.0, and 10% aqueous solutions. SACC and ASP were diluted in water to give sweetness equivalents of 0.1, 1.0 and 10% S solutions. Experiment 1: Plaque responses to SOR, MANN, X were compared to S, F, maltose, raffinose, and corn starch. Exp. 2: other sweeteners were used.	Plaque pH in presence of sugar alcohols after 20 min of incubation Soln Conc (w/v) Substrate 0.1% 1.0% 10% Sucrose 5.43 4.83 4.15 Fructose 5.47 4.39 4.14 Maltose 5.24 4.53 4.22 Raffinose 5.75 5.03 4.30 Mannitol 5.67 5.54 5.22 Sorbitol 6.30 6.17 5.82 Xylitol 6.07 6.13 6.33 Corn starch 5.55 4.85 4.29 Mean pH of plaque after incubation for 20 min with solutions up to 10% of isomaltulose resulted in a low pH similar to that of S. Increasing concentrations of ISO and HSH resulted in lowered pH of plaque compared to the pH in the 0.1% solution of the sweetener. The lowest pH values reported were about 5.6 (ISO) and 5.0 (HSH). Results of incubation of plaque with both S and X showed that X did not interfere with S fermentation.	The 10% solution of HSH resulted in a final plaque pH that is detrimental to dental enamel. Authors state that the HSH was mainly SOR. The results showing that plaque pH increases with increasing concentration of X, while the pH of all the other sugars tested decreased, provides support for the contention that X is nonpromotional for caries. For SOR, MANN, HSH, and ISO, the trend towards decreasing pH with increasing concentration, suggests that at a slightly higher concentration (>10%), the pH might dip below the level required for demineralization of enamel (pH 5.5).

Table 1.-- Sugar Alcohols and Plaque pH; Acid Production

Study	Study Design	Subjects	Methods	Results	Comments
Birkhed et al., 1978 (Ref. 40)	In vitro study of acid production from GLU and SOR in dental plaque suspensions and in vivo pH changes after mouth rinses	18 subjects, 25-40 years old	Prior to study, all Ss used SOR dentifrices and consumed sporadically SOR-containing products (gums, candies). No oral hygiene 2 (d) before; no professional cleaning before this 2-day period. Plaque was scraped off buccal, lingual, and approximal surfaces. Methods for measuring acid production are described in the study. After acid production was followed for 6 min, 1 mL of 0.2 M GLU solution control (C) was added and acid production was followed for another 6 min. This procedure was repeated using SOR as a substrate. One week after acid measured, Ss rinsed with water, then rinsed for 30 sec with 10% GLU soln. Sample plaque was taken immediately and at time 2, 5, 10, 20 and 30 min after the rinse. Analysis carried out using the pH values or the differences between pH values. Paired t-test used for statistical analysis. Adaptation period: Ss also instructed to rinse 6 x per day for 6 weeks with a 10% SOR soln without swallowing it. After 4 weeks, plaque was collected for determination in vitro acid production and after 5 and 6 weeks of adaptation, plaque pH in vivo was measured after mouth rinses with GLU and SOR	Results showed acid production with SOR before the SOR adaptation period was 11.3% of that resulting from the GLU control. After the adaptation period, acid production from SOR increased to 30.4%, a significant increase ($p<0.001$) from the before adaptation period. Mean plaque pH with 10% GLU soln before (B) and after (A) SOR adaptation pH 0 2 5 10 20 30 B 6.77 6.06 5.88 5.77 6.25 6.55 A 7.04 6.25 6.11 5.98 6.38 6.66 (p)<0.01 <0.05 <0.05 - - - Mean plaque pH with 10% SOR soln before and after SOR adaptation pH 0 2 5 10 20 30 B 6.91 6.96 7.01 6.99 7.00 6.99 A 7.07 6.94 6.83 6.76 6.67 6.86 (p) - - - <0.05 <0.01 - Significant difference between time (t) 0 and t = 10 and between t = 0 and t = 20, $p<0.01$; and t = 0 and t = 30, $p<0.05$.	Authors state that increased in vitro acid production from SOR after the adaptation period shows that adaptation occurred. Authors note that initial plaque pH values in the presence of GLU were a little higher after adaptation than before and these differences may have influenced statistical analyses of pH differences. However, pH curves for GLU before and after adaptation ran almost parallel to each other, whereas the SOR curves did not. SOR pH values after adaptation decreased slightly over 30 min, although differences were significant at 10 and 20 min. Authors conclude that these experiments suggest that the fermentability of SOR was more pronounced after adaptation than before. They also conclude that SOR can be regarded as a satisfactory low-cariogenic substitute for fermentable sugars, such as S, fructose and GLU.

Table 1.-- Sugar Alcohols and Plaque pH. Acid Production

Study	Study Design	Subjects	Methods	Results	Comments
Birkhed et al., 1978 (Ref. 41)	Intervention to study effects on in vivo pH and in vitro acid production from HSH (Swedish HSH), MALT, SOR, X. Randomized, blinded.	110 men and women (68 men, 42 women), ages 19 to 58 years.	3-month study. Ss divided into 4 groups and instructed to suck on 2 lozenges, 4 times a day between meals. Each lozenge contained 0.5 g of sweetener and 0.5 g gum arabic. No other dietary instructions were given. Changes in in vivo pH were measured after a mouth rinse for 10 sec with 10 mL of 50% soln of HSH, MALT, SOR, or X. The rinse was used 1 week before and 1 week after lozenge-consumption period. A no lozenge control group also rinsed with one of the four solns as did the test groups. Control (C) group had no diet or candy restriction during the 3-month test period. Plaque acid production activities were measured in vitro 1 week before and after the 3-month test period. Student's t-test and two-way analysis of variance used on plaque pH values of 5 groups.	Before the test period, the pH of HSH showed its lowest value at 10 min. Plaque pH values, after test, were similar, but all pH values were lower. No differences in pH values before and after testing were not statis. signifikant. The lowest pH values attained were above pH 6.0. Results of acid production measures showed HSH at 56-59%, compared to GLU (100%). MALT slightly raised pH from baseline to the highest value at 2 min (before and after). After the test period, pH values were lower than before, and pH differences 0-2 min, 0-10 min, and 0-30 min before compared with after the test period were statis. signif. ($p<0.05$). The lowest pH reported was about 6.8. Acid production, compared to GLU, was 26 and 32%. SOR raised pH values above baseline before test period. After test, all pH values were lower than before but remained above 6.0. pH changes 0-20 and 0-30 min before compared to after the test period were statistically significant ($p<0.05$). Acid production, compared to GLU, was 15 and 18%. X increased pH before the test period. There was no significant difference in the pH before and after the test. No acid production reported for X compared to GLU. In C group, X and MALT gave similar pH curves. The SOR curve showed an initial rise and then slight lowering to almost horizonal. HSH caused the lowest pH values.	The control group was not controlled for intake of sugar alcohols during the 3-month study period. This group was tested with GLU and not S. Authors state that HSH does not cause as large pH changes as S. It would have been helpful to have had a S group. Authors state that it may be incorrect to conclude that HSH (Swedish HSH) is non-cariogenic, since it contains high molecular weight hydrogenated saccharides from which fermentable low molecular weight sugars are set free on contact with salivary amylase.

Table 1.-- Sugar Alcohols and Plaque pH, Acid Production

Study	Study Design	Subjects	Methods	Results	Comments
Birkhed and Edwardsson, 1978 (Ref. 39)	In vitro study to evaluate the effects of various S substitutes on acid production in individual plaque samples	Not given	Subjects (Ss) instructed not to clean teeth for 2 days (d) before experiment and not to eat or drink anything the morning of the exam. On day 3, Ss rinsed with distilled water for 10 seconds (sec) before plaque was removed from the buccal, lingual, and approximal surfaces of the teeth. Plaque treatment is described in the study. 1 mL of 0.2M glucose (GLU) soln was added to plaque suspension and acid production was followed for 10 minutes (min). Repeated acid production experiments performed with 1 mL of substrates: MANN, X, MALT, SOR, French HSH, lactose, Swedish HSH, fructose, GLU syrups. Plaque pH was also determined. Ss rinsed with distilled water, plaque was collected and pH measured (time 0). Ss rinsed for 30 sec with 10 mL concentrated soln of GLU or S. Plaque again taken and pH determined at 2, 5, 10, 20, and 30 minutes (min) after the rinse. Mouth rinses repeated at 1 week intervals with the test substances. Student's t-test for paired observations used when comparing fermentability of various substrates and when measuring pH	**Acid Production Rates** **Substrates** — **Percent** MANN, X — 0 MALT, SOR — 10-30 French HSH — 20-40 Lactose — 40-60 Swedish HSH — 50-70 Fructose — 80-100 Glucose syrups — 100 Results of pH measurements showed that X, MALT, MANN, and French HSH increased or in some cases only slightly decreased plaque pH (pH remaining about 6.8 to 7.0). SOR showed a slight decrease in pH but the pH remained about pH 6.7 to 6.8. Swedish HSH decreased pH to just below 6.0 after 5 min. The pH increased to over 6.0 after 30 min. Lowest plaque pH in S and fructose was about 5.5 or below.	Authors report error of method to measure acid production has been calculated to be 10-15% in duplicate experiments with GLU. French HSH is said to contain fewer high molecular weight hydrogenated polysaccharides than Swedish HSH and, therefore, is less fermentable. Authors note that lower pH values are obtained if the pH of interoral plaque is measured. It is also noted that pH methodology used in this study does not give information of the pH at any particular site of a tooth, rather it gives overall averages.
Birkhed and Skude, 1978 (Ref. 51)	In vitro study to compare acid production from HSH and soluble starch	11 adult subjects	Subjects were instructed to avoid oral hygienic procedures for 2 d. Ss rinsed with tap water; dental plaque was then removed. Acid production activities (APA) from 3% GLU solutions, boiled soluble starch, and Swedish HSH were determined in 0.1 mL samples of dental plaque. In a separate experiment (Ss n=4) APA was determined in 7 concentrations (0.003 to 12% w/v) of Swedish HSH and starch. Student's paired t-test for comparison between APA was used.	**APA expressed as a % of that from GLU (mean values)** **%** **GLU** — 99.7 **Starch** — 75.7 **HSH** — 61.5 APA from soluble starch and HSH was optimal at a substrate concentration of 0.03 - 6%.	Authors note that Swedish HSH is more fermentable than HSH 80/55 made in France. Compared to GLU, Swedish HSH is very fermentable, although the rate is slower. Results of this study raise questions regarding the usefulness of Swedish HSH in dental health.

Table 1.-- Sugar Alcohols and Plaque pH, Acid Production

Study	Study Design	Subjects	Methods	Results	Comments
Frostell, 1969 (Ref. 42)	In vitro study to evaluate the effect of different physical and chemical factors on pH changes in dental plaque after intake of sugar solutions and different types of candy and foods.	41 Ss, ages 15-50 years, with average to high dental caries activity	Groups with either 18, 13, or 10 Ss. Ss told not to brush their teeth 2 (d) before the experiment and not to eat or drink on the day of the experiment. Plaque was collected and pooled: pH was determined immediately. Ss then rinsed mouths for 30 sec with 10 mL of test solution or ate food being tested. After 2, 5, 10, 20, and 30 min, new samples of plaque were taken and pH determined. Statistical evaluation performed on differences in pH at a certain time and baseline. Rinses tested: S (0.05% to 50% soln.) Foods: SOR tablets (45%), sugar tablets (GLU plus S, 45%), HSH candy (97%), conventional candy (S, 55%; dextrose and maltose, 18%), marmalade (60%), and sponge cakes, ginger cakes, marshmallows, and chocolates (some with 45% S and others S free).	Increasing concentrations of S resulted in ↓ pH. pH dropped rapidly below pH 6 within 5 min for the 5% and 50% soln. Plaque pH after 30 min for the 50% soln remained below pH 6. SOR tablets: Ss consumed 2 tablets. Results showed SOR ↑ plaq pH to about 6.8 within first 5 min followed by a return to baseline (about pH 6.5). S tablets resulted in pH drop to about 6.0 within first 5 min, followed by a return to about pH 6.3. HSH candy: Results showed only slight ↓ (0.26 units) in plaque pH from about pH 6.6 to about pH 6.3; S from lozenges resulted in a ↓ to about 5.8. A S solution produced a minimum pH of about 5.3. HSH in marmalade: pH ↓ from 7.0 to 6.0 after 5 min followed by ↑ to about 6.5. S marmalade: pH ↓ to 5.3. After 30 min pH ↑ to 6.0.	Length of study not mentioned. Methods do not indicate if the Ss consumed the food and candy or rinsed with solutions once or over a period of time before collecting plaque. No mention of Ss dietary intakes or other sweeteners consumed prior to study. Actual baseline pH not given except as shown on graphs. Small number of subjects in HSH experiment. This study did not focus on the effect of sugar alcohols on plaque pH, rather it was to evaluate other carbohydrates. Statistical significance was not reported.
Gallagher and Fussell, 1979 (Ref. 44)	In vitro study to compare fermentability of X with other sugars in dental plaque	50 plaque donors from people of European and Polynesian origin: Group A - 25 adult workers in health fields Group B - 13 adult dental patients Group C - 12 children attending school dental clinic Subgroups were formed under Groups A and C to include individuals of similar dietary habits.	Plaque was collected from lingual surfaces of 1 or 2 teeth per subject. Control media contained no added carbohydrate. Test broths contained 1% arabinitol, X, ribitol, or S. After incubation plaque samples, acid production was measured as pH. 2 Ss in group A wore intraoral caries dentures. The dentures were worn continuously for 5 (d) except for 6 or 7 daily test periods of 15 min., when it was removed and one enamel block was exposed to 5% X soln. Plaque was collected at end of 5 (d). Plaque was plated to determine the presence of X fermenters.	**Mean pH of sugars** control X S ANOVA Group Ss media media media 1-10 6.35 6.36 - A 11-14 6.26 6.10 - 15-25 6.17 6.26 4.69 * B 26-38 6.71 6.59 4.23 ** C1 39-46 6.38 6.26 ***4.28 NS C2 47-50 6.33 6.01 4.31 * * probably signif. p<0.05 ** signif. p<0.01 *** highly signif p<0.001	X was shown to be significantly less acidogenic compared to S.

Table 1.-- Sugar Alcohols and Plaque pH, Acid Production

Study	Study Design	Subjects	Methods	Results	Comments
Gehring and Hufnagel, 1983 (Ref. 45)	Study to describe 2 intra- and extraoral measurements of plaque pH.	6 male or female Ss, ages 19-31 years	Intraoral pH measurements of dental plaque were performed with a modified surface glass electrode. Extraoral pH was measured on dental plaque using a single rod measurement chain with a flat membrane. Test substances: S, fructose, HSH, MANN, ISO, SOR, X, sorbose: 20% soln in water and used as a rinse. Baseline pH: Ss chewed paraffin for 5 min pH then measured. Ss rinse for 2 min with test soln then plaque pH was measured intraorally over a 32 min time period. Visible plaque was removed for extra-oral measurements of pH over a 25 min time period after mouth rinsing with test substances.	Baseline pH between 6.5 and 7.0. Intraoral Within 5 min, S and fructose showed a plaque pH ↓ to below pH 5.0. By 32 min, pH ↑ to between 5.0 and 5.5. Plaque pH for SOR showed the lowest pH after 5 min with a value of about 6.0. HSH resulted in a ↓ in pH to between 5.5 and 6.0 after 7 min X showed only a slight ↓ in pH to a value between 6.3 and 6.5. MANN showed a small ↓ in pH to about 6.2-6.3. ISO showed a maximum plaque pH ↓ to about 6.0. Over the 32 min test period, the pH of each of these substances slowly increased. Extraoral S and fructose showed similar pH decreases as measured intra-orally but the minimum pH were between 5.0 and 6.0. No other pH values given.	X had the least effect on plaque pH intra-orally. MANN and SOR showed similar decreases in pH to 6.0 - 6.3. HSH and ISO showed some pH drop to 6.0 or slightly below.
Grenby et al., 1989 (Ref. 76)	In vitro study to compare dental properties of Lac with five other sweeteners	plaque microorganisms were collected from panel of volunteers	LAC, GLU, S, SOR, MANN, and X in 1% solutions were made in sterile 1% peptone-P media. Plaque was incubated, 24 hr, in media with sweetener with standard segments of intact surfaces of extracted human molar teeth. At the start and finish of incubation and at 30- and 60-min intervals during the first 7 hr, pH, and total acid were measured. Polysaccharide synthesis was also measured. t-tests or F-test used to evaluate differences.	Acid development: GLU > S > MANN and SOR > Lac > X Final pH: S and GLU: 4.0 - 4.3 MANN and SOR: 4.6 - 5.1* LAC and X: 6.1 - 6.3* *Significantly less acid and higher pH than from S and GLU Significantly less polysaccharide synthesis was found in the polyols compared to S and GLU. No signif. difference between S and GLU. X had significantly less polysaccharide development than all the other sweeteners.	X and Lac showed little acid production and change in pH. SOR and MANN showed slight changes in acid production and plaque pH over the first 12 hr, followed by further pH decrease under the conditions of this experiment.
Havenaar et al., 1978 (Ref. 46)	In vitro study to evaluate acid formation in growing cultures by oral bacteria.	Caries-free and caries active subjects were used to obtain fresh isolates of Streptococci and Actinomyces strains.	Sugar substitutes used: SOR, X, LAC, MALT, sorbose and HSH. Micro-titer plates were filled with phenol red broth with addition of 1% GLU or sugar substitute, agar, and inoculated with bacterial suspension without carbohydrate. After 72 hr, a color change indicated acid formation. pH was measured. The growth of S. mutans was measured in GLU broth with or without added X, pH was measured.	No acid production from X. S. mutans produced acid from MALT, SOR, LAC and HSH. Actinomyces species were able to ferment SOR, LAC, and HSH. Fermentation results showed no change in pH from X and a pH ↓ to between 6.0 to about 6.5 with LAC, HSH, MALT, and SOR over a 120-min test period. Testing with S. mutans strain adapted to sugar alcohols showed no pH changes with X, but marked increased fermentation with MALT, HSH, SOR, and LAC. Minimum plaque pH values reported were between 5.0 and 6.0. Adaptation was lost after subculturing once in GLU.	in vitro fermentation by oral microbes was shown with all sugar substitutes except X. Authors state that S. mutans slowly fermented the other sugar alcohols. Adaptation to sugar alcohols by oral microflora was quickly lost.

Table 1.-- Sugar Alcohols and Plaque pH, Acid Production

Study	Study Design	Subjects	Methods	Results	Comments
Jensen, unpublished (Ref. 47)	In vivo study of interproximal plaque pH using HSH compared to SOR and S	4 adults, ages 24 to 38	A removable telemetric appliance was constructed which contained a glass pH microelectrode. The appliance was placed interproximally and plaque accumulated for 3 day prior to first test. Resting pH measured. Ss rinsed with test substance for 60 sec Plaque pH monitored for 30 min at which time Ss rinsed with distilled water. Paraffin was chewed for 5 min to restore resting pH. 5 different HSH test samples (numbered 1-5) were tested; their compositions were not identified. 50% SOR and S solutions were used as control rinses. Student's t-test for paired samples was used to compare test solutions with control solutions.	Test Substance / Minimum pH Values: Test soln, SOR, S 1: 6.39, 6.34, 4.11 2: 6.23, 6.58, 4.08 3: 6.56, 6.51, 4.07 4: 6.37, 6.48, 4.06 5: 6.42, 6.51, 4.06 t-tests showed the experimental solutions were statistically significantly different ($p<0.005$) from the S control minimum pH values. No significant differences between the SOR control and test substances.	Test substances were not identified. HSH solutions were slowly fermented but plaque pH did not drop below 6.0. SOR was mildly acidogenic.
Maki et al., 1983 (Ref. 48)	In vitro study to examine acid production from isomaltulose in dental plaque suspensions	12 Ss - no description	Dental plaque was collected and prepared for acid production measurement. Endogenous acid production was first measured followed by the addition of a 1% sugar soln. pH was kept constant by the addition of buffer. Acid production activity was expressed as $Ex10^{3}$ (E = equivalent weight) of acid per mg protein of plaque per min. Solutions used: isomaltulose, SOR, X, S.	Series 1 Mean acid (n=12) production activities: S = 20.6 (100%) isomaltulose = 9.6 (4.7%) SOR = 3.3 (1.1%) X = 0	There was little acid production from SOR and none from X in this study.

Table 1.-- Sugar Alcohols and Plaque pH, Acid Production

Study	Study Design	Subjects	Methods	Results	Comments
Park et al . 1991 (Ref 49)	In situ study to evaluate the effect of SOR and X mints on plaque acidogenicity. randomized, crossover	5 Ss. ages 25 to 46 years	Ss wore an appliance containing interproximal wire telemetry pH sensor in place of missing mandibular molars. No oral hygiene for 3 to 7 (d) while wearing prostheses. Mints - sweetened with 94% SOR (SOR) or sweetened with 79% SOR and 15% X (SOR-X) Snack foods: cookies, cupcake, granola bar (all store bought). 9X5 randomized block test design used to evaluate acidogenic potential of. snacks. Resting plaque pH was taken for 5 min. Ss then ingested test snacks for 2 min. If indicated, 3 min after ingestion of snack, Ss consumed one of the mints for 5 min. Plaque pH was monitored during snack ingestion and use of the mint and then for one hr following the challenge. At end of test. Ss rinsed with tap water and reference buffer soins were applied topically to the pH probe and the stabilized electrode response was recorded. These values were used to transform readouts to pH values. Statistical analysis: Bartletts test to determine homogeneity of variances. All variances were homogenous and an ANOVA was performed.	Resting mean plaque pH: 6.97 Lowest plaque pH attained Test Food No Mint SOR SOR-X Cookie 4.02 5.04* 5.60* Granola bar 4.16 4.68 5.32 Cupcake 4.06 5.03 5.40 *These values do not differ significantly	Authors conclude that the use of a sugarless mint reduced the acidogenicity of test snacks. when they were used 3 min following snack ingestion. SOR-X mint was significantly more effective than the SOR mint. The SOR mint was useful with only 2 of the 3 snack foods. However, final pH values did not go above 5 in all but one test (i.e., with the SOR/X mint). Authors suggest that the benefit from use of X or SOR-containing mints is attributed to the stimulatory effect on saliva production during snack ingestion. Saliva helps buffer oral acids.

Table 1.-- Sugar Alcohols and Plaque pH, Acid Production

Study	Study Design	Subjects	Methods	Results	Comments
Söderling et al., 1989 (Ref. 50)	Intervention to 1) investigate the effect on plaque of chewing gums that contained either X, SOR or a mixture of X/SOR and 2) compare the results with those obtained with subjects who used S gums.	28 men and women (ages 19-35 yrs, avg. age 22.5 yrs), non-smokers with a DMFS index ranging from 1 to 16, mean 8.3	4-week test period. 21 Ss (not habitual gum chewers) randomly assigned to 3 groups of 7: X (10.9 g/day), SOR (10.9 g/day) or X-SOR (8.5/2.4 g/day) in gums. 7 controls were habitual users of S gum. Test phase: 2 wks no-gum, then sugar alcohol gums for 2 wks (10 gums/day in 5 2-gum doses). Ss maintained normal diet and oral hygiene except 48 h before 2nd and 3d visits, Ss refrained from oral hygiene and kept a diet history. Plaque and saliva collected after 2 and 4 wks. S. mutans and lacto-bacillus determined in saliva. Resting pH of 48-hr plaque was measured and Ss rinsed mouths for 1 min with 10 mL mouth rinse containing same sugar alcohols (10% w/v) as in test gums. Plaque pH measured at 2, 5, 10, 15 and 20 min after rinse. Plaque pH repested at above times after rinsing with a 10 mL rinse of 10% (w/v) S solution. Student t-test, Wilcoxon test, Pearson and likelihood chi-square test, Spearman test	No changes in resting pH values were noted in X and X/SOR groups whereas the use of SOR gum was associated with significantly lower pH compared to baseline values. Final plaque pH with SOR gum remained above pH 6.0. Plaque of X & X/SOR gum users showed better ability to resist pH drops induced by S rinse than plaque of SOR gum users ($p<0.05$). Baseline: habitual S gum users showed highest plaque S. mutans as compared to X ($p<0.02$), SOR ($p<0.02$) and X-SOR ($p<0.01$) groups. 2-week plaque results: decreased S. mutans in X and X-SOR groups. More than half SOR Ss showed increases. Difference between X and SOR signif. ($p<0.05$) Tendency for saliva levels of S. mutans ↑ in SOR group and ↓ in both X groups. Differences significant.	No indication of S intake in controls. Authors indicate that the results suggest that the effect of SOR on the quantity and properties of dental plaque, as well as on the salivary levels of S. mutans, varied between individuals from no effect to an unfavorable effect. The X/SOR or X gums exerted almost similar beneficial effects on plaque weight, acidogenic response to S, and occurrence of S. mutans in saliva.
Toors and Herzog, 1978 (Ref. 11)	In vitro study to determine the fermentability of a non-sugar licorice, licorice components, and regular licorice in pooled plaque/saliva mixtures; in vivo plaque pH measure.	12 volunteers - provided plaque samples	In vivo plaque pH was measured before and after licorice consumption using pH telemetry. Resting pH was determined by having the Ss chew on paraffin tablets. Ss chewed 10 pieces of licorice on day before plaque samples were harvested and pooled. Substances tested: Regular licorice (35% S); experimental licorice, the components of the experimental licorice, X, hydrogenated potato starch (HPS), and white bread suspension.	**Fermentability in plaque-saliva mixtures (as % of regular licorice fermentation)** SOR 12 Soy flour 75 potato starch deriv. 82 Exper. licorice 68 X 5 HPS 60 White bread suspen. 79 In vivo plaque pH values during consumption of: regular licorice (about 5.0), experimental licorice (about 5.5), S rinse (about 4.5).	Results of this study show that it is more than the source of sweetener that can account for the cariogenicity of a food. Some of the ingredients in the test licorice were more acidogenic than SOR. Authors note that a comparable HPS (HSH) showed critical pH drops down to pH 4.5 for powder form and pH 5.0 for syrup. Other forms of HPS have been shown to be less fermentable. Authors state that the methods used here to evaluate fermentation do not relate fermentation values to the pH of deeper layers of plaque in situ at the enamel surface. Telemetric measures showed acid production during and directly following consumption of the experimental licorice was too high to warrant labeling it as safe for teeth.

Abbreviations:

X = Xylitol
S = Sucrose
SOR = Sorbitol
LAC = Lactitol
HSH = Hydrogenated starch hydrolysates
HGS = Hydrogenated glucose syrups
MALT = Maltitol
MANN = Mannitol
ISO = Isomalt
GLU = Glucose
DMFT = Decayed, missing, filled teeth
DMFS = Decayed, missing, filled surfaces

Table 2.--Sugar Alcohols and Dental Caries--Continued

Study	Study Design	Subjects	Methods	Results	Comments
Bánóczy et al., 1981 (Ref. 21)	Intervention, double blind study to determine influence of SOR-containing sweets on caries increment	535 children, ages 3-12 years, living in a children's home in Hungary	3-year study: 405 were evaluated at end 1st year; 326 at the end of second year; and 258 (131 in test group; 127 in C group) at end of 3d year. Loss of children over the 3 years was due to adoption of the children and other undefined causes. Test group consumed 8 g/d SOR-containing sweets between meals; control group - 8 g/d S-containing sweets . Ss examined 6 times - every 6 months at beginning. Caries increment determined by DMF means of teeth and teeth surfaces, periodontal and oral hygiene conditions also assessed.	No signif. differences in groups at baseline. **Mean DMFT Values:** **Exam / SOR Group / S Group** 1 / 1.25 / 1.36 2 / 1.84 / 1.80 3 / 2.39 / 2.69 4 / 2.84 / 4.42 5 / 3.72 / 6.29 6 / 4.93 / 7.40 **Caries Increment - comparing SOR to S** SOR / S First year: 1.02 / 2.61 p<0.001 Second yr: 0.90 / 1.86 p<0.001 Third year: 1.18 / 1.13 NS	Authors note that the reduction in caries increment for the SOR group in the 3rd year may be related to the fact that the children in the SOR group traded sweets with the S group. The differences in the 3rd year values were neither clinically nor statistically signif. Authors also explain that the lack of signif. in the 3rd year may be caused by adaptation of micro-organisms to SOR, in addition to other factors. The control group received S-containing sweets between meals, whereas the test group received SOR sweets. The SOR group still developed dental caries, but signif. less than the S group. This does not support "non-promotion" caries claim with SOR; only "less than S." This protocol should have been approved by an Institutional Review Board due to the deliberate development of dental decay, which is viewed as unethical. Authors note that they were not completely successful in maintaining the double blind character of the study from the 2nd year on. This was due to the special taste attributes of SOR compared to S. Statistical methods not given.
Bánóczy et al., 1985 (Ref. 27)	Intervention study (WHO X field study in Hungry) II. General background and control of dietary regimen	286 institutionalized boys and girls, ages 8-13 years; Ss, from 8 institutions, were divided into 3 groups: fluoride, X, and control.	X intake: not to exceed 20 g X/day, average intake between 14 and 20 g/day. 3 pieces chewing gum/day (after bft, lunch, dinner), with supplemental sweets available within acceptable dose range between meals. X-containing (10%) sodium monofluoro-phosphate (0.8%) dentifrice used 2 times/day. Diet questionnaire, based on 24 hr recall, used to evaluate S- and X-containing products. X intake limited to solids; S both solid and liquid. Frequency of consumption calculated separately for weekday and weekends. Fluoride intake was evaluated via periodic surveys of fluoride level in drinking water, milk, dentifrices and urine. Statistical Analyses: Student's paired and unpaired t-tests	S intake: 1. In liquid form lowest between meals at all institutions. 2. Increased intake on weekends at all institutions, except 1. 3. Increased total intake in all groups on weekends (p< 0.001). X intake: 1. Lower intake on weekends (p< 0.001). 2. Substitution for S lower on weekends. Fluoride intake: 1. Concentration in drinking water was extremely variable (0.2 - 4.2 ppm); urinary F/creatinine quotient reflected this trend.	Living and dietary conditions varied considerably between weekday and weekend. Majority of X products were consumed at meals. 3 mos prior to end of study, milk fluoridation program at 1 institution (Fot) was discontinued due to kitchen remodeling. Subjects in this group were in the fluoride group. Authors concluded that consumption of X-containing products did not reduce frequency of intake of S. If this were true in the general population, and adding X to a S diet reduced caries incidence, then it would lend support to X as a caries reducing agent. However, one cannot infer that from this study.

Table 2.--Sugar Alcohols and Dental Caries--Continued

Study	Study Design	Subjects	Methods	Results	Comments
Barmes et al., 1985 (Ref. 29)	Intervention to compare the efficacy of three fluoridated products in order to select the product most suitable for local conditions (WHO field trial - Thailand and French Polynesia)	In both locations approximately 750 children, 250 each of ages 6-7, 9-10 and 12-13 years (non-test)	Approximately 3-year field trial in Thailand (3 groups) and French Polynesia (4 groups). In most groups, n = approx. 250 or more. Products tested both locations: Group 1: fluoride rinse, group 2: S-fluoride gum, and group 3: X (51%)-SOR-fluoride gum. Group 1 rinsed with fluoride rinse 1 min. every 15 days, Grps 2 and 3 chewed 4 sticks gum/day. Groups 1 and 2 began study in Oct. 1977; group 3 began study July, 1978. In Dec. 1978, a fourth group began in Polynesia only; this group used a non-fluoridated gum with X (51%)-Sor sweeteners. The 12-13 year old Ss were given dental exams to be used as a comparison with 9-10 yr old Ss who would be 12-13 yrs at end of study. Approx. 250 6-7 yr. olds examined at end of studies to determine caries prevalence trend in community irrespective of preventive agents. Baseline and final exam of DMFT and final DMFS. A random sample of approx. 100 from each age and region examined at 18 months	**Thailand:** For each group, 7 yr old test Ss at baseline had considerably more dental caries than 7 yr old Ss examined at end of study. **Thailand**: Group 1 2 3 Age at baseline vs final results 7 10 7 10 7 10 DMFT 1.26 1.63 0.96 2.01 0.61 1.14 DMFS 1.66 2.73 1.43 3.91 0.78 1.72 1 2 3 10 12 10 12 10 13 DMFT 2.28 2.80 1.71 2.63 1.59 2.33 DMFS 3.93 5.21 3.12 5.20 2.73 4.52 **Polynesia** Group 2 3 4 Age at baseline vs final results 7 10 7 10 7 10 DMFT 0.97 4.16 0.74 2.95 0.81 3.95 DMFS 1.21 5.19 1.07 3.42 0.97 4.94 2 3 4 10 13 10 13 10 13 DMFT 3.69 9.55 2.48 6.80 3.02 8.08 DMFS 5.79 11.99 4.22 8.50 4.04 10.76	Gum contained X, SOR, and fluoride which confounds the results for X or SOR by themselves. Amount of S, X, and SOR in the gums was not reported. Large number of Ss dropped out of study due to change in schooling system, transport problems etc. In Thailand delay in supply and use of fluoridated X-SOR gum and logistic problems. Doubts raised about compliance in both regions. Authors try to account for the multiple confounding factors associated with field studies. No indication of randomization of subjects. Total dietary intake not indicated. In Polynesia, DMFT and DMFS scores indicated that fluoridated X-SOR gum was the only regime which has come close to controlling the caries process. As expected, the trend is that the group chewing SOR-X-fluoride gum has a lower caries rate than the group chewing S-fluoride gum, and both gum groups do better than just the group receiving a fluoride rinse.

Table 2.--Sugar Alcohols and Dental Caries--Continued

Study	Study Design	Subjects	Methods	Results	Comments
Frostell et al., 1974 (Ref. 31)	Intervention to determine the effect on caries increment of substitution of HSH for S in candy (The Roslagen Study)	225 children,: ages 2-1/2 to 4 years	1-1/2 to 2-1/2 year study. Test group consumed candy with HSH. Composition of carbohydrate component of candy: SOR 10%, dimeric saccharide alcohols (mainly mannitol) 7.5%, trimeric saccharide alcohols 7%, tetrameric saccharide alcohols 7%, pentameric saccharide alcohols 6%, hexameric and higher saccharide alcohols 62%. No HSH gum was made but Ss in test group allowed to chew SOR gum. Candy consumption checked by use of a coupon system. Parents bought candy and storekeepers returned coupon to investigators. C group consumed S candy, also bought with coupons. Not all parents and storekeepers followed through on use of coupons. Ss examined clinically twice a year for total of 6 times (K1-K6). DMFS and DMFT index calculated at each exam. Plaque quantity and any gingival inflammation were also recorded. Periods K1 and K2 - baseline (no intervention). Statistical methods not reported.	Out of 225 Ss, 113 participated through the entire experimental period. Reasons for dropout are given in the study. At baseline and during observation period, K1-K2, there was no statistical difference between HSH and control groups in DMFS. **Caries increment, periods K2-K4 (baseline to 1 yr intervention)** C HSH C HSH DMFS DMFT K2-K4 1.10 2.79 1.84 1.67 Per cent difference 15.5 9.2 **Caries increment, periods K2-K5 (baseline to 1-1/2 yr intervention)** C HSH C HSH DMFS DMFT K2-K5 4.70 2.86 2.76 2.10 Per cent difference 27.0 23.4 **Caries increment, periods K2-K6 (baseline to 2 yr intervention)** C HSH C HSH DMFS DMFT K2-K6 6.95 5.97 1.67 2.79 Per cent difference 14.1 24.0 None of the differences between groups was statistically significant.	Authors state that an analysis of coupons (given to the HSH group) sent in by store owners showed a smaller number than coupons from the control group. Inquiry with parents of children in HSH group revealed that they gave their children other candy as well and that HSH candy varied from 50 to 75 percent of total candy consumption. Authors reported that some investigators over recorded and others under recorded dental caries. Since exams were every 6 months, authors state that it was possible to correct most of the effects of the differences in diagnosis. Authors state the results show a tendency for reduced caries with HSH; this tendency was most obvious after 1-1/2 years of intervention but decreased after 2 years, which is unexpected. Due to the problems in this study of poor compliance, inter-examiner variability, lack of blinding, and inconsistent results, the results of this study do not support significant dental benefits from use of HSH candies in place of S-containing candies.
Glass, 1983 (Ref. 32)	Intervention to evaluate the cariogenicity by regular use of SOR gum, randomized	540 children, ages 7-11 years in a nonfluoridated area	2 year study. Ss randomly assigned to one of two groups; although all Ss living at the same street address were assigned to the same study group. Control - no gum group; Gum group (2 sticks per day). 4 sticks available for use at home. Intake of SOR from gum not reported. Examinations yearly. Examiners were blinded as to the group assignment of each child.	43 dropouts from the study due to changes of school or residence. There were no significant differences between groups in age, sound teeth, surfaces at risk of caries, and past caries experience. There were no statistically significant differences between groups over the two year period. **Analysis of mean caries increments over 2 years** SOR Control t New DF teeth 2.53 2.55 0.09 New DF surfaces 4.63 4.70 0.15 n 269 271	Authors state that the amount of gum chewed by the Ss in this study was around 3-8 times greater than the estimated 90th percentile. Composition of gum was not given. Mean SOR intake was not given. Mean daily S intake of the groups was not given. Gum chewing has been demonstrated to have an anti-caries effect, regardless of sweetener, by stimulating saliva which buffers pH and provides calcium and phosphorus to aid remineralization of enamel. Because this effect was not considered in this study, it is inconclusive to state the effect, if any, that SOR contributed to the lower caries rate in the test group.

Table 2.--Sugar Alcohols and Dental Caries--Continued

Study	Study Design	Subjects	Methods	Results	Comments
Creanor et al., 1992 (Ref. 37)	Clinical study to evaluate the effect of chewing gum for 20 minutes on in situ enamel lesion remineralization compared to a fluoridated dentifrice; crossover	12 adult Ss	2 7-week crossover tests: 1. SOR gum (n=6), no gum C (n=6) and 2. S gum (n=6) and no gum C (n=6). 10 Ss were common to both studies. Lower appliances were constructed for each Ss. All Ss used fluoride dentifrice 4 weeks before study and during each test period. Ss brushed twice daily for 2 min with a pea-size amount of toothpaste. Appliances were worn at all times. A 1 week's diet for each Ss was recorded. A copy of the diet was given each person with the request that each keep a similar diet in test and C phases. Snack foods given twice a day between meals. Test Ss chewed 5 sticks gum/d for 20 min: one after each meal and snack. Test gum: SOR, some IWGS and aspartame; S gum with S and GLU. Lesions were Artificial enamel lesions were created in vitro in human premolars and coated with acid resistant nail polish. Teeth were immersed for 5 days in demineralization soln (pH 4.5). Baseline mineral content measured. Microradiographs were taken of enamel sections and mineral content made. Difference between baseline and final value calculated for mineral loss (ML), surface zone (SZ), and lesion body (LB) mineral content. Baseline value and mean of all lesions used for determination predicted changes for all Ss in test and C phases. A weighted ANOVA was used to predict changes	**SOR Gum**: The total mineral loss after 7 weeks corresponded to a remineralization value of 18.2% ($p<0.001$) compared to the baseline average. The control value was 12.1% remineralization compared to baseline ($p<0.01$). No significant differences between test and C for remineralization values or for SZ and LB values. **S Gum**: Total mineral loss after 7 weeks corresponded to a remineralization value of 18.3% ($p<0.001$) vs. baseline average. The control value was 10.8% remineralization vs baseline ($p<0.01$). No significant differences between test and control for remineralization values in SZ. The S gum value was significantly higher ($p<0.01$) than the C.	Results of this study show that chewing gum per se is beneficial to teeth regardless of the sweetener used. Authors report a significant difference in remineralization in favor of the S gum when considering the mineral content of the lesion body. Authors state that chewing gum for 20 min. after meals or snacks should minimize deleterious effects of the S gum. Authors note that other studies have shown no signif. difference in the ability to stimulate salivary flow rate and to raise plaque pH after 20 min. of chewing S gum vs. a sugar-free gum. Chewing S gum for less than 20 min. did not neutralize as much acid. Authors conclude that the increased salivary flow that occurred during gum chewing in this study helped to accelerate the rise in plaque pH, reduce the tendency for demineralization, and to enhance lesion remineralization beyond that for dentifrice alone.

Table 2.--Sugar Alcohols and Dental Caries--Continued

Study	Study Design	Subjects	Methods	Results	Comments
Ikeda et al., 1975 (Ref. 33)	Clinical study to evaluate the cariogenicity of maltitol and a polysaccharide alcohol (HSH) using human intraoral test and cariogenicity test in rats	Number of subjects not specified	Intraoral Cariogenicity Test (ICT) was used: Cow enamel fragments were adhered to resin-made gum of the submaxillary denture at the position of right and left molars. The denture was used by the subject in a normal way. Enamel fragments were extraorally dipped in 3% MALT or HSH solutions for 1 min/day. The control fragment was dipped in 3% S daily. Hardness was measured 1 week later. Sprague-Dawley SPF rats, 4 weeks old, were inoculated with S. mutans and divided into 2 groups. One group was given feed with 26% sugar alcohol and 10% starch mixed for 75 days. Another group was given Keyes' 2,000 feed without S.	Decalcification in MALT group was 1.66 (n=16). HSH showed higher decalcification compared to MALT but they were significantly lower than S (values not reported). Decalcification in S group (n=16) was 2.70 (significantly different from maltitol group). Results of rat study show the caries score for the S group (n=5) to be 45.8; for the MALT group (n=5) the score was 3.2. MALT was significantly less cariogenic than S.	Details of study and number and description of subjects were not given. No indication that diets were controlled. Bovine enamel was used. A control group should have been provided in which the bovine teeth were soaked in pure water, rather than assuming the decalcification would be 0 if no sugar were used. Authors state that it is complicated to evaluate the results under this experimental method. Indigenous cariogenicity in ICT varies according to each individual and is influenced by saccharide intake of daily diet. Under these experimental conditions, author states that decalcification of enamel by MALT as intraoral substrate is close to zero. Results of this study are difficult to interpret.
Kandelman et al., 1988 (Ref. 10)	Intervention to study effect of partial substitution of S by X on development of caries (WHO X field study in French Polynesia)	746 children, ages 6-12 yrs	32-month study with 3 groups. C group - 345 Ss of Bora Bora supplied with toothbrushes, fluoridated dentifrice and regular instructions in oral hygiene; X1 group - 240 Ss of Rangiroa; X2 group - 161 Ss of Maupiti. Daily portion of 20 g X given with various products e.g (chewing gum, hard candy, chocolate, wafer gumdrop and ice lolly). Complete oral exams given at baseline, and after 8, 20 and 32 months. Interproximal surfaces of incisors routinely inspected. Standardized bite-wing radiographs taken at each exam from Ss older than 8 yrs. Plaque index determined in 9 and 10 yr subjects. ANOVA used to assess the baseline caries data. Caries increment (CI) and CI rate assessed for between group and between treatment differences using ANCOVA with baseline data as covariate.	468 subjects completed study. 278 subjects were dropouts. Intra-and inter-examiner reliability indicated high level of agreement in caries scoring. Poor oral hygiene noted in all treatment groups. **Treatment group** / **n** / **Caries increment** / **Caries increment rate** X1 / 164 / 4.58[a] / 4.95[a] X2 / 109 / 4.37[a] / 5.11[a] C / 195 / 7.19[b] / 9.09[b] Statistical evaluation: mean values of groups with different superscripts are signif. different. Signif. reduction of caries increment rate by 37 and 39% in 2 X groups vs the C group. For all but one age class (6 yr olds), the highest caries increment rates occurred in C group. Poor oral hygiene observed in all treatment groups. No differences between 2 X groups. Larger differences between C vs X groups found in older subjects.	37.3% of the Ss dropped out. Most children were leaving school at age 13. X2 group had no subjects with initial age of 11 and 12 yrs. Not clear as to whether all subjects on study were already receiving fluoridated toothpaste and regular instructions in oral hygiene. No gum without sweetener used. Caries increments and caries increment rates were pooled for all age classes for each treatment. Ss were not randomized to groups nor the test double-blinded. Ss compliance with study protocol not indicated. Total dietary intake not indicated. Authors noted that the cariostatic potential of X was confirmed under realistic conditions. The authors also state that "the mere substitution of sugar in certain foods and the resulting decreased frequency and time of sugar exposure have undoubtedly contributed to the observed effect." Therefore, the question remains whether X is truly cariostatic or less cariogenic than sugar.

Table 2.--Sugar Alcohols and Dental Caries--Continued

Study	Study Design	Subjects	Methods	Results	Comments
Kandelman and Gagnon, 1987 (Ref. 22)	Intervention study to evaluate the effects of chewing gum containing X on incidence and progression of caries.	433 children of low socioeconomic status with high caries rate, ages 8 and 9.	One year study. 13 elementary schools involved, all same experimental group/school. 2 experimental groups received chewing gum 3 times/day; chewing time was 5 min. A third group received no gum. 1 group (X65) = 65% X (1.1 g/stick) gum; total daily X intake = 3.4 g. 2nd group (X15) = gum with 15% X (0.3 g/stick) + 50% SOR (0.8 g/stick); total daily X intake = 0.8 g. Preventive program consisted of 3 sessions of oral hygiene instruction with periodic brushing control, weekly 0.2% sodium fluoride (NaF) mouthrinse. Dental examination criteria was that used in previous clinical trials and scores based on WHO standards. Plaque distribution assessed by a modified Plaque Index (PI). Net progression of decay obtained by subtracting number of reversals from number of progressions of decay. Each subject analyzed by same examiner throughout study. Calibration between examiners carried out prior to study. Statistical Analyses: ANCOVA for net progression of decay and DMFS increment; chi-square test to analyze medical questionnaire.	**Net progression of decay (NPD)** was signif. lower in the X65 group (1.25) than in X15 group (1.87) ($p<0.05$). Each X groups had signif. ($p<0.001$) less NPD than control. **Adjusted mean NPD:** control: 3.53 surfaces; X groups: 1.59* ($p<0.001$) **DMFS increment** was lower in Ss that chewed gum (1.58) than those that did not chew (3.28) ($p<0.001$); No significant differences in X groups (high = 1.34, low = 1.78). Buccolingual surface progression of decay was 0.82 for X15 Ss and 0.41 for X65 Ss ($p<0.05$); both of the X groups fared better than controls (1.7; $p<0.001$). Occlusal and Approximal surfaces progression of decay did not differ between X groups, but was signif. higher in controls than in X groups ($p<0.001$).	Because there was no signif. difference between the DMFS increment of the 2 X groups, the only conclusion from this trial is that the DMFS was lower in gum chewers than non-chewers, regardless of sweetener. Data adjusted for age and sex, but no mention if any differences were found. No information given as to diets children were consuming other than they maintained dietary habits with high S intake. No dietary records kept. Gum may have displaced S-containing sweets. Authors do not state if the control groups had access to any gum during study and if so what type. Ingredients other than X and SOR in gum not mentioned. Authors noted a signif. examiner effect as indicated by the analysis of covariance, but the differences in the assessment of caries progression were independent of the study group.
Leach et al., 1989 (Ref. 35)	In situ study to determine the effect on the potential for remineralization of artificial caries-like lesions in human enamel with SOR	10 adults	Artificial white spot lesions were prepared in enamel surfaces of human teeth and set into intraoral cast silver bands. One band was attached to a lower first molar tooth. Bands were worn for 2 3-week periods during which Ss continue to use normal oral hygiene procedures (including fluoride dentifrice). Drinking water contained no fluoride. No diet instructions were given. Ss given snack foods (candy, raisins, chocolate wafer, creamed-filled cupcake) and instructed to consume one each morning and afternoon between meals. Snacks were selected randomly. During one of 2 experimental periods, Ss chewed 5 sticks gum per day, each for 20 min., immediately after breakfast, lunch, dinner, and snacks. The gum contained SOR with small amounts of MANN, HGS, and aspartame. During second experimental, Ss consumed snacks but no gum.	**Microradiographic assessment of mineral content of lesions before and after intra-oral exposure** O = original lesion N = no gum period G = SOR Gum period mean values (n=10) **Integrated mineral loss, delta Z, vol% x µm** O: 1422 N: 1183 G: 1010 **Minimum mineral content (vol%)** O: 56.3 N: 62.7 G: 69.0 **Depth of lesion, µm** O: 104.7 N: 99.1 G: 94.6 Analysis of variance: variance due to treatment, $p<0.0001$. Differences between treatment means: $p<0.01$, all parameters	It would be helpful to compare these results to those with a S gum, particularly when gum is chewed for 20 minutes. Significant remineralization of original lesions occurred during the absence of chewing gum. Authors state the use of gauze to promote plaque retention with intraoral devices could in the presence of a cariogenic diet promote demineralization or remineralization (because of a concentration of calcium and phosphates in plaque and fluoride from dentifrice). Authors state that it is unknown to what extent remineralization was dependent upon duration and timing of gum-chewing. They state that the effect of gum is likely to be maximized by administration immediately after a cariogenic meal or snack, so that it can be chewed long enough to reverse the pH fall of plaque.

Table 2.--Sugar Alcohols and Dental Caries--Continued

Study	Study Design	Subjects	Methods	Results	Comments
Moller and Poulsen, 1973 (Ref. 20)	Intervention to determine the effect of long term chewing of SOR gum on incidence of dental caries	Group 1: 174 children, 8-12 years old (School T) Group 2: 166 children, 8-12 years old (School K)	2 year study. SOR-containing gum: 1.2 g SOR and 45 mg calcium phosphate Group 1 chewed 3 tablets SOR gum daily: one in morning, one after lunch, one after dinner Group 2: control (C) no gum Dental caries recorded by the following criteria: 1= initial dental caries without loss of substance; 2= loss of substance in enamel; 3= dentinal caries; 4= pulp involvement	Mean number of erupted teeth increased from about 18 per child at start of study to about 24 per child Ss from Group 2 had marginally more teeth erupted than Group 1. Number of missing teeth were nearly identical between groups. At start of study sound tooth surfaces were signif. less frequent in Group 1 (4%) than in Group 2 (2.2%). During 2-yr study, frequency of sound tooth surfaces l in Group 1 (81.9% to 82.6%); Group 2 reported a reduction (84.7% to 83.9%). The frequency of filled tooth surfaces in the 2 groups also suggested a smaller caries increment in Group 1 than in Group 2. The relationship between untreated dental caries and fillings showed that Group 1 had a smaller caries increment, differences were significant.	28 Subjects (Ss) failed to finish study. Gum contained calcium phosphate which acts as a buffer in saliva to help maintain pH and aid remineralization. More importantly, the control group chewed no gum at all, so this lack of salivary stimulation is a large confounder Also, the study was not blinded. Authors note that differences could be related to chewing gum, reduced consumption of S-containing sweets, increased salivation, differences as to the time of dental treatment, intra-examiner variability in maintaining the diagnostic criteria and differences in the "natural" caries progression pattern between the two groups.
Rekola, 1986 (Ref. 23)	Assessment of results from 2-year Turku sugar study with regards to the progression of incipient carious lesions on buccal smooth surfaces; comparison of S with X.	33 Ss S group; 47 Ss X group	See Turku methods - almost complete substitution of X for S in diet (Ref. 24). Color dental pictures taken of Ss in S and X groups during the original Turku 2-year sugar study were examined. Photos, taken after 2 months and at 24 months, were of right and left sides and of the front of maxillary and mandibular teeth. White lesions of teeth 16-26 and 36-46 were measured. Total of 35 white spot lesions in 11 Ss in S group and 60 white-spot lesions in 16 Ss in X group were measured. Teeth of all Ss also examined with stereo-microscope (teeth 15-25 and 45 to 35). Statistics: absolute method error, paired t-test, Wilcoxon test, Student's t-test, Mann-Whitney U-test	S group showed tendency for increasing size in white spot lesions (NS) and a decrease of lesion area in X group ($p<0.01$). At 24 months, the mean area of white-spot lesions in X group was signif. smaller ($p<0.01$) than in S group. In S group area of white-spot lesions increased in absolute values ($p<0.05$). Results of stereo-microscope exam gave similar result: originally quantified caries scores (CIS) increased in S group and decreased in X group. Differences were signif. ($p<0.001$)	Authors note that results indicate that X consumption caused remineralization of incipient white-spot lesions on buccal surfaces. Comparison is of X-consuming group to S-consuming group. The results do not support a non-promotion claim of X without a comparison; to do so in this study, there would need to be another group which received neither S nor X.
Rekola, 1987 (Ref. 25)	Assessment of results form 2-year Turku sugar study with regards to quantifying changes in size of approximal carious lesions with dietary substitution of X for S	Same as Ref. 23	Same as Ref. 23 Condition of distal surfaces of the canines and that of the mesial and distal surfaces of premolars and first and second molars were recorded from radiographs. Total surfaces examined were 1,188 in S group and 1,692 in X group. Ss did not receive fluoride treatment during trial. Criterion "carious" was used when there was a radiolucent area involving part of the enamel, or up to the amelodentinal junction. Advanced lesions were filled during the study. Criteria "overlap" or "unreadable" were used when contact surfaces of neighboring teeth were overlapping or when the surface was not shown on film. Projections of approximal lesions on bite-wing radiographs were analyzed planimetrically. Statistics: same as Ref. 21	Results showed highly significant l in approximal lesion size in S group; X group lesions remained unchanged. Corresponding difference in size of lesions between X and S groups after 2-year study was highly signif. ($p<0.001$)	Authors concluded that ad libitum consumption of S enhances further progression of carious lesion, whereas X consumption favors arrest and decrease of the lesions. Without a group consuming neither S nor X, it is difficult to attribute enamel remineralization and arrested caries development to X consumption, rather than to the absence of S.

Table 2.--Sugar Alcohols and Dental Caries--Continued

Study	Study Design	Subjects	Methods	Results	Comments
Rundegren et al., 1980 (Ref. 36)	In situ study to evaluate S substitutes for their contribution to demineralization of bovine enamel slabs	Group 1: 4 male students (age 19) Group 2: 4 Ss (ages 56 to 59 years with dentures)	Intraoral devices with bovine enamel mounted on acrylic blocks were used with Group 1. Partial dentures with enamel slabs were used in Group 2. All devices were placed in the buccal region of the first molars. Systems tested (10% w/v) were S, MALT, HSH. Each was tested for 4 weeks. S was used as a positive control for demineralization. A 0.9% sodium chloride (NaCl) soln was a negative control during 2-week test. Ss immersed experimental sites of their appliances 4 times daily, 10 min each, in cups containing soln. After immersion, appliances were returned to the mouth. At end test week, plaque was collected and plated. Samples were examined for S. mutans. Degree of demineralization was also measured before and after each test week.	A comparison of enamel hardness with 10% HSH vs NaCl showed slightly higher values for demineralization with NaCl. Results with HSH vs S and MALT vs S showed greater demineralization of enamel with S. The differences were significant at 1% level (Student's t test). Demineralization in MALT and HSH groups was associated with dietary effects. S showed an effect on demineralization above that of the diet.	Small number of subjects; the mean of the results was not given. Authors state that HSH, in comparison to NaCl, did not contribute to enamel softening and measured changes in microhardness reflect a background intake of fermentation of dietary carbohydrates. Authors state that elderly Ss showed a higher degree of demineralization than the adolescents.

Table 2.--Sugar Alcohols and Dental Caries--Continued

Study	Study Design	Subjects	Methods	Results	Comments
Scheinin et al. 1985 (Ref. 26)	Intervention trial (WHO X field studies in Hungary) to examine the effects of partial replacement of S in sweets and confectionery with X on incidence of caries.	589 institutionalized children (410 boys, 229 girls), ages 6 - 11. Ss were from 11 institutions in Budapest, Hungary.	3-yr study. X group, n = 278: max intake 20 g/day X in chewing gum, chocolate, gum drops, tictacs, and wafers. X group also used fluoride dentifrice. Fluoride group, n = 266: no X, but received fluoride in n = dentifrice, milk fluoride or X. (See Ref. 49 for details of intakes of groups) Oral registrations made initially and yearly by 2 teams. Inter- and intra-examiner errors were accounted for throughout study; Proportion of agreements between examiners was 94% -96% which included quantitative and qualitative development of caries and 95% - 98% for quantitative development only. Caries registrations made without knowledge of results from previous examiner. Caries increment rate (RT) determined from changes in DMFT for teeth at risk. Molar and premolar teeth divided into 5 surfaces: occlusal, mesial, buccal, distal and lingual. Transillumination of teeth was done with fiber optics system. No radiographic assessments. Caries codes: 1 = initial caries, no loss of enamel; 2 = enamel caries, no dentin caries; 4 = caries with pulpal involvement. Statistical Analyses: Kruskal-Wallis test for overall comparison of differences; Mann-Whitney U-test for differences between groups; ANCOVA for 3 yr caries increments and rates over base-line prevalence. Note: In a large number of instances the SD is equal to or larger than the mean.	Significant differences between groups in age, sex, number of sound surfaces, number of decayed surfaces and number of filled surfaces at baseline. X group had signif. higher caries prevalence. At 3 yr, X group had lower caries increment, D_sMFT, ($p<0.001$) and increment rate of decayed teeth, RT_{ds}, ($p<0.002$) than fluoride or control; there were no differences between fluoride or C; no differences between any of the groups in D_sMFT and increment rate RT_{ds}. Stable caries increment in X group for all ages; increasing incidence of caries in fluoride and C groups, especially in 10 yr olds. Considerable variation between institutions at baseline and 3 yr. At 3 yr, X group had lower incidence and caries increment rate (D_sMFS and D_sMFS) than fluoride or C groups ($p<0.001$); fluoride group had lower incidence and rate (D_sMFS) than C ($p<0.01$). Caries rate highest for occlusal surfaces in all age groups, espec. 7 yr olds; buccal and lingual surfaces in X group had consistently lower incidence and rate than other 2 groups. In 7, 8 and 9 yr olds, no difference between X and fluoride groups in D_sMFT in anterior teeth; incidence was lower in posterior teeth in X group than other groups. Caries scores of anterior teeth lower in fluoride than C and X groups in 7, 8 and 9 yr olds; 10 yr olds X group lowest scores.	301 subjects dropped-out: Ss in X group were older and those in fluoride were younger than those that remained in study. Caries scores in the dropouts were lower at baseline than those remaining in study. Authors noted that when comparing dropouts to the remaining subjects, there was no bias favoring treatment effect with regard to age and caries prevalence. X products were traded, especially during last yr of study, between institutions with subjects not in X group. Institutions previously assigned to fluoride group were transferred during 1st yr to control and visa versa due to extreme fluctuations in fluoride drinking water levels. Authors noted that substantial part of examiner error was due to differential diagnosis of fissure caries between limits of degree 1 lesions and evaluation of surfaces at border of 2 adjacent surfaces. Authors note that results from this study were obtained under conditions where caries prevalence and incidence are still high. Control group consisted of children with less caries than other 2 groups at base-line examination and this was attributed to diet.

Table 2.--Sugar Alcohols and Dental Caries--Continued

Study	Study Design	Subjects	Methods	Results	Comments
Scheinin et al. 1985 (Ref. 23)	Substudy of intervention study (WHO X field studies in Hungary) to evaluate effects of partial replacement of S with X on 2 yr caries increment.	976 institutionalized children, ages 6 - 12.	See Ref. 27 for details of dietary methods. This study differed from 3 yr one in that baseline differences were eliminated because new subjects entering study during the 1st year were included in this study. 2-yr caries increment was analyzed separately for each age. Codes, categories, and criteria for caries and other oral registrations were based on standard methods described in Ref. 26. Statistical Analysis: ANCOVA; Kruskal-Wallis test	DMFS increment at 2 yr was 3.8 in X group, 4.8 in fluoride groups and 6.0 in C group. RS (ratio between caries incidence and tooth surface population at risk) was 4.5 in X group, 5.5 in fluoride and 7.5 in C group. X group had a 37% and 21% lower caries increment and 40% and 18% lower incidence rate than C and fluoride groups, respectively ($p<0.001$). The differences in DMFS was significant between the X and C groups at each age ($p<0.05$-0.001); between X and fluoride group, differences only significant at age 11 ($p<0.002$); between fluoride and C groups difference only significant at age 9.	Authors noted that 42% of Ss from main study were in substudy. Total number of drop-outs was 243 (20%). (primarily due to adoption and to a lesser extent transfer to other institutions). Subjects analyzed at baseline and final examination were the same, but the intermediate examination had a number of absentees, especially in X group. The majority (67%) of the Ss used X for a full yr prior to establishing baselines. New Ss in the X group had partial substitution for S with X 6 mos before start of this study. A substantial number (exact number or % not given) of new 6 and 7 yr olds in fluoride group were exposed to milk fluoridation for a 3 yr period prior to baseline. Authors stated that the low caries incidence in these age groups could be due to this. This study provides further support that X, when substituted for S, results in lower caries incidence.
Yagi, 1979 (Ref. 34)	In situ study to evaluate the change in enamel hardness from maltitol	3 female and one male Ss, ages 42-54 years with deficiencies in submaxillary molars and wearing lingual bar denture	Intraoral cariogenicity test using bovine enamel held in a denture. While wearing the denture, about 0.08 mL of 3% MALT soln was dropped on one of 2 enamel fragments. On other fragment, 0.08 mL of 3% S soln was dropped. Ss had no dietary restrictions. After 7 days, enamel hardness was measured. Hardness is shown as depth in µm of depth that the diamond head of micro hardness scale penetrated. The experiment was repeated on each Ss.	The average change in hardness compared to pretreatment levels was 1.47 um for MALT and 3.35 µm for S. These changes were significant as well as the difference between MALT and S treatments.	Bovine enamel was used. The bovine enamel should also have been exposed to pure water. Authors note that there were considerable differences in responses when examining individual responses to S and MALT. Differences are attributed to differences to the oral environment (e.g., plaque bacteria and quality and quantity of saliva).

Abbreviations:

X = Xylitol
S = Sucrose
SOR = Sorbitol
LAC = Lactitol
HSH = Hydrogenated starch hydrolysates
HGS = Hydrogenated glucose syrups
MALT = Maltitol
MANN = Mannitol
ISO = Isomalt
GLU = Glucose
DMFT = Decayed, missing, filled teeth
DMFS = Decayed, missing, filled surfaces

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Federal Register

Thursday
July 20, 1995

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public and Indian Housing HOPE in Youth Program: Demonstration; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3841–N–03]

Public and Indian Housing HOPE in Youth Program: Notice of Demonstration

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of demonstration program.

SUMMARY: This Notice announces the Department's intention to contribute up to $1 million from the Youth Development Initiative under the Family Investment Centers Program for a HOPE in Youth Demonstration to be administered by the Housing Authorities of the City and County of Los Angeles. The Demonstration is designed to leverage funds, bringing together combined investments through an alliance among the Housing Authorities of the City and County of Los Angeles, the Industrial Areas Foundation, church-related social service providers, and leaders of several major religious denominations. A Coordinating Council of this alliance will develop greater avenues for educational opportunities and supportive services for public housing youth in these communities. In addition, the housing authorities will be working with private sector institutions to provide a variety of services that enhance the supportive services already available to public housing youth. This demonstration will particularly emphasize the provision of educational opportunities and supportive services to attempt to break the cycle of poverty that often leads to crime and violence among youth. A component of the demonstration will be the development of replicable models with wider applicability. This notice provides guidelines for the use of the demonstration funds and invites comments on the proposed demonstration.

DATES: *Comment due date:* August 21, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Bertha Jones, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4112, Washington, DC 20410, Telephone Number (202) 708–4214 (This is not a toll-free number). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service, on 1–800–877–8339, for information on the program.

SUPPLEMENTARY INFORMATION:

Authority

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) provides for the establishment of Family Investment Centers (FIC). The final rule implementing the FIC Program for public housing was published on August 24, 1994 (59 FR 43622), as part 964, subpart D.

In the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994), Congress appropriated $26,342,000 for Family Investment Centers. The Department's intention to use the total of $10 million for Youth Development Initiative activities was announced in the NOFA for Public and Indian Housing Family Investment Centers, published on February 15, 1995 (60 FR 8900). On May 30, 1995 (60 FR 28304), the Department published a NOFA for Youth Development Initiative Under Public and Indian Housing Family Investment Centers (Youth Development Initiative), which announced that $10 million was being made available for the Youth Development Initiative. The Youth Development Initiative was amended on July 6, 1995 (60 FR 35215), to clarify that $1 million of the funds was being set aside for a HOPE In Youth Demonstration Program, reducing the amount to be awarded under the Youth Development Initiative from $10 million to $9 million.

In accordance with the requirements of section 470(a) of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 3542), this notice describes the proposed demonstration and invites public comment. Any changes made in this demonstration as a result of the Department's consideration of public comments, and any extension of time for the commitment of funds that may be necessary because of these changes, also will be published in the **Federal Register**.

The Department will not commit funds for the proposed demonstration until after the latest of: (1) The date the Department has considered any comments received in response to this notice; (2) September 18, 1995, which is 60 days after today's publication date; and (3) the date the Department has received and approved an application that meets the requirements set forth in this notice and any subsequent notice announcing changes in the demonstration.

Background of Demonstration

The Los Angeles public housing community has a particular need to address a lack of educational opportunities, supportive services and lifestyle choices for its youth. The City of Los Angeles is living with a crisis, a generation of young people doomed to school failure and lack of jobs with no future. Los Angeles County has the distinction of being the gang capital of the world, because of the magnitude of gang-related crimes and the sheer number (over 100,000) of gang members within its borders as a result of the lack of proper educational and training opportunities to provide alternatives to crime. Based on 1991 statistics, gang activity has accounted for 771 homicides, more than two each day. This demonstration will bring into the public housing communities unique experiences that have proven to be successful in other communities outside of public housing, together with a coordinated team approach for reducing gang membership and preventing new recruitment into gang activity and crime.

For purposes of this demonstration, the Department will make up to $1 million available to the Housing Authorities (HAs) of the City and County of Los Angeles for use in establishing a HOPE in Youth Demonstration to be administered in accordance with the requirements of the Youth Development Initiative under the Family Investment Centers Program. This demonstration will bring together the skills needed for the successful operation of a program that will build a critical mass of people to develop educational and employment opportunities, provide alternatives to crime and violence and empower public housing youth to become economically self-sufficient. It is designed to empower parents in public housing to positively influence these at-risk youth to continue

their education and to build coalitions of principled people and train them to rebuild the social fabric of public housing neighborhoods.

Under the HOPE in Youth Demonstration Program, HUD will make available up to $500,000 each to the Housing Authorities of the City and County of Los Angeles, after the HA meets applicable programmatic and application requirements. The HOPE In Youth Demonstration is unique in a number of ways. It involves an innovative collaboration between two housing authorities whose combined jurisdictions cover a large metropolitan area. In addition, the housing authorities will be working with private sector institutions to provide a variety of services to enhance the supportive services available to public housing residents. The demonstration will also focus on education and supportive services aimed at strengthening families through parenting classes, mentoring, helping parents understand their role in supporting schools and helping parents to know how to communicate with their children.

Applicable Requirements

In order to receive the funding proposed in this notice, the Housing Authorities of the City and County of Los Angeles will be required to meet the applicable programmatic and submission requirements set forth in the NOFA for the Youth Development Initiative under Family Investment Centers Program published on May 30, 1995 (60 FR 28304), as well as any subsequent notice that is published after the comment period for this demonstration notice has closed. If either of these HAs cannot fulfill its obligation, the Secretary reserves the right to award the entire grant to the remaining HA in accordance with the programmatic and application requirements.

When applicable, the certifications, findings, determinations, and requirements listed by the Department under the ''Other Matters'' section of that NOFA also apply to this notice.

Authority: 42 U.S.C. 1437t and 3535(d).

Dated: July 11, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

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