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Thursday
July 27, 1995

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV95–947–1FIR]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Oregon-California Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect Oregon-California potatoes are subject to assessments. Funds to administer the Oregon-California potato order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995–96 fiscal period, which began July 1, 1995, and ends June 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act 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 provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the 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 his or her 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.

Pursuant to the 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. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 550 producers of Oregon-California potatoes under this marketing order, and approximately 40 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Oregon-California Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on March 15, 1995, and unanimously recommended a budget of $46,200, $1,100 more than last season. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Annual report, $1,500 ($1,400), audit, $1,000 ($800), inspection fees, $2,500 ($2,000), and miscellaneous, $600 ($300). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.006 per hundredweight, the same as last season. This rate, when applied to anticipated shipments of 7,920,000 hundredweight, will yield $47,520 in assessment income, which will be adequate to cover budgeted expenses.

Funds in the reserve on June 30, 1995, estimated at $27,000, were within the maximum permitted by the order of one fiscal period's expenses.

An interim final rule was published in the **Federal Register** on June 6, 1995 (60 FR 29750). That interim final rule added § 947.246 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 6, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on July 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIF., AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

Accordingly, the interim final rule amending 7 CFR part 947 which was published at 60 FR 29750, is adopted as a final rule without change.

Dated: July 21, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–18478 Filed 7–26–95; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AD99

1995 Specifications for Cotton Bale Packaging Materials

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations with respect to the price support loan programs for upland and extra long staple cotton which are conducted by the Commodity Credit Corporation (CCC) in accordance with the Agricultural Act of 1949 (the 1949 Act), as amended. The amendments made by this final rule will eliminate obsolete provisions and more appropriately reflect loan eligibility quality requirements for the 1995 and subsequent year crops.

EFFECTIVE DATES: July 27, 1995. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Philip Sharp, Program Specialist, Price Support Division, Consolidated Farm Service Agency, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7988.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires 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).

Executive Order 12778

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The amendments to 7 CFR Part 1427 set forth in this final rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35. Existing information collections were approved by OMB, and assigned OMB control Numbers 0560–0087 and 0560–0129.

Background

Each year the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council in cooperation with the American Textile Manufactures Institute, approves specifications for cotton bale packaging to be used as industry guidelines. Accordingly, this final rule amends § 1427.5(b)(2)(iii) to change the referenced year from 1994 to 1995 for the Specifications for Cotton Bale Packaging Materials published by the JCIBPC.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.5 is amended by revising paragraphs (b)(2)(iii) introductory text and (b)(2)(iii)(A) to read as follows:

§ 1427.5 General eligibility requirements.

* * * * *

(b) * * *

(2) * * *

(iii) Be packaged in materials which meet specifications adopted by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging materials in the June 1995 Specifications for Cotton Bale Packaging Materials. Heads of bales must be completely covered.

(A) Copies of the June 1995 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Copies may be inspected at the South Agriculture Building, room 3623, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

Signed in Washington, DC on July 20, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–18481 Filed 7–26–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–253–AD; Amendment 39–9317; AD 95–04–07 R1]

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment clarifies information in an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, that currently requires inspections to determine the condition of the lockwires on the forward engine mount bolts and correction of any discrepancies found. That amendment also provides for termination of the inspections for some airplanes by installing retainers on the bolts. The actions specified in that AD are intended to prevent broken lockwires, which could result in loosening of the engine mount bolts, and subsequent separation of the engine from the airplane. This amendment clarifies the procedures for accomplishing the optional terminating action on engines 1, 2, and 3. This amendment is prompted by communications received from affected operators indicating that those procedures were unclear.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of March 17, 1995 (60 FR 11617, March 2, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On February 16, 1995, the FAA issued AD 95–04–07, amendment 39–9159 (60 FR 11617, March 2, 1995), which is applicable to certain McDonnell Douglas Model DC–10–10, –15, and –30 airplanes, and KC–10A (military) airplanes. That AD requires visual inspections to determine the condition of the lockwires on the forward engine mount bolts on engines 1, 2, and 3, and correction of discrepancies found. That AD also requires that operators report the results of the visual inspections to the FAA. Additionally, that AD provides for the termination of the visual inspections by installing retainers on the engine mount bolts on Model DC–10–30 airplanes and KC–10A airplanes in accordance with Revision 6 of McDonnell Douglas DC–10 Service Bulletin 71–133, dated June 30, 1992. That action was prompted by reports indicating that the lockwires on the forward engine mount bolts were stretched or broken. The actions required by that AD are intended to prevent broken lockwires, which could result in loosening of the engine mount bolts, and subsequent separation of the engine from the airplane.

Since the issuance of that AD, the FAA has received communication from affected operators indicating that the procedures for accomplishing the optional terminating action on engines 1, 2, and 3 are unclear. These operators have indicated that the service information contained in McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992 (which is referenced in the AD as the appropriate source of service information) does not describe procedures to accomplish the optional terminating action for engine 2. These operators have requested that the FAA clarify AD 95–04–07 to indicate exactly how to accomplish the optional terminating action for engine 2.

In considering this request, and upon further review of the procedures contained in that service bulletin, the FAA concurs that clarification is necessary.

It was the FAA's intent to include all engines in the provision for the optional terminating action. As such, the intent of paragraph (c) was to allow termination of the inspection for any engine on which retainers on the engine mount bolts had been installed. The FAA finds that although Figure 6 of the service bulletin does not describe procedures for installing retainers on the forward engine mount bolts on engine 2, the method for installing the retainers on engine 2 does not differ from the method for installing the retainers on engines 1 and 3, which is described in Figure 6 of the service bulletin. Therefore, the FAA has determined that paragraph (c) must be revised to reference Figure 6 of McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992, as the appropriate source of service information to accomplish the optional terminating action on engine 2, as well as engines 1 and 3.

Action is taken herein to clarify AD 95–04–07 and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date of the rule remains March 17, 1995.

Since this action only clarifies the procedures for accomplishing an optional action contained in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9159 (60 FR 11617, March 2, 1995), and by adding a new airworthiness directive (AD), amendment 39–9317, to read as follows:

95–04–07 R1 McDonnell Douglas: Amendment 39–9317. Docket 94–NM–253–AD. Revises AD 95–04–07, Amendment 39–9159.

Applicability: Model DC–10–30 airplanes on which bolt retainers have not been installed on the engine mount in accordance with McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992; Model DC–10–10 and –15 airplanes; and KC–10A (military) airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent broken lockwires, which could result in loosening of the engine mount bolts and subsequent separation of the engine from the airplane, accomplish the following:

(a) Within 120 days after the effective date of this AD, unless accomplished previously within the last 750 flight hours prior to the effective date of this AD, perform a visual inspection to detect broken lockwires on the forward engine mount bolts on engines 1, 2, and 3, in accordance with McDonnell Douglas Alert Service Bulletin DC10–71A159, Revision 1, dated January 31, 1995.

(1) If no lockwire is found broken, repeat the inspection thereafter at intervals not to exceed 750 flight hours.

(2) If any lockwire is found broken, prior to further flight, check the torque of the bolt, install a new lockwire, and install a torque stripe on the bolt, in accordance with the alert service bulletin. Thereafter at intervals not to exceed 750 flight hours, perform a visual inspection to detect misalignment of the torque stripes, and repeat the inspection to detect broken lockwires, in accordance with the alert service bulletin.

(b) Submit a report of findings of broken lockwires and/or misaligned torque stripes found during the inspections required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; or fax to (310) 627–5210, at the times specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable. The report must include the manufacturer's fuselage number of the airplane, number of cycles on the airplane, torque value of the bolt, and condition of the lockwire (i.e., broken or intact). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspections are accomplished after the effective date of this AD: Submit reports within 30 days after finding any discrepancy.

(2) For airplanes on which the inspections have been accomplished prior to the effective date of this AD: Submit the initial report within 30 days after the effective date of this AD, and subsequent reports within 30 days after finding any discrepancy.

(c) For Model DC–10–30 airplanes and KC–10A (military) airplanes only: Installation of retainers on the engine mount bolts of engines 1, 2, or 3 in accordance with the procedures depicted in Figure 6 of Revision 6 of McDonnell Douglas DC–10 Service Bulletin 71–133, dated June 30, 1992, constitutes terminating action for the requirements of this AD for that engine.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(f) The inspections shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–71A159, Revision 1, dated January 31, 1995. The installation shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992. The incorporation by reference of these documents was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of March 17, 1995 (60 FR 11617, March 2, 1995). Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment is effective on March 17, 1995.

Issued in Renton, Washington, on July 18, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18087 Filed 7–26–95; 8:45 am]

BILLING CODE 4910–13–U

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Freedom of Information Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act (FOIA) regulations to reflect organizational and administrative changes within TVA.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (CST 13B), Chattanooga, TN 37402–2801, telephone number: (615) 751–2523.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to internal agency organization and administration. Since this rule is nonsubstantive, it is being made effective immediately, July 27, 1995.

List of Subjects in 18 CFR Part 1301

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

For the reasons set forth in the preamble, title 18, chapter XIII, part 1301 of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552.

2. Section 1301.1 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1301.1 Records.

* * * * *

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the Tennessee Valley Authority, TVA FOIA Officer, Records and Information Management (RIM), 1101 Market Street, Chattanooga, TN 37402–2801. A request shall:

* * * * *

3. Section 1301.1 is amended by revising the text of paragraph (c)(1)(i) to read as follows:

§ 1301.1 Records.

* * * * *

(c) *Processing of requests*—(1) *Initial determination.* (i) Within 10 days (excluding Saturdays, Sundays, and legal public holidays) after a request is received by TVA, and subject to paragraph (c)(3) of this section, TVA shall make an initial determination as to whether to comply with the request, and shall immediately give written notice of the determination to the person making the request. Initial determinations shall be made by the TVA FOIA Officer or the TVA FOIA Officer's designee. If the initial determination is not to comply with the request, the notice to the person making the request shall include a statement of the reasons for the denial of the request; a notice of the right of the person making the request to appeal the denial to the TVA FOIA Appeal Official designated in paragraph (c)(2)(iii) of this section, and the time limits therefor; and the name and job title of the person responsible for the initial determination.

* * * * *

4. Section 1301.1 is amended by revising the text of paragraph (c)(2)(i) to read as follows:

§ 1301.1 Records.

* * * * *

(c) *Processing of requests*—* * *

(2) *Appeal.* (i) If the initial determination is to deny the request, the person making the request may appeal such action to the TVA FOIA Appeal Official. Such an appeal must be taken within 30 days after the person's receipt of the initial determination and is taken by delivering a written notice of appeal to the TVA FOIA Appeal Official designated in paragraph (c)(2)(iii) of this section. Such notice shall include a statement that it is an appeal from a denial of a request under the Freedom of Information Act and shall indicate:

(A) The date on which the denial was issued; and

(B) The date on which the denial was received by the person making the request.

* * * * *

5. Section 1301.1 is amended by revising the text of paragraph (c)(2)(ii) to read as follows:

§ 1301.1 Records.

* * * * *

(c) * * *

(2) * * *

(ii) Within 20 days (excluding Saturdays, Sundays, and legal public holidays) after an appeal is received, and subject to paragraph (c)(3) of this section, TVA shall make a final determination on the appeal. In making such a determination, TVA will consider whether or not to waive the provisions of any exemption contained in paragraph (a) of this section, except that without the written permission of the person involved, TVA will not waive the exemptions contained in paragraphs (a) (4), (6) and (7) of this section. Determinations of appeals under this section shall be made by the TVA FOIA Appeal Official or the FOIA Appeal Official's designee. If the determination on the appeal is to deny the request for records, TVA shall notify the person making the request of such determination, including the reason for the denial; a notice of the person's right to judicial review of the denial; and the name and job title of the TVA official responsible for the determination of the appeal.

* * * * *

6. Section 1301.1 is amended by adding a new paragraph (c)(2)(iii) to read as follows:

§ 1301.1 Records.

* * * * *

(c) * * *

(2) * * *

(iii) TVA has designated its Senior Manager, Administrative Services, TVA, 400 Summit Hill Drive, Knoxville, TN 37902–1499 as the TVA FOIA Appeal Official and appeals should be directed accordingly.

* * * * *

7. Section 1301.1 is amended by revising the text of paragraph (c)(3)(ii) to read as follows:

§ 1301.1 Records.

* * * * *

(c) * * *

(3) * * *

(ii) The 20-day time limit provided in paragraph (c)(2) of this section may be extended by TVA for unusual circumstances as set forth in this paragraph upon written notice to the person appealing a denial of a request for records. The notice shall specify the reasons for the extension and the date on which a determination of the appeal is expected to be dispatched. The aggregate length of an extension under this paragraph when combined with any extension provided under paragraph (c)(3)(i) of this section shall not exceed 10 working days. A decision to make an extension under this paragraph shall be made by the TVA FOIA Appeal Official or the FOIA Appeal Official's designee.

* * * * *

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 95–18430 Filed 7–26–95; 8:45 am]

BILLING CODE 8120–08–W

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 202, 500, 501, and 510

Animal Drugs, Feeds, and Related Products; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to reflect a change in several cross-references to the Federal Food, Drug, and Cosmetic Act (the act). These changes resulted from enactment

of the Nutritional Labeling and Education Act of 1993 (NLEA). By making these changes to the animal drug regulations those who rely on these regulations will be better able to understand and adhere to the requirements of the regulations.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

EFFECTIVE DATE: July 27, 1995.

SUPPLEMENTARY INFORMATION: As a result of enactment of the NLEA, certain cross-references to the act in 21 CFR Chapter I are incorrect. Under section 3 of the NLEA, entitled ''Technical Amendments to the Federal Food, Drug, and Cosmetic Act,'' paragraph (r) provides for several amendments to section 512 of the act (21 U.S.C. 360b). The amendments changed the cites for two definitions under section 201 of the act (21 U.S.C. 321), specifically the cites for ''new animal drug'' and ''animal feeds'' were changed from ''201(w)'' to ''201(v)'' and from ''201(x)'' to ''201(w),'' respectively. This document amends §§ 202.1, 500.26, 501.4, and 510.413 (21 CFR 202.1, 500.26, 501.4, and 510.413) of the animal drug regulations to conform to those changes.

Publication of this document constitutes final action on these changes. Under the Administrative Procedure Act (5 U.S.C. 553(b)), FDA finds for good cause that due notice and public procedure is unnecessary. This document only corrects various technical errors introduced by enactment of the NLEA. By making these changes to the animal drug regulations, those who rely on these regulations, including regulated industry, will be better able to understand and adhere to the requirements of the regulations. Therefore, FDA concludes that good cause exists for proceeding directly to a final rule.

The agency has determined under 21 CFR 25.24(a)(9) 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.

List of Subjects

21 CFR Part 202

Advertising, Prescription drugs.

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Polychlorinated biphenyls (PCB's).

21 CFR Part 501

Animal foods, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 202, 500, 501, and 510 are amended as follows:

PART 202—PRESCRIPTION DRUG ADVERTISING

1. The authority citation for 21 CFR part 202 continues to read as follows:

Authority: Secs. 201, 301, 502, 505, 507, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 352, 355, 357, 360b, 371).

§ 202.1 [Amended]

2. Section 202.1 *Prescription-drug advertisements* is amended in paragraph (e)(4)(i)(*b*)(*3*) by removing ''201(w)'' and adding in its place ''201(v)''.

PART 500—GENERAL

3. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: Secs. 201, 301, 402, 403, 409, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371).

§ 500.26 [Amended]

4. Section 500.26 *Timed-release dosage form drugs* is amended in paragraph (a) by removing ''201(w)'' and adding in its place ''201(v)''.

§ 500.27 [Amended]

5. Section 500.27 *Methylene blue-containing drugs for use in animals* is amended in paragraph (a)(3) by removing ''201(w)'' and adding in its place ''201(v)''.

PART 501—ANIMAL FOOD LABELING

6. The authority citation for 21 CFR part 501 continues 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).

§ 501.4 [Amended]

7. Section 501.4 *Animal food; designation of ingredients* is amended in paragraph (b)(13) by removing ''201(x)'' and adding in its place ''201(w)''.

PART 510—NEW ANIMAL DRUGS

8. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.413 [Amended]

9. Section 510.413 *Chloroform used as an ingredient (active or inactive) in animal drug products* is amended in paragraph (b) by removing ''201(w)'' and adding in its place ''201(v)''.

Dated: July 18, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18447 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 866

[Docket No. 91N–0063]

Immunology and Microbiology Devices; Revocation of the Exemption From Premarket Notification; Blood Culturing System Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the microbial growth monitor classification regulation by revoking the exemption from the premarket notification requirements for automated blood culturing system devices used in testing blood and other normally sterile body fluids for bacteria, fungi, and other microorganisms. Revocation of the exemption is necessary because of the importance of these devices in providing rapid diagnosis of potentially life-threatening conditions. Devices using traditional manual methods employing turbidity measurements or direct counts, included under this classification regulation, will continue to be exempt from the requirement of premarket notification.

DATES: The final rule is effective October 25, 1995. A premarket notification submission is required for any automated blood culturing system intended to be introduced or delivered for introduction into commerce on or after October 25, 1995, under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), and the procedures in subpart E of 21 CFR part

807. A manufacturer or an initial distributor of an imported blood culturing device that has already begun commercial distribution under the existing exemption from premarket notification is required to submit a premarket notification on or before October 25, 1995 and must have a premarket notification cleared by FDA by April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, Ext. 157.

SUPPLEMENTARY INFORMATION:

I. Background

Blood culturing system devices are diagnostic devices used in clinical settings to detect the presence or growth of bacteria, fungi, or other microorganisms from blood samples or from samples of other body fluids that are normally sterile. The process involves testing for these microorganisms by inoculating the patient's sample directly into broth media or by inoculating a processed sample concentrate onto agar media. Microbial growth is monitored either by traditional manual methods (visual inspection, microscopic evaluation, and/or subculturing) or by instrument-assisted (automated) monitoring of microbial metabolic activities, such as the detection of increased presence of carbon dioxide or changes in fluorescence, bioluminescence, or ATPase activities.

In the **Federal Register** of November 9, 1982 (47 FR 50814 at 50826), FDA classified blood culturing system devices into class I (21 CFR 866.2560). In the **Federal Register** of June 12, 1989 (54 FR 25042 at 25046), FDA published a final rule exempting microbial growth monitors, subject to certain limitations, from the requirement of premarket notification. In the **Federal Register** of April 26, 1991 (56 FR 19333), FDA proposed to revoke this exemption for blood culturing system devices because of safety and effectiveness considerations. FDA determined, on reconsideration, that blood culturing system devices do not meet the criteria for exemption identified in the regulation published in the **Federal Register** of June 12, 1989.

Although current efforts have been directed toward streamlining the regulation of in vitro diagnostic devices, FDA's revocation of the blood culturing system devices exemption is necessary because it is based on significant safety and effectiveness considerations.

Subsequent to June 12, 1989, through the medical/scientific literature, FDA became aware of a significant number of problems related to these devices. These problems include: (1) Failure of media to support growth of certain organisms; (2) false negative and false positive results; and (3) cross contamination of cultures. Also, in the early 1990's, the use of instrument assisted microbial growth monitors, originally intended for blood culturing, started to be commonly used to detect, recover, and provide a complete panel of susceptibility results for *Mycobacterium tuberculosis*.

Since these devices are relied upon for rapid diagnosis of bacterial or fungal infection, and are commonly used to detect, recover, and determine susceptibility of *Mycobacterium tuberculosis*, the reported failure of these devices raises significant questions of safety and effectiveness. Bacterial or fungal infections of the bloodstream may be life-threatening. Tuberculosis is a disease of serious health consequences for the patient and its potential for quick dissemination is a very significant public health concern. Malfunction of these devices, therefore, could result in misdiagnosis and mistreatment, thus endangering patients, health care professionals, and the public at large.

Because of safety and effectiveness concerns presented by the device, FDA believes it is necessary to revoke the exemption from the premarket notification procedures to enable FDA to monitor the introduction into commerce, by manufacturers and importers, of automated blood culturing system devices, and to determine whether the devices are as safe and effective as legally marketed devices. Devices using traditional manual methods employing visual turbidity measurement or direct counts are not affected by this final regulation.

FDA provided interested persons 60 days to submit written comments on the proposal. FDA received two comments. A summary of these comments and FDA's responses follows:

1. One comment requested clarification of the continued exemption for traditional culture media used with manual blood culture methods. The comment suggested that the amended section contain language that makes it clear that traditional manual blood culture bottles in which microbial growth is detected by visual reading and conventional subculturing techniques are not affected by the revocation of the exemption.

FDA agrees with this suggestion. Conventional media dispensed in blood culture bottles (20 to 100 milliliter volume) with limited entry seals that are used only with conventional manual blood culture procedures (visual observation for signs of microbial growth and routine subcultures and/or microscopic screening for presence of bacteria and fungi) are not dependent on instrument-based monitoring for detection of signs of microbial growth. However, media bottles used with the automated system are an integral part of the system; therefore, any new or modified media to be used with an automated blood culturing system are also subject to the revocation.

2. A second comment objected to the continued exemption for blood culture systems not using automated instrumentation.

FDA disagrees with the comment. Current traditional manual blood culturing methods use media formulations and techniques that have been in use for many years. The types of media used are often commercialized for blood culturing by manual procedures developed and controlled by individual laboratories. In contrast, devices or systems that specify incubation and observation procedures based on a combination of different media or for use with a monitoring component (other than visual inspection for evidence of microbial growth and routine subculture to solid media and microscopic examination) are not exempt from premarket notification.

Closed systems that exclude routine microscopic examination and subcultures would also be considered a microbial growth monitor and would be subject to the revocation. Similarly, any media bottle designed to be used with a microbial growth monitor (blood culture instrument or detection mechanism other than direct observation/subculture/microscopic inspection) for detection of microorganisms from patient specimens would be considered a component of the microbial growth monitor and also subject to the revocation.

II. References

The following information has been placed on display in the Dockets management Branch (HFA–350), Food and Drug Administration, rm. 1–24, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Aronson, M. D., and D. H. Bor, ''Blood Cultures,'' *Annals of Internal Medicine*, 106:246–253, 1987.

2. Thorpe, T. C., et al., ''BacT/Alert: An Automated Calorimetric Microbial Detection System,'' *Journal of Clinical Microbiology*, 28:1608–1612, 1990.

3. Wallis, C., and J. L. Melnick, ''Rapid, Calorimetric Method for the Detection of Microorganisms in Blood Culture,'' *Journal of Clinical Microbiology*, 21:505–508, 1985.

4. Washington, II, J. A., and D. M. Ilstrue, ''Blood Cultures: Issues and Controversies,'' *Reviews of Infectious Diseases*, 8:792–802, 1986.

5. Welch, W. D., et al., ''Variability in CO_2, O_2, and pH levels in Blood Culture Bottles from Five Different Manufacturers,'' *Journal of Clinical Microbiology*, 20:881–883, 1984.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (a)(10) 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.

IV. Analysis of Impacts

FDA has examined the impact of the final 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 final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final 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 this final rule revokes an exemption and places manufacturers of these devices on a level with manufacturers of other devices, the agency certifies that the final 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 on small entities.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 866.2560 is amended by revising paragraph (b) to read as follows:

§ 866.2560 Microbial growth monitor.

* * * * *

(b) *Classification*. Class I. With the exception of automated blood culturing system devices that are used in testing for bacteria, fungi, and other microorganisms in blood and other normally sterile body fluids, this device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: July 18, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18446 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 902, 926, 934, and 950

Alaska, Montana, North Dakota, and Wyoming Regulatory Programs

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

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Alaska, Montana, North Dakota, and Wyoming. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Alaska, Montana, North Dakota, and Wyoming and consideration of public comments, OSM has decided that initial enforcement in Alaska and North Dakota will be accomplished through the State program amendment process; in Montana through State enforcement and, if necessary, direct Federal enforcement; and in Wyoming through State enforcement and the State program amendment process.

EFFECTIVE DATE: July 27, 1995.

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

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures.

Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 (60 FR 16722) to implement the performance standards of sections 720(a)(1) and (2) of SMCRA.

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM Enforcement Decisions

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, after consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 6, 1995, **Federal Register** (60 FR 17459) and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the state since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are into enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations here OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied residential dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and implement the definitions at 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Alaska

Alaska program activity, requirements, and enforcement. By letter to Alaska dated December 15, 1994, OSM requested information from Alaska that would help OSM decide which approach to take in Alaska to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Alaska program provisions (Administrative Record No. AK–F–01). By letter dated January 27, 1995, Alaska responded to OSM's request (Administrative Record No. AK–F–02).

Alaska stated that no underground coal mines were operating in Alaska after October 24, 1992.

Alaska stated that its program does not contain or authorize enforcement of the structural damage repair and water supply replacement requirements of section 720(a) of SMCRA. To be no less stringent than SMCRA, Alaska indicated that it would have to amend section 27.21.220 of the Alaska Surface Coal Mining Control and Reclamation Act to add subsection (c) to require prompt repair or compensation for material damage resulting subsidence, and prompt replacement of water supplies affected by underground coal mining operations. It indicated that it realistically believed that this statutory change could be made in the spring of 1996.

Alaska concluded that it did not believe that it has the statutory authority to investigate complaints of structural damage or water loss caused by underground coal mining operations after October 24, 1992.

On May 18, 1995, OSM confirmed with Alaska that no underground mines were active after October 24, 1992 (Administrative Record No. AK–F–07). However, there is an underground coal mine exploration site that would likely be permitted within 6 months. Alaska has indicated that it would address the requirements of section 720(a) of SMCRA in its permitting process for this mine. Due to the remote location of this operation, it is highly unlikely that material damage to noncommercial buildings and to occupied residential dwellings and related structures and that damage to drinking, domestic, and residential water supplies would occur.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17495) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Alaska (Administrative Record No. AK–F–04). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received comments from one party in response to its notice.

The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA (Administrative Record No. AK–F–08). The party also commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) and also responds to these comments below in the ''Comments'' subsection of following Montana section D. These concerns about direct Federal enforcement are moot issues for Alaska because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Alaska, the Casper Field Office on May 18, 1995, consulted with Alaska in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. AK–F–07). Because there has been no underground mining activity since October 24, 1992; there is little likelihood for subsidence damage to noncommercial buildings and to occupied residential dwellings and related structures, or adverse effects to drinking, domestic, and residential water supplies by a proposed underground coal mining operation; and Alaska has indicated it would address the requirements of section 720(a) of SMRCA in the permit for the proposed mine, the Field Office and Alaska agreed that it is unlikely that any enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Alaska revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides the initial enforcement of the underground coal mine subsidence control and water replacement requirements in Alaska is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process.

If circumstances within Alaska change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in Montana

Montana Program Activity, Requirements, and Enforcement

By letter to Montana dated December 15, 1994, OSM requested information from Montana that would help OSM decide which approach to take in Montana to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Montana program provisions (Administrative Record No. MT–13–01). By letter dated March 6, 1995, Montana responded to OSM's request (Administrative Record No. MT–13–02).

Montana stated that one underground coal mine was active in Montana after October 24, 1992. Montana stated that its program does not fully authorize enforcement of the structural repair and water replacement requirements of section 720(a) of SMCRA and the implementing Federal regulations.

Specifically, Montana indicated that (1) Administrative Rules of Montana 26.4.911(5), which address compensation for structural damage resulting from subsidence, are not clearly authorized by the subsidence prevention provisions of section 82–4–231(10)(f) of the Montana Strip and Underground Mine Reclamation Act (MSUMRA); (2) section 82–4–253(2) of MSUMRA excepts water derived from ''a subterranean stream having a permanent, distinct, and known channel'' from the requirement for underground coal miners to promptly replace drinking, domestic, or residential water supplies affected underground coal mining, and (3) the procedural requirements of section 82–4–253(2) of MSUMRA would not, in Montana's opinion, result in ''prompt'' replacement of water supplies adversely affected by underground coal mining.

Montana has stated that statutory changes to address these issues will need to be sought in the next legislative session in January 1997, and subsequent rule changes would follow adoption of statute changes. OSM has determined that Montana has not received or investigated any citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992.

On May 3, 1995, Montana indicated its preferred enforcement alternative for the State (Administrative Record No. MT–13–05). Because it would enforce its currently approved program to the fullest extent and introduce in the 1997 legislative session program amendments to address the issues in its March 6, 1995, letter, Montana recommended that OSM only initiate direct Federal enforcement in the interim period (between October 24, 1992, and the effective date of Montana's revision of its program to be no less stringent than SMCRA and no less effective than the Federal regulations) when enforcement is needed and the Montana program falls short of the Federal standards.

OSM has determined that only the one underground coal mine has operated after October 24, 1992, and that Montana has not received any complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of this underground mine's operations conducted after October 24, 1992.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17495) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Montana (Administrative Record No. MT–13–04).

The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received from the party that commented on the Alaska program the same comments for the Montana program (Administrative Record No. MT–13–12).

The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25, which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protective standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

> [The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

Regional Director's Decision

Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Montana, the Casper Field Office on April 25, 1995, consulted with Montana in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. MT–13–05).

Only one Montana mine has operated after October 24, 1992, and is subject to the provisions of section 720(a) of SMCRA and the implementing Federal regulations. Neither Montana nor OSM have received any complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of this underground mine's operations conducted after October 24, 1992. The 1997 projection for promulgating counterpart State statutory provisions is consistent with the State legislature schedule for meeting in regular session every other year. Montana would not promulgate rules to implement these statutory provisions until after the legislature's action.

OSM agrees with Montana that the State should be the primary enforcer of its program provisions for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. It also agrees that if, during the interim period prior to Montana revising its program, Montana needs to, but is unable to, fully implement counterparts to the requirements of section 720(a) of SMCRA or the implementing regulations, OSM should initiate direct Federal enforcement.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Montana will occur through State enforcement and, if necessary, direct Federal enforcement of sections 720(a) (1) and (2) of SMCRA and 30 CFR 817.121 and 817.41(j).

If circumstances within Montana change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

E. Enforcement in North Dakota

North Dakota Program Activity, Requirements, and Enforcement

By letter to North Dakota dated December 15, 1994, OSM requested information from North Dakota that would help OSM decide which approach to take in North Dakota to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart North Dakota program provisions (Administrative Record No. ND–W–01). By letter dated December 21, 1994, North Dakota responded to OSM's request (Administrative Record No. ND–W–02). North Dakota indicated that its regulatory program does not include provisions for underground coal mining and that no underground coal mines have operated in North Dakota after October 24, 1992.

On April 11, 1995, OSM confirmed with North Dakota that no underground coal mines have operated in North Dakota after October 24, 1992, and that there is no underground mining activity proposed in the State (Administrative Record No. ND–W–07). Prior to the issuance of any permit allowing underground mining, North Dakota is aware that it would have to revise its program to incorporate underground mining provisions no less stringent than SMCRA and no less effective than the Federal regulations. Such provisions would include counterpart provisions to section 720(a) of SMCRA and the implementing Federal regulations.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17495) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in North Dakota (Administrative Record No. ND–W–08). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Alaska program, and OSM's responses to it, also apply to the North Dakota program (Administrative Record No. ND–W–09).

Regional Director's Decision

Prior to the Regional Director making this decision on which enforcement alternative should be implemented in North Dakota, the Casper Field Office on May 30, 1995, consulted with North Dakota in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. ND–W–07).

The North Dakota program does not currently allow underground coal mining. Prior to issuing a permit allowing underground mining, North Dakota would have to, through the State program amendment process, revise its program to incorporate underground mining provisions no less stringent than SMCRA and no less effective than the Federal regulations. These State provisions would include counterparts to section 720(a) of SMCRA and its implementing Federal regulations. Any underground mining permit that North Dakota would issue under the underground mining provisions it promulgated would have to address State counterparts to section 720(a) of SMCRA and its implementing Federal regulations. No underground mining activities could commence prior to the issuance of a permit.

On this basis and the disposition of the comment received, the Regional Director decides that no State or Federal enforcement of underground coal mine subsidence control and water replacement provisions would be needed in the interim period between October 24, 1992, and the date of issuance of any North Dakota underground mining permit.

If circumstances within North Dakota change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

F. Enforcement in Wyoming

Wyoming Program Activity, Requirements, and Enforcement

By letter of Wyoming dated December 15, 1994, OSM requested information from Wyoming that would help OSM decide which approach to take in Wyoming to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Wyoming program provisions (Administrative Record No. WY–29–01). By letter dated January 19, 1995, Wyoming responded to OSM's request (Administrative Record No. WY–29–02).

Wyoming stated that three underground coal mines were active in Wyoming after October 24, 1992. Wyoming indicated that existing State program provisions at Wyoming Statutes 35–11–102 (policy and purpose); 35–11–406 (permit applications); 35–11–416 (surface owner protection); and 35–11–428 (in situ mining permit applications); and Wyoming Coal Rules and Regulations at chapter VI, section 2 (general environmental performance standards); chapter VII, sections 1 through 4 (underground mining permit applications, environmental protection performance standards, public notice, and surface owner protection); and chapter XVIII, section 3 (in situ mining permit applications) are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations.

Wyoming explained that it will enforce these State program provisions in accordance with the enforcement provisions that were in effect October 24, 1992. Wyoming has investigated one citizen complaint alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. This complaint concerned subsidence damage to a reclaimed reservoir. This is a unique situation in that the alleged damage occurred within the permit area of an adjacent surface coal mine. The two mine operators have mutually agreed upon corrective measures and have not requested the State of Wyoming to intervene.

On May 11, 1995, OSM corresponded with Wyoming and reiterated the available alternative enforcement decisions in the State (Administrative Record No. WY–29–09).

On July 13, 1995, Wyoming sent to OSM a letter in which it stated that it preferred the State enforcement alternative (Administrative Record No. WY–29–12). Wyoming also stated that it interpreted its program and the Federal water replacement requirements (at section 720(a)(2) of SMCRA and 30 CFR 817.41(j)) to apply only to valid water rights as determined by the Wyoming State Engineer. That is, Wyoming would not require an underground mine operator to replace a drinking, domestic, or residential water supply that was being used illegally in contradiction of water rights as determined by the State Engineer.

OSM has determined that three underground coal mines have operated after October 24, 1992. For these mines, Wyoming has received the one complaint alleging subsidence-related damage to a water reservoir.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17495) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Wyoming (Administrative Record No. WY–29–04). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received comments from three parties in response to its notice.

The comments discussed above for the Alaska program, and OSM's responses to it, also apply to the Wyoming program (Administrative Record No. WY–29–11).

A party supported the selection of the State enforcement alternative (Administrative Record No. WY–29–07). The Regional Director acknowledges this comment and took it into consideration before making the enforcement decision set forth below.

A party commented that several of Wyoming's statutory provisions are less stringent than the Federal counterparts at section 720(a) of SMCRA and less effective than the implementing Federal regulations at 30 CFR 817.121(c) and 817.41(j) (Administrative Record No. WY–29–08). Because of this, the party stated that OSM is required to provide direct Federal enforcement as set forth in item (3) of section B. of the April 6, 1995, **Federal Register** notice soliciting comment on the enforcement alternative that should be implemented in the State.

In the near future, OSM intends to send a letter to Wyoming in accordance with 30 CFR 732.17(d) notifying Wyoming of revisions that need to be made to its program. OSM does not agree with the commenter's conclusion that OSM is required to institute Federal enforcement in the interim period because Wyoming's program is less stringent than SMCRA and less effective than the implementing Federal regulations. As set forth in item (1) of section B. of the April 6, 1995, **Federal Register** notice, OSM could decide not to directly enforce the Federal SMCRA and regulation provisions in the interim period in Wyoming if it found that the number and extent underground mines that have operated since October 24, 1992, is low, the number of complaints concerning section 720 of SMCRA is low, the State's investigation of subsidence-related or water supply loss and contamination complaints has been thorough and complete so as to assure prompt remedial action, or the State's promulgation of counterparts to 30 CFR 817.41(j) and 817.121(c)(2) is imminent. Also, OSM could decide not to directly

enforce the Federal SMCRA and regulation provisions if some other similar extenuating circumstances exist. Even though OSM does not agree with this comment supporting direct Federal enforcement, the Regional Director acknowledges it and took it into consideration before making the enforcement decision set forth below.

Regional Director's Decision

Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Wyoming, the Casper Field Office on May 11 and July 13, 1995, consulted with Wyoming in accordance with 30 CFR 843.25(a)(4) (Administrative Record Nos. WY–29–09 and WY–29–12).

Three Wyoming mines have operated after October 24, 1992, and are subject to the provisions of section 720(a) of SMCRA and the implementing Federal regulations. For one of these mines, Wyoming investigated a complaint relating to potential subsidence damage to a water reservoir.

The Regional Director acknowledges Wyoming's determination that its program would not require an underground mine operator to replace a drinking, domestic, or residential water supply that was being used illegally in contradiction of water rights as determined by the State Engineer. OSM believes this position is not inconsistent with section 720(a) of SMCRA regarding water supply replacement and section 717 of SMCRA regarding water rights. However, before OSM finally determines that Wyoming's program on this complicated issue is no less stringent than SMCRA, OSM will further review Wyoming's water right statutes, rules, policies, and procedures.

OSM agrees with Wyoming that the State should be the enforcer of its program provisions for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. Based upon the number and location of the underground mines, the potential is low for material damage to noncommercial buildings, occupied residential dwellings, and related structures and for damage to drinking, domestic, or residential water supplies. Given these circumstances, it is unlikely that any enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Wyoming revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Wyoming will occur through State enforcement and the State program amendment process.

If circumstances within Wyoming change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–18439 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Parts 904,918, 936, and 943

Arkansas, Louisiana, Oklahoma, and Texas Regulatory Programs

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

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Arkansas, Louisiana, Oklahoma, and Texas. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Arkansas, Louisiana, Oklahoma, and Texas and consideration of public comments, OSM has decided that initial enforcement is not reasonably likely to be required and that implementation in these States will be accomplished through the State program amendment process.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT:

Tim L. Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 (60 FR 16722) to implement the performance standards of sections 720(a)(1) and (2) of SMCRA.

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, after

consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 6, 1995, **Federal Register** (60 FR 17498) and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process*. If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement*. If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement*. If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement*. If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and implement the definitions at 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Arkansas

Arkansas Program Activity, Requirements, and Enforcement

By letter to Arkansas dated December 15, 1994, OSM requested information from Arkansas that would help OSM decide which approach to take in Arkansas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Arkansas program provisions (Administrative Record No. AR–542). By letter dated January 30, 1995, Arkansas respond to OSM's request (Administrative Record No. AR–543).

Arkansas stated that one underground coal mine was active in Arkansas after October 24, 1992. Arkansas indicated that its existing State law and its regulations at Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) Sections 779.17, 780.21(e), 783.17, 784.14, 784.20(c), 816.54, and 816.124–U(b) and (c) are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations. Arkansas did not indicate when the existing State counterpart provisions went into effect. However, Arkansas did indicate that it had not received any citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992.

On May 31, 1995, OSM confirmed with Arkansas that one underground coal mine was active after October 24, 1992, and that no citizen complaints alleging subsidence-caused material damage or water supply loss or contamination as a result of this operation had been received by Arkansas (Administrative Record No. AR–553). Arkansas stated its intention to actively pursue and promulgate regulations conforming to the Federal regulations once it receives a 30 CFR Part 732 notification from OSM.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Arkansas (Administrative Record No. AR–552). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received comments from one party in response to its notice (Administrative Record No. AR–554). These comments apply not only to the Arkansas program but also to the Louisiana, Oklahoma, and Texas programs (Administrative Record Nos. LA–356, OK–971, and TX–592) that are addressed below.

The party commented that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues for these States because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Arkansas, the Tulsa Field Office on May 31, 1995, consulted with Arkansas in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. AR–553). Based upon the location of the existing and projected underground mining, the potential is low for material damage to noncommercial buildings, occupied residential dwellings, and related structures and for damage to drinking, domestic, or residential water supplies. Given thee circumstances, the Tulsa Field Office and Arkansas agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Arkansas revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Arkansas is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Arkansas of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Arkansas change significantly, the Regional Director may repasses this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in Louisiana

Louisiana Program Activity, Requirements, and Enforcement

By letter of Louisiana dated January 23, 1995, OSM requested information from Louisiana that would help OSM decide which approach to take in Louisiana to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Louisiana program provisions (Administrative Record No. LA–352). By letter dated February 7, 1995, Louisiana responded to OSM's request (Administrative Record No. LA–353). Louisiana indicated that its regulatory program does not include provisions for underground coal mining and that no underground coal mines have operated in Louisiana after October 24, 1992.

On May 30, 1995, OSM confirmed with Louisiana that no underground coal mines have operated in Louisiana after October 24, 1992, and that there is no underground mining activity proposed in the State (Administrative Record No. LA–355). Prior to the issuance of any permit allowing underground mining, Louisiana is aware that it would have to revise its program to incorporate underground mining provisions no less stringent than SMCRA and no less effective than the Federal regulations. Such provisions would include counterpart provisions to section 720(a) of SMCRA and the implementing Federal regulations.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Louisiana (Administrative Record No. LA–354). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Arkansas program, and OSM's responses to them, also apply to the Louisiana program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Louisiana, the Tulsa Field Office on May 30, 1995, consulted with Louisiana in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. LA–355).

The Louisiana program does not currently allow underground coal mining. Prior to issuing a permit allowing underground mining, Louisiana would have to, through the State program amendment process, revise its program to incorporate underground mining provisions no less stringent than SMCRA and no less effective than the Federal regulations. These State provisions would include counterparts to section 720(a) of SMCRA and its implementing Federal regulations. Any underground mining permit that Louisiana would issue under the underground mining provisions it promulgated would have to address State counterparts to section 720(a) of SMCRA and its implementing Federal regulations. No underground mining activities could commence prior to the issuance of a permit.

On this basis and the disposition of the comments received, the Regional Director decides that no State or Federal enforcement of underground coal mine subsidence control and water replacement provisions would be needed in the interim period between October 24, 1992, and the date of issuance of any Louisiana underground mining permit.

If circumstances within Louisiana change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

E. Enforcement in Oklahoma

Oklahoma Program Activity, Requirements, and Enforcement

By letter to Oklahoma dated January 23, 1995, OSM requested information from Oklahoma that would help OSM decide which approach to take in Oklahoma to implement the requirements of section 720(a) of SMCRA, the implementing Federal

regulations, and/or counterpart Oklahoma program provisions (Administrative Record No. OK–965). By letter dated February 8, 1995, Oklahoma responded to OSM's request (Administrative Record No. OK–966).

Oklahoma stated that one underground coal mine was active after October 24, 1992, and one underground mine was constructing surface facilities as of February 8, 1995.

Oklahoma indicated that the State regulation at OAC 460:20–45–47(c) (previously codified as section 817.121(c)) addresses repair or compensation of subsidence-related material damage to structures and replacement of water supplies contaminated or diminished due to subsidence. However, Oklahoma indicated that this regulation ''is not as clearly written'' as the new Federal regulations and that it includes ''vague statements * * * regarding structures, facilities, and any drinking, domestic or residential water supplies'' that will be clarified once the regulation is revised in accordance with the new Federal regulations.

Oklahoma did not indicate when the State counterpart provisions went into effect. However, Oklahoma stated that it had investigated one citizen complaint alleging subsidence-related damage for underground mining operations conducted after October 24, 1992, and it issued a violation notice as a result of the complaint. OSM has determined that the citizen complaint did not involve structural damage or water supply loss or contamination.

On May 23, 1995, OSM confirmed with Oklahoma that one underground coal mine was active after October 24, 1992 (Administrative Record No. OK–970). This mine is no longer producing coal, and the underground mine workings are not extensive. The other permitted underground mine was continuing development work and had not produced coal by underground mining methods. Oklahoma stated its intention to actively pursue and promulgate regulations conforming to the Federal regulations once it receives a 30 CFR Part 732 notification from OSM (Administrative Record No. OK–969). It stated that it believed this process would take approximately 12 months to implement.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Oklahoma (Administrative Record No. OK–968). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Arkansas program, and OSM's responses to them, also apply to the Oklahoma program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Oklahoma, the Tulsa Field Office on May 23, 1995, consulted with Oklahoma in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. OK–970). Based upon the location of the existing and projected underground mining, the potential is low for material damage to noncommercial buildings, occupied residential dwellings, and related structures and for damage to drinking, domestic, or residential water supplies. Given these circumstances, the Tulsa Field Office and Oklahoma agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Oklahoma revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Oklahoma is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Oklahoma of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Oklahoma change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

F. Enforcement in Texas

Texas Program Activity, Requirements, and Enforcement

By letter to Texas dated January 23, 1995, OSM requested information from Texas that would help OSM decide which approach to take in Texas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Texas program provisions (Administrative Record No. TX–587). By letter dated January 26, 1995, Texas responded to OSM's request (Administrative Record No. TX–588).

Texas stated that no underground coal mines were operating in Texas after October 24, 1992.

Texas stated that the Texas Surface Coal Mining and Reclamation Act currently has no counterpart to section 720 of SMCRA, and its regulations at section 817.564, regarding repair and compensation for damages occurring to buildings and other structures, and at section 817.521, regarding replacement of water supplies, have no direct counterparts to OSM's proposed regulations at 30 CFR 817.121(c) and 817.41(k).

On May 30, 1995, OSM confirmed with Texas that no underground coal mines have operated in Texas after October 24, 1992, and that there is no underground mining activity proposed in the State (Administrative Record No. TX–591). Texas stated its intention to actively pursue and promulgate regulations conforming to the Federal regulations once it receives a 30 CFR Part 732 notification from OSM.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Texas (Administrative Record No. TX–590). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Arkansas program, and OSM's responses to them, also apply to the Texas program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Texas, the Tulsa Field Office on May 30, 1995, consulted with Texas in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. TX–591). Because there has been no underground mining activity since October 24, 1992, and there is no underground mining activity proposed in the State, the Tulsa Field Office and Texas agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Texas revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement

of the underground coal mine subsidence control and water replacement requirements in Texas is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Texas of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Texas change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–18440 Filed 7–26–95; 8:45 am]

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30 CFR Parts 906, 931, and 944

Colorado, New Mexico, and Utah Regulatory Programs

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

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Colorado, New Mexico, and Utah. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Colorado, New Mexico, and Utah and consideration of public comments, OSM has decided that initial enforcement will be accomplished in Colorado through State enforcement, in New Mexico through the State program amendment process, and in Utah through State enforcement and, if necessary, direct Federal enforcement of Federal provisions protecting water supplies.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Acting Director, Albuquerque Field Office, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 (60 FR 16722) to implement the performance standards of sections 720(a)(1) and (2) of SMCRA.

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, after consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 6, 1995, **Federal Register** (60 FR 17501) announcing the public comment period and opportunity for public hearing and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of

the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definition at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and implement the definitions at 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Colorado

Colorado Program Activity, Requirements, and Enforcement

By letter to Colorado dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Colorado to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Colorado program provisions (Administrative Record No. CO–652). By letter dated February 24, 1995, Colorado responded to OSM's request (Administrative Record No. CO–661).

Colorado stated that, of the 25 underground coal mines that had permits as of October 24, 1992, 11 actually mined coal after that date.

Colorado indicated that prior to June 1, 1992, Colorado had in place surface owner protection performance standards at 2 Code of Colorado Regulations 407–2, rules 4.20.3(1) and 4.20.3(2) that encompassed the requirements of section 720(a)(1) of SMCRA. Rule 4.20.3(2), which contained requirements regarding an operator's obligation to repair or compensate for material damage or reduction in value or reasonably foreseeable use caused by subsidence to surface structures, features, or values, expired on June 1, 1992, under Colorado's ''Sunset Law.'' The rule expired because Colorado's Office of Legislative Legal Services found during November 1991 it was not supported by statute. Colorado subsequently developed language for a bill to amend the Colorado Surface Coal Mining and Reclamation Act (the Colorado Act) and introduced the bill during the 1995 legislative session. The intent of the bill was to amend Colorado Revised Statute (C.R.S.) 34–33–121(2)(a) to provide specific statutory support for Rule 4.20.3(2).

Colorado explained that, although the specific language of Rule 4.20.3(2) expired during June 1992, the Division of Minerals and Geology has continued since that time to interpret its rules to require that mine operators are responsible for repairing or compensating surface owners for subsidence-caused material damage to structures. Colorado based its authority for doing so on the general provisions of Rule 4.20.3(1) and the subsidence control plan mitigation requirements of Rule 2.05.6(6)(iv).

Colorado indicated that there may be a conflict between the provisions of section 720(a)(2) of SMCRA, which requires prompt replacement of drinking, domestic, or residential water supplies adversely impacted by underground mining operations, and Colorado water law. Consequently, Colorado has requested an opinion from the Colorado Assistant Attorney General in this regard. Existing Colorado Rule 4.05.15 requires operators to ''* * * replace the water supply of any owner of a *vested* water right which is proximately injured as a result of the mining activities in a manner consistent with applicable *State* law'' (emphasis added).

For underground mining operations conducted after October 24, 1992, Colorado has received one complaint alleging subsidence-related structural damage and two complaints alleging water supply loss or contamination. Colorado investigated all three complaints. Colorado determined the complaint alleging subsidence-caused structural damage to be without basis. One of the complaints alleging water supply loss or contamination was withdrawn, and the second was under investigation by Colorado.

On May 4 and 31, 1995, OSM confirmed with Colorado that 11 of its 25 underground coal mines produced coal after October 24, 1992 (Administrative Record No. CO–668). At that time, OSM also discussed with Colorado the status of the State's revision of its program to include counterparts to SMCRA and the implementing Federal regulations.

Effective July 1, 1995, the Colorado legislature amended the Colorado Surface Coal Mining Reclamation Act, C.R.S. 34–33–101, *et seq.*, (Administrative Record No. CO–664) to serve as a statutory basis for a subsidence material damage rule to replace Rule 4.20.3(2), which, as discussed above, expired under Colorado's Sunset Law. On May 24, 1995, the Colorado Mined Land

Reclamation Board commenced rulemaking to replace this rule. Upon the completion of these actions, Colorado believes that it will have fully implemented counterparts to the subsidence material damage provisions of the Federal regulations at 30 CFR 817.121(c)(2).

Colorado stated that C.R.S. 34–33–111(1)(m) and Rule 2.05.6(3), which address protection of the hydrologic balance, give it the necessary authority to require replacement of drinking, domestic, or residential water supplies in a manner no less effective than 30 CFR 817.41(j) (Administrative Record No. CO–664). However, Colorado has not yet received an opinion from the Colorado Assistant Attorney General as to whether related Rule 4.05.15 limits the replacement of water supplies to those with ''vested water rights.''

Colorado received no additional complaints. The investigation of the water supply complaint is ongoing. With respect to the structural damage complaint that Colorado initially determined was without basis, Colorado and OSM are reviewing information supplied by the complainant with the intent of resolving the complainant's concerns.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17501) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Colorado (Administrative Record No. CO–662). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold a public hearing. OSM received comments from two parties in response to its notice.

One party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA (Administrative Record No. CO–666). The party also commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) and also responds to these comments below in the ''Comments'' subsection of following Utah section E. These concerns about direct Federal enforcement are moot issues for Colorado because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Another party commented on the national Federal regulations (Administrative Record No. CO–665) after OSM published them as a final rule on March 31, 1995 (60 FR 16722). These comments are not germane to OSM's April 6, 1995, **Federal Register** request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Colorado.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Colorado, the Albuquerque Field Office on May 4 and 31, 1995, consulted with Colorado in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. CO–668). Because the number of mines in Colorado that are subject to section 720(a) of SMCRA is low, Colorado has made significant progress in promulgating the necessary statutory and rule provisions, and Colorado has shown a commitment to investigating citizen complaints regarding subsidence and water supply impacts, the Field Office and Colorado agreed that Colorado should be the primary enforcer of its State program provisions for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. Only, if a situation arises in which Colorado's enforcement role as primary enforcer does not appear to fully meet the requirements of section 720(a) of SMCRA, would OSM through Federal oversight issue ten-day notices.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Colorado will occur through State enforcement.

If circumstances within Colorado change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in New Mexico

New Mexico Program Activity, Requirements, and Enforcement

By letter to New Mexico dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in New Mexico to implement the requirements of section 720(a) of SMCRA, to implementing Federal regulations, and/or the counterpart New Mexico program provisions (Administrative Record No. NM–725). By letter dated December 22, 1994, New Mexico responded to OSM's request (Administrative Record No. NM–726).

New Mexico stated that two underground coal mines were active in New Mexico after October 24, 1992. New Mexico stated that it intended to revise its subsidence information and control plan provisions at Coal Surface Mining Commission (CSMC) Rule 80–1–20–124 to be no less stringent than section 720 of SMCRA.

New Mexico did not indicate whether it had authority within its program to investigate citizen complaints of structural damage or water supply loss or contamination caused by underground mining operations conducted after October 24, 1992. New Mexico had not received any citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. New Mexico indicated that both of the underground mines that operated after October 24, 1992, are located several miles from structures subject to the Federal requirements for subsidence-related material damage.

On May 13, 1995, New Mexico proposed an amendment to OSM for its permit application requirements at CSMC Rule 80–1–9–39 (Administrative Record No. NM–739). Specifically, New Mexico proposed to revise its subsidence information and control plan requirements at this rule with the intent of making it consistent with section 720 of SMCRA. OSM is currently reviewing the effectiveness of this proposed rule.

On May 3 and June 5, 1995, OSM confirmed with New Mexico that tow underground coal mines were active after October 24, 1992 (Administrative Record No. NM–746). New Mexico stated that it had received no subsidence material damage or water supply complaints for these operations, and that neither operation has noncommercial buildings or occupied dwellings and related structures, or developed water sources, within the

projected subsidence angles of draw. New Mexico indicated that, if it were necessary to apply the provisions of 30 CFR 817.41(j) and 817.12(c)(2) before it had revised its program to be no less effective than these Federal regulations, it would pursue enforcement utilizing general provisions contained in the State regulations.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17501) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in New Mexico (Administrative Record No. NM–737). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received from one of the parties that commented on the Colorado program the same comments regarding total or partial direct interim Federal enforcement and ten-day notice procedures (Administrative Record No. NM–749). OSM does not agree with the commenter's assertions. It addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) and also responds to these comments below in the ''Comments'' subsection of following Utah section E. These concerns about direct Federal enforcement are moot issues for New Mexico because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in New Mexico, the Albuquerque Field Office on May 3 and June 5, 1995, consulted with New Mexico in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. NM–746). Because there has been little underground mining activity since October 24, 1992; there is little likelihood for subsidence damage to noncommercial buildings and to occupied dwellings and related structures, or adverse effects to drinking, domestic, and residential water supplies by underground coal mining; and New Mexico has already proposed to OSM revisions to part of its regulatory program, the Field Office and New Mexico agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which New Mexico entirely revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in New Mexico is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. On June 22, 1995, OSM notified New Mexico of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations (Administrative Record No. NM–747).

If circumstances within New Mexico change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

E. Enforcement in Utah

Utah Program Activity, Requirements, and Enforcement

By letter to Utah dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Utah to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Utah program provisions (Administrative Record No. UT–1001). By letter dated January 20, 1995, Utah responded to OSM's request (Administrative Record No. UT–1015).

Utah stated that the number of underground coal mines in operation after October 24, 1992, may be found in the past and current grant applications filed annually with OSM. From review of these grant applications, OSM determined that there are approximately 21 underground mines that operated after October 24, 1992.

As submitted to OSM on April 14, 1994, and subsequently revised on December 14, 1995 (Administrative Record Nos. UT–917 and UT–997), Utah proposed subsidence material damage provisions at Utah Code Annotated (UCA) 40–10–18(4) that were intended to be counterparts to the provisions of section 720(a)(1) of SMCRA. OSM has not yet published, in accordance with 30 CFR Part 732.17, a final rule **Federal Register** notice detailing its decision on the proposed provisions.

In its January 20, 1995, letter, Utah indicated that it intends to promulgate by March 1996 water replacement statutory provisions that are counterparts to the provisions of section 720(a)(2) of SMCRA.

Utah did not state whether it has authority to investigate citizen complaints of structural damage or water loss caused by underground mining operations conducted after October 24, 1992. Utah indicated that it did receive, investigate, and resolve one citizen complaint after October 24, 1992, but is also indicated that the complaint was judged not to be one that the Energy Policy Act of 1992 revisions to section 720 of SMCRA could remedy.

On May 1 and 31, and June 5, 1995, OSM discussed with Utah its regulatory program as it relates to section 720 of SMCRA (Administrative Record No. UT–1058).

After further review, OSM has determined that 16 underground mines conducted mining operations after October 24, 1992. Utah has not received for these operations any complaints relating to subsidence damage to noncommercial buildings and to occupied dwellings and related structures, or adverse effects to drinking domestic, and residential water supplies.

Utah stated that it still intends to introduce a water replacement counterpart section 720(a)(2) of SMCRA to its legislature during the 1996 session and that it intends to undertake rulemaking by the summer of 1996. Utah stated that, although there is potential for conflicts with State water law regarding replacement of ''junior'' water allocation, it is committed to developing water replacement regulations that meet both the requirements of section 720(a)(2) of SMCRA and 30 CFR 817.41(j) and water rights doctrine. Notwithstanding these future program revisions, Utah indicated that it has the authority under existing enactments and rules to adequately address water replacement issues as they arise. It stated that it is committed to the investigation and resolution of citizens' concerns regarding water sources.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17501) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Utah (Administrative Record No. UT–1039). The comment period closed on May 8, 1995. In response to a request, OSM held a public hearing on May 1, 1995, in Salt Lake City, Utah. OSM entered into the administrative record a verbatim transcript of the hearing testimony

(Administrative Record No. UT–1050). Following are summaries of all substantive comments that OSM received, and OSM's responses to them.

Two commenters indicated that there are 13 active underground mines in Utah (Administrative Record Nos. UT–1045, 1049, and 1050). By OSM's count, there are 16 mines that operated after October 24, 1992, and that are subject to the provisions of the Energy Policy Act.

One party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA (Administrative Record No. UT–1060). Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25, which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protective standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

> [The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule OSM has carved out a limited exception to the general proposition to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

Two commenters recommended that Utah take over the immediate enforcement of Energy Policy Act provisions and 30 CFR 817.41(j) and 817.121(c)(2) because (1) There is a relatively low number of active underground coal mines in Utah, (2) there have been a relatively low number of citizen complaints dealing with subsidence material damage or water supply damage. (3) Utah has promptly taken remedial action of all citizen complaints received, (4) Utah is Keenly aware of State water law, (5) Utah has qualified personnel to enforce the requirements of the Energy Policy Act (Administrative Record Nos. 1045, 1049, and 1050). OSM acknowledges these recommendations and took them into consideration in making a decision on enforcement in Utah.

One commenter stated that the water supply protections afforded by March 31, 1995, Federal regulations are currently in place under the Utah Water Code and that, without further amendment of Utah law, enforcement of these regulations may be accomplished through a memorandum of understanding (MOU) between the Utah Division of Oil, Gas and Mining (Division) and the Utah State Engineer (Engineer, Administrative Record No.UT–1046). Another commenter submitted a suggested MOU addressing water replacement that could be entered into the Division and the Engineer (Administrative Record No. UT–1050). In response to a commenter's perception that a regulatory gap exists between what the Division is willing to enforce and what the Utah State Engineer is willing to enforce (Administrative Record No. UT–1050), the Division endorsed the concept of an MOU with the Engineer as a means to bring together in a complete regulatory framework the Division's determinations on mining's impact on water and the Engineer's determinations of adjudications on water rights. OSM's response to these comments and submission is that, although this is one approach that Utah may decide to pursue, this MOU is not in place and as such is not a consideration in the Regional Director's decision on whether to institute direct Federal enforcement in Utah. If Utah decides to modify its approved regulatory program through such an MOU, it would have to submit it as a State program amendment for OSM approval in accordance with 30 CFR 732.17.

The Utah Division of Oil, Gas and Mining stated that direct Federal enforcement in the State would amount to institution of a separate Federal program to address only subsidence damage and water replacement issues (Administrative Record No. UT–1050). In its opinion, this would be an inefficient and wasteful use of scarce budgetary resources because (1) It has adequate authority to implement the subsidence damage and water replacement provisions required by the Energy Policy Act and the implementing regulations, (2) there exists significant legal and administrative impediments to creation of a successful separate federal program, and (3) it can have new regulatory provisions in place, if necessary, by March 1996. In making the decision that is set forth below, OSM has given thoughtful consideration to Utah's concerns. OSM does not consider that any direct Federal enforcement in Utah would be inefficient and wasteful because OSM also has a responsibility under section 720(a) of SMCRA to ensure that the protective provisions to remedy subsidence material damage and adversely affected water supplies are promptly applied.

The Division indicated its intent to actively seek the input of the Utah Division of Water Rights when it develops water supply regulations so that these regulations are consistent with existing water rights doctrine. The Division and several other commenters made statements about what State water law and the Utah State Engineer require or do not require with respect to water rights and allocations. Some of these comments related directly or indirectly to the implementation of section 720(a) and 30 CFR 817.41(j). OSM responds to these comments by reiterating its position on water rights that was included in the preamble to the March 31, 1995, Federal regulations.

> Section 717(a) requires deference to State water law on questions of water allocation

and use. OSM interprets section 720 and the implementing rules as not requiring the replacement of water supplies to the extent underground mining activities consume or legitimately use the water supply under a senior water right determined under applicable State law. *See In re Permanent Surface Mining Regulation Litigation II, Round III, 620 F. Supp. 1519, 1525 (D.C.D.C. 1985).* However, OSM believes that section 717(a) concerns rights under State water law to consumption or use of water, and was not intended to address destruction or damage of the *source* of water, or contamination of water supply. Thus, OSM anticipates that underground mining activities which cause destruction or damage of a water supply source, or contamination of a water supply, would be subject to the replacement requirements of section 720 even if the permittee possessed senior water rights.

(60 FR 16722, 16733).

Two commenters indicated that, in a proceeding before the Board on Oil, Gas and Mining concerning alleged diminution and contamination by a Utah mining operation of a water source, the Division was unwilling to enforce the water replacement requirements of section 720(a) of SMCRA (Administrative Record Nos. UT–1047, 1048, and 1050). These commenters, and one other person (Administrative Record No. UT–1050), stated that the Division had not fully enforced the water protection provisions of the Utah program. One of the commenters recommended a number of changes in the implementation of the Utah program and indicated that, until these changes were made, OSM should conduct oversight Utah's implementation of the ground-water protection provisions of the Utah program and, if necessary, directly enforce water resources protection provisions in Utah. The other commenter recommended, at a minimum, joint Division and OSM enforcement of the Energy Policy Act requirements, or direct Federal enforcement. OSM acknowledges these comments and took them into consideration in making the decision set forth below.

One commenter stated that, to the best of his knowledge, Utah does not conduct any monitoring of the hydrological consequences of a mine after it has been permitted to determine whether the mine is affecting the hydrologic balance as predicted in the permit (Administrative Record No. UT–1050). In response to this statement, the Division indicated that, during the operation of a mine, it does reevaluate the hydrologic impact conclusions made at the permitting stage in light of monitoring data collected during the mine's operation (Administrative Record No. UT–1050).

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Utah, the Albuquerque Field Office, on May 1 and 31, and June 5, 1995, consulted with Utah in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. UT–1058).

The majority of Utah mines have operated after October 24, 1992, and are subject to the provisions of section 720(a) of SMCRA and the implementing Federal regulations. Although Utah has implemented its regulatory program provisions concerning hydrologic information and hydrologic balance and is committed to the investigation and resolution of citizens' concerns regarding water sources, there are, as is documented in the written record of the public hearing, current concerns and potential for additional complaints regarding the loss, contamination, or diminution of water sources that serve large populations in the coal producing counties in Utah. The mid-1996 projection for promulgating statutory and regulatory State program provisions for water replacement is in keeping with usual timeframes for enactment of legislation and revision of regulations.

The Field Office and Utah agreed that Utah should be the primary enforcer of its State program provisions for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. However, the Field Office found that it is unclear that the water supply protections of section 720(a)(2) of SMCRA and 30 CFR 817.41(j) can be implemented by Utah in all cases. Therefore, the Field Office concluded that, if a situation arises in which Utah's enforcement role as primary enforcer does not appear to fully meet the water replacement requirements of section 720(a)(2) of SMCRA, OSM must take direct Federal enforcement.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Utah will occur through State enforcement and, if necessary, direct Federal enforcement of the water replacement requirements of section 720(a)(2) of SMCRA and 30 CFR 817.41(j).

If circumstances within Utah change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

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30 CFR Parts 915, 916, and 925

Iowa, Kansas, and Missouri Regulatory Programs

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

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Iowa, Kansas, and Missouri. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Iowa, Kansas, and Missouri and consideration of public comments, OSM has decided that initial enforcement is not reasonably likely to be required and that implementation in these States will be accomplished through the State program amendment process.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Acting Director, Kansas City Field Office, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation

must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 (60 FR 16722) to implement the performance standards of sections 720(a) (1) and (2) of SMCRA.

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, after consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 6, 1995, **Federal Register** (60 FR 17504) and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation or regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on he basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and implement the definitions at 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Iowa

Iowa Program Activity, Requirements, and Enforcement

By letter to Iowa dated December 14, 1994, OSM requested information from Iowa that would help OSM decide which approach to take in Iowa to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Iowa program requirements (Administrative Record No. IA–413). Iowa did not respond to this request.

OSM determined that Iowa has not revised its statute to incorporate counterparts to the requirements of section 720 of SMCRA.

On May 9, 1995, OSM confirmed with Iowa that no underground coal mines have operated in Iowa after October 24, 1992, and that there is no underground mining activity proposed in the State (Administrative Record No. IA–418). At that time, OSM also discussed whether the State has counterparts to the implementing Federal regulations.

Iowa has not revised its regulations to incorporate counterparts to the Federal regulations implementing the SMCRA provisions. OSM's review of Iowa's regulations indicates that (1) at Iowa Administrative Code (IAC) 27–40.64(207), Iowa incorporated 30 CFR 817.41 as it existed on July 1, 1992, and (2) at IAC 27–40.64(6), Iowa incorporated 30 CFR 817.121(c)(2) as it existed on July 1, 1992, except the phrase ''To the extent required under applicable provisions of State law.''

Iowa has not proposed a schedule to OSM for when it will revise its program to be no less stringent than SMCRA and no less effective than the Federal regulations.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17504) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Iowa (Administrative Record No. IA–415). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received comments from one party in response to its notice (Administrative Record No. IA–419). These comments apply not only to the Iowa program but also to the Kansas and Missouri programs that are addressed below (Administrative Record Nos. KS–598 and MO–632).

The party commented that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues for these States because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Iowa, the Kansas City Field Office on May 9, 1995, consulted with Iowa in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. IA–418). Because there has been no underground mining activity since October 24, 1992, and there is no underground mining activity proposed in the State, the Field Office and Iowa agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Iowa revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Iowa is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Iowa of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Iowa change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in Kansas

Kansas Program Activity, Requirements, and Enforcement

By letter to Kansas dated December 14, 1994, OSM requested information from Kansas that would help OSM decide which approach to take in Kansas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Kansas program requirements (Administrative Record No. KS–594). By letter dated February 3, 1995, Kansas responded to OSM's request (Administrative Record No. KS–595).

Kansas stated that no underground coal mines were operating in Kansas after October 24, 1992, and that there is no underground mining activity proposed in the State.

OSM has determined that Kansas has not revised its statute to incorporate counterparts to the requirements of section 720(a) of SMCRA. Although not specifically stated, Kansas' letter implies that the provisions can be implemented in the State program through the promulgation of regulations.

Kansas indicated that at Kansas Administrative Regulations (KAR) 47–9–1(d)(40), it adopted 30 CFR 817.121 as it existed on July 1, 1990, and was in the process of promulgating regulations adopting 30 CFR 817.121 as it was written on July 1, 1992. Kansas stated that this revised regulation will authorize the repair of structural damage caused by subsidence in accordance with section 720(a)(1) of SMCRA as it existed on December 31, 1993.

Kansas further indicated that it has the authority to investigate complaints concerning water loss through the material damage criteria of KAR 47–9–1(d)(40), which adopts by reference 30 CFR 817.121(a), and through its hydrologic balance regulations at KAR 47–9–1(d)(7), which adopts by reference 30 CFR 817.41. It further stated that any drinking, domestic, or residential water supply, or other beneficial use as defined by the Kansas Water Appropriations Act, which is impaired by diversion or is otherwise impaired, would have to be replaced according to Kansas Statutes Annotated (KSA) 82a–706b. Lastly, Kansas stated that any waters of the state whose quality is adversely impacted will have to be cleaned up at the owner's expense as provided for in KSA 65–171 *et seq.*

Kansas concluded that the above-discussed regulations and statutes adequately encompass the requirements of section 720(a) of SMCRA.

Kansas made these statements about the effectiveness of its regulations on February 3, 1995, prior to the publication of the Federal regulations on March 31, 1995. On May 5, 1995, after Kansas had an opportunity to review the new Federal regulations, OSM discussed with Kansas the Federal

requirements and whether Kansas still believed that its regulations contained the necessary counterparts to the Federal regulations (Administrative Record No. KS–597). At that time, it concluded that it did not.

Kansas indicated that it is under a moratorium for promulgating new regulations under its State rulemaking process, but that it will propose new regulations that are counterparts to the Federal regulations at the first opportunity to do so. Such new regulations could not be expected to be promulgated until 1997 or 1998.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17504) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Kansas (Administrative Record No. KS–596). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Iowa program, and OSM's responses to them, also apply to the Kansas program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Kansas, the Kansas City Field Office on May 5, 1995, consulted with Kansas in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. KS–597). Because there has been no underground mining activity since October 24, 1992, and there is no underground mining activity proposed in the State, the Field Office and Kansas agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Kansas revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Kansas is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Kansas of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Kansas change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

E. Enforcement in Missouri

Missouri Program Activity, Requirements, and Enforcement

By letter to Missouri dated December 14, 1994, OSM requested information from Missouri that would help OSM decide which approach to take in Missouri to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Missouri program provisions (Administrative Record No. MO–619). By letter dated February 16, 1995, Missouri responded to OSM's request (Administrative Record No. MO–620).

Missouri stated that the subsidence plan permitting requirements at 10 Missouri Code of State Regulations (CSR) 40–6.120(11) and the performance standards for subsidence control at 10 CSR 40–3.280 generally correspond to the requirements of section 720(a)(1) of SMCRA. In these regulations, Missouri requires the permit applicant to submit a plan detailing steps to prevent subsidence damage or mitigate effects of that damage to ''structures or renewable resource lands.'' Missouri interprets ''structures'' to broadly mean any building, whether commercial or noncommercial and whether occupied or unoccupied, and it defines ''renewable resource lands'' as ''aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silviculture production for food and fiber, and grazing lands.''

Missouri also stated that the underground mining permit requirements for alternate water supply at 10 CSR 40–6.110(8) and protection of hydrologic balance requirements at 10 CSR 40–6.120(5)(B)3., together with the performance requirements for water rights replacement at 10 CSR 40–3.200(14), generally correspond to section 720(a)(2) of SMCRA.

Missouri indicated that all of the above-discussed regulations have effective dates preceding October 24, 1992, and appear to provide Missouri authority to enforce the provisions of section 720 of SMCRA.

On May 10, 1995, OSM confirmed with Missouri that no underground coal mines have operated in Missouri after October 24, 1992, and there is no underground mining activity proposed in the State (Administrative Record No. MO–631).

Missouri indicated that it would propose regulation revisions that are intended to be no less effective than the Federal regulations in the next amendment that it submits to OSM.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17504) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Missouri (Administrative Record No. MO–628). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Iowa program, and OSM's response to them, also apply to the Missouri program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Missouri, the Kansas City Field Office on May 10, 1995, consulted with Missouri in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. MO–631). Because there has been no underground mining activity since October 24, 1992, and there is no underground mining activity proposed in the State, the Field Office and Missouri agree that it is unlikely that any Federal or State enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Missouri revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Missouri is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Missouri of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Missouri change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–18442 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Regulatory Program

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

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Ohio. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Ohio and consideration of public comments, OSM has decided that initial enforcement in Ohio will be accomplished through State enforcement.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Beverly C. Brock, Acting Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Eastland Professional Plaza, 4480 Refugee Road, 2nd Floor, Columbus, Ohio 43232, Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related to thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM Enforcement Decisions

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 7, 1995, **Federal Register** (60 FR 17741) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and

regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2)(existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Ohio

Ohio Program Activity, Requirements, and Enforcement

By letter to Ohio dated December 15, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Ohio (Administrative Record No. OH–2073). By letter dated January 18, 1995, Ohio responded to this request (Administrative Record No. OH–2085).

Ohio provided a list of permitted underground coal mining operations. There are eighteen active underground coal mines in Ohio. The term ''active underground coal mines'' includes coal mines that are currently producing coal. The term also includes coal mines that are not currently producing coal but are being inspected by Ohio at the same rate as those mines that are producing coal. Thus, the number of mines actually producing coal varies and is usually much lower than eighteen. (Administrative Record Number OH–2090). Ohio indicated that existing program provisions at Ohio Revised Code sections 1513.162 and the Ohio Administrative Code sections 1501:13–1–02(S), 1501:13–9–04(P), and 1501:13–12–03 (C), (D), (E), (F), (H), and (I) are the State's authority for enforcement of water replacement and subsidence related structural damage. Ohio explained that it has enforced these State program provisions requiring replacement of water supplies impacted by underground mining operations since 1977 and enforced State program provisions requiring repair or compensation for subsidence related structural damage since 1988. Ohio has distributed Division Policy Procedures addressing subsidence related water replacement at PPD Underground 93–2, subsidence related damages to structures at PPD Underground 90–2 and 90–3.

By letter dated February 1, 1995 (Administrative Record Number OH–2090), Ohio provided information concerning complaints related to underground mining operations in Ohio. Ohio has investigated 26 citizen complaints alleging water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Ohio has made a determination on six of the complaints that water loss was not mining related and on six of the complaints that water loss was mining related. Fourteen complaints are still being investigated. Twelve of the 14 are related to water supplies associated with one underground coal mining operation and are not subsidence related. Ohio also stated that there is only one pending complaint related to structure damage from subsidence.

On June 2, 1995, OSM met with the Ohio Division of Reclamation to discuss the enforcement scheme to be followed in Ohio. Ohio stated that counterparts to 30 CFR 817.41(j) and 817.121(c)(2) are fully provided for in the Ohio program and that the appropriate enforcement scheme for Ohio is State enforcement of the approved Ohio program (Administrative Record Number OH–2131).

Comments. On April 7, 1995, OSM published in the **Federal Register** (60 FR 17741) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Ohio. The comment period closed on May 8, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. OSM received comments from one party in response to its notice (Administrative Record Number OH–2141).

The party commented that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues in Ohio because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Director's Decision. Based on the information discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Ohio will be accomplished by State enforcement of the Ohio program. The Director has made this decision after soliciting public comment (one comment was received) and providing opportunity for public hearing (no requests for a hearing were received), and considering information provided by Ohio by letters dated January 18, 1995, and February 1, 1995, and in discussions held with Ohio on June 2, 1995. The Director would like

to clarify the meaning of subsection (E) of OAC 1501:13–12–03. This subsection states that any agreement between the operator and the structure owner takes precedence over 1501:13–12–03. This section appears to conflict with the requirements of section 720(a)(1) of SMCRA, which requires repair or compensation of damaged structures without regard to private agreements (see 60 FR 16722, 16735; March 31, 1995). When OSM approved this subsection in 1991, OSM asked for clarification from Ohio about this subsection. Ohio clarified this subsection to mean that the agreement must at a minimum require repair or compensation for subsidence damage of a protected structure and that anything less than this would be considered no agreement between the parties (56 FR 52469, 52470–71; October 21, 1991). Therefore, this subsection is in accordance with section 720(a)(1) of SMCRA. The Director has concluded that Ohio law at ORC 1513.162 and rules at OAC 1501:13–1–02(S); 1501:13–9–04(P); and 1501:13–12–03 (C); (D); (E) as clarified in 56 FR 52469 (October 21, 1991); (F); (H); and (I) authorize enforcement of provisions of the Energy Policy Act of 1992 in Ohio from October 24, 1992.

If circumstances within Ohio change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 20, 1995.

David G. Simpson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–18438 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5264–8]

Ohio: Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Ohio submitted an application seeking final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976, as amended (RCRA). The application included a program description, a statement by the Ohio Attorney General, a memorandum of agreement, and the revisions to Ohio's Administrative Code. The Environmental Protection Agency (EPA) has reviewed Ohio's application and has reached a decision, subject to public review and comment, that these hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Ohio to operate its expanded program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (hereinafter HSWA).

EFFECTIVE DATE: Final authorization for Ohio shall be effective on September 25, 1995 unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on Ohio's final authorization must be received by 4:30 p.m. central time on August 26, 1995. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a document containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

ADDRESSES: Copies of Ohio's final Authorization Revision Application are available for inspection and copying from 9 a.m. to 4 p.m., at the following addresses: Ms. Kit Arthur, Ohio Environmental Protection Agency, 1800 WaterMark Drive, Columbus, Ohio 43266, Phone 614/644–2956; Mr. Timothy O'Malley, U.S. EPA Region 5, Office of RCRA, 77 W. Jackson, Seventh Floor, Chicago, Illinois 60604, Phone 312/886–6085. Written comments should be sent to Mr. Timothy O'Malley, U.S. EPA Region 5, Office of RCRA, 77 W. Jackson (HRM–7J), Chicago, Illinois, 60604, Phone 312/886–6085.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy O'Malley, Ohio Regulatory Specialist, U.S. EPA Region 5, HRM–7J, 77 West Jackson Blvd., Chicago, Illinois, 60604, (312) 886–6085.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. § 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In accordance with 40 CFR 271.21, revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 124, 260–266, 268, and 270.

B. Ohio

Ohio initially received final authorization for its program effective June 30, 1989 (54 FR 27170). Subsequently, Ohio received authorization for revisions to its program, which became effective on June 7, 1991 (56 FR 14203) and August 19, 1991 (56 FR 28008). On June 21, 1994, Ohio submitted a program revision application for additional program approvals. Today, Ohio is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Ohio's application, and has made an immediate final decision that Ohio's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Ohio. The public may submit written comments on EPA's immediate final decision up until August 26, 1995. Copies of Ohio's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Ohio's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

On September 25, 1995, Ohio will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	Analogous state authority
*Reportable Quantity Adjustment Methyl Bromide Production Wastes, October 6, 1989, (54 FR 41402).	Ohio Administrative Code (OAC) 3745–51–32; Appendix II to 3745–51–20; and Appendix to 3745–51–30; effective February 11, 1992.
*Reportable Quantity Adjustment, December 11, 1989, (54 FR 50968).	OAC 3745–51–31; Appendix to 3745–51–11; Appendix to 3745–51–30; effective February 11, 1992.
*Listing of 1,1-Dimethylhydrazine Production Wastes, May 2, 1990, (55 FR 18496).	OAC 3745–51–32, Appendix II to 3745–51–20; Appendix to 3745–51–30; effective February 11, 1992.
*Land Disposal Restrictions for Third Third Scheduled Wastes, June 1, 1990, (55 FR 22520).	OAC 3745–51–20(B); 3745–51–21(B); 3745–51–22(B); 3745–51–23(B); Appendix to 3745–51–30; 3745–51–31; 3745–51–33(C); 3745–52–11(C); 3745–52–34(A)(4); 3745–54–13(A)(2) Comment; 3745–56–29; 3745–56–56; 3745–56–81; 3745–57–12(A) and (B); 3745–65–13(A)(2) Comment; 3745–67–29; 3745–67–56; 3745–67–81; 3745–68–12(A) and (B); 3745–59–01(C),(C)(3),(C)(3)(a), and (C)(3)(b); 3745–59–02(A)(1),(A)(2),(A)(3),(A)(3)(a)–(h), (A)(4),(A)(5),(A)(6),(A)(7),(A)(7)(a)–(c); 3745–59–03(A) and (B); 3745–59–09; 3745–59–35; 3745–59–40(A) and (C); 3745–59–41; 3745–59–42; 3745–59–43; 3745–65–01(E); effective February 11, 1992. OAC Rule 3745–51–24 (B); effective March 31, 1992. OAC Rule 3745–59–07; 3745–59–07 (A)(1)(b),(A)(2)(a)(ii),(A)(3)(b), (A)(7)–(9), (B)(4)(b),(B)(5)(a),(B)(5)(C), (B)(7),(C); effective September 7, 1992.
*Identification and Listing of Hazardous Waste; Technical Correction, July 19, 1988, (53 FR 27162).	OAC 3745–51–05(E) and (F)(2); effective February 11, 1992.
Mining Waste Exclusion I, September 1, 1989, (54 FR 36592).	OAC 3745–51–03(A)(2)(a) and (A)(2)(c); OAC 3745–51–04(B)(7),(B)(7)(a), (B)(7)(a)(i)–(xxiv),(B)(7)(b), (B)(7)(b)(i)–(xx); effective February 11, 1992.
Mining Waste Exclusion II, January 23, 1990, (55 FR 2322).	OAC 3745–50–10(A)(20); 3745–51–04(B)(7), (B)(7)(a)(i)–(xxiv), (B)(7)(b), (B)(7)(b)(i)–(xx); effective February 11, 1992. OAC 3745–52–23(E); effective March 31, 1992.
Testing and Monitoring Activities, September 29, 1989, (54 FR 40260).	OAC 3745–50–11(A)(4); and Appendix II to 3745–51–20; effective February 11, 1992.
Testing and Monitoring Activities; Technical Correction, March 9, 1990, (55 FR 8948).	OAC 3745–50–11(A)(5); Appendix II to 3745–51–20; effective February 11, 1992.
*Toxicity Characteristic Revisions, March 29, 1990, (55 FR 11798) and June 29, 1990, (55 FR 26986).	OAC 3745–51–08; 3745–67–21(D)(1); 3745–67–73 (A); 3745–51–04(B)(6)(a), (B)(9),(B)(10); 3745–51–30(C); 3745–57–03(E)(1); effective February 11, 1992. OAC 3745–51–24(A) and (B); Appendix to 3745–51–24; effective March 31, 1992. OAC 3745–59–07; effective September 7, 1992.
*Exception Reporting for Small Quantity Generators of Hazardous Waste, September 23, 1987, (52 FR 35894).	OAC 3745–52–42(A)(1),(A)(2), and (B); 3745–52–44; effective February 11, 1992.
*Corrective Action for Injection Wells, December 1, 1987, (52 FR 45788).	OAC 3745–50–46(B); effective February 11, 1992.
Delay of Closure Period for Hazardous Waste Management Facilities, August 14, 1989, (54 FR 33376).	OAC 3745–54–13(A)(1), (A)(3)(a), and (B)(1); 3745–55–12(D)(2)(a) and (D)(2)(b); 3745–55–13 (A),(A)(1)(b)(i),(B),(B)(1)(b)(i),(C),(C)(1), (C)(2),(D),(D)(1),(D)(1)(a)–(e),(D)(2),(D)(3), (D)(4),(E),(E)(1),(E)(1)(a)–(b), (E)(2)–(4), (E)(4)(a)–(c),(E)(5),(E)(6),(E)(7), (E)(7)(a)–(d); 3745–55–42(A)(3) and (A)(4); 3745–65–13(A)(1),(A)(3)(a) and (B)(1); 3745–66–12(D)(2)(a) and (D)(2)(b); 3745–66–13(A),(A)(1)(b)(i),(B),(B)(1)(b)(i), (C),(C)(1),(C)(2),(D),(D)(1),(D)(1)(a)–(e), (D)(2),(D)(3),(D)(4),(E),(E)(1),(E)(1)(a)–(b), (E)(2),(E)(3),(E)(4),(E)(4)(a)–(c),(E)(5), (E)(6),(E)(7),(E)(7)(a)–(d); 3745–66–42(A)(3) and (A)(4); effective February 11, 1992.
*HSWA Codification Rule 2—Permit Conditions to Protect Human Health and the Environment, December 1, 1987, (52 FR 45788).	OAC 3745–50–40(L); effective March 31, 1992.
*Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, September 6, 1989, (55 FR 36967) and June 13, 1990, (55 FR 23935).	OAC 3745–58–30(B); 3745–59–01(C),(E),(E)(1), (E)(2), and (E)(3); 3745–59–32(F); 3745–59–33(A),(F) and (G); 3745–59–50(D), effective February 11, 1992. OAC 3745–59–07(A)(3) and (B)(7); effective September 7, 1992.
*Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment, January 31, 1991, (56 FR 3864).	OAC 3745–51–03(D)(1); 3745–51–20(B); 3745–52–10 Comment 2; 3745–52–11(C); 3745–52–34(D)(4); 3745–59–02(A)(5),(A)(7)(a),(A)(7)(b),(A)(3), (A)(3)(a)–(h); 3745–59–09(A) and (D)(1)(b); 3745–59–33 (B); 3745–59–35(A),(C),(D), and (E); 3745–59–40(A); Appendix to 3745–59–40; 3745–59–41(A); 3745–59–42(A),(A)(2) and (A)(3); Appendices I and II to 3745–59–42; 3745–59–43 (A),(C),(C)(1),(C)(2) and (C)(3); 3745–51–31(A); effective February 11, 1992. OAC 3745–59–07(A),(A)(1)(b),(A)(2)(a)(ii), (A)(3)(b),(A)(6) and (A)(7),(A)(8),(A)(9), (A)(10) and (B)(4)(b); effective September 7, 1992.

* Indicates HSWA requirement.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization, and which were issued by EPA prior to the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on June 30, 1989, June 7, 1991, and August 19, 1991, the effective dates of Ohio's final authorization for the RCRA base program, and for subsequent program revisions.

Ohio is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Ohio's program revision meets all of the statutory and regulatory requirements established by RCRA described in its revised program application, subject to the limitations of the HSWA. Accordingly, EPA grants

Ohio final authorization to operate its hazardous waste program as revised. Ohio currently has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program and its amendments. Ohio also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA incorporates by reference authorized State programs in Part 272 of 40 CFR to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of the Ohio program will be completed at a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Ohio's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: July 17, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–18373 Filed 7–26–95; 8:45 am]

BILLING CODE 6560–50–P

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48 CFR Parts 1501, 1503, 1504, 1505, 1506, 1509, 1512, 1513, 1514, 1515, 1516, 1519, 1520, 1522, 1524, 1525, 1530, 1531, 1532, 1533, 1536, 1545, 1546

[FRL–5264–7]

Acquisition Regulation; Removal of Obsolete and Unnecessary Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is removing sections of the EPA Acquisition Regulation (EPAAR) which are obsolete, confusing, or involve delegations or procedures internal to the Agency not required for inclusion in the EPAAR.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer at (202) 260–9032, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Mail Code 3802F).

SUPPLEMENTARY INFORMATION:

A. Background

The President directed each agency to report by June 1, 1995, all Agency regulations which can be deleted because they are obsolete, confusing, or unenforceable. This effort is aimed at making all our regulations cleaner, cheaper, and smarter. This final rule eliminates numerous sections which are outdated or unnecessary. Additionally, this rule eliminates certain delegations and designations of authority covered elsewhere in internal Agency guidance.

In addition, EPA also plans to delete internal Agency procedures for incorporation into internal Agency guidance documents at a later date. These procedures are contained in the following sections:

EPAAR section	Title
1501.602–3	Ratifications.
1504.804–5	Detailed procedures for closing out contract files.
1506.371	Conduct of market surveys.
1509.170–1	Scope of subpart.
1509.170–2	Applicability.
1509.170–3	Purpose.
1509.170–4	Procedures.
1509–406	Procedures.
1509.407–3	Procedures.
1513.570	Oral purchase orders.
1517.201	Exercise of options.
1533.212	Contracting Officer's duties upon appeal.
1536.201	Evaluation of contractor performance.
1536.602–2	Establishment of evaluation boards.
1537.200	Scope of subpart.
1537.205	Management controls.
1542.700	Scope of subpart.
1542.705	Final indirect cost rates.
1542.705–1	Contracting Officer's determination procedure.

B. Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866; therefore, no review is required at the Office of Information and Regulatory Affairs, within OMB.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

This rule does not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq.

E. Unfunded Mandates

This final rule does not impose unfunded mandates on state and local entities or others. It will make the internal Agency procurement process more efficient.

List of Subjects in 48 CFR Parts 1501, 1503, 1504, 1505, 1506, 1509, 1512, 1513, 1514, 1515, 1516, 1519, 1520, 1522, 1524, 1525, 1530, 1531, 1532, 1533, 1536, 1545, and 1546

Government procurement.

For the reasons set out in the preamble, Chapter 15 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Parts 1501, 1503, 1504, 1505, 1506, 1509, 1512, 1513, 1514, 1515, 1516, 1519, 1520, 1522, 1524, 1525, 1530, 1531, 1532, 1533, 1536, 1545, and 1546 continues to read as follows:

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

2. Section 1501.101 is revised to read as follows:

1501.101 Purpose.

This subpart establishes Chapter 15, the Environmental Protection Agency Acquisition Regulation (EPAAR), within Title 48, the Federal Acquisition Regulations System.

3. In Section 1501.602–3, paragraph (c)(2) is revised to read as follows:

1501.602–3 Ratification of unauthorized commitments.

* * * * *

(c)(1) * * *

(2) For ratification actions which arise in regional offices or laboratory sites, the Chief of the Contracting Office to whom the activity functionally reports is the ratifying official.

* * * * *

4. Section 1503.602 is revised to read as follows:

1503.602 Exceptions.

The Assistant Administrator for Administration and Resources Management may authorize an exception, in writing, to the policy in FAR 3.601 and 1503.601 for the reasons stated in FAR 3.602, if the exception would not involve a violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, or EPA regulations at 40 CFR part 3. The Assistant Administrator shall consult with the Designated Agency Ethics Official before authorizing any exceptions.

5. Section 1505.202 is revised to read as follows:

1505.202 Exceptions.

The Contracting Officer need not submit the notice required by FAR 5.201 when the Contracting Officer determines in writing that the contract is for the services of experts for use in preparing or prosecuting a civil or criminal action under the Superfund Amendments and Reauthorization Act of 1986.

6. Section 1515.608 is amended by removing paragraphs (b)(2) and (c)(2); by redesignating paragraph (b)(3) as (b)(2) and by revising paragraph (b) introductory text, by revising newly designated (b)(2) introductory text; and by redesignating paragraph (c)(1) as (c) introductory text and redesignating paragraphs (c)(1)(i), (ii) and (iii) as (c)(1), (2) and (3), respectively; and the title to paragraph (c) introductory text to read as follows:

1515.608 Proposal evaluation.

(a) * * *

(b) *Technical evaluation panel report of initial offers.* The TEP shall deliver their report to the Contracting Officer upon completion of the evaluation of initial offers.

(1) * * *

(2) The TEP report shall also include: * * *

(c) *Technical evaluation panel report following the competitive range determination.* * * *

* * * * *

7. Section 1532.102 is revised to read as follows:

1532.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under EPA contracts or subcontracts for construction and alteration or repair of buildings, structures, or other real property.

8. The following sections are removed:

EPAAR section	Title
1501.303	Codification and public participation.
1501.304	Agency control and compliance procedures.
1501.404	Class deviations.
1503.101–3	Agency regulations.
1503.103–2	Evaluating the certification.
1503.203	Reporting suspected violations of the gratuities clause.
1503.301	General.
1503.408–1	Responsibilities.
1503.409	Misrepresentations or violations of the covenant against contingent fees.
1503.502	Subcontractor kickbacks.
1503.603	Responsibilities of the Contracting Officer.
1505.270	Use of synopses to perform market surveys.
1505.401	General.
1505.502	Authority.
1506.202	Establishing or maintaining alternative sources.
1506.301	Policy.
1506.302	Circumstances Permitting other than full and open competition.
1506.302–1	Only one responsible source and no other supplies or services will satisfy agency requirements.
1506.303	Justifications.
1506.370	Limited competition.
1506.372	Class justification.
1509.105–2	Determinations and documentation.
1509.105–3	Disclosures of preaward information.
1509.506	Procedures.
1509.508	Examples.
1514.205–1	Establishment of lists.
1514.404–1	Cancellation of invitations after opening.
1514.406–3	Other mistakes disclosed before award.
1514.406–4	Mistakes after award.
1515.403	Solicitation mailing lists.
1515.610–70	Limited discussions versus full negotiations.
1515.804–3	Exemptions from or waiver of submission of certified cost or pricing data.
1515.1003	Debriefings.
1519.602–1	Referral.
1520.102	Labor surplus area goals.
1520.303	Review of subcontracting program.
1522.103–4	Approvals.
1522.608–3	Protests against eligibility.
1522.608–4	Award upon final determination.
1522.608–6	Postaward.
1522.1003	Applicability.
1522.1306	Complaint procedures.
1522.1403	Waivers.
1522.1406	Complaint procedures.
1524.202	Policy.
1525.102	Policy.
1530.304	Waiver.
1531.101	Objectives.
1532.402	General.
1532.407	Interest.
1532.409–2	Recommendation for disapproval.
1532.412	Contract clause.
1533.209	Suspected fraudulent claims.
1533.211	Contracting Officer's decision.
1536.203	Government estimate of construction costs.
1536.602–4	Selection authority.
1536.602–5	Short Selection processes for contracts not to exceed $10,000.
1536.604	Performance evaluation.
1536.605	Government estimate of architect-engineer work.
1545.403	Rental—Use and Charges clause.

Dated: July 10, 1995.

Acting Director, Office of Acquisition Management.

Jeanette L. Brown,

[FR Doc. 95–18372 Filed 7–26–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 950426116–5184–02; I.D. 040495D]

RIN 0648–AG14

Atlantic Tuna Fisheries; Quotas and Permit Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise the regulations governing the

Atlantic tuna fisheries to: Set Atlantic bluefin tuna (ABT) fishing category quotas for the 1995 fishing year; control fishing effort in the ABT General category; extend vessel and dealer permitting and reporting requirements to additional Atlantic tunas fisheries; adjust angler bag limits; and make amendments to clarify the regulations, facilitate enforcement and improve management efficiency.

These regulatory amendments address scientific monitoring and allocation issues in the ABT fisheries and simplify rules applicable to recreational fishing for tunas. The permitting and reporting provisions enhance data collection and enforcement of catch restrictions in the Atlantic tuna fisheries and enable the United States to collect fishery information needed by the International Commission for the Conservation of Atlantic Tunas (ICCAT) to produce stock assessments. These actions are necessary to begin implementation of the 1993 recommendation of ICCAT regarding fishing effort on yellowfin tuna, and to implement the 1994 recommendation of ICCAT regarding fishing quotas for ABT, as required by the Atlantic Tunas Convention Act (ATCA).

EFFECTIVE DATE: July 28, 1995.

ADDRESSES: Copies of the Final Environmental Impact Statement (FEIS) and final Regulatory Impact Review/Regulatory Flexibility Analysis (RIR/RFA), are available from Richard B. Stone, Chief, Highly Migratory Species Management Division (F/CM4), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to Richard B. Stone and to the Office of Management and Budget (OMB), (0648–0040; 0648–0168; 0648–0202; 0648–0239; 0648–0247), Attention: NOAA Desk Officer, Washington, DC 20503.

Permit applications and reporting forms are available from NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–3799; or from NMFS, Southeast Regional Office, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432.

FOR FURTHER INFORMATION CONTACT: Christopher W. Rogers, 301–713–2347; or Kevin B. Foster, 508–281–9260.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 implementing the recommendations of ICCAT and issued under the authority of ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to issue such regulations as may be necessary to carry out the recommendations of ICCAT. The regulatory authority of the Secretary with respect to ICCAT recommendations has been delegated to the Assistant Administrator for Fisheries, NOAA (AA). The AA has determined that provisions of this final rule are necessary to implement the recommendations of ICCAT.

Purpose of Current Action

Background information about the need for revisions to Atlantic tuna fishery regulations was provided in the notice of proposed rulemaking (60 FR 25665, May 12, 1995) and is not repeated here.

Management Measures

These regulatory changes will improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the domestic tuna fisheries:

1. Quota Allocations

Initial ABT quotas by category for the 1995 fishing year are established as follows: General category—438 mt; Harpoon Boat category—47 mt; Purse Seine category—250 mt; Angling category—324 mt; Incidental category—125 mt; Inseason Reserve—145 mt. The quota for the Angling category is further subdivided as follows: Southern area school bluefin—70 mt; northern area school bluefin—80 mt; large school/small medium bluefin—170 mt; and large medium/giant bluefin (may not be sold)—4 mt. The quota for the Incidental category is further subdivided as follows: Southern area longline—100 mt; northern area longline—23 mt; and other gear—2 mt.

2. General Category Effort Controls

Monthly subquotas and effort controls are established for the ABT General category for the 1995 fishing year. The initial 438 mt quota for the General category is subdivided as follows: June/July—88 mt; August—175 mt; September—131 mt; and October—44 mt. The AA may designate a portion of the October quota for a particular geographical area.

This rule establishes regulatory authority for the AA to control effort in the General category fishery by designating ''no-fishing'' days. Prior to the start of each fishing season, scheduled ''no-fishing'' days will be published in the **Federal Register** for a comment period of 30 days. For calendar year 1995, this notice and comment procedure is waived because such effort controls were discussed at public hearings on the proposed rule. Notice is hereby given that, for 1995, scheduled days on which no large medium or giant ABT may be retained by persons on board vessels permitted in the General category are: July 30, and 31; August 2, 6, 7, 10, 11, 12, 16, 20, 21, 23, 27, 28, and 30; and September 5, 6, 10, 11, 13, 17, 18, 20, 24, 25, and 27. A designated ''no-fishing'' day may be waived if the AA determines that such effort control is impeding attainment of the monthly quota. If applicable, a notice of such waiver will be filed with the Office of the Federal Register a minimum of 5 days in advance of the scheduled ''no-fishing'' day.

3. Permits and Reporting

Permits and reporting are required for all of the Atlantic tuna fisheries. Vessels taking any Atlantic tuna for recreational or commercial purposes and fish dealers purchasing any Atlantic tuna must be issued appropriate permits by the Director, Northeast Region, NMFS (Regional Director). Dealer permits for the Atlantic tuna fisheries must be obtained by November 15, 1995. Vessel permits for the Atlantic tuna fisheries must be obtained by November 15, 1995 for commercial vessels including charter and headboat vessels, and by January 1, 1996 for private recreational vessels. Atlantic tunas landed by vessels permitted in the Angling category must not be sold.

Only one category of Atlantic tunas permit may be issued for a vessel. Persons on board General category vessels may fish for non-commercial size class ABT or other species of Atlantic tunas, except when the catch limit for commercial size class ABT has been retained or possessed. Current vessel and dealer permittees in the ABT fishery may fish for, sell, or purchase other species of Atlantic tunas without need of an additional permit. Current vessel and dealer permittees in the Atlantic shark, and Atlantic swordfish fisheries may fish for, sell, or purchase all species of Atlantic tunas, except ABT, without need of an additional permit. Handgear fishermen who are operating solely in the exclusive economic zone (EEZ) surrounding Puerto Rico and the U.S. Virgin Islands and dealers of tuna taken by handgear from those waters are also exempt from permit requirements for the Atlantic tuna fisheries.

Permanent consolidation of permits and ABT allocations is authorized for owners of vessels permitted in the ABT Purse Seine category, however, vessel operators transferring permits may not fish with purse seines in any directed Atlantic tuna fishery.

4. Catch Limits

ABT recreational catch limits applicable to persons on board vessels permitted in the Angling category are two fish per angler per trip from among the school/large school size classes plus one fish per vessel in the small medium size class. In addition, one fish per year per vessel is authorized in the large medium or giant class, provided it is reported and is not sold.

Persons on board vessels permitted in the General category or permitted in the Charter/Headboat category may fish under the catch limits for Atlantic tunas applicable to the Angling category. Captains and mates on board vessels permitted in the Charter/Headboat category may be counted as anglers for the purposes of recreational catch limits.

Regardless of permit category, all fishing for any species must cease and the vessel must return to port to offload once a large medium or giant ABT is retained or possessed under regulations pertaining to the Angling category or General category fishery, as applicable.

5. Size Limits

The minimum size for yellowfin and bigeye tuna is 22 inches (56 cm) total fork length according to the curved measurement method.

6. Other Amendments

Other amendments to the regulations at 50 CFR part 285 are made to restrict close approaches by purse seine vessels to other vessels actively fishing, allow for a 10 percent per season and 15 percent per trip incidental catch of large medium ABT by purse seine operators, codify the allowance for purse seine vessel operators to transfer ABT at sea, restrict issuance of letters of authorization to the Director, redefine authorized gear for the Atlantic tuna fisheries and clarify gear use by permit category, define commercial and recreational fishing, redefine the curved measurement method, authorize use of certain catch-and-release tags issued by organizations other than NMFS, clarify the regulations pertaining to sale of small ABT and possession by dealers, and expand the applicability of subpart C regulations to all Atlantic tunas other than bluefin. These changes will not affect the conduct of the tuna fisheries except to facilitate enforcement, reduce discarding, and reduce gear conflict. Without such changes, the fisheries cannot be monitored or enforced with maximum effectiveness.

Comments and Responses

1. Quota Allocations

Comment: Many fishery participants stated the need, based on increased participation rates and the usefulness of scientific data obtained, to increase the allocation to the Angling and General categories by reducing the allocation to the Purse Seine category. Others commented that the underharvest from the 1994 Angling category fishery should be used to cover the 1994 overharvest in the General category rather than reduce the initial quota for the General category in 1995.

Response: NMFS agrees that participation in the General and Angling categories has increased in recent years and has resulted in early closures for these categories. Because of the reliance on the large fish and small fish catch-per-unit-effort (CPUE) indices for stock assessment, the General and Angling category fisheries should be kept open as long as possible to achieve high survey sampling rates over the widest possible geographic area. Also, NMFS, in response to recommendations from the National Research Council, has increased scientific sampling, working with outside organizations, for genetic studies, microconstituent analysis, sexual maturity determination, tagging studies, and age and growth studies. For these reasons, NMFS has reallocated 51 mt from the Purse Seine category (the only category which has not been subject to increased participation and premature closure) to the Reserve category. A total reserve of 145 mt will allow NMFS to transfer tonnage into other categories as needed to keep fisheries open to maximize scientific data collection. The criteria for such inseason transfers are stipulated in the regulations and are not changed by this rule.

Comment: The General Category Tuna Association (GCTA) petitioned NMFS to amend rules, regulations, and guidelines for allocation of U.S. quota, and to reallocate the quota among user groups. More specifically, GCTA requested that NMFS address areas of: (1) Reallocation, (2) Control of bycatch and discards, and (3) Modification of methodology used in computing costs and benefits related to the directed bluefin tuna fishery.

Response: See response to previous comment. In addition, NMFS agrees that there could be additional reduction in bycatch, and NMFS is supporting research in this area. NMFS will continue to monitor advances in this research to see if additional regulatory action is necessary. The FEIS considers the effect of various management options in terms of net economic benefits, as required under E.O. 12866. However, the FEIS also examines, to the extent that data are available, the economic impact of the management alternatives, including expenditures and employment.

Comment: Many people commented that allocation of quota to the Purse Seine fishery, which, they assert, does not provide useful catch and effort information for scientific monitoring purposes, does not support the overall ICCAT objective of a scientific monitoring quota for ABT.

Response: NMFS agrees that fishery data are essential to monitor the status of the bluefin tuna resource. Information from commercial fisheries that can be used for scientific monitoring (i.e., input to stock assessments) includes landings data, size frequency information, and CPUE data. Rod-and-reel fishermen also tag numerous bluefin each year and purse seiners have been used as platforms for large-scale tagging experiments in the past. All bluefin tuna gear categories provide catch and size frequency information. All commercial landings are censused and measured. However, because purse seine landings cover only a narrow size range and geographic area, they do not provide information about the stock as a whole. In addition, CPUE data from purse seiners cannot be used in stock assessments, since they do not appear to correlate well with stock abundance. Standardized CPUE data are also lacking for the harpoon category and northeastern U.S. coastal longline fisheries. The categories that do provide usable catch per unit effort information are the Angling and General category fisheries and the Gulf of Mexico Incidental Longline fishery. It would also be possible to develop a CPUE series for the northeastern U.S. Incidental Longline fishery using existing methodology, but it would take several years before it could be used in the stock assessment. The feasibility of developing a new series based on aerial survey information from the purse seine and harpoon fisheries is currently being investigated. Thus, NMFS places considerable emphasis on the development of existing and new indices that can be used to monitor stock abundance. Although the need for scientific monitoring is paramount, NMFS' quota allocation decisions also take account of stock rebuilding goals, targeted size categories, historical participation and dependence, number of participants, other socio-economic effects, and other relevant factors.

Comment: Some people expressed concern about the biological, economic, and scientific effects of reallocation

from the Purse Seine category to other categories.

Response: Compared to the current allocation, reallocating 51 mt from the Purse Seine category to other categories will have only a small negative effect on stock rebuilding (the spawning stock will grow slightly less (1 percent less) by the year 2010), and a small positive economic effect (a cumulative increase of $5 million over 16 years, or 2 percent in net national economic benefits). In addition, the use of quota to extend the season for rod-and-reel fisheries increases overall sampling success, leading to increases in the accuracy and precision of CPUE indices.

Comment: There was opposition to the proposed allocation of 350 mt of yellowfin tuna to purse seine vessels permitted for ABT without further analysis of environmental and economic impacts.

Response: NMFS agrees that further analysis and comment on yellowfin tuna allocations is needed, and NMFS is not implementing a purse seine quota at this time.

2. General Category Effort Controls

Comment: Most commenters were in basic agreement on the need to extend the General category fishing season but no clearly preferable option emerged on how to do this. Comments were divided on whether the quota should be partitioned on a monthly or bimonthly basis.

Response: Although there was a geographical split on comments for monthly or bimonthly quotas, NMFS agrees that the first 2 weeks of August are, from the standpoint of price and the U.S. share of the Japanese market, important for the General category-caught ABT. Part of the argument for bimonthly quotas (August/September) was to protect this critical market period. NMFS believes that allocating 40 percent of the General category quota to August and providing a larger reserve, which could be used in August, will reduce the possibility of closure during that period.

Comment: Many fishery participants wanted to reduce the rate of catch in the General category fishery and commented that the proposed 2 days of no fishing each week were insufficient to slow catch rates enough to extend the fishing season. In addition, many commented that the 3-day market closure in Tokyo, Japan, in August should also be considered for time off in the General category fishery.

Response: NMFS concurs that 2 days off per week may be insufficient to slow the catch rates to desired levels. Therefore, NMFS has included Mondays and the 3-day Japanese holiday in August as part of the effort control calendar. Since the AA retains the authority to waive ''no-fishing'' days under this rule, NMFS has some flexibility to ensure that the desired catch rate is achieved. In future years, a schedule of designated ''no-fishing'' days will be published in the **Federal Register**.

Comment: Many fishery participants did not want fishing restricted on weekends, citing adverse impact on local economies, particularly shoreside service industries. These participants suggested that all days off be scheduled for weekdays.

Response: NMFS concurs that high participation rates in the General category fishery generate important economic impacts. However, Sundays have been high production days and NMFS is concerned that the effort control program would be ineffective if only weekdays are included in the effort control program. Also, NMFS agrees with some commenters that the burden of ''no-fishing'' days should be ''shared'' between part-time and full-time fishery participants. In addition, early closures in the General category eliminate all weekend days, possibly with greater adverse economic impacts. The allowance at this time for General category vessels to participate in the ABT recreational fishery should mitigate some of the adverse impacts of ''no-fishing'' days.

Comment: Many fishery participants in the Mid-Atlantic area were concerned that the monthly quota for October, in and of itself, would not assure a late-season fishery in the New York Bight area.

Response: Under this final rule, the AA may designate a portion of the October quota for a particular geographic area.

Comment: Some General category participants were concerned that the proposed 7-day notice for waiver of ''no-fishing'' days would unduly restrict the use of waivers to enable a monthly quota to be reached. They suggested 3-days notice would be adequate.

Response: Under this final rule, the required notification period is reduced to 5 days. NMFS is concerned that 3 days would be insufficient to adequately notify all fishery participants.

3. Permits and Reporting

Comment: Many fishery participants were concerned about the proposed separation of Angling and General category permits. While many anglers maintain General category permits for the limited occasions when giant ABT are available to them, their main fishing activity is for school tuna. There were also concerns that General category vessels could not participate in recreational tournaments when the General category fishery is closed or subject to effort controls.

Response: Since the majority of General category permit holders primarily participate in the recreational fishery, NMFS has decided not to eliminate these vessels from the school tuna fishery. Instead, operators of General category vessels may target and land ABT in the smaller size categories. However, persons on board General category vessels must cease fishing and the vessel must return to port immediately upon retaining or possessing the daily catch limit of large medium or giant ABT.

Comment: NMFS received a petition and other letters from harpoon fishermen, requesting a moratorium on issuance of new Harpoon Boat permits. However, during the comment period on the proposed moratorium, many current and past participants in the Harpoon Boat category fishery expressed concerned about the agency's proposed criteria for limiting entry into that category. Additionally, many fishermen were concerned that NMFS was not addressing limited entry for all ABT categories simultaneously.

Response: While NMFS believes that limited entry programs could have beneficial impacts on the operation and management of the ABT fisheries, NMFS agrees that more discussion is needed to address industry concerns on limited entry, to help develop specific criteria for participation, and to ensure that any adverse effects of incremental changes are minimized. NMFS will hold workshops on limited entry for the tuna fisheries in 1995, but will not limit entry into the Harpoon Boat category this year. To avoid speculative entry or fishing effort in this category, NMFS advises Harpoon category permit holders that catch history in the 1995 season may not be considered in any future limited access program.

Comment: Purse seine operators requested that NMFS amend the proposed hailing and inspection requirements to minimize delays.

Response: NMFS has adjusted the requirements so that only one inspection of the gear and vessel is required prior to the start of the fishing season. In addition, inspection is automatically waived if not undertaken within 48 hours of notifying NMFS.

Comment: Purse seine operators requested that NMFS allow permanent consolidation of permits and ABT allocations and provide for individual vessel quotas which could be freely

transferrable to permit holders in all fishing categories.

Response: This rule authorizes permanent consolidation of permits and ABT allocations for owners of vessels permitted in the ABT Purse Seine category, however, vessel operators transferring permits may not fish with purse seine nets in any directed fishery for Atlantic tunas. NMFS believes that freely transferrable quotas could be useful in resolving allocation issues between participants in all categories. However, time is needed to develop monitoring procedures and adequate controls for such a system.

Comment: Artisanal fishermen and local fish dealers operating in Puerto Rico and the U.S. Virgin Islands requested exemptions from the permitting and reporting requirements, because they would duplicate local reporting systems.

Response: NMFS agrees to initially exempt such fishermen and dealers from permitting and reporting while the adequacy of existing information collection programs is investigated.

4. Angling Catch Limits

Comment: Many people commented that simplification of ABT catch limits was needed but that the potential to take two small medium tuna per angler was excessive. It was suggested that the limit for small medium ABT remain at one fish per vessel.

Response: NMFS agrees and has adjusted the catch limits to allow two ABT per angler from either the school or large school size classes plus one small medium ABT per vessel.

Comment: Some charter vessel operators opposed the prohibition on captains and mates from counting as anglers for the purposes of catch limits. They commented that removing this measure would not result in significant catch towards the annual quotas but does impact the success of individual trips.

Response: NMFS remains concerned that increased catch rates, particularly for school bluefin, could result in early closures. Nevertheless, those parties most directly affected by closures are in the best position to moderate catch levels. The rule allows captains/mates to be counted as anglers for the purposes of catch limits.

Comment: While many individuals commented that the proposed yellowfin tuna 10-fish catch limit was too high (relative to actual catch rates), they oppose the limit until NMFS provides further analysis. It is believed that a 10 fish limit amounts to a quota on the recreational fishery while no commercial category, except purse seine, was proposed for yellowfin quota management.

Response: NMFS agrees that further analysis on the impact of recreational catch limits is needed. For this reason, NMFS did not include a yellowfin tuna catch limit in this rule. NMFS seeks further comment on appropriate catch limits for the recreational tuna fishery.

5. Size Limits

Comment: NMFS should set a higher yellowfin size limit because the ICCAT limit does not coincide with age of first spawning; fish should have the opportunity to spawn at least once.

Response: NMFS agrees that increasing the minimum size could be beneficial; however, more information is needed on the potential impact for both recreational and commercial sectors, especially the effect on discard rates and an analysis of release mortality. Because U.S. landings are low relative to total Atlantic landings and the major spawning area is outside of the U.S. EEZ, a higher U.S. size limit is not likely to have measurable effect on yield per recruit. NMFS must, therefore, assess benefits in terms of post-release return of larger fish to U.S. fishing areas.

Comment: Many anglers catch both yellowfin and bluefin. Small sized tunas are difficult to differentiate and the length-weight relationship is approximately the same for young fish of both species. Though 22 inches (56 cm) corresponds to the ICCAT minimum, NMFS should reduce confusion by having a consistent yellowfin, bigeye, and bluefin tuna size minimum of 27 inches (69 cm).

Response: NMFS agrees that a uniform size limit would simplify regulations. However, further analysis is needed before establishing 27 inches (69 cm) curved measure as the minimum for yellowfin and bigeye tuna. Since the 22 inch (56 cm) minimum corresponds closely with the current ICCAT recommendation, NMFS is establishing this as the minimum size for the current time.

6. Technical Amendments

Comment: Many anglers use tags issued by the Billfish Foundation for tag and release fishing. ABT regulations should reflect this.

Response: NMFS is concerned that all anglers register with the NMFS tagging program to assist in data collection and provide a means to contact ABT fishery participants. An allowance is made to certify use of tags issued by other programs, provided anglers are registered with NMFS in the tagging program.

Comment: As proposed, the prohibition on close approaches by purse seine vessels is not truly reciprocal, since approaching the cork line signifies the ''act of fishing.'' There is a need for similar reciprocal language, or purse seiners could be precluded from ever setting the net if other vessels move into an area where a purse seiner is operating.

Response: The regulatory text has been changed to include similar reciprocal language.

Comment: As proposed, the seasonal allowance for purse seine incidental catch of large medium ABT is not enforceable until a vessel's entire annual catch has been landed.

Response: NMFS has amended the incidental catch allowance to restrict the take of large medium ABT to 15 percent per trip and 10 percent per season.

Comment: NMFS has allowed at-sea transfer of ABT between purse seine vessels but the regulations prohibit at-sea transfers for all vessels except permitted buy-boats.

Response: Since 1986, NMFS has allowed transfers between purse seine vessels to reduce discarding when vessels have netted more fish than the remaining vessel allocation would allow. Codified text has been amended to reflect this policy.

Comment: Bandit gear, as defined, is not synonymous with downrigger. This could lead to confusion about use of downriggers by Angling category boats.

Response: The definition of downrigger is clarified and downriggers are authorized for use with rod-and-reel gear under the rules for the Angling, General and Charter/Headboat categories.

Comment: The existing prohibition on the sale of small bluefin does not address dealer trade in Pacific bluefin or imported Atlantic bluefin.

Response: NMFS has clarified the regulations by inserting a new section of regulatory text to specify that small bluefin tuna in the possession of dealers must be accompanied by documentation of origin.

Comment: The existing subpart C regulations apply only to yellowfin and bigeye tuna. NMFS must clarify whether permitting and reporting requirements apply to all species of Atlantic tuna.

Response: NMFS has clarified the regulations by amending subpart C to apply to all Atlantic tunas other than bluefin.

Changes From the Proposed Rule

Based on consideration of comments received, and further analysis of

available data, the following changes were made to the proposed rule:

1. Quota Allocations

Initial ABT quotas by category for the 1995 fishing year were changed by transferring 51 mt from the Purse Seine category to the Reserve category for scientific research and to enhance data collection in the handgear categories. In addition, 4 mt were transferred from the Incidental category to the Angling category to account for catch of large medium and giant ABT in the consolidation of recreational permits.

2. General Category Effort Controls

Monthly subquotas were modified by increasing the percentage allocated to August to 40 percent and reducing the percentage allocated to September to 30 percent. This should reduce the possibility of closure during a critical market period for U.S. product. A portion of the October sub-quota may be set aside for a specific geographic area. In addition, the scheduled days off were increased to 3 per week, generally including Sundays, Mondays, and Wednesdays, but modified to coincide with certain market closures in Japan. The regulatory text has been modified to provide notification and opportunity for comment on the annual schedule of ''no-fishing'' days. Also, the required advance notice of waiver of days off has been reduced to 5 days from the proposed 7 days.

3. Permits and Reporting

The moratorium on the Harpoon Boat category has been eliminated, pending further analysis and comment. Vessels for which General category permits have been issued may fish for non-commercial size ABT and other species of Atlantic tunas, except when the catch limit for commercial size class ABT has been retained. Handgear fishermen and dealers operating solely in the EEZ surrounding Puerto Rico and the U.S. Virgin Islands are exempt from Atlantic tuna permit requirements. Hailing and inspection requirements for purse seine vessel operators have been revised to minimize delay. Permanent consolidation of permits and ABT allocations is authorized for owners of vessels permitted in the ABT Purse Seine category; however, vessel operators transferring permits may not fish with purse seines in any of the Atlantic tuna fisheries.

4. Catch Limits

ABT catch limits applicable to persons on board vessels permitted in the Angling category are two fish per angler per trip from either the school/large school size classes plus one fish per vessel in the small medium size class. In addition, a total quota of 4 mt is set for the one fish per year per vessel authorized in the large medium or giant class. Captains and mates on board charter/headboat vessels may be counted as anglers for the purposes of catch limits. Operators of charter/headboat vessels are subject to the rules applicable to General category vessels once a large medium or giant ABT is retained or possessed.

5. Size Limits

This rule incorporates the proposed minimum size for yellowfin and bigeye tuna of 22 inches (56 cm) total fork length according to the curved measurement method. Further analysis on alternative minimum sizes will be conducted and comment is requested.

6. Other Amendments

Changes were made to the proposed amendments to restrict close approaches by purse seine vessels to other vessels actively fishing, to codify the allowance for purse seine vessels to transfer ABT at sea, to set the purse seine tolerance for large medium ABT to 15 percent per trip and 10 percent per season, to add definitions for commercial and recreational fishing, to clarify the definition and authorized use of downriggers, to authorize use of certain catch-and-release tags issued by organizations other than NMFS. In addition, a new § 285.34 has been added to clarify the prohibition on dealers possessing and selling bluefin tuna smaller than the large medium size class. Finally, subpart C of part 285 has been revised to make regulations applicable to all Atlantic tunas other than bluefin tuna.

Classification

This final rule is published under the authority of ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that this rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic tuna fisheries.

NMFS prepared an FEIS for this rule that examined the environmental consequences of four national quota levels in combination with five domestic allocation alternatives and three access control alternatives. The selected quota level is expected to allow the bluefin tuna resource to rebuild, while enabling a viable commercial industry and recreational fishery to exist. The selected allocation alternative is expected to result in little biological or economic impact overall, but should improve the quality of data used for scientific monitoring. NMFS does not intend to implement access controls in 1995, pending further analysis. No significant impact on the human environment would result from implementing effort controls in the General category or amending the tuna permitting and reporting requirements. The FEIS has been filed with the U.S. Environmental Protection Agency and has been distributed. Parties not on the initial distribution list may obtain a copy from Richard B. Stone (see **ADDRESSES**).

NMFS prepared an RFA as part of the RIR, which describes the impact this rule has on small entities. The RIR/RFA indicates that General category permit holders (81 percent of commercial vessels landing at least one bluefin in 1994) would face a reduction of gross revenues of approximately 18 percent due to the reduction in overall quota relative to 1994. However, effort controls could result in increased prices, offsetting the revenue decline associated with decreased quota. In addition, inseason transfers from the Reserve category to the General category could increase the total catch in that category. This final rule is also estimated to reduce gross revenues to vessel owners in the Purse Seine category by about 18 percent due to the transfer of 51 mt to the Reserve category. Copies of the RIR/RFA are available from NMFS (see **ADDRESSES**).

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

This rule contains new and revised collection-of-information requirements subject to review under the Paperwork Reduction Act. It modifies requirements that were approved by OMB under control numbers 0648–0202 and 0648–0239 and restates requirements that were approved by OMB under control numbers 0648–0040, 0648–0168 and 0648–0247.

The public reporting burden for completing an application for a Federal fishing permit for vessel owners is estimated at 0.50 hours (30 minutes) per response for initial applications and 0.25 hours (15 minutes) per response for renewals. The public reporting burden for completing an application for a Federal permit for tuna dealers is estimated at 0.08 hours (5 minutes) per response. The public reporting burden for these dealers for collection of information on dealer reports is estimated at 0.08 hours (5 minutes) per response for the phone-in daily dealer reports, at 0.05 hours (2.5 minutes) per response for the written daily dealer reports, at 0.55 hours (33 minutes) per response for the biweekly dealer reports.

The public reporting burden for completing an ICCAT Bluefin Tuna Statistical Document is estimated at 0.33 hours (20 minutes). The public reporting burden for completing a vessel log by vessel owners is estimated at 0.10 hours (6 minutes) per day and 0.10 hours (6 minutes) per notification of fish transfer. The public reporting burden for registering with the NMFS Cooperative Tagging Center is estimated at 0.03 hours (2 minutes).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 21, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.1, paragraph (c) is revised to read as follows:

§ 285.1 Purpose and scope.

* * * * *

(c) This part does not apply to any person or vessel authorized by the Commission, or in writing by the Director, or any state upon written authorization by the Director, to engage in fishing for research purposes.

* * * * *

3. In § 285.2, the definitions of ''Center Director'' and ''Party boat'' are removed, definitions of ''Bandit gear'', ''Commercial fishing'', ''Downrigger'', ''Fixed gear'', ''Headboat'', ''Length overall'', ''Operator'', ''Recreational fishing'', ''Rod and reel'', and ''Trap'' are added in alphabetical order, and the definitions of ''Charter boat'', ''Curved fork length'' and ''Regional Director'', ''Straight fork length'' are revised to read as follows:

§ 285.2 Definitions.

* * * * *

Bandit gear means vertical hook-and-line gear with rods attached to a vessel, with no more than two hooks per line and with line retrieved by manual, electric, or hydraulic reels.

* * * * *

Charter boat means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year.

* * * * *

Commercial fishing means fishing for purposes including sale or barter of any or all of the fish harvested.

* * * * *

Curved fork length means a measurement of the length of Atlantic tuna taken in a line tracing the contour of the body along the middle of the lateral surface from the tip of the upper jaw to the fork of the tail.

* * * * *

Downrigger means a rod attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling, and that has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line.

* * * * *

Fixed gear means stationary, anchored non-trawl gear.

* * * * *

Headboat (partyboat) means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire.

* * * * *

Length overall means the length listed on the vessel's U.S. Coast Guard Certificate of Documentation or Certificate of Number, or if not documented, on the vessel's state registration certificate.

* * * * *

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

* * * * *

Recreational fishing means fishing for purposes not including sale or barter of any or all of the fish harvested.

Regional Director means

(1) For the purposes of Atlantic tuna vessel and dealer permits and Atlantic bluefin tuna dealer reports, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799; and for purposes of reporting for Atlantic tunas other than bluefin, the Regional Director, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432.

(2) For the purposes of Pacific bluefin dealer permits and reporting, the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

* * * * *

Rod and reel means vertical hook-and-line gear with a hand-held (includes rod holder) fishing rod and with a manually operated reel attached.

* * * * *

Straight fork length means a measurement of the length of Atlantic tuna taken in a straight line along the middle of the lateral surface from a line perpendicular to the tip of the upper jaw to a line perpendicular to the fork of the tail.

* * * * *

Trap means a pound net, weir or staked gill net that is maintained and operated at a fixed location.

* * * * *

4. In § 285.3, paragraphs (j) and (k) are revised, and paragraphs (q), (r) and (s) are added to read as follows:

§ 285.3 Prohibitions.

* * * * *

(j) For any person on board a vessel subject to the jurisdiction of the United States to fish for or catch any Atlantic tuna with gear that is not authorized under § 285.21(b) or § 285.51, or to retain or land Atlantic tunas taken with unauthorized gear.

(k) For any person to possess any Atlantic tuna on board a vessel subject to the jurisdiction of the United States that has gear on board that is not authorized under § 285.21(b) or § 285.51, unless authorized under § 285.7.

* * * * *

(q) Purchase, receive, or transfer for commercial purposes any Atlantic tunas landed by owners or operators of vessels not permitted to do so under this part, or purchase, receive, or transfer for commercial purposes any Atlantic tunas without a valid dealer permit issued under this part.

(r) Sell, offer for sale, or transfer for commercial purposes any Atlantic tunas landed by owners or operators of a vessel not permitted to do so under this part or to any person or vessel without a valid dealer permit issued under this part.

(s) Dispose of fish or parts thereof or other matter in any manner, after any communication or signal from an

authorized officer, or after the approach of an authorized officer.

5. Section 285.9 is removed.

6. In § 285.20, paragraphs (a)(1)(i) and (b)(3) are revised to read as follows:

§ 285.20 Fishing seasons.

(a) * * *

(1) * * *

(i) For anglers fishing for Atlantic bluefin tuna under the quota specified in § 285.22(d);

* * * * *

(b) * * *

(3) A vessel permitted in the Purse Seine category may fish under the bluefin tuna quota specified in § 285.22(c), or in fisheries for Atlantic yellowfin or skipjack tuna or other fisheries where bluefin tuna might be taken as bycatch, only until the allocation of bluefin tuna assigned or transferred under § 285.25(d) to that vessel is reached. Upon reaching its individual vessel allocation of Atlantic bluefin tuna, directed purse seine fisheries for Atlantic tunas are closed to such vessel and the vessel will be deemed to have been given notice to that effect.

* * * * *

7. In § 285.21, paragraphs (a), (b), the heading and first sentence in paragraph (c), and paragraphs (h), (i), and (m) are revised to read as follows:

§ 285.21 Vessel permits.

(a) *Permit requirements.* A vessel that fishes for, takes, retains or possesses Atlantic bluefin tuna must have on board a valid permit issued to the vessel owner under this section.

(b) *Categories of permits.* (1) Upon submission of a complete and valid application pursuant to paragraph (c) of this section, the Regional Director will issue to the owner of each qualifying vessel a permit for one of the following permit categories: General, Charter/Headboat, Angling, Harpoon Boat, Purse Seine, or Incidental Catch. A permit will not be issued for more than one category.

(2) Persons may fish for, retain or possess Atlantic bluefin tuna only under the quota, catch limits, and size classes applicable to the permit category of the carrying vessel, except that anglers on board General and Charter/Headboat category vessels may fish for and retain school, large school and small medium bluefin tuna, subject to the limits applicable to the Angling category only until such time that a large medium or giant bluefin tuna is caught, retained or possessed on board the vessel.

(3) School, large school and small medium bluefin tuna landed by anglers on board General and Charter/Headboat category vessels are counted against the Angling category quota. When the General category fishery is open, large medium and giant bluefin tuna landed by anglers on board General and Charter/Headboat category vessels are counted against the General category quota. When the General category fishery is closed, or at any time in the Gulf of Mexico, large medium and giant bluefin tuna landed by anglers on board Angling and Charter/Headboat category vessels pursuant to § 285.24(d)(2) may not be sold and are counted against the Angling category quota.

(4) Persons fishing for Atlantic bluefin tuna must not possess on board or use any gear inappropriate to the category for which the carrying vessel is permitted:

(i) General—rod and reel (including downriggers), handline, harpoon, bandit gear;

(ii) Charter/Headboat—rod and reel (including downriggers), handline;

(iii) Angling—rod and reel (including downriggers), handline;

(iv) Harpoon Boat—harpoon;

(v) Purse Seine—purse seine nets;

(vi) Incidental Catch—purse seine nets, fixed gear, traps, longlines.

(5) When fishing for, or possessing, Atlantic bluefin tuna, operators of vessels permitted for the Charter/Headboat category must have on board a current copy of the operator's merchant marine license or the operator's uninspected passenger vessel license.

(6) Vessels permitted for any category other than the Angling category are eligible to conduct commercial fishing for Atlantic bluefin tuna.

(c) *Application procedure.* Permits issued under this section must be renewed upon expiration. * * *

* * * * *

(h) *Transfer.* A permit issued under this section, except in the case of a purse seine permit as allowed under paragraph (m) of this section, is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(i) *Display.* A permit issued under this section must be carried on board the vessel at all times. The permit must be displayed for inspection upon request of any authorized officer or any employee of NMFS designated by the Regional Director for such purpose. Upon sale of any large medium or giant Atlantic bluefin tuna, the vessel permit must be presented for inspection to the permitted dealer completing the landing card.

* * * * *

(m) *Closed categories.* The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22(c) only to current owners of those purse seine vessels, or their replacements, that were granted allocations under this subpart and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to the owner of any vessel that was replaced or consolidated with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

8. In § 285.22, paragraphs (a), (b), (d), (e), the heading and first sentence of paragraph (f) introductory text, and paragraph (h) are revised to read as follows:

§ 285.22 Quotas.

* * * * *

(a) *General.* (1) The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 438 mt, of which 88 mt are available in the period beginning June 1 and ending July 31; 175 mt are available in the period beginning August 1 and ending August 31; 131 mt are available in the period beginning September 1 and ending September 30; and 44 mt are available beginning October 1.

(2) On the basis of the statistics referenced at § 285.20(b)(1), the Assistant Administrator will project a date when the catch of Atlantic bluefin tuna will equal the available quota in any period, and will publish a notification in the **Federal Register** stating that fishing for, retaining, possessing, or landing Atlantic bluefin tuna under the quota for that period is prohibited from a specified time on that date until the opening of the subsequent quota period, whereupon a quota equal to the initial quota for that period as adjusted for estimated overharvest or underharvest prior to that period will become available.

(3) If the Assistant Administrator determines (based on dealer reports, availability of large medium or giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information) that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation of the October quota for such

area. The amount of any geographic allocation shall not exceed 20 mt. The Assistant Administrator will publish notification of any geographic set-aside allocation and its basis in the **Federal Register**. The daily catch limit for the identified area will be set at one large medium or giant Atlantic bluefin tuna per day per vessel.

(b) *Harpoon Boat.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 47 mt.

* * * * *

(d) *Angling.* The total annual amount of Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by anglers is 324 mt. No more than 4 mt of this quota may be large medium or giant Atlantic bluefin tuna and no more that 150 mt of this quota may be school Atlantic bluefin tuna. The quota for school Atlantic bluefin tuna is further subdivided as follows:

(1) 70 mt of school Atlantic bluefin tuna may be caught, retained, possessed, or landed south of 38°47′ N. lat.; and

(2) 80 mt of school Atlantic bluefin tuna may be caught, retained, possessed, or landed north of 38°47′ N. lat.

(e) *Incidental.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 125 mt. This quota is further subdivided as follows:

(1) For longline vessels, 123 mt, no more than 100 mt of which may be caught, retained, possessed, or landed in the area south of 34°00′ N. lat.

(2) For vessels fishing under § 285.23 (a) and (b), 2 mt may be caught, retained, possessed, or landed in the regulatory area.

(f) *Inseason adjustment amount.* The total amount of Atlantic bluefin tuna that will be held in reserve for inseason adjustments is 145 mt. * * *

* * * * *

(h) If the Assistant Administrator determines, based on landing statistics and other available information, that an annual quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator will subtract the overharvest from, or add the underharvest to, that quota category for the following year; provided that the total of the adjusted quotas and the reserve is consistent with a recommendation of the Commission regarding country quotas. The Assistant Administrator will publish any amounts to be subtracted or added and the basis for the quota reductions or increases in the **Federal Register**.

* * * * *

9. In § 285.23, paragraphs (a) and (b) are revised, paragraph (d) is removed, and paragraph (e) is redesignated as paragraph (d) and revised to read as follows:

§ 285.23 Incidental catch.

(a) *Herring, mackerel, and menhaden purse seine gear and fixed gear other than longlines or traps.* Subject to the quotas in § 285.22, large medium and giant Atlantic bluefin tuna may be retained during any fishing trip, on board a vessel for which an Incidental Catch permit has been issued under § 285.21 that is fishing with herring, mackerel, and menhaden purse seine gear or fixed gear other than longlines or traps principally for species of fish other than tuna, provided that the total amount of Atlantic bluefin tuna taken does not exceed 2 percent, by weight, of all other fish on board the vessel at the end of each fishing trip.

(b) *Traps.* Subject to the quotas in § 285.22, large medium and giant Atlantic bluefin tuna may be retained during any fishing trip on board a vessel for which an Incidental Catch permit under § 285.21 has been issued that catches Atlantic bluefin tuna incidentally while fishing with traps, provided that the total amount of Atlantic bluefin tuna taken does not exceed 2 percent, by weight, of all other fish landed by the owner of the vessel within the preceding 30-day period.

* * * * *

(d) *Purse Seine.* When fishing for Atlantic yellowfin or skipjack tuna, vessels for which an Atlantic bluefin tuna Purse Seine category permit has been issued are allowed a 1 percent per trip (by weight) incidental take of bluefin less than the large medium size class. Any landings of these incidental catches may not be sold and will be counted against the Purse Seine category quota allocation for bluefin tuna.

10. In § 285.24, paragraphs (a), (c), (d), and (e) are revised to read as follows:

§ 285.24 Catch limits.

(a) *General category.* (1) From the start of each fishing year, except on designated ''no-fishing'' days, only one large medium or giant Atlantic bluefin tuna may be caught and landed per day from a vessel for which a General category permit has been issued under § 285.21. On designated ''no-fishing'' days, persons on board such vessels may not possess, retain or land any large medium or giant Atlantic bluefin tuna. The Assistant Administrator will publish in the **Federal Register** a schedule of designated ''no-fishing'' days.

(2) The Assistant Administrator may increase or reduce the catch limit over a range from zero (''no-fishing'' days) to a maximum of three large medium or giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable daily catch limit made under this paragraph. Other than fishery closures pursuant to attainment of quotas in any period, such notice of catch limit adjustment shall be published at least 5 calendar days prior to the change becoming effective.

(3) Large medium and giant Atlantic bluefin tuna may be possessed or retained on board a vessel for which a General category permit has been issued if the amount does not exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect on that day.

(4) Anglers on board vessels permitted in the General category may possess school, large school, and small medium Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit for the Angling category in effect on that day. However, on allowable fishing days, once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained, fishing by persons on board the vessel must cease and the vessel must proceed to port.

* * * * *

(c) *Purse Seine category.* Large medium bluefin tuna may be caught from a vessel for which a Purse Seine category permit has been issued provided that the total amount of large medium bluefin landed per trip does not exceed 15 percent by weight of the total amount of giant Atlantic bluefin tuna landed on that trip, and the total annual amount of large medium bluefin landed does not exceed 10 percent by weight of the total amount of giant Atlantic bluefin tuna allocated to that vessel for that fishing season.

(d) *Angling category.* (1) Each angler on board a vessel permitted in the Angling category may catch and retain each day no more than two Atlantic

bluefin tuna which may be from the school or large school size class. In addition to the per angler limits, one small medium size class bluefin tuna may be retained each day, per angling category vessel. Anglers may not retain young school Atlantic bluefin tuna.

(2) In addition to the daily catch limit for school, large school and small medium bluefin tuna, a vessel for which an Angling category permit has been issued may catch and retain annually one large medium or giant Atlantic bluefin tuna, to be counted against the Angling category quota specified in § 285.22. The owner or operator of the vessel must report to the nearest NMFS enforcement office within 24 hours of landing any large medium or giant bluefin, and must make the tuna available for inspection and attachment of a tag. No such large medium or giant Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose except for taxidermic purposes. A list of local NMFS enforcement offices may be obtained from the Regional Director.

(3) The Assistant Administrator may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota spread over the longest possible period of time. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable daily catch limit made under this paragraph. Other than fishery closures pursuant to attainment of quotas in any period, such notice shall be published at least 5 calendar days prior to a change in daily catch limit becoming effective.

(4) Anglers on board vessels for which an Angling category permit has been issued may possess school, large school, and small medium Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit for the Angling category in effect on that day.

(e) *Charter/Headboat category.* (1) Anglers on board vessels for which a Charter/Headboat category permit has been issued are subject to the daily catch limits for school, large school, and small medium Atlantic bluefin tuna applicable to the Angling category.

(2) When the General category fishery is closed, or at any time when operating in the Gulf of Mexico, operators of Charter/Headboat vessels are subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (d) of this section.

(3) When the General category fishery is open, except when operating in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued are subject to the daily catch limit in effect for the General category for large medium or giant Atlantic bluefin tuna as specified in paragraph (a) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained, fishing by persons on board the vessel must cease and the vessel must proceed to port. Large medium or giant bluefin tuna landed by Charter/Headboat vessels may be sold and are counted against the quota for the General category.

(4) Anglers on board vessels for which a Charter/Headboat category permit has been issued may possess school, large school, and small medium Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit for the Angling category in effect on that day. Vessels for which a Charter/Headboat category permit has been issued may possess large medium and giant Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect on that day.

11. In § 285.25, paragraph (d) is revised and paragraph (e) is added to read as follows:

§ 285.25 Purse seine vessel requirements.

* * * * *

(d) *Vessel allocations.* (1) Owners or operators of vessels for which a Purse seine permit has been issued under § 285.21(b) must apply for an allocation of Atlantic bluefin tuna from the quotas specified in § 285.22. The owner or operator must apply for this allocation in writing to the Regional Director by April 15 and must specify the particular size class or classes of Atlantic bluefin tuna for which the vessel will fish. The owner or operator must supply documentation of the vessel's stockholders, owners, partners, or association structure.

(2) The Regional Director will review applications for allocations of Atlantic bluefin tuna on or about May 1, and will make equal allocations of the available size classes of Atlantic bluefin tuna among vessel owners so requesting. Such allocations are freely transferrable among purse seine vessel permit holders. Any purse seine vessel permit holder intending to fish for more than one allocation in any fishing season must provide written notice of such intent to the Regional Director 15 days before commencing fishing in that season. Purse seine vessel permit holders who transfer their annual allocation to another purse seine vessel permit holder must not fish their permitted vessel in any fishery in which Atlantic bluefin tuna might be caught.

(3) Purse seine vessel owners may apply to the Regional Director to permanently consolidate vessel permits issued under § 285.21(b). Upon approval of consolidation by the Regional Director, the Atlantic tuna permit(s) of the transferring vessel(s) will be cancelled, and the holder of the consolidated permit is authorized to apply for allocations of Atlantic bluefin tuna commensurate with the number of consolidated permits. Purse seine vessel owners who cancel their permit by means of consolidation must not fish their vessel in any fishery in which Atlantic bluefin tuna might be caught.

(e) *Transfer at sea.* Purse seine vessel owners or operators may transfer large medium and giant Atlantic bluefin tuna at sea from the net of the catching vessel to another permitted purse seine vessel provided the amount transferred does not cause the receiving vessel to exceed its annual vessel allocation as modified by authorized transfers. Such at-sea transfers are authorized only between purse seine vessels permitted under § 285.21 and not to buy boats permitted under § 285.28.

12. Section 285.26 is amended by removing the phrase ''tip of the snout'' in the second sentence, and adding in its place the phrase ''tip of the upper jaw''.

13. Section 285.27 is revised to read as follows:

§ 285.27 Tag and release program.

(a) Notwithstanding other provisions of this part, an angler may fish for Atlantic bluefin tuna under a tag and release program, provided the angler tags all Atlantic bluefin tuna so caught with tags issued under this section, and releases and returns such fish to the sea immediately after tagging and with a minimum of injury. To participate in this program, an angler must obtain tags, reporting cards, and detailed instructions for their use from the Cooperative Tagging Center, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149–1099 or by calling (800)437–3936.

(b) Tags obtained from sources other than NMFS may be used to fish for Atlantic bluefin tuna provided the angler has registered each year with the

Cooperative Tagging Center and the NMFS program manager has approved the use of tags from that source. Anglers using an alternative source of tags wishing to tag bluefin tuna can call (800) 437–3936 or write NMFS at the address given above.

(c) Anglers registering for the Atlantic bluefin tagging program are required to provide their name, address, phone number, and, if applicable, identify the alternate source of tags.

(d) If NMFS-issued or NMFS-approved tags are not on board a vessel, all anglers on board that vessel are deemed to be ineligible to fish under this section.

14. In § 285.29, paragraphs (a) and (d) are revised to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must report via electronic facsimile (fax) or an Interactive Voice Response System (IVRS) as instructed by the Regional Director within 24 hours of the purchase or receipt of each Atlantic bluefin tuna from the person or vessel that harvested the fish. Said report via fax or the IVRS must include the tag number affixed to the fish by the dealer, the date landed, the round and/or dressed weight (indicating which weight(s) measured), the total or pectoral fin curved fork length (indicating which length(s) measured), and the permit category of the landing vessel. In addition, dealers must submit to the Regional Director a daily report on a reporting card provided by NMFS. Said card must be postmarked and mailed at the dealer's expense within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each vessel permit holder or vessel operator must sign each reporting card immediately upon transfer of the fish to verify the name of the vessel that landed the fish and the vessel permit number, and each card must indicate the tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round and/or dressed weight (indicating which weight(s) measured), the total and/or pectoral fin curved fork length (indicating which length(s) measured), gear used, and area where the fish was caught. The dealer purchasing or receiving the Atlantic bluefin tuna must inspect the vessel permit and verify that the required vessel name and vessel permit information is correctly recorded on the reporting card.

* * * * *

(d) Must retain at his/her place of business a copy of each landing card (including proof of fax or IVRS transmission) and a copy of each bi-weekly report for a period of 2 years from the date on which each was required to be submitted to the Regional Director.

* * * * *

15. In § 285.31, paragraphs (a)(3), (a)(4), (a)(8), (a)(13), (a)(15), (a)(30), (a)(31), (a)(34) and (a)(37) are revised and paragraph (a)(38) is added to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(3) Fish for, catch, possess or retain Atlantic bluefin tuna in excess of the quotas specified in § 285.22 except that fish may be caught and released under the provisions of § 285.27.

(4) Fish for, catch, or possess or retain Atlantic bluefin tuna in excess of the catch limits specified in § 285.24, or to possess or retain large medium or giant ABT on designated ''no-fishing'' days, except that fish may be caught and released under the provisions of § 285.27.

* * * * *

(8) For any vessel other than a vessel holding a purse seine permit issued under § 285.21(b), to approach to within 100 yd (91.5 meters) of the cork line of any purse seine net used by any vessel fishing for Atlantic bluefin tuna, or for any such purse seine vessel to approach to within 100 yd (91.5 meters) of any vessel, other than a purse seine vessel, actively fishing for Atlantic bluefin tuna;

* * * * *

(13) Purchase, receive, or transfer any Atlantic bluefin tuna at sea from a person or vessel engaged in fishing for such tuna without a valid dealer permit for buy-boat operations issued under § 285.28 unless between permitted purse seine vessels as authorized under § 285.25(e);

* * * * *

(15) Sell, offer for sale, or transfer to any person for a commercial purpose any large medium or giant Atlantic bluefin tuna caught with rod and reel gear under § 285.24(d)(2) or § 285.24(e)(2);

* * * * *

(30) Fish for, catch, possess, or retain Atlantic bluefin tuna from the Gulf of Mexico except as specified under §§ 285.23(c) or 285.24(e)(2), or if taken incidental to recreational fishing for other species and retained in accordance with § 285.24(d)(2);

(31) Fish for, catch, possess or retain Atlantic bluefin tuna with a gear type or in a manner other than specified in §§ 285.21, 285.22, 285.23, 285.24 and 285.25, or other than authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7;

* * * * *

(34) Sell, offer for sale, purchase, receive for a commercial purpose, trade, or barter, or if a seafood dealer or processor, retain or possess, any Atlantic bluefin tuna other than a large medium or giant, except with documentation as specified in § 285.34;

* * * * *

(37) Fish for, catch, possess or retain any Atlantic bluefin tuna less than the large medium size class from a vessel other than one issued a permit for the Angling, General or Charter/Headboat categories under § 285.21, or a Purse Seine category permit operating under § 285.23(d);

(38) Fail to cease fishing and return to port once the catch limit for large medium and giant bluefin is retained or possessed on board vessels permitted in the General and Charter/Headboat categories.

16. In § 285.32, paragraphs (a) and (b) are revised to read as follows:

§ 285.32 Civil penalties.

(a) Any person who violates § 285.31(a)(1) through (a)(21) inclusive, or (a)(25) through (a)(31) inclusive, or (a)(33) and (a)(34) or (a)(36) through (a)(38) inclusive, will be assessed a civil penalty of not more than $25,000 for a first violation and a civil penalty of not more than $50,000 for a subsequent violation.

(b) Any person who violates § 285.31(a)(22) through (24) inclusive, or (a)(32), or (a)(35) will be assessed a civil penalty of not more than $1,000, and a civil penalty of not more than $5,000 for a subsequent violation.

* * * * *

17. Section 285.34 is added to read as follows:

§ 285.34 Restrictions on sale.

(a) Any Atlantic bluefin tuna less than the large medium size class may not be, or attempted to be, purchased, bartered, traded, sold, or offered for sale, or retained or possessed by a dealer or seafood processor in any state unless it is lawfully imported and is accompanied by the Commission's Bluefin Tuna Statistical Document.

(b) Except for a bluefin tuna landed in a Pacific state and remaining in the state of landing, a bluefin tuna that is possessed by a dealer or seafood processor is deemed to be a bluefin tuna harvested from the Atlantic Ocean by a United States vessel unless it is accompanied by the Commission's Bluefin Tuna Statistical Document.

18. Subpart C is revised to read as follows:

Subpart C—Atlantic Tunas Other Than Bluefin Tuna

285.50 Species subject to regulation.
285.51 Authorized fishing gear.
285.52 Size limits.
285.53 Vessel permits.
285.54 Commercial Vessel recordkeeping and reporting.
285.55 Dealer permits.
285.56 Dealer recordkeeping and reporting.
285.57 Purse Seine vessel requirements.
285.58 Incidental catch.
285.59 Prohibitions.

Subpart C—Atlantic Tunas Other Than Bluefin Tuna

§ 285.50 Species subject to regulation.

Regulations contained in this subpart pertain to yellowfin tuna, bigeye tuna, albacore tuna, skipjack tuna and Atlantic bonito.

§ 285.51 Authorized fishing gear.

Fishing for, catching, retention or possession of Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito in the regulatory area by persons on board fishing vessels subject to the jurisdiction of the United States is authorized only for handline, rod and reel (including downriggers), harpoon, purse seine, longline, drift gillnet and bandit gear unless the gear is authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7.

§ 285.52 Size limits.

(a) Fishing for, catching, retention or possession of Atlantic yellowfin and bigeye tunas in the regulatory area by persons on board fishing vessels subject to the jurisdiction of the United States is authorized only for yellowfin or bigeye tuna measuring 22 inches (56 cm) or more in total curved fork length.

(b) Total curved fork length is the sole criterion for determining the size class of whole (head on) Atlantic yellowfin and bigeye tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body along the middle of the lateral surface from the tip of the upper jaw to the fork of the tail.

§ 285.53 Vessel permits.

(a) *Permit requirements.* The operator of each vessel that fishes for, or takes, Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must have on board a valid permit issued under this section.

(b) *Commercial vessel permits.* Effective November 15, 1995, as a prerequisite to selling Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito and to be eligible for exemption from applicable bag limits, if any, specified in this subpart, an owner or operator of a vessel that fishes for or takes Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must be issued by the Regional Director a vessel permit in the commercial category appropriate for the gear type or method of fishing.

(c) *Charter/Headboat vessel permits.* Effective November 15, 1995, owners or operators of charter vessels and headboats must be issued by the Regional Director a charter/headboat vessel permit to lawfully fish for, catch, retain or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito. Anglers on board charter vessels and headboats must adhere to applicable catch limits for the recreational fisheries.

(d) *Recreational vessel permits.* Effective January 1, 1996, owners or operators of private recreational vessels are required to obtain vessel permits in order to fish for, catch, retain or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito. Anglers on board private recreational vessels must adhere to applicable daily catch limits. Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito taken on board private recreational vessels may not be sold.

(e) *Purse seine.* Directed purse seine fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito is restricted to owners of those purse seine vessels that have current Atlantic bluefin tuna purse seine permits under § 285.21(b) and that have reported, or replaced vessels that have reported, Atlantic yellowfin, skipjack, albacore or bigeye tuna landings to NMFS over the period 1989 through 1993. The owner or operator of such purse seine vessel must apply for authorization to fish for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito in writing to the Regional Director by April 15. The owner must supply documentation of the vessel's stockholders, owners, partners, or association structure and records of landings to verify that the vessel meets the qualifying criteria. The Regional Director will review these applications for authorization on or about May 1 and issue authorizations as appropriate.

(f) *Exemptions.* In lieu of a permit issued under this section, persons on board a vessel for which a valid permit for the Atlantic bluefin tuna fishery has been issued under § 285.21 of this part are eligible to fish for and take Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito using the authorized gear and subject to the commercial fishing restrictions applicable to the category of permit issued for the vessel. In lieu of a permit issued under this section, owners or operators of vessels for which valid permits for the Atlantic shark fishery (50 CFR part 678) or the Atlantic swordfish fishery (50 CFR part 630) have been issued are eligible to fish for and take Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito using the authorized gear and subject to fishing restrictions applicable to the permit issued to the vessel. Owners or operators of vessels fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands with only handgear on board are exempt from the permit requirements of this section.

§ 285.54 Commercial vessel recordkeeping and reporting.

(a) The master or other person in charge of a fishing vessel that engages in commercial fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito or any person as may be authorized in writing to serve as the agent of such master or person, must:

(1) Keep an accurate log of all operations conducted from the vessel, entering therein for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of tuna on board by species. The record and bridge log shall be sufficient to comply with this paragraph, provided however, that the items of information specified herein are fully and accurately entered in such log; and,

(2) Furnish on a form obtainable from the Regional Director, following the sale or delivery of a catch of tuna made by such vessel, a report, certified to be correct as to facts within the knowledge of the reporting individual, giving the name and official number of the fishing vessel, the dates of beginning and ending of the fishing voyage, the port of departure, and a listing separately by species of the round weight quantities (pounds or short tons) of tuna sold or delivered. At the option of the vessel master or other person in charge, a copy of the fish ticket, weighout slip, settlement sheet, or similar record issued by the dealer or his agent may, however, be used for reporting purposes in lieu of the form obtainable from the Regional Director, if such alternate record is similarly certified and contains all items of information required by this paragraph. Such sale and delivery

reports must be delivered or post marked and mailed to the Regional Director within 72 hours after weighout has been completed.

(b) The master or other person in charge of a fishing vessel, subject to the jurisdiction of the United States, except vessels proceeding directly to Puerto Rico or to any other U.S. port for unloading, must report to the Regional Director not less than 48 hours prior to entering the regulatory area via the Panama Canal. In addition, the master or other person in charge of a vessel, subject to the jurisdiction of the United States except a vessel without fish on board, must notify the Regional Director not less than 48 hours prior to leaving the regulatory area via the Panama Canal. Each report must include the name of the reporting vessel, the tonnage by species on board, and whether the fish were caught in Pacific or Atlantic waters.

(c) All such fishing vessels entering or leaving the regulatory area via the Panama Canal are subject to inspection. Official seals will be affixed to wells containing fish taken within or outside the regulatory area, as appropriate and the same will be noted on the vessel log. The official seals may be removed only by a designated agent of NMFS upon arrival at point of sale or delivery.

(d) The master or other person in charge of a fishing vessel subject to the jurisdiction of the United States, must notify the Regional Director not less than 48 hours prior to any transfer of Atlantic tuna taken in the regulatory area to another vessel for the purpose of transshipment. Such reports must include the date and place of unloading, name and destination of the oncarrying vessel, and the tonnage by species of tuna transferred.

(e) The failure to file the reports or to follow the procedures required by this section, the tampering with or the removal of an official seal, or the alteration of a fishing vessel's log by any person or fishing vessel subject to the jurisdiction of the United States is a prohibited act within the meaning of § 285.3.

(f) Any person authorized to carry out enforcement activities under the Act or these regulations has power, without warrant or other process, to inspect, at any reasonable time, catch on board the vessel, log books, catch reports, statistical records, or other reports as required by the regulations in this part to be made, kept or furnished.

(g) Owners and operators of vessels fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands with only handgear on board are exempt from the reporting requirements of this section.

§ 285.55 Dealer permits.

(a) *General.* Effective November 15, 1995, a dealer purchasing or attempting to purchase, receiving, possessing, importing or exporting Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must have a valid permit required under this section.

(b) *Application.* Applications for a dealer permit must be in writing on an appropriate form obtained from the Regional Director. The application must be signed by the applicant, and be submitted to the Regional Director at least 30 days before the date upon which the applicant desires the permit to be effective. The application must contain the following information: Company name; principal place of business; owner or owners' names; applicant's name (if different from owner or owners) and mailing address and telephone number; and any other information required by the Regional Director.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section remains valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit which is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit will report the change in writing to the Regional Director.

(l) *Exemptions.* Dealers issued valid permits for the Atlantic bluefin tuna fishery under § 285.28 of this part, dealers issued valid permits for the Atlantic shark fishery (50 CFR part 678) or the Atlantic swordfish fishery (50 CFR part 630), and dealers located in Puerto Rico and the Virgin Islands who purchase, sell, or re-sell only Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito taken shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands by handgear are exempt from the permit requirements of this section.

§ 285.56 Dealer recordkeeping and reporting.

(a) A dealer who has been issued a dealer permit pursuant to § 285.55 must submit reports to the Fisheries Science Center Director as specified in paragraph (b) of this section. A report form is available from the Science and Research Director. The following information must be included in each report:

(1) Name, address, and permit number of the dealer.

(2) Names and official numbers of fishing vessels from which Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito were received.

(3) Dates of receipt of Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito.

(4) Listed by each port and county where Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito were offloaded from fishing vessels:

(i) Total weight (pounds) for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito by market category, if applicable, and for other

species received with the tuna, including, but not limited to, shark, swordfish, dolphin, and wahoo; and

(ii) Price per pound or total value paid by market category for tuna and other species, to the extent that such price information is known at the time of reporting.

(b) A report of tuna and other applicable species received by a dealer on the first through the 15th days of each month must be submitted to the Science and Research Director postmarked not later than the 20th day of that month. A report of tuna and other applicable species received by the dealer on the 16th through the last day of each month must be submitted to the Science and Research Director postmarked not later than the 5th day of the following month. If no tuna was received during the reporting period, a report so stating must be submitted postmarked as specified for that respective reporting period.

(c) The reporting requirement of paragraph (a) of this section may be satisfied by providing a copy of each appropriate weigh-out sheet and/or sales record, provided such weigh-out sheet and/or sales record, by itself or combined with the form available from the Science and Research Director, includes all of the required information.

(d) In lieu of providing a required report to the Science and Research Director by mail, as specified in paragraph (a) of this section, a dealer may provide a report to a state or Federal fishery port agent designated by the Science and Research Director. Reports so provided must be delivered to such port agent not later than the prescribed postmark date for submitting each such report.

(e) *Additional data and inspection.* Additional data may be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. Dealers are required to make tuna available for inspection by the Science and Research Director or an authorized officer and must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito;

(f) *Recordkeeping.* Dealers must retain at their place of business a copy of each bi-weekly report for a period of 2 years from the date on which each was required to be submitted to the Regional Director.

(g) *Exemptions.* Dealers located in Puerto Rico and the Virgin Islands who purchase, sell, or re-sell only Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito taken shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands by handgear are exempt from the reporting and recordkeeping requirements of this section.

§ 285.57 Purse Seine vessel requirements.

(a) *Mesh size.* Any owner or operator of a purse seine vessel conducting a directed fishery for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must use a purse seine net with a mesh size as specified under § 285.25(a).

(b) *Inspection.* The owner or operator of a purse seine vessel conducting a directed fishery for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of any regulated species. The owner or operator must request such inspection at least 48 hours before commencement of the first fishing trip of the season. In addition, at least 48 hours before commencement of offloading any Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito after a fishing trip, the owner or operator must request an inspection of vessel and catch by calling 508–563–5721 or 508–281–9261. The inability to provide for an inspection within 48 hours of notification shall constitute a waiver of this requirement. The owner or operator of a purse seine vessel must have the vessel's catch information recorded on the appropriate forms at the time of offloading and prior to transporting said tuna from the area of offloading.

§ 285.58 Incidental catch.

Persons or fishing vessels subject to the jurisdiction of the United States must release, in a manner to promote survival, any yellowfin tuna or bigeye tuna less than the minimum size specified in § 285.52 taken incidental to authorized fishing in the regulatory area.

§ 285.59 Prohibitions.

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States to do any of the following:

(1) Fish for, catch, possess, retain or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito without a valid permit required under § 285.53 and carried on board the vessel;

(2) Fish for, catch, land, retain or possess, Atlantic yellowfin or bigeye tuna below the minimum size specified in § 285.52;

(3) Fail to release immediately with a minimum of injury any Atlantic yellowfin or bigeye tuna that will not be retained;

(4) Fish for or catch Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito in a directed fishery with purse seine nets if without any remaining bluefin tuna allocation made under § 285.25(d);

(5) For any vessel other than a vessel holding a purse seine permit issued under § 285.53(d), to approach to within 100 yds (91.5 meters) of the cork line of any purse seine net used by any vessel fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito, or for any such purse seine vessel to approach to within 100 yds (91.5 meters) of any vessel, other than a purse seine vessel, actively fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito;

(6) Begin fishing or offloading from any purse seine vessel to which a permit has been issued under § 285.21 any Atlantic tuna without first requesting an inspection of the vessel in accordance with § 285.57(b);

(7) Fail to report the catching of any Atlantic tuna to which a plastic tag has been affixed under a tag and release program conducted by NMFS or any other scientific organization;

(8) Falsify or fail to make, keep, maintain, or submit any reports, or other record required by this subpart;

(9) Refuse to allow an authorized officer to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Atlantic tuna required by this subpart;

(10) Make any false statement, oral or written, to an authorized officer concerning the catching, harvesting, landing, purchase, sale, or transfer of any Atlantic tuna;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part;

(12) Refuse to permit access of NMFS personnel to inspect any records relating to, or area of custody of, Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito;

(b) It is unlawful for any person subject to the jurisdiction of the United States to violate any other provision of

this subpart, the Act, or any other rules implemented under the Act.

[FR Doc. 95–18419 Filed 7–21–95; 4:36 pm]

BILLING CODE 3510–22–P

50 CFR Part 663

[Docket No. 941265–4365; I.D. 071995B]

Pacific Coast Groundfish Fishery; End of Whiting Regular Season

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

ACTION: Fishing restrictions.

SUMMARY: NMFS announces the end of the regular season for the Pacific whiting (whiting) fishery off Washington, Oregon, and California and the reimposition of a 10,000–lb (4,536–kg) trip limit coastwide. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan that governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. This action is intended to keep landings close to the 1995 harvest guideline for whiting, while allowing small quantities to be landed by fresh fish and bait fisheries and as bycatch in other fisheries.

EFFECTIVE DATE: Effective from 0001 hours (local time), July 24, 1995, until the effective date of the 1996 annual specifications and management measures, which will be published in the **Federal Register**.

ADDRESSES: Comments on this action should be sent to Mr. William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Ms. Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these actions has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson 206–526–6140; or Rodney R. McInnis 310–980–4040.

SUPPLEMENTARY INFORMATION: At its October 1994 meeting, the Pacific Fishery Management Council (Council) recommended that a 10,000–lb (4,536–kg) trip limit apply to landings of whiting after the end of the regular season (when the harvest guideline is reached) (60 FR 2339, January 9, 1995). At-sea processing of whiting was prohibited on May 4, 1995 (60 FR 24572, May 9, 1995) when 107,000 metric tons (mt) (60 percent of the 178,400 mt harvest guideline) was projected to have been taken (102,624 mt for at-sea processing and 3,932 mt for shore-based processing). The remaining 71,844 mt of the harvest guideline was reserved for delivery to shore-based processors.

Based on the best available information on current and projected rates of landings, the Regional Director has determined that approximately 168,346 mt of whiting has been caught through July 16, 1995, and that at a rate of about 1,200 mt delivered shoreside per day, the 178,400 mt harvest guideline would be reached on July 24, 1995. Therefore, the regular season ends and the 10,000–lb (4,536–kg) trip limit for whiting resumes at 0001 hours (local time), July 24, 1995. Because at-sea processing of whiting is prohibited, this trip limit applies only to vessels delivering shoreside. The trip limit is intended to accommodate small bait and fresh fish markets and the bycatch of whiting in other fisheries.

NMFS Action

NMFS announces the following change to the 1995 fishery specifications and management measures for whiting published at paragraph IV.F.(1)(b) (60 FR 2343, January 9, 1995) as follows:

(b) No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed, per vessel per fishing trip.

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the office of the Regional Director (see **ADDRESSES**) during business hours. This action was recommended by the Council at its October 1994 meeting, and was announced in the annual specifications and management measures on January 9, 1995 (60 FR 2331). There was an opportunity for public comment at the August and October 1994 Council meetings. Supporting documents (catch projections) were available for public inspection prior to, and at, the June 1995 Council meeting. Because of the need for immediate action, and because the public had an opportunity to comment on the action at Council meetings, NMFS has determined that good cause exists for this action to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. This action is taken under the authority of 50 CFR 663.23(b)(3) and (c)(1)(i)(I), and is exempt from review under E.O. 12866.

Dated: July 21, 1995.

Richard W. Surdi,

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

[FR Doc. 95–18432 Filed 7–24–95; 11:55 am]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 072095B]

Groundfish of the Gulf of Alaska; ''Other Rockfish'' in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting the retention of ''other rockfish'' in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catches of ''other rockfish'' in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the ''other rockfish'' total allowable catch (TAC) in the Central Regulatory Area of the GOA has been reached.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), July 21, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

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

In accordance with § 672.20(c)(1)(ii), the TAC for ''other rockfish'' in the Central Regulatory Area was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 370 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for ''other rockfish'' in the Central Regulatory Area of the GOA has been reached. Therefore,

NMFS is requiring that further catches of ''other rockfish'' in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 672.20(e).

Classification

This action is taken under § 672.20 and is exempt from review under E.O. 12866.

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

Dated: July 21, 1995.

Richard W. Surdi,

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

[FR Doc. 95–18420 Filed 7–21–95 4:36pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 144
Thursday, July 27, 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.

FARM CREDIT ADMINISTRATION

12 CFR Parts 615, 618, and 620

RIN 3052–AB48

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Disclosure to Shareholders; Capital Adequacy

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the FCA Board (Board), proposes amendments to FCA capital regulations for Farm Credit System (Farm Credit or System) institutions to add unallocated surplus and total surplus standards for banks and associations; add a collateral ratio for banks; add procedures for the establishment of individual institution capital standards and for the issuance of capital directives; remove outdated provisions; and make other technical, clarifying, and conforming changes. The regulation would require that each institution maintain at least a minimum level of unallocated surplus and total surplus capital, and that banks maintain at least a minimum collateral ratio. In addition, the regulations would specify procedures for setting higher individual capital standards when warranted by higher risk and issuing capital directives.

DATES: Written comments must be received on or before October 25, 1995.

ADDRESSES: Comments should be submitted in writing to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Surplus and Collateral Requirements

System banks and associations should hold sufficient capital to operate in a safe and sound manner, provide a foundation for future viability, and provide a reasonable level of protection to shareholders who must purchase equity in a System institution as a condition of receiving a loan. The FCA proposes to require System banks and associations to maintain the following capital standards in addition to the existing risk-adjusted permanent capital standards:

- A ratio of at least 7 percent of total surplus to risk-weighted assets; and
- A ratio of at least 3.5 percent of unallocated surplus to risk-weighted assets.

For purposes of the total surplus computation, institutions would be permitted to treat the following as surplus: stock held by non-borrowers, allocated stock, and stock held by borrowers that was not purchased as a condition of receiving a loan, provided that all of such stock can only be retired pursuant to a discretionary revolvement plan of at least 5 years or a similar retirement plan. Perpetual stock held by non-borrowers could also be included in the unallocated surplus computations. For the purposes of the total surplus computation, the double counting of association investments in their affiliated banks would be eliminated according to the permanent capital allotment agreements. However, the unallocated surplus measurement for an association would be net of the association's investment in the bank.

In addition, banks would also be required to maintain a collateral ratio of at least 104 percent of eligible assets (as defined by § 615.5050 of existing FCA regulations) to liabilities, net of any bank equities that are being counted as permanent capital of associations.

The existing permanent capital requirements would continue unchanged. An institution that falls below its permanent capital ratio is statutorily prohibited from further retirement of borrower stock, but noncompliance with the proposed surplus and collateral standards would not result in the same prohibition. However, as proposed by these regulations, noncompliance with the surplus or collateral ratios would prohibit the board of directors of an institution from delegating the decision to retire stock to management.

Institutions that do not satisfy the proposed surplus and collateral standards would be required to develop and implement a plan approved by the FCA for building surplus to attain the standards within a reasonable time. An association that does not meet the unallocated surplus standard would have the option, as part of its capital plan, of entering into a risk-sharing agreement with its affiliated bank. Under such a risk-sharing agreement, the bank would share association losses up to an amount not to exceed the amount of bank equities counted as association permanent capital. Institutions meeting the goals of plans approved by the FCA would be considered to be in compliance with their applicable surplus and collateral ratios.

II. Background

Since 1986, the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 *et seq.*, has required the FCA to ''cause institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such System institutions and by using such other methods as the [FCA] deems appropriate.'' Section 4.3(a) of the Act. Provisions of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100–233, added a requirement that the FCA promulgate regulations establishing minimum standards of ''permanent capital'' as defined in the statute. These standards were required to be based on financial statements prepared in accordance with generally accepted accounting principles (GAAP) and to take into consideration relative risk factors as determined by the FCA.

Most of the FCA's existing capital regulations were adopted in 1988, in order to implement the permanent capital provisions of the 1987 Act. Those regulations: (1) Established a minimum permanent capital standard for both banks and associations of 7

percent of risk-weighted assets, after elimination of intra-System reciprocal investments; and (2) prohibited the double counting of capital invested by associations in their affiliated banks. Such capital was to be counted as permanent capital by only one institution, and the regulation specified that eventually only the bank could count it. In October 1992, the statutory definition of ''permanent capital'' was amended by Congress to permit banks and associations to specify by mutual agreement the amount of allocated equities that would be considered bank or association equity for the purpose of calculating the permanent capital ratio. In July 1994, the FCA amended the regulations to implement the statutory change.

The 1992 statutory change was a response to concerns raised by the System that the 1988 regulatory provisions would have resulted in additional tax liabilities for Farm Credit associations. The associations' investments in their respective banks resulted over a period of many years and largely consisted of allocated equities—that is, earnings that tax-exempt banks distributed to their owner associations in the form of stock or allocated surplus rather than cash. When earnings were distributed in the form of equities, taxes did not have to be paid by the associations.

III. Purposes of Capital

The capital structure of a System institution, at a minimum, needs to fulfill three broad purposes:

A. To provide a cushion that will allow an institution to remain financially viable during periods of adversity, thereby protecting the System institutions, investors, and taxpayers;

B. To provide a source of funds to help stabilize earnings and finance growth; and

C. To denote and protect the ownership, investment, and rights of shareholders.

There are several categories of capital in the System that, in combination, achieve one or more of these fundamental purposes of capital. These categories are: borrower stock; participation certificates; preferred stock; allocated equities; and unallocated surplus. Borrower stock is common shareholder equity purchased as a condition of obtaining a loan with a System institution.[1] Participation certificates are similar to borrower stock and arise from authorized lending relationships with entities and individuals ineligible to own borrower stock.[2] Preferred stock may be sold to individuals separate from the lending relationship and provides preferential treatment, such as the payment of fixed dividends or preference over common shareholders upon liquidation. Allocated equities, including allocated surplus and allocated borrower stock, result from a patronage allocation of an institution's earnings to its active members. Finally, unallocated surplus is the unallocated retained earnings of an institution.

IV. FCA Review and Concerns

The FCA has been engaged in a comprehensive review of its capital regulations to determine whether they create appropriate incentives for the accumulation of adequate amounts of various components of capital, in light of risks undertaken by the System. The FCA has also reviewed the principles of the 1988 international framework for capital standards, known as the Basle Accord, and capital regulations imposed by Federal banking agencies on commercial banks and thrifts, as well as a publication evaluating the adequacy of those regulations by staff of the Federal Deposit Insurance Corporation (FDIC), for information that may be relevant to determining the adequacy of System capital. As a result of this review, the FCA has concluded that the proposed minimum surplus and net collateral ratios would generate an additional level of protection for both borrower/shareholders and investors in the System's debt instruments.

A. Regulatory Requirements Need To Ensure Sufficient Capital

The FCA believes that a mixture of capital components is necessary to achieve a sound capital structure, and that each institution should have a minimum amount of secure capital that is not at risk at another System institution. As a result, the FCA has the following concerns.

1. Long-term Stability for Associations Requires a More Stable Capital Base Than Just Borrower Stock and Should Provide Some Cushion for Borrower Investments

Under existing regulations, it is possible for an institution to rely solely on borrower stock to meet its minimum capital standards, by establishing a stock purchase requirement of 7 percent or more of the loan amount. An institution may then be in compliance but have little or no surplus to cushion the investment of a shareholder. While the shareholder's investment is at risk and provides some protection to the institution, the Agency believes that it is imprudent to make such investments vulnerable to even modest levels of adversity, given the cooperative structure of the System.

For most corporations, common equity capital is generally a permanent source of funds. Once the equity shares are issued, the company permanently retains the proceeds. The stock may trade among investors, but an individual shareholder may not demand that the company retire the stock. Unlike corporate equity capital, System borrower stock may be, and often is, retired upon repayment of a borrower's loan at the board's discretion. If pending losses threaten the value of an association's stock, borrower/shareholders can obtain financing elsewhere, pay down their loan and request retirement of their stock. As a practical matter, in a situation in which the institution still meets its permanent capital requirements, the degree to which borrower stock acts as a buffer for absorbing loss depends on the extent to which the association refrains from retiring stock.

For an association to use this authority in a way that makes borrower stock a meaningful buffer, the association has to recognize potential losses in a timely manner and be willing to withhold proceeds from stock retirement requests. However, such actions can signal problems to existing and potential borrowers at the association. Thus, an association might continue to make retirements until the evidence of serious adverse financial conditions is abundantly clear. By then, the stock of many members may have been retired, and remaining members would bear the loss. Therefore, despite the fact that borrower stock is an at-risk investment like any common equity stock, it is less able to absorb losses than common equity capital. By contrast, a minimum surplus requirement would provide a more permanent source of capital that is capable of absorbing losses and of providing protection to the investments of borrower/shareholders.

Another concern is that an institution can grow in an unbounded manner if each new loan is fully capitalized by borrower stock. Similarly, the institution's capital base can fluctuate significantly when borrowers repay or prepay loans and their stock is retired.

[1] Institutions are authorized to issue common stock to non-borrowers, but no such stock has been issued.

[2] For the remainder of the preamble, further references to borrower stock will include participation certificates, as applicable. Participation certificates are considered to be similar to borrower stock from a financial perspective, even though voting rights differ.

In addition, the most frequent source of an association's financial stress is borrower adversity, whether it is the result of widespread adverse financial conditions (as it was in the mid-1980s), or the result of troubled conditions in a region or industry in which an association has a concentration of loans. As occurred in the mid-1980s, when an institution is unable to retire borrower stock because of financial stress, the institution's business and its borrower/shareholders are adversely affected.

2. ''Local'' Unallocated Retained Earnings (URE) Are Important to Institutions During Periods of Economic Adversity

Over a number of years, most associations in the System accumulated URE, in part, through non-cash earnings distributions from their affiliated banks. Since these non-cash distributions have seldom been retired, some portion of these distributions has resulted in an increase to URE on the associations' balance sheets and yet has continued to be reported as allocated equities on the bank's financial statements. Certain associations have little or no URE that is not also included in the bank's GAAP capital. This group of associations is particularly vulnerable to financial adversity at their affiliated banks because most of their capital other than borrower stock is at risk in both the bank and the association. When a bank sustains losses, all of the bank's capital is available to absorb losses, regardless of whether it is being counted as permanent capital at the association. It follows that such capital will not be available to absorb association losses, which can create a domino effect in troubled times, since adversity in one institution can cause adversity in many or all institutions in the district.

The FCA conducted a study of production credit associations (PCAs) that became financially stressed during the 1980s. The sample used represented a comparable set of financially stressed and healthy institutions. Although the number of institutions and quarters of historical financial data were limited, the FCA was able to make inferences regarding capital levels and long-term viability. The healthy associations, which had unallocated surplus net of their investments in their affiliated banks, were better able to withstand adversity and stay financially viable without assistance. However, associations with no or low surplus, after deducting the investment in the bank, generally could not independently withstand an adverse economic environment without assistance or other action to address their financial deterioration.[3]

A URE cushion that does not include the association's interdependent investment in its affiliated bank provides optimum protection for borrower/shareholders. Losses at the affiliated bank stemming from adversity in other associations or from risks borne by the bank (funding, investment, operational, etc.) could impair the investment in the bank and deplete association capital. Consequently, an association with a large URE and a high permanent capital ratio may not be adequately insulated from adversity if it relies heavily on capital that is invested in its affiliated bank. Strong local URE allows the association to remain viable even if the investment in the bank becomes impaired. The likelihood of the bank and associations sustaining losses simultaneously greatly amplifies the need for a local URE standard.

3. A Sufficient Level of Eligible Collateral Is Needed To Protect Investors in the System's Debt Instruments

The basis for funding banks within the System is the maintenance of sufficient eligible collateral. Performing agricultural loans make up the bulk of eligible collateral,[4] followed by marketable securities and cash. Nonperforming loans and acquired property also provide eligible collateral, after deducting for losses. During the 1980s, the collateral positions of the Farm Credit banks were a critical measure of survival. As an example, the collateral of one bank was exhausted, and the bank lost its ability to independently obtain funding from the marketplace before its capital was depleted.[5]

Farm Credit banks have long used a collateral ratio as a principal indicator of financial strength. Both the Market Access Agreement and the Contractual Interbank Performance Agreement (CIPA)[6] use a collateral ratio as a critical measure of bank financial viability and survivability. A bank failure within the System would have grave consequences not only for that bank and its affiliated associations, but also for the other System banks because of joint and several liability and the market perception of the System as a single entity seeking funding.

The FCA believes that a bank could be shut out of the securities markets if its collateral ratio (as defined in § 615.5050 of the regulations) dropped below 100 percent. Thus, a margin of safety above this level is reasonable, in order to protect investors and allow sufficient time for corrective action to be implemented prior to a funding crisis at an individual bank, and thus district, level. Also, the FCA believes that the net collateral position of a bank, net of its equities counted by associations as part of their permanent capital, affords better protection for both investors and shareholders.

Both the statute and the FCA's capital regulations require a permanent capital calculation that eliminates the double counting of capital shared by System institutions through the allotment agreements. Similarly, the FCA believes a collateral ratio adjusted for the allotment agreements is another appropriate measure of financial safety. This would help ensure that the bank has sufficient capital, net of any capital counted as association permanent capital, to protect investors and shareholders. Specifically, it prevents a bank from placing such equities at risk for investor protection at the same time that associations are placing them at risk for credit and other purposes.

B. Basle Accord and Capital Regulations of Other Regulators

As a part of its review, the FCA has re-examined the 1988 Basle Accord agreed to by the Committee on Banking Regulations and Supervisory Practices, which meets under the auspices of the Bank for International Settlements in Basle, Switzerland. In the existing capital regulations, the FCA incorporated the Basle Accord principles of weighting assets, including off-balance-sheet items, according to categories of risk. However, the FCA did not incorporate in the regulations the two-tiered approach of the Basle Accord, which requires that each institution have at least a minimum amount of ''core capital'' (primarily stable equity capital), which must constitute at least 50 percent of the required capital of the institution. Rather, the FCA treated all types of capital meeting the statutory definition of permanent capital as if they were of

[3] In fact, the stressed PCAs in the study generally had no ''local'' URE. The median value was actually below zero. These PCAs were subsequently merged or provided financial assistance.

[4] Such loans consist of loans made directly by the bank or, in the case of a bank's wholesale lending activities, the loans made by the direct lender associations which are pledged as security for the associations' direct loans from the bank (up to the amount of the direct loan).

[5] The bank was able to maintain access to the funding markets only after certain other System banks agreed to pledge excess collateral to the troubled bank.

[6] These are self-monitoring agreements among the Federal Farm Credit Banks Funding Corporation (Funding Corporation) and System banks that specify levels of bank financial performance, as well as the consequences of a bank's falling below such levels.

equal value to the institution to absorb losses.

The Federal regulatory agencies for commercial banks and thrifts in this country—the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System—have all adopted capital regulations that are consistent with the Basle Accord framework. In each agency's two-tiered capital system, core or Tier 1 capital is mainly composed of common stock, surplus, noncumulative perpetual preferred stock, and minority interests in consolidated subsidiaries. Supplementary or Tier 2 capital is composed of a portion of the allowance for loan losses and all other kinds of capital and capital-like instruments, up to an amount equal to the amount of Tier 1 capital. The minimum capital requirement is 8 percent. Commercial banks and thrifts also have a minimum leverage requirement, calculated as the ratio of Tier 1 capital to total (*i.e.,* not risk-adjusted) assets, to protect against risks other than credit risk.

Common shareholders' equity in commercial banks and thrifts is the most stable, permanent form of capital because it is fully paid and is rarely retired. By contrast, nearly all of the common equity capital of System associations is borrower stock, which lacks the characteristic of permanence because it is retired in the ordinary course of business of the associations.

The FCA also reviewed an FDIC staff study published in 1993 that compared the risk-based standards for commercial banks to the primary and secondary capital constraints they had replaced.[7] The previous standards differed from the current 8-percent standard in two important ways: the assets were not risk weighted, and all of the allowance for losses (ALL) was included in capital. The study concluded that the risk-based standard was a better predictor of the potential failure of a bank than the previous standards for two reasons: (1) The exclusion of ALL from Tier 1 and its only limited inclusion in Tier 2 improved the quality of the capital measure; and (2) the risk-based measure was more sensitive to credit risk.[8] But the study also concluded that using both the risk-based standard and the new Tier 1 capital-to-total-assets leverage ratio together was a better predictor of failure than either one separately, because in many cases the leverage ratio, which addressed risks other than credit risk, provided a more stringent test of capital adequacy.

C. Farm Credit System Observations

In May 1993, the System's Presidents Planning Committee appointed a capital adequacy work group (System group) with the charge of reviewing the FCA's capital adequacy regulations and making recommendations for improvements. As a result of this effort, in November 1993 the System group provided the FCA with a report of its findings and suggestions. The System group refined this report with a supplemental document submitted to the FCA in April 1994. The System group informed the FCA that the group had consulted with all the banks and a number of associations in developing its final report.

The final report recognized concerns with existing regulatory requirements similar to those identified by the FCA. The System report supported a requirement to build unallocated surplus and allocated surplus to buffer borrower stock from potential losses and to insulate an institution's capital position from the potentially volatile nature of borrower stock. The report noted the important role borrower stock plays in obtaining new loans and retaining quality business, given the cooperative structure of the System. The report also acknowledged the need to protect investors in System securities.

The System group recommended that the FCA establish regulatory standards requiring all institutions to build unallocated surplus and total surplus (*i.e.,* allocated equities and unallocated surplus) by annually retaining a portion of earnings. The System group's proposed goals of 3.5-percent unallocated surplus and 7-percent total surplus were proposed to be achieved by retaining at least 10 percent of net earnings after taxes in unallocated surplus and at least 50 percent of net earnings in unallocated and allocated equities. These objectives were based on the regulatory permanent capital framework and used risk-adjusted assets as the ratios' denominators.

The System group's report also recognized the need to protect investors in System securities. The System recommended that each bank begin reporting to the Funding Corporation its collateral position net of bank equities being counted at associations for permanent capital purposes. The System group stated that its recommendation ''effectively prevents the bank from placing such equities at risk for investor protection at the same time that associations are putting them at risk for credit and other purposes pursuant to an allotment agreement,'' and further that ''[i]t gives tangible recognition to the spirit and intent of the . . . 1992 legislation.''

Similarities and differences between the FCA's proposed regulation and the System group's suggestions are discussed below in section C of part V.

V. FCA Conclusions and Proposals for Surplus and Collateral Ratios

The FCA makes the following proposals:

A. Surplus and Collateral Requirements

Each Farm Credit institution[9] should have some minimum amount of capital in the form of unallocated surplus, allocated equities or stock not required to be purchased as a condition of obtaining a loan, in order to protect against losses. Part of the surplus should be unallocated surplus that provides a cushion for borrower stock and allocated equities and that does not also support risks in another System institution. The FCA believes that this unallocated surplus would better enable an institution to withstand its own losses and also insulate both the institution and its borrowers from adversities suffered by related System institutions.

1. Unallocated Surplus Requirement

The FCA proposes that institutions have unallocated surplus of at least 3.5 percent of risk-weighted assets. For this purpose, unallocated surplus would include common stock and noncumulative perpetual preferred stock held by non-borrowers, provided that the institution adheres to a policy of not retiring such stock. For associations, the net investment in its affiliated bank—that is, the total investment less reciprocal investments, pass-through stock, and investments related to loan participations—would be subtracted from the unallocated surplus. For both banks and associations, the risk-weighted asset base would be calculated as it is for the institution's permanent capital requirement, except

[7] John P. O'Keefe, ''Risk-Based Capital Standards for Commercial Banks: Improved Capital-Adequacy Standards?'' published in the *FDIC Banking Review,* Spring-Summer 1993.

[8] ALL is already excluded from the permanent capital measure for System institutions; so the FDIC staff finding is not directly relevant with respect to the inclusion of ALL. However, the finding is important because it shows the necessity of assuring at least a minimum amount of the highest quality of capital.

[9] ''Institution'' includes each System bank, System association, and the Farm Credit Leasing Services Corporation. It does not include other System entities, such as other service corporations. The surplus ratios for the Leasing Corporation are calculated the same way as the surplus ratios for banks. However, the Leasing Corporation would not have to maintain a net collateral standard.

that an association's assets would be reduced by the net investment in the bank. The unallocated surplus ratio would be calculated as follows:

$$\frac{(\text{URE}) + (\text{qualifying stock}) - (\text{net investment})}{(\text{Risk-adjusted assets}) - \text{Risk-adjusted net investment})}$$

If this proposed regulation is enacted, the existing requirement in § 615.5330 for banks for cooperatives to add a percentage of earnings to unallocated surplus annually would be replaced by the new requirement.

The FCA believes this minimum unallocated surplus requirement is needed to provide a source of permanent at-risk capital that does not depend on the financial condition of the bank and that protects against the suspension of stock retirements when problems emerge.

2. Total Surplus Requirement

The FCA proposes a requirement that each institution hold total surplus (adjusted according to the permanent capital allotment agreement, or according to the allotment regulation if there is no agreement) equal to 7 percent of risk-weighted assets. The total surplus would consist of the capital treated as unallocated surplus for the purposes of the unallocated surplus ratio (prior to any deductions for investments in the banks), as well as certain allocated equities and other stock. Allocated equities would consist of allocated surplus and allocated stock subject to a discretionary revolvement plan of 5 years or more, or not projected to be retired under the institution's capital adequacy plan. Other stock included in total surplus would be stock other than stock that has been purchased as a requirement of obtaining a loan and would be either perpetual stock or, if term stock, have an original maturity of at least 5 years; furthermore, the institution must adhere to a policy of not retiring the perpetual stock and of not retiring the term stock prior to its maturity. The amount of such term stock that is eligible to be included in total surplus would be reduced by 20 percent in each of the last 5 years of the life of the instrument.[10] The risk-weighted asset base would be the base as calculated for the institution's permanent capital ratio. The total surplus ratio would be calculated as follows:

$$\frac{(\text{URE}) + (\text{qualifying allocated equities}) + (\text{qualifying stock})}{\text{Risk-adjusted assets}}$$

3. Net Collateral Requirement

The FCA proposes that all System banks should also maintain a net collateral ratio of at least 104 percent of eligible assets (which are defined by § 615.5050), exclusive of any amounts counted as association permanent capital, divided by total liabilities. This measure would differ from the measure of eligible collateral that is required by section 4.3(c) of the Act in that it would eliminate any double-leveraged capital by ''netting out'' the capital counted as association permanent capital pursuant to the allotment agreements.[11] A 104-percent minimum net collateral ratio affords an added measure of protection should market forces cause a decline in the underlying value of collateral.

This ratio would also provide the overall protection against other risks that a leverage (*i.e.*, total assets) ratio is intended to address and that ratios based on risk-adjusted assets do not fully provide for. For example, it would provide important information on a bank's ability to withstand losses associated with management and operational risks. Management and operational risks are not readily measurable, but they are often serious sources of risk in a financial institution.

B. Compliance

1. Capital Plans

Institutions that are below any applicable minimum surplus or collateral standards on the effective date of the regulations, or that fall below the minimum standards after the effective date, would be required to develop and submit a capital plan acceptable to the FCA for achieving the minimum standards.[12] The plan would include an explanation of how the institution will build surplus, realistic projections and goals for increasing the pertinent ratios, and a reasonable timeframe for achieving the minimum capital standards. An association that proposes a long timeframe for achieving its minimum unallocated surplus standard would generally be expected to have a Risk-Sharing Agreement, as described below, as part of its capital plan; however, determination of the appropriateness of having a Risk-Sharing Agreement would be made on a case-by-case basis. An institution that is meeting the goals of its approved plan would be deemed by the FCA to be in compliance with the surplus and collateral standards.

2. Risk-Sharing Agreements

a. *Noncompliance on the Effective Date.* Associations that are below their unallocated surplus standard on the effective date of the surplus requirements would have the option of including a Risk-Sharing Agreement with their affiliated bank as a part of their capital plan. Under such a Risk-Sharing Agreement, the affiliated bank could agree to share specified association losses. The maximum amount of such specified losses may not be greater than the amount of the association's investment in the bank counted as association permanent capital during the term of the Risk-Sharing Agreement. While the agreement is in effect, the bank would have to defer sharing in losses when it is below its own minimum capital standards, or when doing so would cause it to fall below them.

An association would be able to count in its unallocated surplus the amount its bank agrees to cover in the event of loss.

[10] Thus, for example, in the first year after its issuance, term stock with a 5-year maturity would count in surplus in an amount equal to 80 percent of its value; in the fifth year, none of the stock would be counted in surplus.

[11] This net collateral position would not replace the collateral requirement of section 4.3(c) of the Act and, indeed, could not do so without a statutory amendment. The FCA is not considering proposing such a statutory change.

[12] Such a plan would supplement or amend the capital adequacy plan required by § 615.5200 of the regulations.

Any association losses actually absorbed by the bank (which would probably be reflected by a reduction of the amount of the association's direct loan) would then have to be allocated back to the association by the bank, which would result in a reduction of the association's investment in the bank.

The FCA notes that an association with a Risk-Sharing Agreement must continue to build unallocated surplus net of the investment in the bank during the time period of its capital plan, so that the association will have achieved at least the minimum standard when the Agreement terminates.

The risk-sharing arrangement would have two potential benefits for the associations. First, an association would be able to report a higher unallocated surplus ratio without directly generating the earnings itself or causing a taxable event. Second, in the event that the association does sustain losses, the sharing of the losses by the bank would mitigate the effect of the losses on the association's loanable funds position. ''Loanable funds position'' refers to the association's levels of interest-earning assets and interest-bearing liabilities. A positive loanable funds position means that interest-earning assets exceed interest-bearing liabilities.

There is also a benefit for the bank and the other associations in the district. That is, the allocation of losses by the bank back to the association would mean that the bank's unallocated surplus would not be reduced by the association's losses shared in by the bank, and the interest rates on direct loans to the other associations should not be affected.[13] Without a loss-allocation requirement, the Risk-Sharing Agreement would require a bank to come to the assistance of an association without ultimately holding the association accountable for that assistance.

b. Subsequent Noncompliance

An association that falls below the unallocated surplus standard subsequent to the effective date of the regulations could propose a Risk-Sharing Agreement with its affiliated bank as part of its capital plan, but the FCA would approve it only under appropriate circumstances. Factors the FCA would consider would include: (1) The causes of the decline in the association's surplus ratio; (2) the present and projected financial health of the affiliated bank and other associations in the district; (3) the bank's continued ability to meet its own capital ratios under risk sharing; and (4) the likelihood that the association will sustain significant losses in the near term.

An example of a circumstance in which risk sharing may be appropriate would be a temporary decrease in an association's unallocated surplus ratio due to a significant and immediate growth in assets. There may also be times when an association is experiencing losses, but the affiliated bank is very well capitalized and the other associations in the district are healthy. In this situation, the prospects are very high that a bank would be able to share an association's losses when needed, without causing undue stress on the bank or other associations in the district. Therefore, a Risk-Sharing Agreement may be appropriate.

3. Other Considerations

In the development of these proposed regulations, the FCA considered making the Risk-Sharing Agreement a permanent means of association compliance with the unallocated surplus standard. If the Agreement were a permanent method of compliance, an association with an Agreement would not be required to build unallocated surplus to at least 3.5 percent net of its investment in the bank. Arguments in favor of doing so are that this approach would better reflect the value to the association of an important intra-System asset and that it would not limit the discretion of an association and its affiliated bank to accumulate earnings at the bank in order to minimize taxes. However, permitting a Risk-Sharing Agreement to, in effect, substitute for unallocated surplus net of the investment in the bank would fail to address an important safety and soundness concern—that is, the concern that institutions have a minimum amount of capital in excess of borrower-owned equities that is not at risk in other Farm Credit institutions. It is only by having unallocated surplus net of its investment in the bank that an association will be insulated from problems that may be suffered by the bank (due, in most cases, to problems at other associations).

As stated above, a Risk-Sharing Agreement would not permit the bank to share association losses if the bank is not meeting all of its capital requirements, including the surplus and collateral requirements.[14] Consequently, in a time of widespread financial stress for Farm Credit institutions, associations with Risk-Sharing Agreements would not be sufficiently insulated from the problems of other Farm Credit institutions, because the bank may be unable to perform under the Risk-Sharing Agreement.[15]

The FCA has, therefore, provided in the proposed regulations that Risk-Sharing Agreements may be used only temporarily as a means of complying with the unallocated surplus requirement and that associations must eventually meet the minimum standard on their own. However, the FCA specifically invites comments and suggestions on the use of the Risk-Sharing Agreements to meet the unallocated surplus requirements on a permanent basis, as well as any alternative methods of ensuring that associations have sufficient surplus that is not at risk in other Farm Credit institutions.

4. Terms and Conditions of the Risk-Sharing Agreement

The term ''Risk-Sharing Agreement'' has been chosen to distinguish the arrangement from the loss-sharing agreements previously entered into by some Farm Credit institutions. Unlike the previous loss-sharing agreements, which obligated one institution to use funds that it had earned to absorb losses at another institution that otherwise had no claim on the funds, the Risk-Sharing Agreement covers only funds earned (albeit allocated from the bank) by an association and accumulated at the bank to absorb losses at that association.

The basic terms and conditions of a Risk-Sharing Agreement would limit the amount of exposure to the bank. Restrictions on such an arrangement, which are intended to protect both parties, would be as follows:

[13] Most wholesale banks in the System currently do not require equalization of associations' investments in the bank; instead the banks compensate their affiliated associations based on the relative size of the association's investment in the bank. The risk-sharing arrangement would work under these circumstances. If the district's associations are required to equalize their relative investments in the bank on a regular basis, risk sharing might not be a viable option.

[14] The FCA recognizes that sharing association losses under the Agreement would not reduce the permanent capital or total surplus ratios of the bank and would only temporarily reduce the unallocated surplus and collateral ratios, until losses are allocated back to the association. However, the risk sharing would result in a reduction of total bank capital, which could eventually expose System investors to greater risk.

[15] The FCA notes that there were complaints from certain System managers during the late 1980s, and even as recently as 1994, about bank assistance to weaker associations. During the 1980s, certain financially strong direct lender associations in some districts expressed reservations about their district bank's provision of assistance to other, weaker associations in the district. The managers of the stronger associations complained that the weaker associations were being given assistance without any requirements to repay, and that the funds were coming from the unallocated surplus of the bank, which, in the view of some, should be used to keep the cost of all direct loans to associations at the lowest level possible.

a. The maximum dollar amount of losses the bank could participate in would be specified by the Agreement and could not be greater than the amount allocated to the association by the bank that is counted as permanent capital of the association. Such amount would be counted in the 3.5-percent unallocated surplus capital of the association.

b. The bank's participation in association losses must begin on or before the point when losses of the association exceed the association's current year's earnings.

c. The percentage of bank participation in a loss could not be less than 25 percent and would automatically increase to 100 percent when the association's unallocated surplus, net of the investment in the bank, is exhausted. In other words, the bank would share losses up to the maximum amount specified in the Agreement before other association capital is charged.

d. The amount committed to risk sharing by a bank could not be reduced, except by payment to the association, until the association's unallocated surplus ratio net of its investment in the bank is in excess of 3.5 percent. The association and the bank may, of course, agree that the bank will share losses of the association even when the association's unallocated surplus ratio exceeds the minimum requirement without counting the amount covered by the Risk-Sharing Agreement.

e. A bank would be prohibited from sharing any association losses under the Agreement when the bank's permanent capital ratio, surplus ratios, or net collateral ratio is below any of the minimum standards, or if sharing in the losses would cause it to fall below any of the standards.

f. A bank would be required to allocate any losses shared pursuant to the Risk-Sharing Agreement back to the association where the loss was incurred. The allocation of losses back to the association, which may be implemented under general cooperative practices in the System, is essential to hold the association fully accountable for losses incurred.[16]

[16] The allocation of losses back to the association could be a book entry only, without the actual physical movement of assets. At the association level, capital would decrease because the investment in the bank would decrease. The allocation of losses by the bank would decrease the bank's allocated surplus and restore its unallocated surplus to the level prior to the losses taken under the Risk-Sharing Agreement.

C. Comparison of FCA Proposed Regulations and System Group's Proposal

The FCA's proposed regulations are broadly similar to the System group's suggested approach for establishing unallocated and total surplus standards. However, the FCA's proposed regulations differ with respect to achieving the standards, because the FCA believes that the System's proposal to require that a percentage of earnings be retained annually until the standards are met would not ensure that an institution experiencing growth, making cash distributions, or allocating equities would ever achieve the minimum surplus standards. The FCA proposes instead to require institutions not meeting the standards to submit a capital plan to achieve such standards. The FCA believes that achieving the standards over time is a complex planning issue with many considerations that are best addressed in a comprehensive capital plan. An institution that does not submit, or does not meet the goals of, an acceptable capital plan would not be in compliance with the capital requirements.

The FCA's proposed regulations also differ from the System group's proposal in how the unallocated surplus standard is calculated. The FCA is proposing that URE be reduced by an association's net investment in its bank. This approach would ensure that an association has a level of unallocated surplus to provide for financial strength that is independent of its bank affiliation. The FCA notes that, because the proposed surplus standards are separate requirements apart from the permanent capital standard, the failure to meet the minimum surplus standards would not alone trigger the statutory prohibition on the retirement of borrower stock.

The net collateral ratio for banks is proposed by the FCA to be calculated as recommended by the System group. However, the FCA is proposing that an enforceable minimum regulatory standard be set in lieu of the requirement to report the net collateral position to the Funding Corporation. The FCA concluded that a minimum net collateral standard is key to ensuring the building of capital at the bank to protect investors in System securities and to ensure an early warning mechanism for market access to funding, which is a critical safety and soundness issue.

VI. Retirement of Borrower Stock

As long as an institution's[17] unallocated and total surplus ratios meet or exceed applicable minimum standards, and the permanent capital position is at least 9 percent, the retirement of borrower stock may be delegated by its board of directors to management within certain parameters.

This provision clarifies what kind of delegations may be made by the board to management, consistent with the statutory mandate that stock is retirable only at the board's discretion. If an institution is meeting or exceeding its minimum surplus standards and, if applicable, collateral standard, the board may delegate the decision to retire borrower stock to management provided that the institution's permanent capital will remain at 9 percent or greater after the retirement. Management may make such retirements only in accordance with the institution's retirement policy and must report the aggregate amount of the retirements and their impact on the institution's capital position to the board every quarter. If an institution's surplus and collateral standards are less than the minimum requirements, or if its permanent capital would be less than 9 percent after the retirement, the institution's board of directors must specifically consider and approve each retirement of borrower stock prior to actual cash retirement or payout of the stock.

This proposed regulation is similar to a suggestion made by the System group. The System group recommended that stock retirements be delegable to management when an institution's permanent capital ratio is greater than 8 percent after the retirement, *or* when the institution had reached the surplus requirements (or, if not, had been applying the required proportion of earnings to surplus). The proposed regulation would set a higher permanent capital standard for delegations and would require the institution also to be in compliance with the surplus and collateral standards.

VII. Individual Institution Capital Ratios and Capital Directives

The FCA proposes regulations providing procedures to implement its statutory authorities: (1) To establish individual capital ratios for a single institution, and (2) to issue a capital directive to an institution that is below its minimum capital requirements (including individual institution standards, if any), or to the board of directors of an institution to prohibit the board from reducing the capital of the institution. These authorities would apply with respect to the proposed

[17] While this provision of the regulation addresses all institutions it is recognized that the delegation restriction would have a limited impact on most banks.

surplus and collateral ratios as well as to the permanent capital ratio. They provide another regulatory tool to the FCA to take appropriate action when an institution's capital is insufficient. The authorities differ from a cease and desist order in that a full hearing (as mandated by section 5.25 of the Act) is not required; therefore, the FCA may respond more quickly in order to minimize further deterioration of an institution's capital position.

These powers were granted to the FCA in 1986, at the same time the Agency was directed to set capital standards for System institutions. The FCA was authorized to ''establish such minimum level of capital for a System institution as the [FCA], in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the System institution.'' Section 4.3(a) of the Act. The FCA was further authorized to issue a capital directive to any System institution failing to maintain capital at or above the required level, including any individual minimum standard. Such a capital directive may, among other things, require the System to submit and adhere to a plan acceptable to the FCA describing how the institution will achieve its minimum capital requirements. Section 4.3(b)(2) and (3) of the Act.

The 1987 Act, which added permanent capital provisions to the Act, prohibited System institutions from reducing the permanent capital of an institution through the payment of patronage refunds or dividends, or the retirement of stock, if the permanent capital of the institution failed, or would fail, to meet the minimum capital adequacy standards established under section 4.3(a) of the Act, including the permanent capital standards. In addition, the FCA was authorized, pursuant to section 4.3A(e), to issue a capital directive to the board of directors of an institution to comply with such prohibitions if the board has failed to do so.

The issuance of a capital directive would be at the discretion of the FCA. Section 5.31 of the Act, as amended by the 1987 Act, provides that a capital directive ''shall be treated as an effective and outstanding order enforceable in the appropriate United States district court in the same manner and to the same extent as a final cease and desist order issued under section 5.25.'' In addition, civil money penalties may be imposed for violation of a capital directive pursuant to section 5.32. A capital directive could be issued in lieu of, in conjunction with, or in addition to other enforcement actions available to the FCA. Furthermore, the FCA could take any available enforcement action in lieu of issuing a capital directive.

These proposed regulations contain procedures for the establishment by the FCA of a permanent capital ratio, surplus ratios and, if applicable, a collateral ratio for an individual institution, as well as for the issuance of capital directives. The regulations are similar to the regulations of the OCC and the FDIC, which have nearly identical authority to the FCA's with respect to individual capital ratios and capital directives. *See* 12 U.S.C. 3907.

For the establishment of individual institution capital ratios, the procedures provide for notice to the institution setting forth the proposed individual capital ratio or ratios, the reasons the FCA has determined that such ratio or ratios are appropriate for the institution, and a statement that the institution has 30 days within which to comment in writing on the proposal. The 30-day time period may be shortened or lengthened in the discretion of the FCA, with proper notice of its action to the institution. The institution has the opportunity to agree to or object to the FCA's proposals and to state the reasons therefor, to propose modifications to the proposal, and to provide documentation or other relevant information, including information about any mitigating circumstances.

For the issuance of capital directives, the procedures are similar—notification to the institution of the proposed capital directive, a 30-day period for the institution to respond, an evaluation of the institution's response, and a determination to issue the capital directive as proposed, to modify it, or not to issue the capital directive at all.

VIII. Other Proposed Changes

A. Exclusion of Impact of FASB 115

The FCA has concluded that unrealized gains and losses should not be reflected in the permanent capital, surplus, or collateral ratios. The FCA is considering the implementation of interest rate risk requirements that would ensure that System institutions have sufficient capital to cover the level of risk taken for interest rates. The current requirements of the Financial Accounting Standards Board's (FASB) Statement No. 115 would include unrealized gains or losses based largely on the shifts in interest rates. Such a requirement may duplicate the efforts of an interest rate risk standard. The FCA notes that the other Federal bank regulators have now eliminated the unrealized gains and losses requirements of FASB Statement No. 115 from their capital standards.

B. Technical and Conforming Changes

The following amendments are being proposed to add new terms to the capital regulations, to remove obsolete terms and provisions, and to make conforming changes in other parts of the regulations:

Section 615.5201 is proposed to be amended to include the terms ''Federal land credit association'' and ''agricultural credit bank'' in the definition of ''institution.'' Changes would also be made to § 615.5220(d) and (e) to include such terms.

Section 615.5216, which granted forbearance to institutions that were below the minimum permanent capital standards when those standards became effective in 1988, is proposed to be deleted from the regulations because all institutions are now in excess of the minimum standard. References to the interim standards would also be deleted in §§ 615.5205, 615.5220(f), 615.5240(a), 615.5250(a)(4)(ii) and (iii), 615.5250(c)(3), and 615.5270(b).

Section 615.5230(b)(1) is proposed to be amended to eliminate the reference to preferred stock issued to the Financial Assistance Corporation. All such stock has been retired.

Section 615.5250(c), which pertains to the mandatory exchange of eligible borrower stock, is proposed to be deleted because all mandatory exchanges have been completed. A related provision in § 615.5260(a) would also be deleted.

Section 615.5260(d), which requires FCA approval of eligible borrower stock retirements other than in the ordinary course of business, is proposed to be deleted. The FCA has determined that it no longer has significant safety and soundness concerns regarding such retirements, because there is only a small amount of eligible borrower stock outstanding, and the FCA has not received an approval request since 1990.

IX. Regulatory Impact and FCA Regulatory Philosophy

These proposed regulations are consistent with the FCA Board's Policy Statement on Regulatory Philosophy and achieve the Board's objective of creating an environment that promotes the confidence of borrower/shareholders, investors and the public in the System's financial strength, and future viability. *See* 60 FR 26034, May 16, 1995.

The objective of the revisions to the capital regulations is to establish standards that encourage the building of a sound capital structure in System

institutions. The FCA expects the building of a sound capital structure at each institution to improve the likelihood of an institution's survival during periods of economic stress and thereby improve the safety and soundness of the System as a whole. Additionally, the regulations reflect the importance of capital structure to business viability for System institutions. The FCA believes that regulations implementing these goals must provide a meaningful measurement of capital adequacy and be appropriate for all System institutions.

These proposed regulations will affect all System banks, associations, and the Leasing Corporation because all such institutions will be required to adhere to the standards. However, less than 10 percent of the institutions would be below the standards, if the standards were in effect today, and those institutions will be required to build capital. As of the quarter ending March 31, 1995, 90 percent of the direct lender associations would have met the proposed surplus requirements had the requirements been in place on that date. All of the Federal land bank associations would have met the proposed surplus standards. Of the direct lender associations that would not have been in compliance, two associations would not have met either the total surplus or unallocated surplus ratios, nine additional associations would not have met the unallocated surplus ratio, and four additional associations would not have met the total surplus requirements. However, in most of those associations both types of surplus have been increasing steadily during the past 5 years, and the FCA estimates that most, if not all, of the associations would achieve the minimum standards in 7 years or less if these trends continue.

As of the quarter ending March 31, 1995, all eight banks would have been above the 7-percent total surplus standard.[18] In addition, five of the eight banks would have been above the proposed unallocated surplus ratio and the net collateral ratio. Of those that would not have met the proposed requirements, two banks would have been below the minimum unallocated surplus standard and one bank would have been below the net collateral standard. All banks have been building allocated and unallocated surplus over the past several years, although in some cases the ratios have not increased because assets have also grown.

The FCA has determined that the proposed regulations would not have a significant effect upon the general economy. In addition, the proposed regulations pertain only to System institutions and, therefore, would not present a conflict with the rules and regulations of other financial regulatory agencies. Due to the nature of the regulations, it is not anticipated that the regulations will have any material impact upon governmental entitlements, grants, user fees, or loan programs.

List of Subjects

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For reasons stated in the preamble, parts 615, 618, and 620 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

§ 615.5201 [Amended]

2. Section 615.5201 is amended by adding the words ''Federal land credit association,'' after the words ''Federal land bank association,''; and by removing the words ''National Bank for Cooperatives,'' and adding in their place, the words ''agricultural credit bank,'' in paragraph (g).

3. Section 615.5205 is revised to read as follows:

§ 615.5205 Minimum permanent capital standards.

Each Farm Credit System institution shall at all times maintain permanent capital at a level of at least 7 percent of its risk-adjusted assets.

4. Section 615.5210 is amended by removing paragraphs (f)(2)(i)(D) and (f)(2)(v)(D); redesignating paragraph (f)(2)(v)(E) as new paragraph (f)(2)(v)(D); adding a new paragraph (e)(2)(ii)(G)(*10*); and revising paragraphs (e)(2)(ii)(G)(*7*) and (f)(2)(i)(C) to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(G) * * *

(*7*) Each institution shall deduct from its total capital an amount equal to any goodwill.

* * * * *

(*10*) The permanent capital of an institution shall exclude any impact from unrealized holding gains or losses for available-for-sale securities.

(f) * * *

(2) * * *

(i) * * *

(C) Goodwill.

* * * * *

§ 615.5216 [Removed and reserved]

5. Section 615.5216 is removed and reserved.

Subpart I—Issuance of Equities

§ 615.5220 [Amended]

6. Section 615.5220 is amended by removing paragraph (f), redesignating paragraphs (g), (h), and (i) as paragraphs (f), (g), and (h), respectively; removing the words ''may be more than, but'' each place they appear in paragraphs (d) and (e); by adding the words '', agricultural credit banks (with respect to loans other than to cooperatives),'' after the words ''For Farm Credit Banks'' in paragraph (d); by adding the words ''and agricultural credit banks (with respect to loans to cooperatives)'' after the words ''For banks for cooperatives'' in paragraph (e); and by removing the words ''(including interim standards)'' in newly designated paragraph (f).

§ 615.5230 [Amended]

7. Section 615.5230 is amended by removing the words ''preferred stock to be issued to the Farm Credit System Financial Assistance Corporation and'' in paragraph (b)(1).

8. Section 615.5240 is amended by removing paragraph (b); redesignating the introductory paragraph and

[18] The FCB of Columbia and the FCB of Baltimore, which merged on April 1, 1995, to form AgFirst, FCB, are treated here as a single bank.

paragraph (a) introductory text as paragraphs (a) and (b) introductory text, respectively; adding a new paragraph (c); and revising newly designated paragraph (a) to read as follows:

§ 615.5240 Permanent capital requirements.

(a) The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards established under subpart H of this part and the total capital requirements established by the board of directors of the institution.

* * * * *

(c) An institution's board of directors may delegate to management the decision whether to retire borrower stock, provided that:

(1) The institution's permanent capital ratio will be in excess of 9 percent after any such retirements;

(2) The institution meets and maintains all applicable minimum surplus and collateral standards;

(3) Any such retirements are in accordance with the institution's capital plan; and

(4) The aggregate amount of stock purchases, retirements, and the net effect of such activities are reported to the board of directors on a quarterly basis.

§ 615.5250 [Amended]

9. Section 615.5250 is amended by removing paragraph (c); redesignating paragraphs (d) and (e) as paragraphs (c) and (d) respectively; by removing the words ''(including interim standards)'' in paragraphs (a)(4)(ii) and newly designated (c)(3); and by removing the words '', including interim standards'' in paragraph (a)(4)(iii).

Subpart J—Retirement of Equities

§ 615.5260 [Amended]

10. Section 615.5260 is amended by removing ''; or'' at the end of paragraph (a)(2)(ii) and inserting a period in its place and by removing paragraphs (a)(2)(iii) and (d).

§ 615.5270 [Amended]

11. Section 615.5270 is amended by removing the words ''(including interim standards)'' in paragraph (b).

12. Subpart K is revised to read as follows:

Subpart K—Surplus and Collateral Requirements

Sec.
615.5301 Definitions.
615.5330 Minimum surplus ratios.
615.5335 Bank net collateral ratio requirements.
615.5336 Compliance.

Subpart K—Surplus and Collateral Requirements

§ 615.5301 Definitions.

For the purposes of this subpart, the following definitions shall apply:

(a) The terms *institution, permanent capital, risk-adjusted asset base,* and *total capital* shall have the meanings set forth in § 615.5201.

(b) *Net collateral ratio* means a bank's collateral position as defined by § 615.5050, less an amount equal to that portion of the allocated investments of affiliated associations that is not counted as permanent capital of the bank, divided by the bank's total liabilities.

(c) *Net investment in the bank* means the total investment by an association in its affiliated bank, less reciprocal investments and investments resulting from a loan originating/service agency relationship, including participations.

(d) *Risk-Sharing Agreement means* a binding contract between a bank and its affiliated association, under which a bank agrees to share losses that the affiliated association may incur and which specifies at least the following:

(1) The maximum dollar amount of association losses to be shared by the bank shall be specified and shall not be greater than the amount of the association's allocated investment in the bank that is counted as association permanent capital.

(2) The participation in losses shall begin on or before the point when losses of the association exceed its current year's earnings, net of non-cash allocated earnings allocated to the association from the affiliated bank.

(3) The percentage of bank participation in a loss shall be not less than 25 percent and shall automatically increase to 100 percent when the association's unallocated surplus less the net investment in the bank is zero.

(4) The dollar amount committed to risk sharing by the bank under the agreement shall not be reduced except by payment to the association, unless the association has an unallocated surplus ratio in excess of 3.5 percent, net of the net investment in the bank.

(5) At any time a bank's permanent capital ratio, surplus ratios, or net collateral ratio is less than the minimum applicable standards or would fall below upon payment, the bank shall defer its payments under the agreement until such time as the payments do not result in the bank's failure to meet its minimum standards.

(6) The bank shall allocate any and all losses shared under the agreement back to the association where the loss was incurred.

(e)(1) *Total surplus* means:

(i) Unallocated retained earnings;

(ii) Allocated equities, including allocated surplus and stock which, if subject to revolvement, have a revolvement of not less than 5 years and are eligible to be included in permanent capital pursuant to § 615.5201(j)(4)(iv); and

(iii) Stock that is not purchased as a condition of obtaining a loan, provided that it is either perpetual stock or term stock with an original maturity of at least 5 years, and provided that the institution has and adheres to a policy of not retiring such perpetual stock and of not retiring such term stock prior to its stated maturity. The amount of term stock that is eligible to be included in total surplus shall be reduced by 20 percent in each of the last 5 years of the life of the instrument.

(2)The surplus of an institution shall exclude any impact from unrealized holding gains or losses for available-for-sale securities.

(f) *Unallocated surplus* means unallocated retained earnings and any common or non-cumulative perpetual preferred stock held by non-borrowers, provided that the institution has and adheres to a policy of not retiring the stock. Any impact from unrealized holding gains or losses for available-for-sale securities shall be excluded from unallocated surplus.

§ 615.5330 Minimum surplus ratios.

(a) *Total surplus.* Each institution shall achieve and maintain a ratio of at least 7 percent of total surplus to risk-adjusted assets.

(b) *Unallocated surplus.* (1) Each institution shall achieve and maintain a ratio of unallocated surplus to risk-adjusted assets of at least 3.5 percent.

(2) Each association shall compute its unallocated surplus ratio by deducting an amount equal to the net investment in its affiliated Farm Credit bank from which it has received allocated equities from both its unallocated surplus and its risk-adjusted asset base, except that the amount specified as the maximum amount of losses to be shared by the bank in a Risk-Sharing Agreement that is in effect shall not be deducted from the unallocated surplus or risk-adjusted asset base.

(c) An institution's total and unallocated surplus ratios shall be computed as of the end of each month.

§ 615.5335 Bank net collateral ratio requirements.

(a) Each bank shall achieve and maintain a net collateral ratio of at least 104 percent of net collateral to total liabilities.

(b) A bank's net collateral ratio shall be computed as of the end of each month.

§ 615.5336 Compliance.

(a) *Association compliance requirements.* (1) Each association that fails to satisfy either or both of its minimum surplus ratios shall submit a plan for achieving and maintaining the standards, with appropriate annual progress toward meeting the goal, to the Farm Credit Administration within 60 days of the month-end in which the failure occurred. If the capital plan is not approved by the Farm Credit Administration, the association shall submit a revised capital plan within the time specified by the Farm Credit Administration.

(2) An association whose unallocated surplus ratio is less than the minimum requirement on [the effective date of the final rule] shall have the option to include a Risk-Sharing Agreement with its affiliated bank in the capital plan, provided that the capital plan also incorporates provisions for achieving and maintaining the unallocated surplus standard exclusive of the Risk-Sharing Agreement.

(3) An association whose unallocated surplus ratio is less than the minimum requirement subsequent to [the effective date of the final rule] may include a Risk-Sharing Agreement in its capital plan only if the Farm Credit Administration approves such inclusion.

(b) *Bank compliance requirements.* A bank that fails to meet its minimum applicable unallocated or total surplus standard or net collateral standard shall submit a plan for achieving and maintaining the standards to the Farm Credit Administration within 60 days of the month-end when the failure occurred for meeting the standard. If such plan is not acceptable to the Farm Credit Administration, the bank shall submit a revised capital plan within the time specified by the Farm Credit Administration.

(c) *Compliance with the use of a capital plan.* An institution that is adhering to a capital plan that has been submitted to the Farm Credit Administration under this subpart and that has been approved by the Agency shall be deemed to be in compliance with the requirements of this subpart.

13. Subparts L and M are added to read as follows:

Subpart L—Establishment of Minimum Capital Ratios for an Individual Institution

Sec.
615.5350 General—Applicability.
615.5351 Standards for determination of appropriate individual institution minimum capital ratios.
615.5352 Procedures.
615.5353 Relation to other actions.
615.5354 Enforcement.

Subpart M—Issuance of a Capital Directive

615.5355 Purpose and scope.
615.5356 Notice of intent to issue a capital directive.
615.5357 Response to notice.
615.5358 Decision.
615.5359 Issuance of a capital directive.
615.5360 Reconsideration based on change in circumstances.
615.5361 Relation to other administrative actions.

Subpart L—Establishment of Minimum Capital Ratios for an Individual Institution

§ 615.5350 General—Applicability.

(a) The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios that would otherwise be applicable to an institution under §§ 615.5205, 615.5330, and 615.5335. The Farm Credit Administration is authorized to establish such minimum capital requirements for an institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the institution. Proceedings under this subpart also may be initiated to require an institution having capital ratios greater than those set forth in §§ 615.5205, 615.5330, or 615.5335 to continue to maintain those higher ratios.

(b) The Farm Credit Administration may require higher minimum capital ratios for an individual institution in view of its circumstances. For example, higher capital ratios may be appropriate for:

(1) An institution receiving special supervisory attention;

(2) An institution that has, or is expected to have, losses resulting in capital inadequacy;

(3) An institution with significant exposure due to operational risk; interest rate risk; the risks from concentrations of credit; certain risks arising from other products, services, or related activities; or management's overall inability to monitor and control financial risks presented by concentrations of credit and related services activities;

(4) An institution exposed to a high volume of, or particularly severe, problem loans;

(5) An institution that is growing rapidly; or

(6) An institution that may be adversely affected by the activities or condition of System institutions with which it has significant business relationships or in which it has significant investments.

§ 615.5351 Standards for determination of appropriate individual institution minimum capital ratios.

The appropriate minimum capital ratios for an individual institution cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in Agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(a) The conditions or circumstances leading to the Farm Credit Administration's determination that higher minimum capital ratios are appropriate or necessary for the institution;

(b) The exigency of those circumstances or potential problems;

(c) The overall condition, management strength, and future prospects of the institution and, if applicable, affiliated institutions;

(d) The institution's capital, risk asset and other ratios compared to the ratios of its peers or industry norms; and

(e) The views of the institution's directors and senior management.

§ 615.5352 Procedures.

(a) *Notice.* When the Farm Credit Administration determines that minimum capital ratios greater than those set forth in §§ 615.5205, 615.5330, or 615.5335 are necessary or appropriate for a particular institution, the Farm Credit Administration will notify the institution in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable) and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the institution.

(b) *Response.* (1) The institution may respond to any or all of the items in the notice. The response should include any matters which the institution would have the Farm Credit Administration consider in deciding whether individual minimum capital ratios should be established for the institution, what those capital ratios should be, and, if applicable, when they should be

achieved. The response must be in writing and delivered to the designated Farm Credit Administration official within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the time period with the consent of the institution or when, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution is informed promptly of the new time period.

(2) Failure to respond within 30 days or such other time period as may be specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* After the close of the institution's response period, the Farm Credit Administration will decide, based on a review of the institution's response and other information concerning the institution, whether individual minimum capital ratios should be established for the institution and, if so, the ratios and the date the requirements will become effective. The institution will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the institution.

(d) *Submission of plan.* The decision may require the institution to develop and submit to the Farm Credit Administration, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the institution by the date required.

(e) *Reconsideration based on change in circumstances.* If, after the Farm Credit Administration's decision in paragraph (c) of this section, there is a change in the circumstances affecting the institution's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the institution or the Farm Credit Administration may propose a change in the minimum capital ratios for the institution, the date when the minimums must be achieved, or the institution's plan (if applicable). The Farm Credit Administration may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Farm Credit Administration's original decision and any plan required under that decision shall continue in full force and effect.

§ 615.5353 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for an institution may be established or revised through a written agreement or cease and desist proceedings under part C of title V of the Act, or as a condition for approval of an application.

§ 615.5354 Enforcement.

An institution that does not have or maintain the minimum capital ratios applicable to it, whether required in subparts H and K of this part, in a decision pursuant to this subpart, in a written agreement or temporary or final order under part C of title V of the Act, or in a condition for approval of an application, or an institution that has failed to submit or comply with an acceptable plan to attain those ratios, will be subject to such administrative action or sanctions as the Farm Credit Administration considers appropriate. These sanctions may include the issuance of a capital directive pursuant to subpart M of this part or other enforcement action, assessment of civil money penalties, and/or the denial or condition of applications.

Subpart M—Issuance of a Capital Directive

§ 615.5355 Purpose and scope.

(a)(1) This subpart is applicable to proceedings by the Farm Credit Administration to issue a capital directive under sections 4.3(b) and 4.3A(e) of the Act. A capital directive is an order issued to an institution that does not have or maintain capital at or greater than the minimum ratios set forth in §§ 615.5205, 615.5330, and 615.5335; or established for the institution under subpart L, by a written agreement under part C of title V of the Act, or as a condition for approval of an application. A capital directive may order the institution to:

(i) Achieve the minimum capital ratios applicable to it by a specified date;

(ii) Adhere to a previously submitted plan to achieve the applicable capital ratios;

(iii) Submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and time schedule by which the institution shall achieve the applicable capital ratios;

(iv) Take other action, such as reduction of assets or the rate of growth of assets, restrictions on the payment of dividends or patronage, or restrictions on the retirement of stock, to achieve the applicable capital ratios; or

(v) A combination of any of these or similar actions.

(2) A capital directive may also be issued to the board of directors of an institution, requiring such board to comply with the requirements of section 4.3A(d) of the Act prohibiting the reduction of permanent capital.

(b) A capital directive issued under this subpart, including a plan submitted under a capital directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in section 5.25 of the Act. Violation of a capital directive may result in assessment of civil money penalties in accordance with section 5.32 of the Act.

§ 615.5356 Notice of intent to issue a capital directive.

The Farm Credit Administration will notify an institution in writing of its intention to issue a capital directive. The notice will state:

(a) The reasons for issuance of the capital directive;

(b) The proposed contents of the capital directive, including the proposed date for achieving the minimum capital requirement; and

(c) Any other relevant information concerning the decision to issue a capital directive.

§ 615.5357 Response to notice.

(a) An institution may respond to the notice by stating why a capital directive should not be issued and/or by proposing alternative contents for the capital directive or seeking other appropriate relief. The response shall include any information, mitigating circumstances, documentation, or other relevant evidence that supports its position. The response may include a plan for achieving the minimum capital ratios applicable to the institution. The response must be in writing and delivered to the Farm Credit Administration within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the 30-day time period:

(1) When, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution shall be informed promptly of the new time period;

(2) With the consent of the institution; or

(3) When the institution already has advised the Farm Credit Administration that it cannot or will not achieve its applicable minimum capital ratios.

(b) Failure to respond within 30 days or such other time period as may be specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed capital directive.

§ 615.5358 Decision.

After the closing date of the institution's response period, or receipt of the institution's response, if earlier, the Farm Credit Administration may seek additional information or clarification of the response. Thereafter, the Farm Credit Administration will determine whether or not to issue a capital directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

§ 615.5359 Issuance of a capital directive.

(a) A capital directive will be served by delivery to the institution. It will include or be accompanied by a statement of reasons for its issuance.

(b) A capital directive is effective immediately upon its receipt by the institution, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the Farm Credit Administration.

§ 615.5360 Reconsideration based on change in circumstances.

Upon a change in circumstances, an institution may request the Farm Credit Administration to reconsider the terms of its capital directive or may propose changes in the plan to achieve the institution's applicable minimum capital ratios. The Farm Credit Administration also may take such action on its own motion. The Farm Credit Administration may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the capital directive and plan shall continue in full force and effect.

§ 615.5361 Relation to other administrative actions.

A capital directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of applications. The Farm Credit Administration also may, in its discretion, take any action authorized by law, in lieu of a capital directive, in response to an institution's failure to achieve or maintain the applicable minimum capital ratios.

PART 618—GENERAL PROVISIONS

14. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17, of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart J—Internal Controls

§ 618.8440 [Amended]

15. Section 618.8440 is amended by removing the reference ''§ 615.5200(b)'' and adding in its place, the references ''§§ 615.5200(b), 615.5330 (c) or (d), and 615.5335(b)'' in paragraph (b)(6).

PART 620—DISCLOSURE TO SHAREHOLDERS

16. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

17. Section 620.5 is amended by revising paragraphs (d)(1)(ix) and (g)(4)(ii) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(d) * * *

(1) * * *

(ix) The statutory and regulatory restriction regarding retirement of stock and distribution of earnings pursuant to § 615.5215, and any requirements to add capital under a plan approved by the Farm Credit Administration pursuant to §§ 615.5330, 615.5335, 615.5351, or 615.5357.

* * * * *

(g) * * *

(4) * * *

(ii) Describe any material trends or changes in the mix and cost of debt and capital resources. The discussion shall consider changes in protected borrower capital, permanent capital, surplus requirements and collateral position, debt, risk-sharing agreements, and any off-balance-sheet financing arrangements.

* * * * *

Dated: July 20, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–18323 Filed 7–26–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 211

Amendments of Regulations to Establish Liability for Royalty Due on Federal and Indian Leases, and to Establish Responsibility to Pay and Report Royalty and Other Payments

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on a Notice of Proposed Rule, which was published in the **Federal Register** on June 9, 1995. The proposed rule would establish and clarify which persons may be held liable for unpaid or underpaid royalties, compensatory royalties, or other payments on Federal and Indian mineral leases. In response to requests for additional time, MMS will extend the comment period from August 8, 1995, to September 8, 1995.

DATES: Comments must be received by 4 p.m. mountain time on September 8, 1995.

ADDRESSES: Written comments should be sent to the Minerals Management Service, Building 85, Denver Federal Center, P.O. Box 25165, Mail Stop 3101, Denver, Colorado 80225–0165, Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231–3432 or (FTS) 231–3432.

Dated: July 21, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–18471 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–MR–P

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–016–FOR]

Oklahoma Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma regulatory program (hereinafter referred

to as the ''Oklahoma program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a revision to the Oklahoma rules pertaining to procedures for assessment conference. The proposed amendment is intended to revise the Oklahoma program to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., c.d.t. August 28, 1995. If requested, a public hearing on the proposed amendment will be held on August 21, 1995. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on August 11, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Tim Dieringer, Acting Director, Tulsa Field Office at the first address listed below

Copies of the Oklahoma program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Tim Dieringer, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Tim Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.10, 936.15, 936.16, and 936.30.

II. Discussion of the Proposed Amendment

By letter dated July 5, 1995, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. OK–972). Oklahoma submitted the proposed amendment at its own initiative. The provisions of the Oklahoma rules that Oklahoma proposes to amend are at Oklahoma Administrative Code (OAC) 460:20–61–10 concerning procedures for assessment conference.

Specifically, Oklahoma proposes to revise OAC 460:20–61–10(a)(1) by adding the word ''original'' in the second sentence. The effect of this proposed wording change is that assessment conferences would be held within 60 days from the date of issuance of the proposed assessment or the end of the *original* abatement period, whichever is later.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on August 11, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

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

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d))

provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 20, 1995.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–18437 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 37–3–7097; FRL–5264–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Butte County Air Pollution Control District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, Santa Barbara County Air Pollution Control District, and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from the manufacture and application of cutback and emulsified asphalt materials.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATE: Comments must be received on or before August 28, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

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

Butte County Air Pollution Control District, 9287 Midway, Suite 1A, Durham, CA 95938.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Victorville, CA 92392.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1188.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: Butte County Air Pollution Control District (BCAPCD) Rule 241, Cutback and Emulsified Asphalt; Mojave Desert Air Quality Management District (MDAQMD) Rule 1103, Cutback and Emulsified Asphalt; Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 425, Use of Cutback Asphalt; Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 329, Cutback and Emulsified Asphalt Paving Materials; and Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.28, Cutback and Emulsified Asphalts. These rules were submitted by the California Air Resources Board to EPA on May 13, 1993; December 22, 1994; November 18, 1993; June 19, 1992; and November 30, 1994 respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Chico Area, the Southeast Desert Modified AQMA Area, the Monterey Bay Area, the Santa Barbara-Santa Maria-Lompoc Area, and the Sacramento Metro Area [1]. 43 FR 8964; 40 CFR 81.305. Because these areas (with the exception of the Chico Area) were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. [40 CFR 52.222] On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the

[1] The BCAPCD lies within the Chico Area. Portions of MDAQMD lie within Southeast Desert Modified AQMA Area. YSAQMD lies within the Sacramento Metro Area.

date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[2] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Southeast Desert Modified AQMA Area is classified as severe-17. Monterey Bay Area and Santa Barbara-Santa Maria-Lompoc Area are classified as moderate. Sacramento Metro Area is classified as severe.[3] Therefore, all these areas (with the exception of the Chico Area, which is classified as transitional) were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The Chico Area is subject to Section 185A and Section 172(c)(1) instead of Section 182(a)(2)(A). Section 185A specifically exempts transitional areas from Subpart 2 (of Title I, Part D), including any RACT fix-up obligations, until December 31, 1991. Section 172(c)(1) requires transitional areas to correct any RACT deficiencies regarding enforceability (see General Preamble, 57 FR 13525).

The State of California submitted many revised RACT rules for incorporation into its SIP on May 13, 1993; December 22, 1994; November 18, 1993; June 19, 1992; and November 30, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for BCAPCD Rule 241, Cutback and Emulsified Asphalt; MDAQMD Rule 1103, Cutback and Emulsified Asphalt; MBUAPCD Rule 425, Use of Cutback Asphalt; SBCAPCD Rule 329, Cutback and Emulsified Asphalt Paving Materials; and YSAQMD Rule 2.28, Cutback and Emulsified Asphalts. The BCAPCD adopted Rule 241 on January 12, 1993; the MDAQMD adopted Rule 1103 on December 21, 1994; the MBUAPCD adopted Rule 425 on August 25, 1993; the SBCAPD adopted rule 329 on February 25, 1992; and the YSAQMD adopted Rule 2.28 on May 25, 1994. These submitted rules were found to be complete on July 19, 1993; December 27, 1993; January 3, 1995; August 27, 1992; and January 30, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[4] and are being proposed for approval into the SIP.

The submitted rules control VOC emissions from the manufacture, sale, mixing, storage, use, and application of cutback and emulsified asphalt materials. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to all of these rules is entitled, ''Control of Volatile Organic Compounds from Use of Cutback Asphalt,'' EPA–450/2–77–037. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BCAPCD Rule 241, Cutback and Emulsified Asphalt; and MDAQMD Rule 1103, Cutback and Emulsified Asphalt are new rules that were adopted to limit VOC emissions from the use of cutback and emulsified asphalts.

MBUAPCD Rule 425, Use of Cutback Asphalt includes the following significant changes from the current SIP:

- Prohibition of manufacture and sale
- Maximum allowable distillate content for slow cure cutback asphalt of 0.5 percent
- Maximum allowable petroleum solvent content for emulsified asphalt of 3 percent
- ASTM Test Method D244–88 for emulsified asphalt
- Recordkeeping requirements

SBCAPCD Rule 329, Cutback and Emulsified Asphalt Paving Materials includes the following significant changes from the current SIP:

- Modified definitions of ''Asphalt'' and ''Cutback asphalt''
- Sections for applicability, prohibitions, recordkeeping, and test methods
- Maximum allowable reactive organic compound content for cutback asphalts of 0.5 percent
- No penetrating prime coat, cold-weather application, or asphalt plant distance exemptions
- ASTM Test Method D244 for emulsified asphalt

YSAQMD Rule 2.28, Cutback and Emulsified Asphalts includes the following significant changes from the current SIP:

- No penetrating prime coat exemption
- Maximum allowable solvent content for emulsified asphalts of 3 percent
- Prohibitions of manufacture and sale and of specification
- Detailed recordkeeping and test methods provisions

(A detailed summary of rule highlights and changes is provided in the TSD's dated June 9, 1995.)

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BCAPCD Rule 241, Cutback and Emulsified Asphalt; MDAQMD Rule 1103, Cutback and Emulsified Asphalt; MBUAPCD Rule 425, Use of Cutback Asphalt; SBCAPCD Rule 329, Cutback and Emulsified Asphalt Paving Materials; and YSAQMD Rule 2.28, Cutback and Emulsified Asphalts are being proposed for approval under section 110(k)(3) of the CAA as meeting

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[3] Chico Area, Southeast Desert Modified AQMA Area, Monterey Bay Area, and Santa Barbara-Santa Maria-Lompoc Area retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). Sacramento Metro Area was reclassified from serious to severe effective on June 1, 1995. See 60 FR 20237 (April 25, 1995).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

the requirements of section 110(a) and Part D.

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

Regulatory Process

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

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being proposed for approval by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 17, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–18490 Filed 7–26–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–5265–4]

State of Wyoming; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Wyoming for final authorization, public hearing and public comment period.

SUMMARY: Wyoming has applied for final authorization of its hazardous waste regulatory program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Wyoming's application and has made the tentative decision that Wyoming's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Wyoming's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the application.

DATES: A public hearing is scheduled for August 29, 1995, at 7:00 p.m., at the Laramie County Library, Pioneer Room, 2800 Central Avenue, Cheyenne, Wyoming, at 7:00 p.m. Wyoming will participate in the public hearing held by EPA on this subject. All comments on the Wyoming's final authorization application must be received by the close of business on August 28, 1995.

ADDRESSES: Copies of Wyoming's final authorization application are available during business hours at the following addresses for inspection and copying: U.S. EPA Region VIII, Library, Suite 144, 999 18th Street, Denver, Colorado 80202–2466 and at the Department of Environmental Quality, Herschler Building, 4th Floor, 122 West 25th Street, Cheyenne, Wyoming 82002. Written comments should be sent to Marcella DeVargas, Mail code: 8HWM–WM, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466.

FOR FURTHER INFORMATION CONTACT: Marcella DeVargas, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, Phone 1–800–227–8917 or 303–293–1670.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA). Two types of authorization may be granted. The first type, known as ''interim authorization,'' is a temporary authorization which is granted if EPA determines that the State program is ''substantially equivalent'' to the Federal program (Section 3006(c), 42 U.S.C. 6926(c)). Interim authorization is currently available only for requirements imposed pursuant to HSWA.

The second type of authorization is a ''final'' (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is ''equivalent'' to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for the interim or final State

authorization processes appear at 40 CFR Part 271.

B. Wyoming

On September 19, 1994, Wyoming submitted a draft application to EPA for review. This application consisted of Wyoming's proposed hazardous waste rules. EPA submitted comments to the State on January 31, 1995. Comments on the draft application have been addressed by the State. On July 17, 1995, Wyoming submitted its official application for review for final authorization to EPA. Prior to submission, Wyoming solicited public comments and held a public hearing on the draft application.

EPA has reviewed Wyoming's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Wyoming to operate its program subject to the authority retained by EPA under HSWA.

In accordance with Section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on August 29, 1995, at the Laramie Public Library, Pioneer Room, 2800 Central Avenue, Cheyenne, Wyoming at 7:00 p.m. The public may also submit written comments on EPA's tentative determination until August 28, 1995. Copies of Wyoming's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA will consider all public comments on its tentative determination received at the hearing or during the public comment period. Issues raised by those comments may be the basis for a decision to deny final authorization to Wyoming. EPA expects to make a final decision on whether or not to approve Wyoming's program by October 25, 1995 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

C. Effect of HSWA on Wyoming's Authorization

Prior to the Hazardous and Solid Waste Amendments of 1984, a State with final authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements, however, did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt law equivalent or more stringent than newly promulgated HSWA-related federal provisions to retain final authorization, such federally promulgated HSWA-related provisions apply in authorized States in the interim.

As a result of HSWA, there will be a dual State/Federal regulatory program in Wyoming if final RCRA authorization is granted. To the extent the State program as authorized is unaffected by changes to the federal program promulgated pursuant to HSWA, the State program will operate in lieu of the Federal program. To the extent federal HSWA-related requirements go into effect after authorization of the State program, EPA will administer and enforce these portions of HSWA in Wyoming until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of HSWA under a Cooperative Agreement.

Today's tentative determination only includes authorization of Wyoming's program for certain HSWA requirements. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, generators of hazardous waste, and those who manage (transport, treat, store and/or dispose) hazardous waste regulated under the State program, must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

D. Indian Country

Today's proposal to authorize the Wyoming hazardous waste regulatory program does not extend to ''Indian Country,'' as defined in 18 U.S.C. § 1151, including the Wind River Reservation.

Should Wyoming decide in the future to apply for authorization of its hazardous waste program on ''Indian Country'', the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a state (or tribe) to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian Law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval.

EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Should the State of Wyoming choose to submit analysis with regard to jurisdiction of the State over all or part of Indian Country in the State, it may do so without prejudice.

Any future EPA evaluation of whether to approve the Wyoming program for ''Indian Country,'' to include Indian reservation lands, would be governed by EPA's judgment as to whether the State has demonstrated adequate authority to justify such approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 **Federal Register** 64876, December 12, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Wyoming's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not

impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 19, 1995.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 95–18489 Filed 7–26–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–119, RM–8667]

Radio Broadcasting Services; Dafter, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dafter Community Broadcasters proposing the allotment of Channel 293A to Dafter, Michigan, as that community's first local service. The coordinates for Channel 293A are 46–21–36 and 84–25–36.

DATES: Comments must be filed on or before September 11, 1995, and reply comments on or before September 26, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jeffrey D. Southmayd, Southmayd & Miller, 1220 Nineteenth Street, NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–119, adopted July 13, 1995, and released July 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18405 Filed 7–26–95; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 60, No. 144
Thursday, July 27, 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 21, 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

- Animal Plant Health Inspection Service

Importation of Animal & Poultry, Animal/Poultry Products, Certain Animal Embryos, and Zoological Animals—Addendum 2
VS Form 17–129
Business or other for-profit; 400 responses; 68 hours
Dr. Roger Perkins (301) 734–8170

Extension

- Consolidated Farm Service Agency

Application for payment amounts due persons who have died, disappeared or who have been declared incompetent—7 CFR 707
ASCS–325
Individuals or households; 3,000 responses; 1,500 hours Jane Salem (202) 720–7635

National Agricultural Statistics Service
Mink Survey
Farms; 500 responses; 83 hours
Larry Gambrell (202) 720–5778

- National Agricultural Statistics Service

Livestock Surveys
Farms; Business or other-for-profit; 117, 736 responses; 21,526 hours
Larry Gambrell (202) 720–5778

Donald E. Hulcher,
Deputy Department Clearance Officer.

[FR Doc. 95–18421 Filed 7–26–95; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 95–051–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in the Marrs-Valencia meeting room of the Embassy Suites Hotel, 1800 South Second Street, McAllen, TX 78503, (210) 686–3000. Sessions will be held from 8 a.m. to 5 p.m. on August 15–17, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. John Williams, Chief Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1231, (301) 734–8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

Tentative topics for discussion at the upcoming meeting include: The status of avian influenza (AI) in Mexico; the status of AI surveillance activity in the United States; the status of H5 and H7 AI vaccine for production; Foot-and-Mouth Disease Vaccine Bank update; the status of vesicular stomatitis in the United States; update on emergency preparedness; workshop on global trade; the status of bovine spongiform encephalopathy surveillance; the status of hog cholera in Mexico; update of activities at the Plum Island Animal Disease Center; world disease status; and surveillance of emerging diseases.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to Dr. John Williams at the address listed under **FOR FURTHER INFORMATION CONTACT.** Written comments may also be filed at the time of the meeting. Please refer to Docket No. 95–051–1 when submitting your comments.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 20th day of July 1995.

Terry Medley,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–18479 Filed 7–26–95; 8:45 am]

BILLING CODE 3410–34–P

Natural Resources Conservation Service

Deep Creek Watershed, Yadkin, North Carolina

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, US Department of Agriculture, gives notice that an environmental impact

statement is not being prepared for the Deep Creek Watershed, Yadkin County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Richard A. Gallo, State Conservationist, Natural Resources Conservation Service, 4405 Bland Road, Suite 205, Raleigh, NC, 27609, telephone (919) 790–2888.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard A. Gallo, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are flood control and municipal and industrial water supply. The planned works of improvement include one multiple purpose reservoir.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Richard A. Gallo

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive order 12372, which requires intergovernmental consultation with State and local officials.)

Richard A. Gallo,

State Conservationist.

[FR Doc. 95–18485 Filed 7–26–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32b1)–14–95]

Foreign-Trade Zone 122—Corpus Christi, TX, Subzone 122J, Valero Refining Company (Crude Oil Refinery); Request for Modification of Restrictions

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, pursuant to § 400.32(b)(1) of the Board's regulations, for modification of the restrictions in FTZ Board Order 414 authorizing Subzone 122J at the crude oil refinery of Valero Refining Company (Valero) in Corpus Christi, Texas. The request was formally filed on July 18, 1995.

The Board Order in question was issued subject to certain standard restrictions, including one that required the election of privileged foreign status on incoming foreign merchandise. The zone grantee has requested that the latter restriction be modified so that Valero would have the option available under the FTZ Act to choose non-privileged foreign (NPF) status on foreign refinery inputs used to produce certain petrochemical feedstocks and by-products, including the following: benzene, toluene, xylenes, other hydrocarbon mixtures, distillates/residual fuel oils, kerosene, naphthas, liquified petroleum gas, ethane, methane, propane, butane, ethylene, propylene, butylene, butadiene, petroleum coke, asphalt, sulfur, sulfuric acid, cumene and pseudocumene.

The request cites the FTZ Board's recent decision in the Amoco, Texas City, Texas case (Board Order 731, 60 FR 13118, 3/10/95) which authorized subzone status with the NPF option noted above. In the Amoco case, the Board concluded that the restriction that precluded this NPF option was not needed under current oil refinery industry circumstances.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 28, 1995.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 19, 1995.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 95–18395 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket A(32b1)–13–95]

Foreign-Trade Zone 84—Houston, TX, Subzone 84F, Phibro Refining, Inc. (Crude Oil Refinery); Request for Modification of Restrictions

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, pursuant to § 400.32(b)(1) of the Board's regulations, for modification of the restrictions in FTZ Board Order 552 authorizing Subzone 84F at the crude oil refinery of Phibro Refining, Inc. (Phibro), in Houston, Texas. The request was formally filed on July 18, 1995.

The Board Order in question was issued subject to certain standard restrictions, including one that required the election of privileged foreign status on incoming foreign merchandise. The zone grantee has requested that the latter restriction be modified so that Phibro would have the option available under the FTZ Act to choose non-privileged foreign (NPF) status on foreign refinery inputs used to produce certain petrochemical feedstocks and by-products, including the following: benzene, toluene, xylenes, other hydrocarbon mixtures, distillates/residual fuel oils, kerosene, naphthas, liquified petroleum gas, ethane, methane, propane, butane, ethylene, propylene, butylene, butadiene, petroleum coke, asphalt, sulfur, sulfuric acid, cumene and pseudocumene.

The request cites the FTZ Board's recent decision in the Amoco, Texas City, Texas case (Board Order 731, 60 FR 13118, 3/10/95) which authorized subzone status with the NPF option noted above. In the Amoco case, the Board concluded that the restriction that precluded this NPF option was not needed under current oil refinery industry circumstances.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 28, 1995.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 19,1995.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 95–18396 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–428–602]

Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On January 6, 1995, the Department of Commerce (the Department) published the preliminary results of its 1990–1993 administrative reviews of brass sheet and strip from Germany. The reviews cover exports of this merchandise to the United States by one manufacturer/exporter, Wieland-Werke AG (Wieland), during the periods March 1, 1990 through February 28, 1991, March 1, 1991 through February 29, 1992, and March 1, 1992 through February 28, 1993. The reviews indicate the existence of dumping margins for the 1990–91 and 1991–92 periods, and *de minimis* margins for the 1992–93 period.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have adjusted Wieland's margins for these final results.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, 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) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1995, the Department published in the **Federal Register** (60 FR 2076) the preliminary results of its 1990–91, 1991–92, and 1992–93 administrative reviews of the antidumping duty order on brass sheet and strip from Germany (52 FR 6997, March 6, 1987).

Applicable Statute and Regulations

The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Reviews

Imports covered by these reviews are sales or entries of brass sheet and strip, other than leaded and tinned brass sheet and strip, from Germany. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. These reviews do not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review periods are:

March 1, 1990 through February 28, 1991 (fourth review);

March 1, 1991 through February 29, 1992 (fifth review);

March 1, 1992 through February 28, 1993 (sixth review).

The reviews cover one manufacturer/exporter, Wieland.

Analysis of Comments Received

We received case and rebuttal briefs from Wieland and from the petitioners, Hussey Copper, Ltd., The Miller Company, Outokumpu American Brass, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America. Unless otherwise noted, the comments below pertain to all three reviews.

Model-Matching Methodology

Comment 1: Wieland disputes the Department's use of specific alloy grades in matching U.S. to home market sales. Wieland would have the Department use only two classes of alloys, above or below 75 percent copper content, instead of using exact alloy grades. The respondent states that the exact-alloy comparison method which we used in the preliminary results is a change from the method used in the prior review.

The respondent further alleges that the Department used the exact-alloy method in order to conform the model-matching criteria with other orders, and that in so doing the Department ignored record evidence demonstrating that Wieland's U.S. sales cannot be ''appropriately matched'' to home market sales of identical alloys. Wieland claims that ''using alloy groups * * * provides the most practical means of achieving reasonable comparisons''.

Wieland claims that our approach is contrary to Department practice in other cases involving brass sheet and strip, because the Department failed, in these reviews, to determine the appropriate matching criteria on the basis of the specific nature of Wieland's sales. The respondent alleges that by relying on specific alloy grades rather than using Wieland's two alloy groups, the Department ''fails to take account of the nature of Wieland's sales''. Wieland does not make clear how our approach neglects to take account of the nature of its sales, but implies that its sales are made more often on the basis of whether products are above or below 75 percent in copper content than on the basis of exact alloys.

The respondent also asserts that, since certain other model-matching criteria, namely gauge and width, are grouped by classes, alloys should also be grouped.

The petitioners note in rebuttal that there is no industry standard to distinguish alloys for high copper content (i.e., greater than 75 percent), that customers specify exact alloys in placing their orders, that in all other antidumping proceedings involving brass sheet and strip the Department has always made exact-alloy matches, and that Wieland's alloy groupings disregard the Department's conclusion in an earlier review that it should abandon the grouping methodology and instead make matches on an exact-alloy basis. The petitioners further assert that Wieland failed to establish that its home market sales, when matched to U.S. sales on the basis of exact alloys, ought not to be taken as representative of home market prices.

Department's Position: We disagree with the respondent. We did not employ the alloy-specific approach merely to conform to approaches used in reviews of other brass sheet and strip orders, but in order to follow section 771(16)(B) of the Act, which requires us to compare U.S. sales to home market merchandise which is identical or, when not identical, is ''like that (U.S.) merchandise in component material or materials and in the purposes for which used,'' prior to resorting, if necessary, to less similar merchandise as described in 771(16)(C)(i)–(iii).

Wieland does not identify which U.S. sales, if any, are not ''appropriately'' matched to home market merchandise by our method, or otherwise explain how its less specific standard would be more appropriate. Nor does Wieland explain how its grouped alloy approach

would be ''the most practical means of achieving reasonable comparisons'', other than by arguing that it would make the number of home market sales used in sales comparisons ''sufficient''.

Regarding Wieland's claim that matching by alloy groups would more appropriately reflect the nature of Wieland's sales, nothing in the record supports this claim. On the contrary, according to Wieland, its customers generally specify exact alloys in their orders. While its customers may sometimes choose the lowest-cost combination of metals within a narrow range, no information on the record suggests that Wieland's customers use the standard of 75 percent copper content in ordering merchandise.

In arguing that grouping alloys would be appropriate because grouping is used for gauge and width ranges, Wieland glosses over the distinction between the gauge and width measures on the one hand, and alloy grades on the other. Gauge and width are both infinitely variable and therefore must be divided into tiers to permit any comparisons. Alloy grades, by contrast, are discretely defined proportions of metals. Matching by specific alloys provides more precision than merely differentiating between merchandise which contains above or below 75 percent copper.

The respondent's grouped-alloy approach would assign all home market merchandise to one of two groupings, would compare each U.S. sale to home market merchandise containing up to seven different alloys, and would not necessarily result in comparisons of U.S. sales to home market merchandise made of only the identical alloy, or of only the single most similar alloy. The respondent's suggested groupings could result in understated or overstated dumping margins, due to the mix of home market models which would form the basis of foreign market value (FMV). Matching by specific alloys, on the other hand, ensures that we use the most similar merchandise possible to establish FMV in our dumping calculations. Therefore, the Department has continued to use the alloy-specific matching method.

Comment 2: The respondent complains that the Department's change in model-matching methodology reduces the dumping analysis to ''little more than a game of chance'' since, according to Wieland, the margin depends far more on the chance occurrence that a home market customer will place an order for an alloy identical to one sold in the United States than on Wieland's general pricing policies for its U.S. and home market sales. Where a single home market sale serves as the basis for comparison, Wieland argues, the results of the U.S./home market price comparison will depend completely on the date on which that home market sale was made, or, more particularly, on the metal pricing date for the metal component of the home market sale. Thus, Wieland argues, differences between U.S. and home market prices are caused by volatility in the market prices for copper, zinc, and tin, rather than by Wieland's brass sheet and strip pricing strategies. Wieland suggests that as an alternative the Department should use alloy groups for model-matching purposes. Wieland points out that differences in alloy costs could then be adjusted for with a sale-specific metal adjustment.

Department's Position: We disagree with the respondent. Wieland's ''game of chance'' complaint is not supported by the facts of the case or the methodology we used. This complaint hinges on Wieland's implicit suggestion that individual home market sales, or pairs of sales, somehow may not conform to its pricing policies. Wieland offers no evidence on the record that any home market sale prices should be excluded as unrepresentative. Wieland has not argued or demonstrated that some of its home market sales are outside the ordinary course of trade or are, for some other reason, inappropriate as the basis of FMV.

While Wieland has alleged that there is a danger that price differences for identical merchandise comparisons might result from changes in commodity prices of components, it has not demonstrated that such price fluctuations should affect the model-match methodology.

In the statutory definition of such or similar merchandise (section 771(16) of the Act) there is a clear preference for matching U.S. sales to home market merchandise which is manufactured by the same producer, composed of the same materials, and approximately equal in value, before resorting to comparisons to less similar merchandise. Our approach reflects this preference; the respondent's approach would ignore it. We are not permitted to ignore contemporaneous sales of identical merchandise. Wieland's suggested approach simply does not conform to the requirements of the antidumping law and regulations.

The risk of price differences caused by changes in the prices of commodities used as components is not unique to this proceeding but is inherent in price comparisons in many industries. That risk has not heretofore served as justification for omitting comparisons of U.S. sales to contemporaneous home market sales of identical or most similar merchandise. Yet the respondent's approach would make comparisons to identical or most similar merchandise impossible, by defining models so broadly that all comparisons would potentially include similar merchandise as well as identical merchandise (and would thus be subject to adjustments for differences in alloy values under 19 CFR 353.57(b)). But this grouped-alloy approach would not be warranted by the regulations cited above or by the facts of this review; using exact alloy comparisons, we were able to match a substantial portion of U.S. sales to home market merchandise of identical alloys, and all the remaining U.S. sales with home market merchandise containing one of the three most similar alloys.

Comment 3: Wieland states that the Court of International Trade (CIT), addressing the model-matching issue in remanding the final results in the first administrative review, did not require the Department to abandon the use of two alloy groups, but merely asked the Department to articulate the reasons why it did not use the exact-alloy method. *See Hussey Copper Ltd.,* v. *United States,* 834 F. Supp. 413 (CIT 1993).

Department's Position: As explained in our response to Comment 2 above, the Department has concluded that the exact-alloy matching methodology more closely follows the statute, which requires us to make comparisons of identical merchandise, when this is possible, before making comparisons with similar merchandise.

Comment 4: The petitioners request that the Department alter the hierarchy of traits used in matching U.S. sales to home market sales. In particular, the petitioners ask the Department to place alloy in the third position, instead of the fifth position. According to the petitioners, alloy was placed in the third position in certain other brass sheet and strip cases, and alloy specifications are more important to customers than gauge and width differences.

Department's Position: The petitioners argue that the model-match methodology used in this review is a departure from the methodology used in reviews of brass sheet and strip from other countries. In fact, although there are many similarities in the methodologies used in the various brass sheet and strip cases, they are not identical. Because the facts of each case are distinct from those of other cases, different hierarchies are applied to the criteria to define home market sales of the most similar merchandise.

In these reviews, the Department used five criteria to define models in order to

compare sales: form, coating, gauge, width, and alloy. For those U.S. sales for which we did not find sales of identical home market merchandise, we determined that the most similar home market merchandise for comparison purposes was merchandise which was identical in form, coating, gauge, and width, and similar in alloy content. Therefore, we used specific programming instructions to search for contemporaneous home market sales of merchandise which was identical except for alloy. Thus, the only criterion for which we considered differences was alloy, no matter what the order of the criteria as listed in the program. Consequently, we do not agree with the petitioners' suggestion that we change the ordering of the criteria in a search for similar merchandise.

Concerning the question of whether alloy is more important to customers than gauge and width specification, as the petitioners allege, we note that Wieland states in its February 23, 1995 Rebuttal Brief (p.3) that ''generally customers must have very precise gauges and widths to serve their particular purpose and to use with their particular equipment, and no gauge or width substitutes would be acceptable''. Notwithstanding the petitioners' allegation, there is nothing in the record of this review to confirm or support the petitioners' suggestion that customers have less flexibility in alloy than in gauge and width specifications, which typically have narrow tolerances reflecting the customers' machining or assembly requirements. Thus, the petitioners' assertion that alloy is more important than gauge and width to the respondent's customers is without foundation in the record of this review.

Therefore, we have determined for these final results to use the model-matching methodology used for the preliminary results.

Differences in Average Order Size

Comment 5: Defending its claim for adjustments in price to reflect the different average order sizes of its U.S. sales, Wieland contests our preliminary finding that it has not demonstrated a relationship between order size and price. In support of the claimed adjustment, Wieland cites the price lists in its questionnaire responses, the Department's verification report in the 1991–1992 administrative review, section 773(a)(4)(A) of the Act, and the regulations (19 CFR 353.55).

In rebuttal, the petitioners point to the Department's disallowance in the first review, as upheld by the CIT, concerning the same cost adjustment claim for different order sizes. The petitioners also note Wieland's failure to show that it met the regulatory requirement for such an adjustment, *i.e.*, that Wieland must show that it ''granted quantity discounts of at least the same magnitude on 20 percent or more of sales of such or similar merchandise * * *'' (19 CFR 353.55(b)(1)).

Department's Position: We disagree with the respondent. The regulations do not allow for adjustments to price based merely on claimed differences in per-pound costs according to order size. The adjustments allowed are only for differences in price or discounts for different quantities produced. The regulations (19 CFR 353.55(b)(2)) provide for adjustments if ''the producer demonstrates * * * that the discounts reflect savings specifically attributable to the production of the different quantities.'' In its questionnaire response Wieland complied in part, by showing the savings, in the form of differences in per-kilogram costs for processing different order quantities. But Wieland did not place on the record any evidence of quantity discounts actually given, or information showing that prices were affected by different production quantities. Indeed, Wieland's questionnaire response states unequivocally: ''Wieland does not provide price-based quantity discounts''.

The price list Wieland cites in this regard is not an adequate basis for this claim since it is a matter of record that the respondent's prices are negotiated ad hoc and do not necessarily follow the price list. The 1991–1992 verification report, in which we noted variations in prices for varying quantities in one particular contract, is not dispositive; our inspection of a contract in a verification does not signal our acceptance of a claimed adjustment to price. Wieland has the burden, in each review, of showing how its actual prices varied according to quantity, as required by 19 CFR 353.55.

Value-Added Tax

Comment 6: While conceding that the practice is consistent with current Department policy on value-added tax (VAT), Wieland contests the Department's application of a 14-percent VAT adjustment to both U.S. and home market sales in this review, and requests that the Department instead add the actual home market VAT amount to U.S. price. Wieland alleges that the use of the VAT rate on sales in both markets introduces a multiplier effect. Wieland urges the Department to instead adopt its alternative solution, at least until this issue can be resolved more definitively by the U.S. Court of Appeals for the Federal Circuit (CAFC), once an appeal is heard in the case of *Federal Mogul Corporation* v. *United States,* 834 F. Supp. 1391 (Fed. Cir. 1993).

Department's Position: We disagree with Wieland. We adjusted U.S. Price (USP) and FMV for VAT in accordance with our practice, pursuant to the decision of the CIT in *Federal-Mogul Corporation and the Torrington Company* v. *United States,* 813 F. Supp. 856 (October 7, 1993) (*Federal-Mogul*) and as outlined in *Silicomanganese From Venezuela; Preliminary Determination of Sales at Less than Fair Value,* 59 FR 31204, June 17, 1994, where we address the multiplier effect issue in detail.

Commission Offset

Comment 7: The petitioners argue that the Department should offset home market commissions for purchase price (PP) sales.

Department's Position: We agree and have made an offset to FMV for PP sales based on U.S. indirect selling expenses, limited to the amount of commissions that were deducted from home market price.

Interest Rates Used in Credit Expenses

Comment 8: In the 1990–1991 review period, neither Wieland nor its U.S. affiliate borrowed funds in the United States. To calculate the imputed credit expense on its ESP sales in that period, Wieland used a U.S. bank deposit interest rate. The petitioners argue that the Department should correct for Wieland's use of deposit interest rates, and replace them with home market borrowing rates. The petitioners cite the Department's position in *Final Determination of Sales at less than Fair Value: Coated Groundwood Paper from Belgium* 56 FR 56359 (November 11, 1991) (*Groundwood Paper*), that a respondent must show that it had actual borrowings in the United States before the Department imputes credit expenses based upon U.S. rates.

To calculate the imputed credit expense on its PP sales in the 1990–1991 period, Wieland originally used its home market borrowing rates. However, in its February 13, 1995 rebuttal brief, Wieland asks the Department to ''correct this mistake'' and to replace the home market rates which it used for PP sales with the U.S. deposit rate which it used for ESP sales, because Department policy now requires that a U.S. interest rate be used to calculate imputed credit expense on U.S. sales.

For the 1991–1992 and 1992–1993 review periods, Wieland did have borrowings in the United States, and

used Wieland-America's average short-term borrowing rate during the review period as the basis for calculating imputed credit expenses for both PP and ESP sales. For both of these reviews, the petitioners argue that Wieland-Werke's home market borrowing rate should be used as the basis for all U.S. credit expenses. The petitioners argue that Wieland-Werke extended the credit and incurred the expense to finance the receivables. The petitioners also note that in the 1992–1993 period of review, Wieland discontinued invoicing its customers through Wieland-America and instead billed its unrelated U.S. customers directly.

The respondent argues that the Department correctly measured the cost of financing sales made in dollars by applying a dollar interest rate, citing Department policy in the *Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Colombia,* 60 FR 6980, 6998 (1995) (Comment 21) (*Roses*). Wieland also notes that in the *Final Determination of Sales at Less than Fair Value: Class 150 Stainless Steel Threaded Pipe Fittings from Taiwan* (59 FR 38432 (July 28, 1994) (*Class 150 Stainless Steel Pipe*)), the Department stated that it ''is required to use the lowest rate at which the respondent has borrowed or to which the respondent has access.''

Department's Position: We disagree with the petitioners and concur with the respondent that it is reasonable to use dollar-denominated borrowing rates in these reviews. The respondent is correct in arguing that the interest rate used for credit expenses should match the currency in which the sales are denominated, as stated in *Roses.*

On the question of whether the parent's or the U.S. subsidiary's dollar-denominated borrowing rate should be applied, where a company had access, directly or through its U.S. affiliate, to two different dollar-denominated rates, the lower of the two rates is presumed to have been used. See, for example, *Class 150 Stainless Steel Pipe,* where the Department calculated imputed credit for PP sales using the lower of two U.S. interest rates available to the respondent. See also *Notice of Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France,* 58 FR 37125 (1993) (Comment 30), in which the Department states that it does not concern itself with determining which of the corporate entities related to the respondent actually incurs the cost of financing.

In this case, during the 1990–1991 POR neither the German parent nor the U.S. subsidiary had borrowings in U.S. dollars, and in the 1991–1992 and 1992–1993 PORs, we are aware of only the U.S. subsidiary having U.S. borrowings. Therefore, for the 1991–1992 and 1992–1993 administrative reviews, we have used the U.S. subsidiary's interest rate for borrowings in U.S. dollars.

Concerning Wieland's calculation of U.S. credit expenses in the 1990–1991 review period and Wieland's request that we use deposit rates rather than borrowing rates, (1) as noted above in *Class 150 Stainless Steel Pipe,* we use actual borrowing rates or, if no borrowing occurred, borrowing rates to which the firm had access, either directly or through its U.S. affiliate; (2) it is our practice to use lending rates, as opposed to investment return or deposit rates, in calculating credit expenses (see *Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Stainless Steel Angle From Japan* 60 FR 16608, March 31, 1995 (Comment 7)).

As for the petitioner's reference to the Department's position in *Groundwood Paper,* our decision in *Groundwood Paper* has been superseded by more recent proceedings (see *Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium,* 58 FR 37122, July 8, 1993). As stated later in *Roses,* in cases where there are no borrowings in the currency of the sales made, as in Wieland's 1990–1991 review period, the Department may use external information about the cost of borrowing in a particular currency. Since Wieland did not supply the U.S. borrowing rates to which it had access during the 1990–1991 review period, we have used the U.S. prime rate to calculate Wieland's imputed U.S. credit expenses for this period.

Use of Alloy CDA250

Comment 9: The petitioners state that in the fifth review (1991–1992) the Department should include home market sales with alloy grade CDA250 in its dumping analysis, in order to ensure that each U.S. sale is compared to the home market sales with the closest alloy composition for product matches in which an identical alloy match is not available.

Department's Position: We agree with the petitioners and have included these sales in our analysis for these final results.

Clerical and Programming Errors

Comment 10: Wieland states, and the petitioners agree, that the Department's computer program fails to reflect all possible matches between U.S. and home market sales.

Department's Position: We concur and have amended the programs by adding programming which ensures that all U.S. sales are correctly matched to home market sales.

Comment 11: The respondent points out that adjustments for different alloys were not converted to pounds.

Department's Position: We agree with the respondent and have converted the adjustments for different alloys to pounds.

Comment 12: The petitioners state that the Department failed to deduct commissions or direct and indirect selling expenses in its VAT tax adjustment when it calculated the net U.S. price for ESP sales.

Department's Position: We agree in part with the petitioners. Since in the preliminary results we did not adjust U.S. commissions and indirect expenses for VAT, we have done so in these final results.

Clerical Errors Alleged in the Fourth Review Only

Comment 13: The petitioners state that the Department failed to adjust FMV for the differences in metal costs whenever U.S. sales were matched to a home market sale of merchandise with a different alloy. Petitioners state that the Department should increase both the adjustment for different alloys and the adjustment for other differences in merchandise to account for the VAT.

Department's Position: In the preliminary results, when matches were based on merchandise made of different alloys, we did adjust FMV for differences in alloys. However, we inadvertently failed to increase the adjustments for differences in merchandise and differences in alloys by the VAT rate. We have corrected this oversight for these final results.

Comment 14: The petitioners state that the Department compared VAT-inclusive U.S. prices to constructed values (CV) which had not been increased by the VAT rate.

Department's Position: We agree with the petitioners; we do not add VAT to CV, but in the preliminary results we inadvertently compared VAT-inclusive U.S. prices to CV. We have corrected the computer programming language by removing VAT from the U.S. prices which would be compared to CV. However, since CV was not used in these final results, this point is moot.

Comment 15: The petitioners state that in its test for sales below cost in the home market, the Department neglected to subtract after-sale rebates and freight charges. The petitioners further state that in calculating total cost, the Department neglected to include home market packing expenses.

Department's Position: We disagree with the petitioners. After-sale rebates, home market packing expenses, and freight are included in reported costs, and are therefore also included in price for the purpose of the cost test.

Comment 16: The petitioners state that the Department failed to add U.S. packing expenses to CV.

Department's Position: We disagree with the petitioners; U.S. packing expenses were included in CV for the preliminary results. However, since CV was not used in these final results, this point is moot. Clerical Errors Alleged in the Fifth and Sixth Reviews

Comment 17: The petitioners state the Department double-counted after-sale rebates by including them in both direct and indirect selling expenses.

Department's Position: We agree with the petitioners, and have amended the final results to remove after-sale rebates from home market indirect selling expenses.

Comment 18: The petitioners state that in the 1992–1993 review, the Department failed to include inventory carrying costs in the calculation of U.S. indirect selling expenses.

Department's Position: We agree and have added inventory carrying costs to indirect selling expenses for ESP sales.

Comment 19: Petitioner states that the Department should increase both the adjustment for different alloys and the adjustment for other differences in merchandise to account for the VAT.

Department's Position: We inadvertently failed to increase the adjustments for differences in merchandise and differences in alloys by the VAT rate. We have corrected this oversight for these final results.

Final Results of Reviews

As a result of our analysis of the comments received, we determine that the following margins exist for Wieland:

Manufacturer/exporter	Period	Percent margin
Wieland-Werke AG	3/1/90–2/28/91	2.04
	3/1/91–2/28/92	2.36
	3/1/92–2/28/93	0.46

Individual differences between the USP and FMV may vary from the above percentages. The Department shall instruct the Customs Service to liquidate all appropriate entries.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act:

(1) The cash deposit rate for Wieland will be zero, since the rate published in the final results of review for the 1993–1994 period is *de minimis*;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 8.87%, the ''all others'' rate established in the LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 11, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–18397 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–821, A–588–837]

Initiation of Antidumping Duty Investigations: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Bill Crow or James Maeder, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0116 and 482–3330, respectively.

Initiation of Investigations

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

The Petitions

On June 30, 1995, we received petitions filed in proper form by Rockwell Graphic Systems, Inc. and its parent company, Rockwell International Corporation (the petitioner). Supplements to the petitions were received on July 17 and 19, 1995. In accordance with section 732(b) of the Act, the petitioner alleges that large newspaper printing presses from Germany and Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file these petitions because it is an interested party, as defined under section 771(9)(C) of the Act. The petitioner also states that it has filed the petitions on behalf of the U.S. industry producing the product that is subject to this investigation.

Determination of Industry Support for the Petitioner

Section 732(c)(4)(A) of the Act requires the Department to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if (1) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product; and (2) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. For purposes of our analyses, we accept the definition of the domestic like product as defined in the petitions.

A review of the production data provided in the petitions indicates that the petitioner accounts for more than 25 percent of the total production of the domestic like product and for more than 50 percent of that produced by companies expressing support for, or opposition to, the petitions. The Department received no expressions of opposition to the petitions by domestic producers of the domestic like product. However, on July 17, 1995, Mitsubishi Heavy Industries, Ltd. (MHI) submitted on the Japanese record a challenge to the petitioner's claim that the petition was filed on behalf of the domestic industry with respect to newspaper press components, alleging that petitioner lacks standing because it does not produce all components (*e.g.*, folders), subcomponents and parts (*e.g.*, reel stands, paper guides, screws, etc.) of the subject merchandise. Also, on July 18, 1995, MAN Roland, Inc. (MAN Roland) submitted in connection with the German petition a challenge to the petitioner's claim that the petition was filed on behalf of the domestic industry with respect to newspaper press components.

The petitioner filed a response to both challenges on July 19, 1995. In addition, in an ex-parte meeting with Department officials, the petitioner clarified certain elements of the scope language submitted in the original petitions. With respect to the arguments concerning parts manufacturing, we have found MHI's and MAN Roland's challenges to be unsubstantiated. Rockwell is a producer of all five of the named newspaper press components designated as within the scope of these investigations as it attested to in its July 19 affidavit.

With respect to the argument that the petitioner does not produce subcomponents and parts, we note that the subject merchandise defined in the scope section of this notice clarifies that the domestic like product identified in the petition is limited to large newspaper printing press systems, press additions, and the five named major press system components. The subcomponents and parts identified by MHI are not included in the definition of the domestic like product accepted by the Department. As such, there is no issue with respect to domestic producers of printing press subcomponents or parts.

MAN Roland also argued that the petitioner does not manufacture presses using flexographic printing technology and, therefore, has not presented evidence of sufficient industry support. Based on the petitioner's attestation, MAN Roland is incorrect. The petitioner has produced and sold, and remains capable of producing and selling, large newspaper printing presses using flexographic printing technology, as discussed in its July 19 and 20, 1995, submissions.

Therefore, the Department determines that both the German and the Japanese petitions are filed on behalf of the domestic producers of large newspaper printing presses, and the five named components designated in the petitions.

Scope of Investigations

The products covered by these investigations are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to complete systems, the scope of these investigations includes the five press system components. They are:

(1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color, or a printing-unit cylinder;

(2) A reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) A folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) A computerized control system, which is any computer equipment and/or software *designed specifically* to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of disassembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation. This scope does not cover spare or replacement parts. Further, these investigations cover all current and future printing technologies capable of printing newspapers, including, but not limited to lithographic (offset or direct), flexographic, and letterpress systems.

The products covered by these investigations are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.91.00, 8524.21.00, 8524.90.00, and 8537.10.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Export Price and Normal Value

Germany

The petitioner based gross export price on detailed pricing information on a sale to a customer in the United States obtained by the bidding process for newspaper press sales. The petitioner

deducted from a delivered price a certain proprietary allowance, installation costs, training expenses, and movement charges, including foreign inland freight, foreign port and loading charges, ocean freight, marine insurance, U.S. wharfage expenses, U.S. port and loading costs, U.S. duty, and U.S. inland freight expenses.

According to the petitioner, the German home market is viable. However, contending that large newspaper printing presses sold in Germany differ substantially from those sold in the United States, the petitioner was unable to provide information for sales of identical or similar large newspaper printing presses sold in both markets. Accordingly, the petitioner based normal value on constructed value (CV).

CV includes the cost of manufacturing (COM), selling, general and administrative expenses (SGA), interest expense, U.S. packing and profit. For COM, the petitioner estimated overhead production factors and material requirements based on its own bid proposal cost of production model for the U.S. sale used in its allegation. The petitioner valued labor and overhead (excluding depreciation) using publicly available data for Germany. Where German market specific costs were unavailable, the petitioner relied on its own experience. Major component parts were valued using price quotes received from a German supplier where available. Because petitioner was unable to obtain German prices for the remaining material parts, it relied on its own experience as a reasonable surrogate. Therefore, the petitioner used Rockwell Graphic Systems' actual price paid to a U.S. supplier to value all the remaining material parts.

As part of COM, the petitioner included an amount for depreciation expense computed from MAN Roland's 1994 financial statements. As noted above, however, the petitioner based the materials costs on supplier price quotes which would reasonably recover the suppliers' costs, including costs relating to manufacturing depreciation. Since MAN Roland produces its own component parts, a significant amount of the depreciation expense reflected in its financial statements relates to machinery and equipment used to manufacture these component parts. Therefore, we believe the COM in the petition double counts depreciation expense for component parts. We could not identify the amount of depreciation expense directly related to manufacturing the component parts. In order to avoid overstating costs, we excluded all reported depreciation expense from the CV calculation.

Although petitioner had obtained a copy of MAN Roland's 1994 financial statements, it was unable to use the information presented to compute SGA expense for CV due to the format of the company's income statement. Moreover, the petitioner was unable to obtain from other sources the German market SGA data for the printing machinery and equipment industry, and documented its unsuccessful attempts to collect this information. As an alternative source for SGA expense, the petitioner calculated an SGA rate specific to large newspaper printing presses based on its own experience. The Department normally relies on home market specific information where reasonably available. In this instance, however, having made a reasonable effort to collect this data, the petitioner was unable to do so. We therefore have relied on the petitioner's own SGA information for CV.

The petitioner calculated interest expense based on MAN Roland's 1994 unconsolidated financial statements rather than using the 1994 MAN consolidated financial statements. The Department normally computes interest expense on a consolidated basis. MAN's 1994 consolidated financial statements indicate that short-term interest income exceeded interest expense. Therefore, we included no interest expense in CV. For U.S. packing, the petitioner calculated MAN Roland's cost based on its own experience.

The petitioner contends that MAN Roland's lack of profit, as reported in its audited financial statements, does not constitute a reasonable profit under the statute. Thus, the petitioner calculated profit based on the financial results for six other MAN companies which manufactured marine engines, automotive parts, space systems, and heavy industrial equipment. Section 773(e)(2) of the Act provides that CV include a reasonable amount for profit earned by the exporter or producer of the merchandise under investigation. The Department therefore recalculated CV using a profit figure of zero based on the results shown in MAN Roland's 1994 financial statements.

Based on the Department's modifications to the petitioner's methodology, the estimated dumping margin is 46.40 percent.

Japan

The petitioner based gross export price on detailed pricing information on two sales to customers in the United States obtained by the bidding process for newspaper press sales. The petitioner deducted from delivered prices installations costs, training expenses and movement charges including foreign inland freight, foreign port and loading charges, ocean freight, marine insurance, U.S. duty, U.S. wharfage charges, U.S. port and unloading fees and U.S. inland freight. For one sale, the petitioner deducted the cost of a certain proprietary allowance; from the second sale, the petitioner deducted the expenses incurred for advance press and support services.

According to the petitioner, the Japanese home market is viable. However, contending that large newspaper printing presses sold in Japan differ substantially from those sold in the United States, the petitioner was unable to provide information for sales of identical or similar large newspaper printing presses sold in both markets. Accordingly, the petitioner based normal value on CV.

CV includes the COM, SGA, interest expense, U.S. packing, and profit. For COM, the petitioner estimated material requirements and overhead costs for the two reported Japanese sales based on its own bid proposal cost of production model and adjusted for known differences between costs incurred in producing the large newspaper printing presses in the United States and the production costs incurred for the merchandise in Japan.

For one sale, the petitioner used SGA expenses from its own U.S. Graphic Systems division expense because the CV was based primarily on U.S. production costs. For the other sale, the petitioner used the SGA expenses incurred by its Japanese subsidiary because the CV was based primarily on the subsidiary's costs. The Department prefers to calculate SGA using home market and industry specific information where reasonably available. Therefore, we used the SGA expenses from petitioner's Japanese subsidiary for both Japanese sales because this represented costs specific to the newspaper press industry in Japan.

The petitioner calculated interest expense and profit for both Japanese sales based on Mitsubishi Heavy Industries' 1993 and 1994 consolidated financial statements, respectively. Packing costs were based on its own U.S. Graphic Systems division's experience.

Based on the Department's modifications to the petitioner's methodology, the estimated dumping margins range from 78.22 to 179.55 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that

imports of large newspaper printing presses are being, or are likely to be, sold at less than fair value. If it becomes necessary at a later date to consider these petitions as a source of facts available under section 776 of the Act, we may review further the calculations.

Initiation of Investigations

We have examined the petitions on large newspaper printing presses from Germany and Japan and have found that they meet the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, pursuant to section 732(c)(2) of the Act, we are initiating antidumping duty investigations to determine whether imports of large newspaper printing presses from Germany and Japan are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations by December 7, 1995.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, copies of the public versions of the petitions have been provided to the representatives of the governments of Germany and Japan. We will attempt to provide copies of the public versions of the petitions to all the exporters named in the petitions.

International Trade Commission (ITC) Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by August 14, 1995, whether there is a reasonable indication that imports of large newspaper printing presses from Germany and Japan are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination in either investigation will result in that investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: July 20, 1995.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–18399 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–032]

Large Power Transformers From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on large power transformers from Japan. The review covers exports of one manufacturer of this merchandise to the United States. The review period is June 1, 1993, through May 31, 1994. The review indicates that no shipments of the subject merchandise took place during the review period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Andrea Chu, Kris Campbell, or Michael R. Rill, 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) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1994, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' (59 FR 29411) of the antidumping finding on large power transformers from Japan. In accordance with 19 CFR 353.22(a), the petitioner requested that the Department conduct an administrative review. We initiated the review on July 15, 1994 (59 FR 36160), covering the period June 1, 1993, through May 31, 1994. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of large power transformers; that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term ''transformers'' includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers.

Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly.

This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of transformers, Fuji Electric Co., Ltd. (Fuji). The review period is June 1, 1993, through May 31, 1994.

Preliminary Results of Review

Fuji reported that it made no shipments to the U.S. during the period of review. The Department confirmed with the U.S. Customs Service that no subject merchandise exported by Fuji was entered into the United States during the period of review. Therefore, we preliminarily determine that there were no shipments subject to this review and that Fuji's cash deposit rate will continue to be 5.90 percent, which is the rate established in the final results of the last relevant review period in which Fuji made shipments.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) For the reviewed company and previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters is 10.63 percent (see **Federal Register** on August 23, 1993 (59 FR 44498)). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held approximately 44 days after the publication of this notice. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 19, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–18400 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–DS–P

Evaluation of State Coastal Management Programs and National Estuarine Research Reserve

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Wisconsin and Florida Coastal Management Programs and the Wells (Maine) National Estuarine Research Reserve Program.

These evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal management. Evaluation of Coastal Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national coastal management objectives, adhered to its Coastal Program or Reserve Management Plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Wells National Estuarine Research Reserve in Maine site visit will be from September 11–15, 1995. A public meeting will be held on Tuesday, September 12, 1995, at 7 p.m., at the Wells Reserve Visitor Center, 342 Laudholm Road, Wells, Maine, 04090.

The Wisconsin Coastal Management Program evaluation site visit will be from September 11–15, 1995. Public meetings will be held on Tuesday, September 12, 1995, at 7 p.m., at the Neville Museum, 210 Museum Place, Green Bay, WI, 54301.

The Florida Coastal Management Program evaluation site visit will be from September 18–22, 1995. A public meeting will be held on Thursday, September 21, 1995, from 6 to 8 p.m, at the Naval Beach Hotel, 851 Gulf Shores Blvd., North, Naples, Florida.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOA/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090, ext. 126.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

Dated: July 19, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone.

[FR Doc. 95–18488 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

July 21, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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) 927–6704. 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 limits for certain categories are being adjusted, variously, for 5 percent allowance for traditional folklore products, swing and special shift.

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 17325, published on April 5, 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 21, 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 March 30, 1995, 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 textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on July 28, 1995, you are directed to amend the directive dated March 30, 1995 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]
Levels in Group I:	
219	5,867,479 square meters.
313	13,555,344 square meters.
314	47,250,253 square meters.
317/617/326.	20,560,336 square meters of which not more than 3,083,244 square meters shall be in Category 326.
331/631	1,545,003 dozen pairs.
334/335	184,373 dozen.
336/636	535,173 dozen.
338/339	1,204,271 dozen.
340/640	1,274,789 dozen.
341	801,497 dozen.
342/642	306,544 dozen.
345	289,589 dozen.
347/348	1,567,173 dozen.
350/650	102,870 dozen.
351/651	452,074 dozen.
445/446	40,045 dozen.
448	15,232 dozen.
604–A [2]	457,538 kilograms.
618	2,369,516 square meters.
625/626/627/628/629.	19,881,056 square meters.
634/635	245,236 dozen.
638/639	1,294,594 dozen.
641	1,834,440 dozen.
644	313,765 numbers.
647/648	2,723,165 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 604–A: only HTS number 5509.32.0000.

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.95–18401 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Applicable Form: Department of Defense Request for Personnel Security Investigation; DD Form 1879

Type of Request: Expedited Processing—Approval Date Requested: 30 days following publication in the **Federal Register**

Number of Respondents: 150,000

Responses Per Respondent: 1

Annual Responses: 150,000

Average Burden Per Response: 15 minutes

Annual Burden Hours: 37,500

Needs and Uses: The DD Form 1879, ''Department of Defense Request for Personnel Security Investigation,'' is used to request Single Scope Background Investigations (SSBIs), Expanded National Agency checks (ENACs), SSBI Periodic Reinvestigations (PRs), or Special Investigative Inquiries (SIIs). It will accompany the revised Standard Form 85P, ''Questionnaire for Public Trust Position,'' or Standard Form 86, ''Questionnaire for National Security Position,'' which will be used by the Defense Investigative Service for the purpose of conducting SSBIs, ENACs, PRs, and SIIs. These provide the basis for determination of a person's eligibility for access to classified information, appointment to a sensitive position, assignment to duties that require a personnel security or trustworthiness determination, continuing eligibility for retention of a security clearance, or assignment to other sensitive duties.

Affected Public: Individuals or households, Businesses or other for-profit; Federal Government

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 24, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18469 Filed 7–26–95; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–595–000]

Texas Eastern Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Brazos River Crossing Project, Request for Comments on Environmental Issues, and Notice of Site Visit

July 21, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Brazos River Crossing Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Texas Eastern Transmission Corporation (Texas Eastern) wants to abandon about 1.8 miles of its mainline No. 11, and replace it with about 1.6 miles of 24-inch-diameter pipeline, including a new crossing of the Brazos River by directional drill, in Austin and Waller Counties, Texas. Texas Eastern's

[1] Texas Eastern Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

existing mainline No. 11 Brazos River crossing has been exposed by erosion.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 16.8 acres of land. An 85-foot-wide right-of-way would be used during construction on the land portion of the project, as well as additional extra work spaces. Following construction, the permanent right-of-way would be 50 feet wide. Extra work spaces and right-of-way beyond the 50-foot-wide permanent right-of-way would revert to their original land uses. Vegetation would be restored in all disturbed areas.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Public safety;
- Land use;
- Cultural resources;
- Air quality and noise;
- Polychlorinated biphenyls.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Eastern. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The project would cross cropland and rangeland. An undetermined amount of prime farmland soils would be temporarily affected. The project would also cross an existing pecan orchard, ranch, corrals, and the construction right-of-way is within 23 feet of a residence.
- Several landowners have stated that an alternative route which uses existing right-of-way would be preferable to the proposed route.
- The project would affect about 5.8 acres of herbaceous wetlands, and about 1.0 acre of forested wetland.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please following the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulation Commission, 825 North Capitol Street NE., Washington, DC 20426;
- Reference Docket No. CP95–595–000;
- Send a *copy* of your letter to: Mr. Jeff Gerber, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before August 21, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Gerber at the above address.

Site Visit

On August 9, 1995, the FERC staff, accompanied by representatives of Texas Eastern, will inspect the proposed location of the facilities. All interested parties may attend. Those planning to attend must provide their own transporation. For further information, call Mr. Jeff Gerber, EA Project Manager, (202) 208–1121.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding is August 4, 1995. Parties seeking to file late interventions must show good cause, as required by Section 385.124(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Jeff Gerber, EA Project Manager, at (202) 208–1121.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–18413 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–387–000]

Hanley and Bird, Inc. v. CNG Transmission Corporation; Notice of Complaint

July 21, 1995.

Take notice that on July 14, 1995, Hanley and Bird, Inc. (Hanley), pursuant to Section 5 of the Natural Gas

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Act (NGA), 717d, and Section 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, filed a complaint seeking resumption of certain end-user interruptible transportation and capacity release service, and relief from allegedly unlawful, unduly discriminatory and anticompetitive practices by CNG Transmission Corporation (CNG) in violation of NGA Sections 5 and 7, the antitrust laws, Commission policy, and the nomination procedures of CNG's FERC GAS Tariff.

Hanley complains that CNG has unlawfully tied entitlement to a small customer, one-part, volumetric (FT(SC)) rate to the requirement that Hanley must first ship 10,000 Dth of gas per day (Hanley's contractual reservation level) before CNG will allow unaffiliated and independent shippers behind Hanley's city-gate to nominate and ship interruptible transportation (IT) or released capacity gas in their own names to Hanley's delivery points on CNG.

Hanley also complains that CNG delayed implementation of Hanley's timely request for FT(SC) rates for the month of June 1995, until July 1, 1995, because notice was not received until after CNG confirmed nominations for June 1995 services.

Hanley requests that the Commission (1) direct CNG to provide IT and capacity release service to the end-users behind Hanley's city-gate, (2) enforce Hanley's election of FT(SC) rates for the month of June 1995 as timely received, or, alternatively, as a cognizable intra-month revision to Hanley's prior nomination for that month, and (3) exercise its authority under NGA Section 16 to cure all damages to Hanley and the end-users caused by CNG's unlawful practices.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before August 21, 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. Answers to this complaint shall be due on or before August 21, 1995.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–18418 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–175–000]

Mojave Pipeline Co.; Notice of Informal Settlement Conference

July 21, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on August 3, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC for the purpose of exploring the possible settlement of the referenced docket.

Any party, as defined by 18 CFR 385.102(c) or any participant, as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene any receive intervenor status pursuant to the Commission's Regulation (18 CFR 385.214).

For additional information, contact Kathleen M. Dias at (202) 208–0524 or J. Carmen Gastilo at (202) 208–2182.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–18417 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–618–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

July 21, 1995.

Take notice that on July 14, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–618–000 a request pursuant to §§ 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216 and 157.211) for authorization to abandon certain facilities in Arkansas, and to construct and operate certain facilities in Arkansas, under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to abandon one 1-inch tap and 1-inch U-shape meter station located on NGT's Line B in Faulkner County, Arkansas, and to replace it with one 2-inch tap and 3-inch L-Shape meter station to be located on Line B, Faulkner County, Arkansas. No service will be abandoned. These facilities are necessary to accommodate a request from Arkla for increased volumes to its Nucor and Conway City Plant. The tap to be abandoned and the tap to be constructed are located in Section 23, Township 5 North, Range 14 West, Faulkner County, Arkansas. The estimated volumes to be delivered through these facilities are approximately 1,489,200 MMBtu annually and 4,080 MMBTu a day. The estimated cost of construction is $43,925 and Arkla will reimburse NGT $31,487.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date 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. 95–18414 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–343–000]

NorAm Gas Transmission Co.; Notice of Informal Settlement Conference

July 21, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, August 8, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, contact Donald Williams at (202) 208–0743 or Irene Szopo at (202) 208–1602.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–18416 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–623–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

July 21, 1995.

Take notice that on July 17, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP95–623–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade facilities at an existing delivery point in Columbia County, Wisconsin, 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 proposes to upgrade the Portage Town Border Station #1 in order to accommodate increased deliveries Wisconsin Power & Light Company (WP&L) under Northern's currently effective throughout service agreements. It is stated that WP&L has requested the upgrade of the delivery point to accommodate growth of gas requirements in the area. It is asserted that Northern would use the upgraded delivery point for the delivery of up to 9,613 MMBtu equivalent of natural gas on a peak day and 1,956,013 MMBtu equivalent on an annual basis. It is further asserted that Northern is presently using the delivery point for the delivery of up to 6,113 MMBtu equivalent on a peak day and 678,513 MMBtu equivalent on an annual basis. It is explained that the proposed increase would be 3,500 MMBtu equivalent on a peak day and 1,277,500 on an annual basis. It is stated that the volumes to be delivered would not exceed the total volumes presently delivered to WP&L. The construction cost is estimated at $166,898. It is stated that WP&L will reimburse Northern in the amount of $154,159. Northern states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers and that its tariff does not prohibit the proposed upgrade of a delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and 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. 95–18415 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC Clarification of Manual and Electronic Filing Process for the Broadband PCS ''C Block'' Auction; Improved Software and Instructions Provided—Electronic Signatures Are Acceptable

July 14, 1995.

Information for All Filers

By Public Notice, released June 13, 1995, the Commission announced it was suspending the June 15, 1995 filing deadline for the FCC Form 175 applications for the broadband personal communications services (PCS) C Block auction and would return any applications filed prior to the announcement of a new filing deadline. The Commission established a new, July 28, 1995 filing deadline by Public Notice on June 23, 1995. By this Public Notice, the Commission clarifies that it will continue to accept any short form applications that are filed up to the July 28 filing deadline. We remind bidders, however, that we have a pending rule making proceeding that proposes changes to the competitive bidding rules for the C Block auction. See Further Notice of Proposed Rule Making, FCC 95–263, 60 FR 34,201 (June 30, 1995). Bidders may want to wait until that proceeding is resolved before submitting their FCC Form 175 applications.

Electronic Filing Instructions

The FCC urges applicants for the upcoming broadband Personal Communications Services (PCS) ''C block'' auction to file their FCC Form 175 applications electronically and emphasizes that the electronic transmission of a name in place of a handwritten signature is permitted.

In an Order released April 21, 1995 (April 21 Order), electronic filing of applications was announced. *See Order,* DA 95–805. The April 21 Order stated that ''handwritten signatures will continue to be required on all applications unless and until specific procedures are established for electronic filing of such applications. Such procedures will be implemented by future Public Notices in the **Federal Register,** modified application forms, and other published procedures.'' *Id.* at ¶ 3.

The specific procedures for electronically filing applications for the C Block were set forth previously in the Bidder Information Package for the FCC Entrepreneurs' Block auction on Block C, which was released to the public in May 1995. The Commission, however, is republishing these procedures, as updated, in an attachment to this Public Notice, which will be printed in the **Federal Register** in its entirety. *See* Attachment A. By so doing, the agency is responding to concerns that electronic signatures may not be officially recognized according to the terms of the April 21 Order. The Commission will accept the electronic transmission of a name as a valid signature on all electronically filed FCC Form 175 applications as specified in Attachment A to the Public Notice.

Also, in an effort to make it easier for applicants to file electronically, the Commission has improved its software to facilitate the electronic filing process. Today, in re-releasing electronic filing procedures, the Commission offers new and improved instructions on how to down-load the software and on electronic filing generally. The new software will be available starting Saturday, July 15, 1995. Anyone interested in filing electronically must down-load the new software package since the old one will no longer be recognized by the Commission's computer system. Any information previously submitted to the electronic filing system has been purged. Therefore, on July 15, 1995, electronic filing will be available to the public. Electronically filed applications may be modified by the applicant up until the filing deadline, 5:30 p.m. E.D.T. on Friday, July 28, 1995, when the information submitted by the applicant will be considered a formally filed application. All applicants are encouraged to file electronically. Applicants are also encouraged to watch

for Public Notices which will keep them apprised of any important dates or rule changes involving the C Block PCS auction.

FCC Auction Hotline: (202) 418–1400

Wireless Telecommunications Bureau: News Media Contact—Stacey Reuben Mesa (202) 418–0654; General Information—Anne Linton (202) 418–0660

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Attachment A—Electronic Filing Information and Instructions

In order to be eligible to bid in the FCC action, applicants must submit an FCC Form 175 application to the Commission. The Commission recently implemented a remote access system to allow applicants to submit their FCC Form application electronically. Auction applicants will have the opportunity to file their applications either electronically or manually (via hard copy). Electronic filing will enable the appplicant to: (1) Receive interactive feedback while completing the application, and (2) receive immediate acknowledgment that the FCC Form 175 has been submitted for filing.

A new version of the Remote FCC Form 175 application software will be available for downloading beginning Saturday, July 15, 1995. The old version of the Remote FCC Form 175 application software will not work. That is, all application software downloaded prior to Saturday, July 15, 1995 will not run properly. The FCC encourages applicants to file electronically. The remote access system for initial filing of the FCC Form 175 applications will generally be available 24 hours per day.

The old version of the Remote FCC Form 175 application software will not work. You must download the new version of the Remote FCC Form 175 application software to file electronically. If you had previously downloaded and installed the FCC Form 175 application, then you should delete the existing FCC Form 175 directory (usually installed as c:/auction) and all files within it. However, if you do not delete the directory before installation, then during installation the setup program will prompt you to update any existing files. You MUST update all the existing files. New instructions for downloading the application as well as revised instruction for filing electronically are attached.

All FCC Form 175 applications submitted to the FCC previously have been DELETED from the system.

The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections.

Applicants who file FCC Form 175 application electronically will NOT be required to transmit an original or electronic signature. However, by submitting the form electronically the certifying official has made representation that they are an authorized representative of the applicant for the license(s) selected, and that they have read the instructions and the certifications and all matters and things stated in the application and attachments including exhibits, are true and correct.

Late applications (*i.e.*, any applications filed after 5:30 p.m. E.D.T. on Friday, July 28, 1995) or unconfirmed submissions of electronic data will not be accepted.

The following provides a general description of the electronic filing software.

Note: All ownership documentation (for electronic filing) must be formatted as ASCII Text (.TXT) file(s), so be prepared and have the file(s) ready prior to accessing the remote FCC Form 175.

The remote FCC Form 175 submission software will prompt the applicant for an FCC Account Number. The FCC Account number that is required to log in to the software is the same as what is required in Item 7 of the FCC Form 175 application. This number will be used to identify and track applications. Applicants must create this number using their Taxpayer Identification Number (TIN) with a prefix of ''0'', i.e., 0123456789. If, and only if, an applicant does not have a Taxpayer Identification Number, the applicant may use its ten digit area code and telephone number (i.e., 5552345678).

In addition, the applicant will be required to enter a self-assigned password. This password must be entered in both the password and the verify password fields. Be careful when entering the passwords since the data entry is case sensitive. The applicant will need to remember the exact spelling of the password and keep it secure. In the event that an applicant loses its password to the remote electronic filing system, the applicant most notify the FCC Technical Support Hotline at (202) 414–1260 and will be required to obtain a replacement code in person at the auction site located at 2 Massachusetts Avenue, NE in Washington, D.C. Only the certifying official or one of the authorized bidders will be able to obtain a replacement password and two forms of identification will be required (at least one of which must be a photo identification). To ensure the security of the filed applications, replacement passwords will not be provided over the telephone.

Further, if an applicant exits the FCC Form 175 without ever submitting the application, the password associated with the FCC Account Number and any data entered will NOT be saved.

The FCC Form 175 submission software contains seven main screens. The first screen is the ''Profile'' screen which is used to capture the general FCC Form 175 information. The second screen is the ''Licenses'' screen which is used to select the licenses for which the applicant wishes to apply. The third screen provides the ''Required Certifications'' prior to submitting their application. The fourth and fifth screens are used to submit the required ''Ownership'' information. Applicants must provide their ownership documentation in an ASCII Text (.TXT) file format. The sixth screen allows the applicant to enter a free-form waiver request. The last screen provides the instructions for filing the FCC Form 175.

If the applicant exits the remote access system prior to submitting their FCC Form 175, the information that they entered during the session will not be saved.

The electronic filing method will capture all of the information required on the FCC Form 175 and will electronically submit the application to the FCC when the Form 175 has been properly completed and the applicant presses the submit button. The system will provide interactive error messages to help ensure the application contains the required information. Applicants that file their FCC Form 175 applications electronically through the FCC remote access system will be able to print their completed application.

The Commission will prohibit submission of FCC Form 175 applications after the deadline and encourages applicants to file their applications early in order to ensure that their applications are submitted and confirmed.

After the FCC Form 175 has been successfully submitted, the option to generate and complete the FCC Form 159 (FCC Remittance Advice Form) will be offered. The FCC Form 159 screen allows the applicant to prepare and print its FCC Form 159 which must accompany its upfront payment to participate in the auction. Certain information will automatically appear on the screen based on the information entered on the applicant's FCC Form 175 application (i.e., the name and

address of the applicant, the payment type code, the FCC Code 1 (auction number), etc.). The FCC Form 159 should be completed, submitted and printed. The printed copy must accompany an applicant's upfront payment if the applicant is paying by cashier's check or must be faxed to Mellon Bank at (412) 236–5702 if the applicant wishes to submit its upfront payment by wire transfer.

After the initial submission period deadline, the Commission will issue a Public Notice which will identify accepted, incomplete and rejected applications and the markets in which each applicant has applied. All applications are still subject to FCC approval. Applicants who submit their FCC Form 175 electronically will need to check the Public Notices to verify acceptance of their application.

During the resubmission period, applicants can make minor corrections to their FCC Form 175 application electronically. Applicants will not be permitted to modify their license selection(s), change their certifying official, or change control of the applicant. If the FCC Form 175 is initially submitted electronically, then any modifications to the form must also be submitted electronically. Further, minor modifications to FCC Form 175 applications, intended to correct applications initially determined to be incomplete, must be submitted prior to the deadline for resubmissions stated in the Public Notice that identifies the accepted, incomplete and rejected applications.

Once the Public Notice is released which identifies the accepted, incomplete, and rejected applications, remote access system users will be allowed to review other applicants' FCC Form 175 applications online.

The FCC Form 175 review software may be used to review and print other applicants' FCC Form 175s. It also provides the ability to download other applicants' FCC Form 175s once the FCC Form 175 resubmission period has started.

The remote access system for initial filing of the FCC Form 175 applications will generally be available 24 hours per day. Once the Public Notice that identifies the accepted, incomplete and rejected applications has been released by the Commission, the remote access system will generally be available on a 24 hour basis for resubmission of FCC Form 175 applications to make minor corrections and for the public to access other FCC Form 175 filings. During certain FCC required timeframes the system may not be available due to internal maintenance and process requirements or other unforeseen technical difficulties. A message will be provided when access is denied.

Those applicants who wish to file their FCC Form 175 electronically or review other FCC Form 175 applications online will need to carefully review the Bidder's Information Package and all subsequent Public Notices. For technical assistance in downloading, extracting or installing the FCC application software contact the FCC Technical Support Hotline at (202) 414–1260.

After the deadline for resubmitting corrected applications, the Commission will release another Public Notice announcing all applications that have been accepted for filing.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant will have to submit an upfront payment. In a pending rulemaking proceeding, the Commission is considering charging fees for software and on-line computer services associated with bidding and viewing other applications. 900 Number Fee Schedule Notice of Proposed Rulemaking, WTB Docket No. 95–69, 10 FCC Rcd 7066 (1995).

The following provides information about electronic filing and remote access. It is divided into three functional and technical parts:

Part 1: Hardware and Software Requirements and Instructions for Installing Electronic Filing Software
Part 2: Instructions for using the remote FCC Form 175 Submission Program
Part 3: Instructions for using the remote FCC Form 175 Review Program.

Part 1—Hardware and Software Requirements and Instructions for Installing Electronic Filing Software

About Your Software

The FCC Form 175, bid submission and round results viewer all require ppp software that is Winsock vl.1 compliant to access the FCC system. Configuration parameters for Trumpet v2.0b, NetManage Chameleon v4.1 and Wollongong Pathway Access for Windows v3.2 software are included in the appendix.

Recommended Hardware and Software Requirements to Access the FCC Auction System

You will need at minimum the following hardware:

- CPU: Intel® 80386 or above (80486 or faster recommended).
- RAM: 8MB RAM (more recommended if you have multiple applications open).
- Hard Disk: 10MB available disk space.
- 1.44MB Floppy Drive (to install the FCC Form 175).
- Three blank MS-DOS® formatted 1.44MB floppy disks.
- Modem: v.32bis 14.4bps Hayes© compatible modem.
- Monitor: VGA or above.
- Mouse or other pointing device.
- Microsoft® Windows™ 3.1 or above, or Microsoft® Windows for WorkGroups™ v3.11 or above.
- PPP asynchronous communications package Winsock v1.1 compliant.

The FCC Form 175 has not been tested on a Macintosh or OS/2 environment. Therefore the FCC will not provide assistance to those who cannot run Microsoft Windows 3.1 or above, or Windows for Workgroups v3.11 or above in an enhanced mode. This includes any other emulated Windows environments.

If your Windows is in a networked environment, you should check with your local network administrator for any potential conflicts with the ppp software package you will use to connect to the FCC network. This usually includes any TCP/IP installed network protocol.

Phone Numbers

The FCC Auction Network phone number for your ppp communications package is 202–408–7835. Technical support for installing or using the FCC Form 175 application can be reached at 202–414–1260. The FCC Auction BBS number is 202–682–5851. The general FCC Auction Hotline number is 202–418–1400.

Various Programs on the Internet

The following is a list of various programs that can be found on the Internet. These files can be downloaded via ftp (be sure to download in binary mode).

Trumpet v2.0b can be found at oak.oakland.edu in the following directory /simtel/win3/winsock as twsk20b.zip. The newest version, Trumpet v2.1c, can be found at ftp.trumpet.com.au in the directory /winsock as twsk21c.zip. You will need PKWare's v2.04g pkunzip.exe to uncompress these files.

PKWare v2.04g can be found at oak.oakland.edu in the following directory /simtel/msdos/zip as pkz204g.exe. This is a self-extracting file. Type pkz204g.exe to extract the file pkunzip.exe.

Please be aware of any licensing issues for these shareware products. The information is included in the respective package.

Installing Your PPP Software

Before you can use the FCC Form 175, you will need to install the ppp software. The ppp software should include documentation sufficient to install their product. Please see the appendix for various ppp software hints and configuration parameters.

Where to Get Form 175

On the Internet, you can connect via anonymous ftp at fcc.gov. Login using the account name anonymous and use your Internet e-mail address as the password. The file F175V2.EXE can be found in the following dir: /pub/Auctions/PCS/Broadband/BTA. Set to binary before you download the file.

If you wish to use the FCC Auctions BBS, dial 202–682–5851 (set your modem to 8 databits, no parity and 1 stop). To download the FCC Form 175 application, you will need a communications program that can handle at least xmodem protocol and preferably zmodem protocol.

Detailed Internet Instruction

To access the FCC ftp server, you will need to have access to the Internet and ftp client software. The following are instructions for the command line version of ftp. Graphical ftp interfaces may differ; please check with your lcoal computer specialist. Connect to the FCC ftp server, usually by typing ftp fcc.gov.

- At the user name prompt, type anonymous and press [Enter].
- At the password prompt, type your Internet e-mail address and press [Enter].
- Type binary so you can download binary files and press [Enter].
- Change your current directory to the BTA directory by typing: cd/pub/Auctions/PCS/Broadband/BTA and press [Enter].
- Type get F175V2.EXE and press [Enter].
- To exit, type bye and press [Enter].

Detailed BBS Instructions

To access the FCC Auctions BBS, you will need a PC with a modem and a communications package that can handle at least xmodem protocol. Use the communications package to dial in to 202–682–5851. Use the settings of 8 data bits, no parity and 1 stop bit (8,n,1).

New users follow steps 1–6, otherwise go to step 7:

1. Type New and press [Enter]. If the word ANSI is blinking, type Y for Yes. If the word ANSI is not blinking, type N for No.
2. Type in your first and last name and press [Enter]. This will be your login name.
3. Type in your Telephone number and press [Enter].
4. Type in your Fax number and press [Enter].
5. Type in what you want your password to be and press [Enter].
6. Retype the password for verification and press [Enter].

After the account is generated:

7. Type B for Broadband Auction and press [Enter].
8. Type B for BTA Auction and press [Enter].
9. Type P to download program files.
10. Move the cursor to the file F175V2.EXE, type [Control-D] (hold the Ctrl key down and press the D key) for Download and press [Enter].
11. Type the letter representing the transfer protocol you want to use and press [Enter]. How the file is downloaded and where it gets downloaded depends on the package being used.
12. When the file has finished downloading, press [Enter].

Repeat steps 9 through 12 to download another file or press X and [Enter] to exit the screen.

To Exit:

Type X to exit and press [Enter] and continue to press [Enter] until asked if you want to exit the BBS. Answer Y for Yes when asked to verify that you want to exit.

Creating Installation Disks From Downloaded Files

After you download the file F175V2.EXE, create the FCC Form 175 installation disks. You will need to have three (3) blank MS–DOS® formatted 3.5″ 1.44MB disks. To create the installation disks, type at the MS–DOS prompt: F175V2/!

The F175V2 program will first decompress several files and then run a batch file to create the installation disks. Please follow the instructions on the screen.

Installing FCC Form 175 Disks

If you had previously downloaded and installed the FCC Form 175 application then you should delete the existing FCC Form 175 directory (usually installed as c:\auction) and all files within it. However, if you do not delete the directory before installation, then during installation the setup program will prompt you to update any existing files. You MUST update all the existing files.

After you create the installation disks, restart Windows and run SETUP.EXE from installation Disk 1 of 3 and follow the instructions on the screen. Before running the installed FCC Form 175, be sure you have started and successfully connected using your ppp software.

Running FCC Form 175

After the FCC Form 175 installation completes, you will have a new Program Manager group called FCC Auction with two icons: Remote FCC Form 175 Submit and Remote FCC Form 175 Review. You must start the ppp software and be connected before you start either the Remote FCC Form 175 Review or Remote FCC Form 175 Submit. To start up either the Remote FCC Form 175 Submit or the Remote FCC 175 Review, you double click the respective icon. When you are finished with either FCC Form 175 program, be sure to disconnect from the FCC Network via your ppp software.

Appendix—Installing Trumpet v2.ob or Higher

If you already have some kind of TCP/IP networking package installed, the Trumpet Winsock program may not run. Contact your LAN administrator for assistance. Trumpet versions 2.0b and 2.1c have successfully been tested to work with the FCC network.

Copy the files winsock.dll, tcpman.exe, hosts, services, login.cmd, bye.cmd, setup.cmd, sendreg.exe, and protocol to a suitable directory.

e.g., c/trumpet

The essential files are:

winsock.dll the core of the Trumpet TCP/IP driver
tepman.exe controlling program for the Winsock
sendreg.exe registration program
hosts list of host names
services list of Internet services
protocol list of Internet protocols
login.cmd Trumpet script file to connect to the FCC Network
bye.cmd Trumpet script file to disconnect from the FCC Network
setup.cmd Trumpet setup file to connect to the FCC Network

Modify the path line in your autoexec.bat to contain a reference to that directory.

e.g., path c:/trumpet;c:/dos;c:/windows

Make sure it is active by rebooting your computer. Now you are ready to start windows.

From windows, start up tcpman by selecting File | Run from the file manager, then type tcpman. If this fails, the path is probably not set up correctly. Please fix it before proceeding. Later, you can set up tcpman as an icon so it can be started directly.

Assuming you are a first time user, a setup screen will appear giving you a number of options to fill in. You will need to fill in the following details to enable the TCP package to function. If you are unclear on any of them, try to

seek some help from qualified Internet support staff—it will save you a lot of time.

First click on Internal PPP. Some of the parameters will be grayed and others ungrayed.

Name server

- Enter name server IP address 165.135.22.249 for DNS searches.

Domain suffix

- Enter doman suffix fcc.gov

MTU

- Maximum Transmission Unit, set to 1500. Related to TCP MSS usually TCP MSS + 40 (Numeric)

TCP RWIN

- TCP Receive Window, set to 4096. It is recommended that this value be roughly 3 to 4 times the value of TCP MSS (Numeric).

TCP MSS

- Maximum Segment Size, set to 1460.

SLIP port

- your modem port number 1=com1, 2=com2 etc., (numeric).

Baud rate

- The speed you wish to run at (numeric), set to the maximum modem DTE speed or 57600. Up to 115200 is supported although speeds greater than 19200 require suitable hardware.

Hardware

- Handshake Should be checked.

The rest of the details should be grayed out and you need not try to fill them in. When you are done, click on [OK].

Under the Dialler | 1. setup.cmd:

- Set the telephone number to: 202–408–7835. You may need to add a dialing prefix.
- Leave the login username blank (i.e., no username)
- Leave the login password blank (i.e., no password)

Under the file | PPP Options

- Do not enable PAP.

If you decide to use the login script login.cmd, you will need to use a text editor and modify the following lines by using the pound symbol (#) at the beginning of the line. The line number is the approximate location:

Lines 71 and 72
input 30 $userprompt
output $username/13
Lines 76 and 77
input 30 $passprompt
output $password/13
Line 81
input 30 $prompt
Line 86
output $pppcmd/13
Line 88
input 30/n

If all goes well, the Trumpet Winsock will be initialized. You are now ready to start using the Winsock.

Remember, before you use the FCC Form 175, you will need to be connected. To connect, select Dialler | Login on the menu bar. After finishing the FCC Form 175, you should disconnect from the FCC network by selecting Dialler | Bye.

Detailed Configuration Information Using NetManage Chameleon v4.1

Install the software as instructed by the NetManage installation routine. Activate the Custom—Connect Here icon in the Program Manager Internet Chameleon group. Setup Chameleon's parameters with the following:

Under the Custom menu Interface | Add:

- Set the Name to FCC.
- Set the Type to PPP.

Under the Custom menu Setup | Port:

- Set the Baud Rate to the maximum DTE speed of your modem, usually 57600 bps for 14.4 kbps modems.
- Set the Data Bits to 8.
- Set the Stop Bits to 1.
- Set the Parity to none.
- Set the Flow Control to Hardware.
- Set the Connector to match your modem comm port.

Under the Custom menu Setup | Modem:

- Select the modem that most closely matches your modem. Hayes© is the most common choice.

Under the Custom menu Setup | Dial:

- Type in the dial edit box: 202–408–7835. You may need to add a dialing prefix.

Under the Custom menu Setup | Login:

- Leave User Name blank.
- Leave User Password blank.

Under the Services | Domain Servers:

- Set the IP address to the number 165.135.22.249

Remember, before you use the FCC Form 175, you will need to be connected. To connect, click on Connect on the menu bar. After finishing the FCC Form 175, you should disconnect from the FCC network by clicking on Disconnect.

Configuration Information For Using Wollongong Pathway for Windows v3.2

Install the Pathway Runtime for Windows v4.0 software using the Wollongong installation routine. During setup, you will be required to provide the following parameters: (you may enter anything for information not listed):

- Set the Adapter to SLIP/CSLIP/PPP connection.
- Set the Domain Name to fcc.gov.
- Set the IP Address to 0.0.0.0.
- Set the Subnet Mask to 255.255.0.0.
- Set the DNS Server to the number 165.135.22.249.

After the installation, start Dialer found in the Pathway Access Program Manger group. Enter a new profile (File | New) and supply the following relevant information:

- Set the Telephone Number to: 202–408–7835. You may need to add a dialing prefix.
- Set the Port to match your modem comm port
- Set the Baud Rate to the maximum DTE speed of your modem
- Check Driver Parameters' Flow Control
- Under Protocol, select PPP
- In the script text box, have only the following command:

SEND:

When you are finished, click on [Save] and provide a filename for your new profile.

Before you use the FCC Form 175 programs, you must be connected. To connect, click on Dial on the tool bar. After you are connected, Dial will gray out and Disconnect will be made available. After finishing the FCC Form 175 programs, you should disconnect from the FCC Network by clicking on Disconnect.

General Setup for Unsupported or Unlisted PPP Software

It is possible to use ppp software that we have not tested. The following information should provide enough information to make your software work. However, if your software cannot confirm/establish the following parameters, you will need to get one of the tested ppp software. The FCC will not provide support for any untested software product.

1. Set the ppp software to ppp mode (do not set for slip).
2. Set the domain name server to 165.135.22.249.
3. Set the domain suffix to fcc.gov.
4. Set the phone number to: 202–408–7835. You may need to add a dialing prefix.
5. Be sure to set the Baud Rate to the maximum DTE modem speed. This is

usually 57600 bps for 14.4 kbps modems.

6. Set the modem parameters to 8 data bits, no parity and 1 stop (if needed, set flow control to hardware).

Note: Spry's Internet-in-a-Box failed our testing procedures.

Part 2—Instructions For Using The Remote FCC Form 175 Submission

The Remote FCC Form 175 Submission program must first be installed. You MUST start the ppp software and be connected to the FCC Remote Electronic Auction System before you start the FCC Form 175 program. If you have not successfully connected to the System, you will receive an error message after the Account Verification Login Screen stating that you were unable to connect to the server.

Once you have successfully connected, double-click on the Remote FCC Form 175 Submission icon to load the application.

Use the TAB key or the mouse to redirect the cursor so the data may be entered. The data entry for this application is case sensitive, therefore be careful to type using either lower case and/or upper case exactly as you want.

In the lower right corner of the FCC Form 175 program is an icon with a question mark representing the Help facility. Click on the Help facility for definitions and additional instructions on how to use the FCC Form 175.

Please Note: If you exit the FCC Form 175 without ever submitting the application, then the information that was entered and the password associated with that FCC Account Number will NOT be saved.

After you have finished using the Remote FCC Form 175 Submission program, you should disconnect from the FCC System.

The first screen to appear will be the Welcome Screen.

Welcome Screen

Select the appropriate auction number (in this case auction '5') by using the mouse to advance to the arrow just below the word Auction.

Click on Ok to continue the submission process. The next screen to appear will be the Account Verification Login Screen.

To exit the remote FCC Form 175 application, click on the Exit button and enter either a 'Y' or click on 'Yes' in response to the message box that asks 'Are you sure you want to exit the application?'.

Account Verification Login Screen

Please Note: The data entry for this application is case sensitive, therefore be careful to type using either lower case and/or upper case exactly as you want.

Enter your ten digit FCC Account Number. This is your Taxpayer Identification Number (TIN) with a prefix of '0' or your ten digit telephone number (if you do not have a TIN).

Use the TAB key or the mouse to advance to the password. On the initial entry of this screen, you will be defining your confidential password. The password must be a minimum of five characters and a maximum of ten characters. It must be entered in BOTH the password and the verify password fields. Please be careful when typing the passwords since the data entry is case sensitive. You will need to remember the exact spelling of your password and keep it secure.

Click on Ok to continue the FCC Form 175 submission process. The next screen to appear will be the Profile Screen.

Click on the Cancel button to exit the Account Verification Login Screen.

Entering Data on the Profile Screen

Please Note: After entering the Profile information, you will need to click on each tab at the top of the screen to navigate through the entire FCC Form 175.

Click on the Instructions tab (at the top of the screen) to review the instructions for filing the FCC Form 175.

The Profile Screen is used to capture the general FCC Form 175 information. The FCC Form 175 will be displayed with your FCC Account Number and the auction number prefilled. The filing phase appears in the lower left corner of the screen in red.

Enter the applicant name.

Enter the applicant address, city, state, and zip code.

Click on the applicable applicant classification box. Click on the box again to reset the box.

If you are eligible to bid on entrepreneurial block licenses, then click on the appropriate entrepreneurial block box(es). Click on the box again to reset the box.

Click on all applicable designated entity boxes. Click on the box again to reset the box.

Enter the person(s) authorized to submit and withdraw a bid. Enter the name in First Name, Middle Initial, Last Name order.

Click on the Required Certifications tab (at the top of the screen) to review the certification requirements. This screen provides the certification requirements for filing the FCC Form 175. Applicants should read the 'Certifications' listed on the FCC Form 175 carefully before submitting the application. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, and ineligibility to participate in future auctions, and/or criminal prosecution.

Click on the Profile tab (at the top of the screen) to return to the FCC Form 175 profile information and reposition the cursor to the box labeled 'Name of Person Certifying'.

Enter the person certifying the application. Enter the name in First Name, Middle Initial, Last Name order.

Enter the title of the person certifying the application.

Enter the contact person. Enter the name in First Name, Middle Initial, Last Name order.

Enter the contact person's telephone number and fax number.

Click on the Licenses tab (at the top of the screen) to select the licenses for which you wish to apply.

Entering Data on the Licenses Screen

Please Note: This information will not be available for update after the initial FCC Form 175 filing period has ended.

The Licenses Screen is used to capture the licenses for which you wish to apply.

The licenses that are offered in the specified auction will be displayed in the 'Available Licenses' box.

If you wish to apply for all markets, then click on the box next to the words 'Markets All'. Click again on the box to reset.

If you wish to apply for all frequency block(s), then click on the box next to the words 'Freq Blks All'. Click again on the box to reset.

If you wish to apply for selected licenses, then click on the markets that you want. Click on the available frequency block(s) that you want.

Click on the 'Copy>>' button to move the license(s) you selected into the 'Selected Licenses' box.

If you wish to delete a license that is in the 'Selected licenses' box, then click on the selected license(s) and then click on the '<<Remove' button to move the license back into the 'Available Licenses' box.

Click on the Ownership Documentation tab (at the top of the

screen) to enter the required free-form ownership information.

Entering Data on the Ownership Documentation Screen

The Ownership Documentation Screen is used to upload and/or view the required free-form ownership information.

Click on the exhibit you wish to upload. You may upload only one exhibit at a time, however, you may upload and view all exhibits if you wish to do so. Click on the 'Upload' button to upload a file containing the ownership information. The file format must be ASCII Text (.TXT).

Click on the exhibit you wish to view. Click on the 'View' button to review the ownership file that was uploaded. If a message box appears asking whether you wish to convert the file to a Write format, you may select either Convert, No Conversion, or Cancel.

Click on the Ownership Worksheet tab (at the top of the screen) to enter the formatted ownership information.

Entering Data on the Ownership Worksheet Screen

The Ownership Worksheet Screen is used to enter the formatted ownership information. Two separate worksheets are displayed, one for Direct Ownership and one for Indirect Ownership.

A separate row for each direct interest holder that has at least a 5% equity ownership in the applicant must be entered on the Direct Ownership Worksheet. A separate row for each indirect interest holder should be entered on the Indirect Ownership Worksheet. Use the Add and Delete buttons to add or delete rows to/from the appropriate worksheet.

Enter the Taxpayer Identification Number (TIN) (or the Social Security Number (SSN), if an individual) of each interest holder.

Enter the familial relationship. It should reflect whether the direct holder is related to any other direct interest holder by blood or marriage (e.g., brother, mother, spouse, etc.).

Enter the appropriate selection for alien ('Y' for yes or 'N' for no).

Enter the appropriate selection for each interest holder's principal business.

Click on all applicable qualifying entity boxes (M=Minority Owned, S=Small Business, W=Woman Owned, and R=Rural Telephone). Click again on the box to reset the box.

Enter the appropriate selection for control group which reflects whether the interest holder is a member of the applicants' control group ('Y' for yes or 'N' for no).

Enter the interest holder's voting interest percentage of the applicant.

Enter the percentage equity held in the applicant.

Please Note: The Direct Ownership Worksheet has the following requirements; The equity held percentage must be 5% or greater. The sum of the equity held percentage may not exceed 100%

The system will calculate the difference of 100% and the sum of all equity held percentages and prefill the difference in the 'Other' category.

Click on the Waiver tab (at the top of the screen) or enter a free-form waiver request.

Entering Data on the Waiver Screen

The Waiver Screen is used to enter a free-form waiver request.

Click on the free-form text area and enter the waiver request information as you wish. Use the arrows on the right to scroll up and down through the text.

Click on the Submit button to submit the FCC Form 175. If any error messages appear, make appropriate corrections and click on Submit until no further error messages appear.

Bid Method Screen

The Bid Method screen captures the desired method(s) you wish to use for the bid submission/withdrawal process. The methods may include telephonic and remote.

The Bid Method screen will appear as your FCC Form 175 is being submitted.

You will receive a message stating your application was successfully submitted. The system will then ask if you want to generate the FCC Form 159.

Entering Data on the FCC Form 159 Screen

The FCC Form 159 screen is used to capture the information that needs to accompany the upfront payment. A copy of this screen needs to be either mailed with a cashier's check or faxed when paying by wire transfer.

This option will only be available after the FCC Form 175 has been initially submitted.

If you have used an FCC Account Number other than the one prefilled on the screen previously with the FCC, enter it in the box that is labeled 'Did you have a number prior to this? Enter it.'.

Enter the total amount paid (in dollars and cents).

Enter the payor name.

Enter the payor address, city, state, and zip code.

Enter the payor daytime telephone number.

Enter the payor country code when the country code is not U.S.A.

Click on the Ok button to save the FCC Form 159 information. Once the FCC Form 159 information has been saved the following instructions will appear.

Making Auction Payments by Cashier's Check

Each cashier's check and corresponding FCC Remittance Advice, FCC Form 159, must be in an individual envelope and specifically addressed to: Mellon Bank, Attention: Auction Payment, P.O. Box 358850, Pittsburgh, PA 15251–5850.

If delivering an auction payment in person or by courier, the check and FCC Remittance Advice, FCC Form 159, must be delivered to: Mellon Bank, Attention: Wholesale Lockbox Shift Supervisor, 27th Floor (153–2713), 3 Mellon Bank Center, 525 William Penn Way, Pittsburgh, PA 15259–0001.

Note: Please indicate on the inside of the envelope 'Lockbox No. 358850'.

Making Auction Payments by Wire Transfer

If making an auction payment by wire transfer, you must fax a completed FCC Remittance Advice, FCC Form 159, to Mellon Bank at (412) 236–5702 at least one hour prior to placing the order for the wire transfer (but on the same business day).

Click on the Print button to print the FCC Form 159. The Cancel button on the FCC Form 159 screen will return you to the FCC Form 175 screen.

Click on the Print button to print the FCC Form 175.

Click on the Backup Data button (in the upper right corner) to save the FCC Form 175 information to a text file(s).

The FCC Form 159 button will be enabled once the FCC Form 175 has been initially submitted. Once enabled, click on the FCC Form 159 button to enter the remittance advice information. This form must accompany the upfront payment.

Click on the Cancel button to exit the FCC Form 175 screen.

After you have finished using the Remote FCC Form 175 Submission program, you should disconnect from the FCC.

Part 3—Instructions For Using The Remote FCC Form 175 Review

The Remote FCC Form 175 Review program must first be installed. You must start the ppp software and be connected before you start the FCC Form 175 program. If you have not successfully connected, you will receive an error message stating that you were unable to connect to the server.

Once you have successfully connected, click on the Remote FCC Form 175 Review icon to load the application.

Use the TAB Key or the Mouse to Redirect the Cursor

In the lower right corner of the FCC Form 175 program is an icon with a question mark representing the Help facility. Refer to the Help facility for definitions and additional instructions on how to use the FCC Form 175 program.

After you have finished using the Remote FCC Form 175 Review program, you should disconnect from the FCC.

The first screen to appear will be the Welcome Screen.

Welcome Screen

Select the appropriate auction number (in this case auction '5') by using the mouse to advance to the arrow just below the word Auction.

Click on OK to continue the review process. The next screen to appear will be the Available Applicants Screen.

To exit the remote FCC 175 application, click on the Exit button and enter either a 'Y' or click on 'Yes' in response to the message box that asks 'Are you sure you want to exit the application?'.

Available Applicants Screen

Please Note: The ability to review other applicants FCC Form 175(s) will not be available during the initial FCC Form 175 filing period. After the initial filing phase, all FCC Form 175(s) will be available for review.

Please Note: The applications may be subject to certain minor amendments during the resubmission period.

The available applicants screen will display all applicants (in FCC Account Number order) that submitted FCC Form 175 for the specified auction. If more than one page of applicants exist, then use the arrows at the corner of the table to scroll up and down through the list of applicants.

The date last changed column reflects the date and time of the last modification to the FCC Form 175.

The status of the FCC Form 175 will appear in the status column. The following values may be displayed during the resubmission period: A=Accepted, I=Incomplete, R=Rejected, U=Unknown. After the Upfront Payments have been applied, then the following values will be displayed: N=Non-Qualified, Q=Qualified.

The Upfront Payment received for an applicant will appear in the upfront payment column after the upfront payments have been processed.

To review the applicants' FCC Form 175, select the applicant by clicking on the specific applicant line.

Click on Ok. The next screen to appear will be the profile Screen.

To print a copy of the FCC Form 175 for that applicant, press the Print button on any of the screens (i.e., Profile, Licenses, Required Certifications, Ownership Documentation, Ownership Worksheet, Waiver, Instructions).

The ability to download either selected records or all records may be limited to specified timeframes established by the FCC.

If you wish to download only specific records then click on the box labeled ''Select records for download'', click on each applicant line you desire, and then click on the Download button. If you wish to reset this option, then click again on the ''Select records for download'' box.

If you wish to download all records, then click on the box labeled ''Download all records'' and then click on the Download button. If you wish to reset this option, click again on the ''Download all records box''.

Click on the Cancel button to exit the Available Applicants screen.

Profile Screen

Please Note: After reviewing the Profile information, you will need to click on each tab at the top of the screen to navigate through the entire FCC Form 175.

The Profile Screen will display the general FCC Form 175 information. The filing phase appears in the lower left corner of the screen.

Click on the licenses tab (at the top of the screen) to review the licenses that were selected.

Licenses Screen

The Licenses Screen provides a listing of the licenses that were selected.

If the FCC Form 175 contained invalid market or frequency block information, then ''Invalid License Data was selected'' will appear below the ''Selected Licenses'' box.

Click on the Required Certifications tab (at the top of the screen) to review the certification requirements.

Required Certifications Screen

This screen provides the certification requirements for filing the FCC Form 175. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction.

Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, and ineligibility to participate in future auctions, and/or criminal prosecution.

Click on the Ownership Documentation tab (at the top of the screen) to review the free-form ownership information.

Ownership Documentation Screen

The Ownership Documentation Screen provides the ownership information for review.

Click on the exhibit you wish to view. You may view only one exhibit at a time, however, you may view all exhibits if you wish to do so. Click on the ''View'' button to review the free-from ownership information.

Click on the Ownership Worksheet tab to review the formatted ownership information.

Ownership Worksheet Screen

The Ownership Worksheet Screen provides the formatted ownership information for review.

Click on the Waiver tab (at the top of the screen) to review the free-form waiver request.

Waiver Screen

The Waiver Screen provides the free-form waiver request for review.

Click on the Instructions tab (at the top of the screen) to review the instructions for filing the FCC Form 175.

Instructions Screen

This screen provides the instructions for filing the FCC Form 175.

Click on the Print button to print the FCC Form 175.

Click on the Cancel button to exit the FCC Form 175 screen.

[FR Doc. 95–18454 Filed 7–26–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Aquaocean Transport, Inc.

10555 Northwest Freeway, Ste. 236
Houston, TX 77027
Officers:
R. W. van Tuyll, President
Laura True, Vice President
Overseas Trading & Shipping Co., Inc.
2719 Pittman Drive
Silver Spring, MD 20910
Officers:
Richard P. Stevens, Chairman
Osman Habour, Director
Wilson International, Inc.
250 Cooper Ave., Ste. 102
Buffalo, NY 14150
Officers:
Michael Dahm, President
Robert Clendenning, Vice President
Miami (USA) International Freight Forwarders, Inc.
2046 NW 180th Ave.,
Pembroke Pines, FL 33029
Officer:
Juliet K. E. Wong, President
Marian Shipping Limited
Pier D Berth D52
Long Beach, CA 90802
Officers:
Thomas A. Solomon, President
Daniel J. D'Agrosa, Vice President

Dated: July 24, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–18502 Filed 7–26–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

BayBanks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 21, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. BayBanks, Inc., Boston, Massachusetts; to acquire an additional 95.5 percent, for a total of 100 percent, of the voting shares of Cornerstone Financial Corporation, Derry, New Hampshire, and thereby indirectly acquire Cornerstone Bank, Derry, New Hampshire.

2. Westfield Mutual Savings Bank Holding Company, Westfield, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of Westfield Savings Bank, Westfield, Massachusetts, which upon the reorganization, will continue to participate in the Massachusetts Savings Bank Life Insurance program.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Piedmont Bancorp, Inc., Hillsborough, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Hillsborough Savings Bank, Inc., S.S.B., Hillsborough, North Carolina.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Thomasville Bancshares, Inc., Thomasville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Thomasville National Bank, Thomasville, Georgia, in organization.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Banque Nationale de Paris, Paris, France, to form a subsidiary, BancWest Corporation, San Francisco, California, which will become a bank holding company by acquiring 100 percent of the voting shares of Bank of the West, San Francisco, California, an existing subsidiary of Banque Nationale de Paris.

2. Draper Bancorp, Draper, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Draper Bank and Trust, Draper, Utah.

Board of Governors of the Federal Reserve System, July 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18461 Filed 7–26–95; 8:45 am]

BILLING CODE 6210–01–F

Northern Trust Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has 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 application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Northern Trust Corporation, Chicago, Illinois; to acquire RCB International, Inc., Stamford, Connecticut, and thereby engage in performing functions and activities that may be performed by a trust company, including fiduciary, agency and custodial activities, pursuant to § 225.25(b)(3) of the Board's Regulation Y; and serving as an advisor for a mortgage or real estate investment trust, providing portfolio investment advice to any

person, and providing financial advice to state and local governments and foreign governments, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18462 Filed 7–26–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation and Wells Fargo & Company, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota, through its wholly-owned subsidiary, Norwest Ventures, Inc., Des Moines Iowa, and Wells Fargo & Company, San Francisco, California, through its wholly-owned subsidiary, Wells Fargo Ventures, Inc., San Francisco California, propose to form a joint venture, Towne Square Mortgage, San Diego, California (which will be owned 85 percent by Norwest and 15 percent by Wells Fargo), and engage *de novo* in the residential mortgage lending business, including activities such as prequalification, mortgage loan origination and processing and closing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The geographic scope for these activities is the State of California, primarily at locations of Wells Fargo's subsidiary bank, Wells Fargo Bank, N.A. Comments on this application also may be submitted to the Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105.

2. Dacotah Banks, Inc., Aberdeen, South Dakota; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The geographic scope for this activity is South Dakota.

B. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Barclays Bank PLC, London, England, and Barclays PLC, London, England; to engage *de novo* through their subsidiary, Barclays De Zoete Wedd Securities, Inc., New York, New York, in providing securities brokerage services, related securities credit activities, and securities brokerage services in combination with investment advisory services, pursuant to § 225.25(b)(15)(i) and (ii) of the Board's Regulation Y; and providing investment or financial advice, pursuant to § 225.25(b)(4)(i) through (vi) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Crystal Valley Financial Corporation, Middlebury, Indiana; to engage through its subsidiary, Crystal Valley Financial Corporation, Middlebury, Indiana, in retaining its investment in a community development corporation (a qualified low-income housing project as defined in section 42(c)(2) of the Internal Revenue Code), through its investment in a limited liability company; and investing in an additional community development corporation (a qualified low-income housing project as defined in section 42(c)(2) of the Internal Revenue Code), through an investment in a limited liability company, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

2. Horizon Bancorp, Michigan City, Indiana; to engage *de novo* through its subsidiary, The Loan Store, Inc., Michigan City, Indiana, in acting as agent or broker for insurance directly related to extension of credit, under § 225.25(b)(8)(ii) of the Board's Regulation Y.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Stuart Family Partnership, The Catherine Stuart Schmoker Family Partnership, The James Stuart, Jr. Family Partnership, The Scott Stuart Family Partnership and First Commerce Bancshares, all of Lincoln, Nebraska; to engage *de novo* through First Commerce Bancshares, Inc., Lincoln, Nebraska, in the business of making loans pursuant, to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18463 Filed 7–26–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Performance Review Boards for Small Client Agencies Serviced by the General Services Administration, Names of Members

Sec. 4314(c) (1) through (5) of Title 5 U.S.C., requires each agency to establish, in accordance with regulations prescribed by the office of Personnel Management, one or more Performance Review Boards. The board shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive. The Performance Review Board also shall make recommendations as to whether the career executive should be recertified, conditionally recertified, or not recertified.

As provided under Section 601 of the Economy Act of 1932, amended 31 U.S.C. 1525, the General Service Administration through its Agency

Liaison Division, provides various personnel management services to a number of diverse Presidential commissions, committees, boards and other agencies through reimbursable administrative support agreements. This notice is proceeded on behalf of the client agencies, and it supersedes all other notices in the **Federal Register** on this subject.

Because of their small size, a Performance Review Board register has been established in which SES members from the client agencies participate. The Board is composed of SES members from various agencies. From this register of names, the head of each client agency will appoint executives to a specific board to serve a particular client agency.

The members whose names appear on the Performance Review Board standing roster to sere client agencies are:

Administrative Conference of the U.S.

Gary J. Edles, General Counsel
Jeffrey S. Lubbers, Research Director

Barry M. Goldwater Scholarship and Excellence in Education Foundation

Gerald J. Smith, Executive Secretary

Board of International Broadcasting

Richard McBride, Executive Director
John A. Lindburg, General Counsel
Patricia H. Schlueter, Director of Financial and Congressional Affairs
Bria T. Conniff, Inspector General

Committee for Purchase From People Who Are Blind or Severely Disabled

Beverly L. Milkman, Executive Director

Defense Nuclear Facilities Safety Board

Kenneth M. Pusateri, General Manager
Joseph R. Neubeiser, Deputy General Manager
Robert M. Anderson, General Counsel
Richard A. Azzaro, Deputy General Counsel for Policy and Litigation
George W. Cunningham, General Engineer
Joyce P. Davis, Chief, Health Physics Branch
Wallace R. Kornack, Assistant Director for Engineering
Steven L. Krahn, Assistant Director for Weapon Programs
Lester A. Ettlinger, Assistant Director for Standards

Harry S Truman Scholarship Foundation

Louis H. Blair, Executive Secretary

Japan-United States Friendship Commission

Eric J. Gangloff, Executive Director

Office of Navajo and Hopi Indian Relocation

Christopher J. Bavasi, Executive Director
Michael J. McAlister, Deputy Executive Director

Artic Research Commission

Garrett W. Brass, Executive Director

National Mediation Board

Ronald M. Etters, General Counsel

Dated: July 18, 1995.

Calvin R. Snowden,

Director.

[FR Doc. 95–18486 Filed 7–26–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Recommendations for Civilian Communities Near Chemical Weapons Depots: Guidelines for Medical Preparedness; Correction

A notice was published in the **Federal Register** on June 27, 1995 (60 FR 33308), entitled, ''CDC Recommendations for Civilian Communities Near Chemical Weapons Depots: Guidelines for Medical Preparedness.'' This notice is corrected as follows:

On page 33309, first column, line 6 of the second paragraph, change ''falls'' to ''fall''; and in the second column, line 9, under the heading: 1. Personal Protective Equipment (PPE), change ''have'' to ''has'' and in line 11, change ''portable'' to ''powered.'' On page 33311, second column, line 8, under the heading: 5. Personal Protective Equipment (PPE), change ''have'' to ''has.''

Dated: July 21, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–18433 Filed 7–26–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Subcommittee Meeting of the National Task Force on AIDS Drug Development on Drug Development Issues

Date, time, and place. September 13 and 14, 1995, 8:30 a.m., Gaithersburg Hilton Hotel, Grand Ballroom, 629 Perry Pkwy., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Hilton Hotel. Attendees requiring overnight accommodations may contact the hotel at 301–977–8900 and reference the task force. Interested persons are encouraged to register early because space is limited.

Type of meeting and contact person. Open subcommittee discussion, September 13, 1995, 8:30 a.m. to 11:45 a.m.; open public hearing, 11:45 a.m. to 12:15 p.m., unless public participation does not last that long; open subcommittee discussion, 12:15 p.m. to 4:45 p.m.; open subcommittee discussion, September 14, 1995, 8:30 a.m. to 11:45 a.m.; open public hearing, 11:45 a.m. to 12:15 p.m., unless public participation does not last that long; Nancy L. Stanisic, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Task Force on AIDS Drug Development, code 12602.

General functions of the task force. The task force shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers.

Open subcommittee discussion. The subcommittee will review, discuss, and clarify issues concerning the

investigational new drug applications and submissions to the National Institutes of Health's Recombinant DNA Advisory Committee as it relates to gene therapy. Representatives from FDA's Center for Biologics Evaluation and Research and the National Institutes of Health's Office of Recombinant DNA Activities will make presentations and answer questions concerning the application process.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the task force. Those desiring to make formal presentations should notify the contact person before September 6, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 19, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–18503 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, ''Evaluation of, and External Quality Assurance for, the Community Nursing Organization (CNO) Demonstration,'' HHS/HCFA/ORD No. 360–94–30500, 30501. We have provided background information about the proposed system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that the ''routine uses'' portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on July 21, 1995. To ensure that all parties have adequate time in which to comment, the new system of records, including routine uses, will become effective 40 days from the publication of this notice or from the date the report was submitted to OMB and the Congress, whichever is later, unless HCFA receives comments which require alterations to this notice.

ADDRESSES: The public should address comments to Richard DeMeo, HCFA Privacy Act Officer, Office of the Associate Administrator for External Affairs, HCFA, Room C2–01–11, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Melissa McNiff, Project Officer for the evaluation of the Community Nursing Organization Demonstration and the External Quality Assurance Program, Office of Research and Demonstrations, HCFA, Room C3–21–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Telephone 410–786–8494.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records, collecting data under the authority of section 4079 of Pub. L. 100–203, the Omnibus Budget Reconciliation Act of 1987. The purpose of this system is to provide data necessary to test the operational feasibility of the CNO and examine whether the combination of capitated payment and nurse-case management will promote timely and appropriate use of community nursing and ambulatory care services and reduce the use of costly acute care services. It will further determine the effect of membership in a CNO on a typical beneficiary's use of health services covered under the CNO package and on services such as physician and inpatient hospital care

which are covered by Medicare but which are not part of the CNO plan. This system of records will also provide data necessary to monitor the quality of home health care and selected ambulatory care services furnished by providers participating in the CNO Demonstration.

The external QA contractor will establish a system of records that includes information on the individual patients receiving Medicare coverage for this purpose. The system of records will contain information concerning a patient's name, Health Insurance Claim Number, demographic characteristics, medical diagnoses and conditions, plans of treatment, receipt of services, health and functional status, and utilization of home health services and certain ambulatory care services. HCFA and the QA contractor will collect only that information necessary to perform the system's function. The database will contain a record for each client enrolled in each CNO. Depending on the size of the CNO enrollment, information will be collected on approximately 7,500 Medicare enrollees.

In order to fulfill the objectives and complete the tasks of this contract, the contractor must have individually identifiable records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, it will not have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for a ''routine use''—that is, disclosures which are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for the purpose of administering the Community Nursing Organization demonstration for which we are responsible. The disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: July 12, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

09–70–0066

SYSTEM NAME:

Evaluation of, and External Quality Assurance for, the Community Nursing Organization Demonstration.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system will be maintained by the evaluation/quality assurance contractor selected by HCFA. Contact the System Manager for the location of the contractor. The system, or portions of the system, may also be maintained at the HCFA Data Center located at 7131 Rutherford Road, Baltimore, MD 21244.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries who receive home health care and certain ambulatory care services from one of the four CNO project sites (Carle Clinic, Mahomet, IL; Carondelet Health Care, Tucson, AZ; Living at Home/Block Nurse Program, St. Paul, MN; Visiting Nurse Service of New York, New York, NY) chosen to participate in the demonstration.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain information concerning a patient's name, Health Insurance Claim Number, demographic characteristics (e.g., sex, age), medical diagnoses and conditions, receipt of service, health and functional status, and utilization of home health services and certain ambulatory care services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4079(c)(6) of the Omnibus Reconciliation Act of 1987 (Pub. L. 100–203).

PURPOSE(S)

To provide data necessary to test the feasibility of a capitated nurse-case managed service delivery model and the effect it has on patient care. The system will also provide data necessary to assess and monitor the quality of home health care and selected ambulatory care services rendered by providers participating in the Community Nursing Organization Demonstration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To the CNOs that provided the home health and selected ambulatory care services in order to verify service utilization rates, elicit feedback on evaluation findings, and investigate potential quality problems and notify the CNOs of any confirmed quality problems that are found.

2. To a Congressional office, from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

3. To the Bureau of Census for use in processing research and statistical data directly related to the administration of programs under the Social Security Act.

4. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components; is party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained:

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is a reasonable probability that the objective for the use would be accomplished.

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

6. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Records are retrieved by beneficiary name and health insurance claim number.

SAFEGUARDS:

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information. For computerized records, safeguards established in accordance with Departmental standards and National Institute of Standards and Technology guidelines (e.g., security codes) will be used, limiting access to authorized personnel. System securities are established in accordance with DHHS Information Resources Manual, Circular #10, Automated Information Systems Security Program; and HCFA Automated Information Systems (AIS) Guide, Systems Security Policies.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic media with identifiers will be retained in secure storage areas. These records will be retained for 1 year after the termination of the monitoring contract. Records are maintaned with identifiers as long as needed for program research analysis.

SYSTEM MANAGERS AND ADDRESS:

Director, Office of Research and Demonstrations, HCFA, Room C3–25–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the system manager at the address indicated above. The requestor must specify the name, address, and health insurance number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. These access procedures are in accordance with Department Regulation (45 CFR 5b.5(a)(2).

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and reasonably identify the record and specify the information to be contested. State the corrective action being sought and the reasons for the correction with supporting justification. These procedures are in accordance with Department Regulation (45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

Sources of information contained in this records system are expected to include: Data collected from the Medicare claims files; Medicare Statistical Systems; CNO plans of care and related patient records; supplemental patient intake forms prepared by the CNOs; and results of quality assessments conducted by the contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 95–18487 Filed 7–26–95; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3849–N–03]

Office of the Assistant Secretary for Public and Indian Housing; Fund Availability (NOFA) for Fiscal Year 1995 for Rental Voucher Program and Rental Certificate Program; Correction

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

ACTION: Notice of Fund Availability (NOFA) for Fiscal Year (FY) 1994 for the Rental Voucher Program and Rental Certificate Program; Correction.

SUMMARY: The Department is publishing a correction to the Notice of Fund Availability (NOFA) published in the **Federal Register** on March 3, 1995 (60 FR 12036), for the Rental Voucher Program and Rental Certificate Program. The fair share allocation areas for the States of Maine, New Hampshire, and Vermont were erroneously combined into one Metropolitan allocation area and one Non-Metropolitan allocation area. Instead, using the principle that each allocation area is supposed to be the smallest possible area, the NOFA should have identified two allocation areas (Metropolitan and Non-Metropolitan) for each State.

DATES AND ADDRESSES: Applications have already been received for these revised allocation areas, in accordance with the original NOFA. Housing agencies do not need to submit any additional application materials.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Room 4220, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Department discovered that when the original NOFA for the Rental Voucher Program and Rental Certificate Program was published, the allocation areas for the New Hampshire State Office had not been based on the principle of using the smallest possible area, which was used for determining the allocation areas for the other offices. Instead, the States of Maine, New Hampshire, and Vermont had been combined into one area. The total amount of funding for the program operation in those States remains the same, but this correction document

divides that single allocation area (subdivided by metropolitan area and non-metropolitan area) into three allocation areas (similarly subdivided).

The applications for funding have been received from housing agencies in these States. No additional submissions are needed. However, the Department wanted to clarify that the rating and ranking procedure used to select applications for funding will be based on these corrected allocation areas.

Accordingly, FR Doc. 95–5184, the NOFA for the Rental Voucher Program and Rental Certificate Program, published in the **Federal Register** on March 3, 1995 (60 FR 12036), is corrected as follows:

1. On page 12063, the allocation areas for the New Hampshire State Office is deleted and the following is inserted to read:

New Hampshire State office; metropolitan allocation areas	Dollars	Units	Component parts of allocation area
Metropolitan Vermont	$1,048,193	27	CHITTENDEN county towns of: Burlington, Charlotte, Colchester, Essex, Hinesburg, Jericho, Milton, Richmond, St. George, Shelburne, South Burlington, Williston, Winooski. FRANKLIN county towns of: Georgia. GRAND ISLE county towns of: Grand Isle, South Hero.
Metropolitan New Hampshire.	2,366,870	60	ROCKINGHAM county towns of: Atkinson, Brentwood, Danville, Derry, East Kingston, Hampstead, Kingston, Newton, Plaistow, Salem, Sandown, Seabrook, Windham. HILLSBOROUGH county towns of: Bedford, Goffstown, Manchester. MERRIMACK county towns of: Allenstown, Hooksett. ROCKINGHAM county towns of: Auburn, Candia. HILLSBOROUGH county towns of: Pelham, Amherst, Brookline, Hollis, Hudson, Litchfield, Merrimack, Milford, Mount Vernon, Nashua, Wilton. ROCKINGHAM county towns of: Exeter, Greenland, Hampton, New Castle, Newfields, Newington, Newmarket, North Hampton, Portsmouth, Rye, Stratham. STRAFFORD county towns of: Barrington, Dover, Durham, Farmington, Lee, Madbury, Milton, Rochester, Rollinsford, Somersworth.
Metropolitan Maine	2,381,477	61	PENOBSCOT county towns of: Bangor, Brewer, Eddington, Glenburn, Hampden, Hermon, Holden, Kenduskeag, Old Town, Orono, Orrington, Penobscot Indian I, Veazie. WALDO county towns of: Winterport. ANDROSCOGGIN county towns of: Auburn, Greene, Lewiston, Lisbon, Mechanic Falls, Poland, Sabattus. CUMBERLAND county towns of: Cape Elizabeth, Cumberland, Falmouth, Freeport, Gorham, Gray, North Yarmouth, Portland, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, Yarmouth. YORK county towns of: Berwick, Eliot, Kittery, North Berwick, South Berwich, Wells, York.
Nonmetropolitan Vermont	1,375,659	43	ADDISON. BENNINGTON. CALENDONIA. CHITTENDEN county towns of: Bolton, Buels, Huntington, Underhill, Westford. ESSEX. FRANKLIN county towns of: Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield, Fletcher, Franklin, Highgate, Montgomery, Richford, St. Albans, Sheldon, Swanton. GRAND ISLE county towns of: Alburg, Isle La Motte, North Hero. LAMOILLE. ORANGE. ORLEANS. RUTLAND. WASHINGTON. WINDHAM. WINDSOR.
Nonmetropolitan New Hampshire.	1,200,992	37	BELNAP. CARROLL. CHESHIRE. COOS. GRAFTON. HILLSBOROUGH county towns of: Antrim, Bennington, Deering, Francestown, Greenfield, Greenville, Hancock, Hillsborough, Lyndeborough, Mason, New Boston, New Ipswich, Peterborough, Sharon, Temple, Weare, Windsor. MERRIMACK county towns of: Andover, Boscawen, Bow, Bradford, Canterbury, Chichester, Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker, Hill, Hopkinton, Loudon, Newbury, New London, Northfield, Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster, Wilmot. ROCKINGHAM county towns of: Chester, Deerfield, Epping, Fremond, Hampton Falls, Kensington, Northwood, Nottingham, Raymond, South Hampton. STRAFFORD county towns of: Middleton, New Durham, Strafford, Sullivan.
Nonmetropolitan Maine ...	2,296,453	71	ANDROSCOGGIN county towns of: Durham, Leeds, Livermore, Livermore Falls, Minot, Turner, Wales. AROOSTOCK. CUMBERLAND county towns of: Baldwin, Bridgton, Brunswick, Casco, Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago. FRANKLIN. HANCOCK. KENNEBEC. KNOX. LINCOLN. OXFORD. PENOBSCOT county towns of: Alton, Argyle, Bradford, Bradley, Burlington, Carmel Carroll, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew, East Millinocket, Edinburg, Enfield, Exeter, Garland, Grand Falls, Greenbush, Greenfield, Howland, Hudson, Kingman, Lagrange, Lakeville, Lee, Levant, Lincoln, Lowell, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Mount Chase, Newburgh, Newport, North Penobscot, Passadumkeag, Patten, Plymouth, Prentiss, Seboels, Springfield, Staceyville, Stetson, Summit, Twombly, Webster, Whitney, Winn, Woodville. PISCATAQUIS. SAGADAHOC. SOMERSET. WALDO county towns of: Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom, Isleboro, Jackson, Knox, Liberty, Lincolnville, Monroe, Montville, Morrill, Northport, Palermo, Prospect, Searsmont, Searsport, Stockton Springs, Swanville, Thorndike, Troy, Unity, Waldo. WASHINGTON. YORK county towns of: Acton, Alfred, Arundel, Biddeford, Cornish, Dayton, Kennebunk, Kennebunkport, Lebanon, Limerick, Limington, Lyman, Newfield, Parsonfield, Saco, Sanford, Shapleigh, Waterboro.

Dated: July 21, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–18411 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–00–P and F–19155–18]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 178 acres. The lands involved are in the vicinity of Nenana, Alaska, within T. 3 S., R. 7 W., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 28, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Elizabeth Sherwood,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–18425 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–JA–P

[AZ–026–05–1430–01; AZA–7489]

Arizona: Termination of Classification and Opening of Lands to Entry in Maricopa County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice will open 15 acres to location and entry under the public land laws and the general mining laws.

EFFECTIVE DATE: August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Angela Mogel, Realty Specialist, Phoenix District Office, U.S. Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027; telephone (602) 780–8090.

SUPPLEMENTARY INFORMATION: The lands were classified and segregated on August 6, 1973 under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The classification is no longer needed for the following described lands:

Gila and Salt River Meridian, Arizona

T. 1 S., R. 3 W.,
Sec. 20, NE¼NE¼SW¼,
S½,SE¼SE¼NW¼.

Containing 15 acres.

At 9:00 a.m. on August 28, 1995, the classification on the lands described above will be terminated and the land will be open to location and entry under the United States public land laws and the mining laws.

Dated: July 17, 1995.

G.L. Cheniae,

District Manager Phoenix District Office.

[FR Doc. 95–18426 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–32–P

[UT–046–3120–00]

Modification of Notice of Intent To Prepare Environmental Impact Statement (EIS) for Proposed Plan Amendment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Modification of notice of intent to prepare an EIS for the proposed plan amendment for the Virgin River management framework plan (MFP).

SUMMARY: This notice is to advise the public that, as a result of public and internal scoping, the preliminary scope of the referenced Proposed Amendment/EIS has been modified.

DATES: Comment opportunities on the modification of the scope of the Proposed Amendment/EIS as well as the preliminary issues identified in the original Notice of Intent, published June 5, 1995, will commence with publication of this notice. Comments must be submitted within 30 days of the date of publication.

FOR FURTHER INFORMATION CONTACT: Jim Crisp, Area Manager, Dixie Resource Area, 345 E. Riverside Drive, St. George, Utah 84790, 801–673–4654 or Verlin Smith, Area Manager, Kanab Resource Area, 318 North First East, Kanab, Utah 84741, 801–644–2672.

SUPPLEMENTARY INFORMATION: Based on concern regarding the number of complex and diverse actions associated with the Proposed Plan Amendment/EIS, and public concern over the planning criteria presented in the above referenced Notice of Intent, it has been decided that it would be more effective to separate those actions that are unrelated to the proposed land tenure adjustments by one of the project proponents. Therefore, the scope of the Proposed Plan Amendment/EIS will only address the alternatives to, and the environmental impacts of specific land tenure adjustments as proposed by the Washington County Water Conservancy District (WCWCD). These proposed land tenure adjustments would be accomplished through the exchange process as follows: 1) The WCWCD has offered BLM two parcels of non-Federal land adjacent to Zion National Park (N.P.) in exchange for Federal lands. One parcel north of Zion N.P. would facilitate the protection of downstream resources including special status fish species. Further review of this site has shown that it is governed by the Zion MFP which applies to the Kanab Resource Area. This proposed amendment would therefore consider the impacts of amending the Zion MFP to allow this specific land exchange. The other parcel has the potential to facilitate resolution of inholding conflicts in Zion N.P.; 2) In exchange for these two parcels, the WCWCD has identified three parcels of Federal land that they would like to acquire through exchange for the following purposes: construct the proposed Sand Hollow Reservoir to accommodate storage of excess water flow and consolidate ownership of lands beneath Quail Creek Reservoir and an associated reservoir pipeline. Preliminary planning issues to be addressed in this Proposed Plan Amendment/EIS associated with these land tenure adjustments remain the same as stated in the **Federal Register** Notice Vol. 60. No. 107, Monday, June 5, 1995. The present land use plan for the Dixie Resource Area is the Virgin River MFP approved in 1981. This land use plan is being revised and updated through preparation of a newer and more comprehensive Dixie Resource Management Plan (RMP) but the completion date is uncertain at this time. The plan amendment now being initiated will amend either the Virgin River MFP or the Dixie RMP whichever

is the current document at the time this amendment is completed.

Mat Millenbach,

State Director.

[FR Doc. 95–18496 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–046–05–0–03–5]

Notice of Intent To Amend Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Proposed Plan Amendment to the Virgin River Management Framework Plan (MFP).

SUMMARY: This notice is to advise the public that the Bureau of Land Management proposes to amend the Virgin River MFP to allow for land tenure adjustments not previously identified in the MFP.

DATES: The comment period for issues and criteria associated with the proposed plan amendment will commence with publication of this notice. Comments are due within 30 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Jim Crisp, Area Manager, Dixie Resource Area, 345 E. Riverside Drive, St. George, Utah 84770, 801–674–4654.

SUPPLEMENTARY INFORMATION: The purpose of the Proposed Plan Amendment is to add additional land exchange criteria under which lands could be disposed of, or acquired through the exchange process, if certain goals or objectives are met. Specifically, the land exchange criteria to be addressed are as follows: (1) Land tenure adjustments would be considered where such adjustments are in the public interest and accommodate the needs of local and State people, including needs for the economy, and community growth and expansion and are in accordance with other land exchange goals and objectives; (2) The land tenure adjustment results in a net gain of important and manageable resource values on public land such as crucial wildlife habitat, significant cultural sites, high quality riparian areas, live water, Threatened & Endangered species habitat, or areas key to the maintenance of productive ecosystems; (3) The land tenure adjustment ensures the accessibility of public lands in areas where access is needed and cannot otherwise be obtained; (4) The land tenure adjustment is essential to allow effective management of public lands in areas where consolidation of ownership is necessary to meet resource management objectives; (5) The land tenure adjustment results in acquisition of lands which serve a national priority as identified in national policy directives. Issues to be addressed in this proposed amendment/Environmental Assessment (EA) include the impacts of disposal or acquisition of lands to the local communities, social and economic values and impacts on natural resources. This amendment will also examine the impacts to the existing land use plan. The present land use plan for the majority of the Dixie Resource Area is the Virgin River MFP approved in 1981. This land use plan is being revised and updated through preparation of a newer and more comprehensive Dixie Resource Management Plan but the completion date is still uncertain at this time. The planning amendment now being initiated will amend either the Virgin River MFP or the Dixie RAMP, whichever is the current document at the time.

Mat Millenbach,

State Director.

[FR Doc. 95–18495 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–DQ–P

[MT–930–1430–01; MTM 82585]

Conveyance of Public Lands in Beaverhead County, Montana, and Order Providing for Opening of Public Land in Beaverhead County, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order informs the public and interested state and local governmental officials of the conveyance of 1,192.72 acres of public lands out of Federal ownership and will open 320.00 acres of surface estate reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. The land that was acquired in the exchange provides access to other public land with wildlife habitat, excellent big-game hunting opportunities, timber resources, wetlands, recreation use area, and is adjacent to a wilderness study area. The exchange also allows for increased management efficiency of public land in the area. No minerals were exchanged by either party. The public interest was well served through completion of this exchange.

EFFECTIVE DATE: September 17, 1995.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2829.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of land made pursuant to Section 206 of FLPMA, the following described lands were transferred to Jack G. Thomas Limited Partnership:

Principal Meridian, Montana

T. 13 S., R. 5 W.,
Sec. 19, lots 1–4, inclusive, and E½ and E½W½;
Sec. 20, SW¼, NW¼SE¼ and S½SE¼;
Sec. 29, N½N½ and SE¼NW¼; and
Sec. 30, N½NE¼.

Total acreage conveyed: 1,192.72 acres.

2. In exchange for the above lands, the United States acquired the following described lands from Jack G. Thomas Limited Partnership:

T. 11 S., R. 11 W.,
Sec. 10, NW¼NW¼, S½NW¼, SW¼, and SW¼SE¼.

Total acreage acquired: 320.00 acres.

3. The value of the Federal public land was appraised at $88,000.00 and the private land was appraised at $143,800.00. An Equalization Payment from the Land and Water Conservation Fund was made in the amount $55,800.00.

4. At 9 a.m. on September 17, 1995, the lands described in paragraph 2 above that were conveyed to the United States will be opened only to the operation of the public land laws generally, subject to valid existing rights and requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 17, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: July 18, 1995.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 95–18493 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–DN–P

[ID–054–1430–01; IDI–28819]

Notice of Realty Action, Sale of Public Land in Lincoln County, Idaho

AGENCY: Bureau of Land Management; Interior.

ACTION: Sale of Public Land in Lincoln County.

SUMMARY: The following described public land has been examined and, through the public-supported land use planning process, has been determined

to be suitable for disposal by direct sale pursuant to section 203 of the *Federal Land Policy and Management Act* of 1976 at no less than the appraised fair market value of $8000.00. The land will not be offered for sale until at least 60 days after the publication date of this notice in the **Federal Register**.

T. 7 S., R. 19 E., Boise Meridian;
Section 2: Lots 3, SE¼NE¼;
Section 3: SW¼SW¼.

The area described contains 99.510 acres in Lincoln County.

When patented, the land will be subject to the following reservations:

1. A reservation to the United States for rights-of-way for ditches and canals constructed under the Act of August 30, 1890 (43 U.S.C. 945).

DATES: Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the *Federal Land Policy and Management Act.* The segregative effect of the Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** or termination of the segregation 270 days from the date of publication, whichever occurs first.

ADDRESSES: Shoshone District Office, Monument Resource Area, P.O. Box 2–B, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Fred Pence at the address shown above or telephone (208) 736–2350.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to Jeff Weber and Phil Hawkes of Star Gate Ranch, 950 E. 570 S, Dietrich, Idaho 83324, based on historical use.

It has been determined that the subject parcel contains no known mineral values; therefore, the mineral interest will be conveyed simultaneously. A separate nonrefundable filing fee of $50.00 will be required from the purchaser for conveyance of the mineral interests.

There will be no reduction in grazing allotment preference as a result of this land going into private ownership.

For a period of 45 days from the date of this publication, interested parties may submit comments to the Field Manager, Burley District Office, 15 East 200 South, Burley, Idaho 83318. Any adverse comments will be reviewed by the Field Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review of the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: July 21, 1995.

Mary C. Gaylord,

Field Manager.

[FR Doc. 95–18492 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–GG–M

[OR 51998, OR 52165, OR 52166; OR–080–05–1430–01: G5–176]

Realty Action; Proposed Modified Competitive Sale; Oregon

July 19, 1995.

The following described public lands have been examined and determined to be suitable for transfer out of Federal ownership by modified competitive sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon

T. 7 S., R. 3 W.,
Sec. 18, Lot 3 (OR 51998)
Sec. 18, Lot 4 (OR 52165)
Sec. 18, Lot 5 (OR 52166)

The above-described parcels aggregate 0.99 acre in Polk county.

The parcels will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcels have not yet been determined. Anyone interested in knowing the values may request this information from the address shown below.

The above-described lands are hereby segregated from appropriation under the public lands laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcels' relatively small size, their best use is to merge them with the adjoining ownerships. Use of the modified competitive sale procedures will avoid an inappropriate land ownership pattern. The sale is consistent with the Salem District Resource Management Plan and the public interest will be served by offering these parcels for sale.

Modified Bidding Procedures

Modified bidding procedures are being used pursuant to 43 CFR 2711.3–2. Bidders must be United States citizens and 18 years of age or older.

The parcel identified as OR 51998 is being offered only to Ervin Simmons Estate et al. (fee owners of Tax Lot 200, Map 7 3 18), Polk County (fee owner of Tax Lot 100, Map 7 3 18B), Richard O. Cox and Carol M. Cox (fee owners of Tax Lot 200, Map 7 3 18B), S. Annette Whisenhant (fee owner of Tax Lot 3601, map 7 3 18BD), Raymond Dale Johnson and Nancy K. Johnson (fee owners of Tax Lot 3607, Map 7 3 18BD), Larry W. Killingsworth and Mary J. Killingsworth (fee owners of Tax Lot 3700, Map 7 3 18BD), and Richard Schwarz and Michelle Schwarz (fee owners of Tax Lot 4100 Map 7 3 18BD).

The parcel identified as OR 52165 is being offered only to Ervin Simmons Estate et al. (fee owners of Tax Lot 200, 800, and 1100, Map 7 3 18), Richard Schwarz and Michelle Schwarz (fee owners of Tax Lot 4100, Map 7 3 18BD), Raymond R. Kreuger and Phyllis A. Krueger (fee owners of Tax Lot 4301, Map 7 3 18BD), Evelyn R. Ables Trust et al. (fee owners of Tax Lot 4300, Map 7 3 18BD), Malcom J. Elstad and Norma Y. Elstad (fee owners of Tax Lot 4400, map 7 3 18BD), and Clara Taylor and Dennis Magnello (fee owners of Tax Lot 702, Map 7 3 18).

The parcel identified as OR 52166 is being offered only to Ervin Simmons Estate et al. (fee owners of Tax Lot 800 and 1100, Map 7 3 18) and Ella E. Lippert (fee owner of Tax Lot 1500, Map 7 3 18D).

Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE, Salem Oregon 97306, prior to 11:00 a.m. on Wednesday, September 20, 1995. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to USDI—Bureau of Land Management for not less than the appraised value of the parcel to be sold, and shall be enclosed in a sealed envelop clearly marked in the lower left hand corner, ''Bid for Public Land Sale OR 51998'' or ''Bid for Public Land Sale OR 52165'' or ''Bid for Public Land Sale OR 51266'', as appropriate.

The written sealed bids will be opened and an apparent high bid will be declared at the sale. The apparent high bidder and any other designated bidder will be notified. In case of a tie of bids submitted by designated bidders, the

interested bidders would be given an opportunity to submit an additional sealed bid within 30 days of notification of eligibility.

The terms, conditions, and reservations applicable to the sale are as follows:

1. The mineral interests being offered for conveyance have no known mineral value. A bid submitted will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. All qualified bidders must include with their bid a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

2. The patents will subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945; and

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, address above.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Marys Peak Area Manager, Salem District Office, address above. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Robert D. Saunders, Jr.,

Acting Marys Peak Area Manager.

[FR Doc. 95–18494 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–33–M

[OR–942–00–1420–00: G5–175]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian,

Oregon

T. 35 S., R. 3 W., accepted June 12, 1995
T. 37 S., R. 3 W., accepted June 26, 1995
T. 33 S., R. 4 W., accepted June 22, 1995
T. 18 S., R. 6 W., accepted June 16, 1995
T. 15 S., R. 7 W., accepted June 2, 1995
T. 38 S., R. 7 W., accepted June 13, 1995

Washington

T. 7 N., R. 13 E., accepted June 19, 1995
T. 28 N., R. 15 W., accepted June 23, 1995

If protests against a survey, as shown on any of the above plat(s), are recelived prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). 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.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, 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 thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue.) P.O. Box 2965, Portland, Oregon 97208.

Dated: July 19, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–18491 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–33–M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms 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 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0006), Washington, DC 20503, telephone 202–395–7340.

Title: Ferrous Metals Surveys.

OMB approval number: 1032–0006.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on ferrous and related metals. This information is published in the monthly and annual issues of Mineral Industry Survey series, Mineral Commodity Summaries, and other Bureau publications for use by private organizations and other Government agencies.

Bureau form number: 6–1056–A ET AL (14 Forms).

Frequency: Monthly Annual.

Description of respondents: Producers and Consumers of Ferrous Metals.

Annual responses: 3,600.

Annual burden hours: 1,931.

Bureau clearance officer: Alice J. Floyd, 202–501–9569.

Dated: June 30, 1995.

Michael McKinley,

Chief, Division of Statistics and Information Services.

[FR Doc. 95–18428 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–53–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms 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 directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0004), Washington, D.C. 20503, telephone 202–395–7340.

Title: Consolidated Consumers' Report.

OMB approval number: 1032–0084.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on ferrous and related metals. This information is published in the monthly and annual issues of Mineral Industry Surveys series, Mineral Commodity Summaries, and other Bureau

publications for use by private organizations and other Government agencies.

Bureau form number: 6–1109–MA.

Frequency: Monthly and Annual.

Description of respondents: Operations that consume ferrous metals.

Estimated completion time: 45 minutes.

Annual responses: 3,656.

Annual burden hours: 2,742.

Bureau clearance officer: Alice J. Floyd, 202–501–9569.

Dated: June 9, 1995.

K.W. Mlynarski,

Acting Chief, Division of Statistics and Information Services.

[FR Doc. 95–18427 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–53–M

National Park Service

General Management Plan/Final Environmental Impact Statement Grand Canyon National Park Coconino and Mohave Counties, Arizona; Availability

Introduction: Pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the Department of the Interior, National Park Service (NPS), has prepared a Final Environmental Impact Statement (FEIS) and General Management Plan (GMP) that describe and analyze a proposed action and four alternatives for the future management, use, and development of Grand Canyon National Park.

Public Review Comments: Two hundred and forty comment letters were received on the draft environmental impact statement (DEIS) during a 60-day period ending May 11, 1995. In addition, four public meetings were held during March 25–29, 1995 in various locations in Arizona and Utah. Approximately 1,400 copies of the DEIS/GMP were distributed during the public review period. The FEIS/GMP incorporates modifications and clarifications in response to some of these public comments. The same proposed action and same four alternatives were evaluated in both the DEIS/GMP and the FEIS/GMP.

Proposed and Alternative Actions: The GMP proposed for adoption provides specific management objectives and visions for the entire park, as well as general regional-ecosystem management objectives and visions. The proposed action, the no-action alternative, and three other alternatives, and their environmental consequences, were identified and analyzed as follows:

Proposed Action: The ''proposed action'' (Alternative 2) emphasizes regional cooperation for information distribution, regional resource preservation, and a quality visitor experience. A major shift away from the use of private automobiles would occur. Alternate modes of transportation would be emphasized throughout the region and within the park, with staging areas linked to regional private transit services in outlying communities and a public transit system within the park. Private vehicles would be removed from the heaviest use areas in the park, creating pedestrian-only areas. The number of private vehicles allowed into the park at any one time would be limited in certain areas. The adaptive use of historic structures and other structures would be maximized. To minimize resource impacts, construction of new park facilities would be almost entirely within disturbed areas. The visitor experience would be defined by the unique qualities of each individual area, and the number of visitors allowed into some areas of the park would be determined by a carrying capacity analysis. With respect to environmental consequences, the proposed action would stabilize the growth of infrastructure within the park, enhance natural and cultural resource preservation, improve significantly the visitor experience, create better living and working conditions for park employees, and benefit local economies.

Under the Plan proposed for adoption, the regional context of Grand Canyon National Park would be emphasized, and proposals for resource preservation and visitor use would take into account environmental effects on both the park and the region. Cooperative planning efforts outside the park would emphasize disseminating information, preserving regional and park resources, and providing a quality visitor experience. The NPS would work jointly with adjacent entities to provide for many park needs outside park boundaries. The most appropriate locations for facilities would be considered in a regional context, taking into consideration principles of sustainable design and the need to preserve resources while providing for a quality visitor experience.

The number of visitors in certain areas would be limited during peak visitation periods based on desired visitor experience and identified resource protection needs, according to the monitoring program called for in the plan. The process for determining use limits would be the same throughout the developed areas of the park. However, visitor levels in specific areas could vary considerably, and use may be limited sooner in some areas than others. South Rim day visitation would be unlimited during the life of this plan if all the proposed alternate transportation services are fully funded and operational in an appropriate time frame. If this does not occur, as a contingency measure day use reservations would be established for the South Rim during peak visitation periods (similar to Alternative 1). North Rim Day visitation would be limited by 2005 or 2010, depending on effectiveness of management actions. Day use at Tuweep could be limited at peak times. In areas where reservations became necessary, visitors would be able to reserve permits in advance, which would be subject to verifying at park entrances. Overnight accommodations would be expanded on the South and North Rims primarily by adaptively reusing existing structures.

To preserve resources and enhance visitor experience, most of the park's developed areas would be accessible only by public transit, hiking, or biking. Private vehicles (tour buses, cars, and RVs) would only be allowed in specific areas. The public transit, pedestrian, and bikeway system would be significantly expanded. The monitoring program called for would measure resource impacts, facility use, visitor satisfaction, and visitor attendance levels in each park developed area. The permit system would be adjusted as needed. To further provide a quality visitor experience, interpretive programs would focus on significant resources of Grand Canyon, as well as regional conservation issues.

Alternatives Considered: The four other alternatives analyzed include: continuing existing programs and conditions (the no-action alternative), a minimum requirements alternative (alternative 1), reduced park development (alternative 3), and increased park development (alternative 4). They are as follows:

Under the ''No-Action'' alternative (continuing existing programs and conditions), planning would be focused within the park, primarily to solve existing problems. Issues related to planning and land management practices in areas immediately outside the park would be handled individually as the need arose, without an overall area vision or cooperative regional planning effort to guide the direction. Cooperative planning to distribute regional information to visitors would be limited. Visitation would continue in all park developed areas, with nearly every South Rim visitor facility

continuing to be overcapacity during peak use periods. No major facilities would be built, and no major park functions would be relocated. Any required facility changes would be done in or adjacent to existing disturbed areas. The number of overnight accommodations, campsites, and all other visitor services would remain the same in each developed area. Minor adjustments in management would be made to help reduce resource damage and to provide a safer visitor experience.

Under the ''Minimum Requirements'' alternative (Alternative 1), planning would be focused within the park (similar to the No-Action alternative). Issues related to planning and land management in areas adjacent to the park would be individually handled as the need arose, without overall area vision or an integrated regional planning effort to give direction. Unlimited day visitation would continue in all park developed areas until visitor congestion, resource damage, and public safety warranted restricting peak visitation access. This would be accomplished by implementing reservation systems based on capacity of existing parking and eating facilities on the South and North Rims. Regional information programs would explain the park's reservation systems to visitors. Overnight accommodations would not be affected. Visitor use at Tuweep and on corridor trails would not be limited under this alternative. Existing land use patterns would be retained—no major facilities would be built, no major park functions would be relocated, and most park facilities would remain where they are now (some minor facilities would be added). Any required facility changes would be accomplished in or adjacent to existing disturbed areas.

Under the ''Reduced Park Development'' alternative (Alternative 3), planning for the park would be done in a regional context to minimize negative impacts resulting from park uses being placed in areas outside the park. Communications would be expanded (as with Alternative 2). Wherever possible, facilities placed outside the park would be clustered in disturbed areas and linked to existing systems. Preserving the park's natural and cultural resources would be emphasized; many disturbed areas would be rehabilitated. Alternate modes of transportation would be emphasized regionally as well as in major park high use areas (as with Alternative 2). Park resources would be preserved by placing all new facilities and relocating many existing functions outside the park. Cooperative regional planning would ensure that NPS functions occurring outside park boundaries featured sustainable planning and design. The NPS would expand its regional information services (as with Alternative 2). On the South Rim all day visitor vehicles would be removed, and a major public transit system would be provided. No new lands within the park would be disturbed, and historic uses of existing structures would be retained wherever possible. Overnight accommodations would be reduced on the South Rim but increased on the North Rim by adaptively reusing historic structures.

Under the ''Increased Park Development'' alternative (Alternative 4), planning outside the park would emphasize regional information (as with Alternative 2). Cooperative planning with outside entities would focus on disseminating information, providing trip planning assistance, and distributing visitor use. Actions to improve visitor convenience would place major visitor services inside the park wherever reasonable, and visitors would be distributed throughout the park's developed areas. No day use limits would be established unless the visitor experience was significantly degraded. The type of vehicular use allowed in some areas would be restricted, and high use areas would be accessible only by transit vehicles or hiking or biking (as with Alternative 2). Other developed areas would be accessible by private vehicles. Overnight accommodations would be increased in all developed areas on the North and South Rims by adaptively reusing existing structures and constructing some new facilities (either in or adjacent to disturbed areas).

SUMMARY: Based upon the analysis in the DEIS, and taking into account all comments obtained from public meetings and received in writing from reviewers, Alternative 2 (as described in the DEIS and modified somewhat in the subject FEIS) is identified as the general management plan proposed to be adopted to guide future management of Grand Canyon National Park. The no action period on this FEIS will expire 30 days after Notice of its availabiity is published by the Environmental Protection Agency in the **Federal Register**.

SUPPLEMENTARY INFORMATION: A limited number of copies of the FEIS/GMP are available upon request from: Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023 (520)638–7945; or the Planning Team Leader, Grand Canyon General Management Plan, National Park Service, TWE-Denver Service Center, P.O. Box 25287, Denver, CO 80225–0287 (303)969–2267.

As noted in the **Federal Register** Notice published March 13, 1995, the official responsible for a decision on the action proposed is the Regional Director, Western Regional Office, National Park Service. Subsequently, the officials responsible for implementing the approved plan are the Field Director, Intermountain Field Office, National Park Service and the Superintendent, Grand Canyon National Park.

Dated: July 12, 1995.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 95–18410 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–70–P

Richmond National Battlefield Park Draft General Management Plan/ Environmental Impact Statement/Land Resource Protection Study

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to Council on Environmental Quality Regulations and National Park Service Policy, the National Park Service (NPS) announces the release of the Draft General Management Plan (Draft GMP/EIS/LRPS) for Richmond National Battlefield Park, Virginia.

DATES: The Draft GMP/EIS/LRPS will be on public review until September 30, 1995. All review comments must be postmarked no later than October 2, 1995. Open house public meetings will be held.

6:00–10:00 pm Wednesday, August 9, 1995—Laurel Hill United Methodist Church, Fellowship Hall, 1991 New Market Rd., Richmond, VA 23231

5:00–9:00 pm Thursday, August 10, 1995—Beulah Presbyterian Church, 7252 Beulah Church Rd., Mechanicsville, VA 23111

12:30–4:30 pm Friday, August 11, 1995—Chesterfield County Historical Society, ''Old Courthouse'' at the Administration Complex, 10011 Iron Bridge Rd., Chesterfield, VA 23832

9:00 am–1:00 pm Saturday, August 12, 1995—St. John's Church Parish Hall, 2401 E. Broad St., Richmond, VA 23223

SUPPLEMENTARY INFORMATION: The Draft GMP/EIS/LRPS presents four alternatives for future management and use of Richmond National Battlefield Park.

FOR FURTHER INFORMATION CONTACT: Superintendent, Richmond National Battlefield Park, 3215 Broad Street, Richmond, Virginia 23223, (804) 226–1981.

For copies of the Draft GMP/EIS/LRPS, please contact the Superintendent at the above address.

Dated: July 17, 1995.

Marie Rust,

Field Director, Northeast Field Area.

[FR Doc. 95–18501 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: review of the plan of action; discussion of problem definition, goals and objectives, and a mission statement; and discussion of other program components. The meeting is open to the public. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council will meet from 10:00 am to 4:00 pm on Wednesday, August 16, 1995.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Capital Plaza Holiday Inn, 300 J Street, Sacramento, CA 95814.

CONTACT PERSON FOR MORE INFORMATION: Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta Estuary. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta Estuary are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta Estuary related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort will be carried out under the policy direction of CALFED. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta Estuary has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC will also provide a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: July 21, 1995.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 95–18500 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–3 (Sub-No. 122X)]

Missouri Pacific Railroad Company—Abandonment Exemption—in Saline County, KS (Trigo Industrial Lead)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Missouri Pacific Railroad Company of a 0.40-mile portion of the Trigo Industrial Lead extending from the end of the line at milepost 491.2 to milepost 491.6 near Salina, in Saline County, KS, subject to 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 26, 1995. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 7, 1995; petitions to stay must be filed by August 11, 1995; requests for a public use condition must be filed by August 16, 1995; and petitions to reopen must be filed by August 21, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–3 (Sub-No. 122X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Joseph A. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [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 (202) 927–5271.]

Decided: July 12, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary

[FR Doc. 95–18460 Filed 7–26–95; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7 and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Terry Shaner, et al.,* Civil Action No. *85–1372,* was lodged on July 10, 1995, with the United States District Court for the Eastern District of Pennsylvania. A motion to file an amended complaint was filed simultaneously with the lodging of the Consent Decree.

The proposed consent decree requires the current Site owners/operators (Terry Shaner, Sr., Susan Shaner, and Terry Shaner, Jr.): (1) To enter into a Consent Judgment for payment of $50,000 with interest (over time) based on EPA's assessment of their inability to pay their fair share of response costs; (2) to convey a conservation easement to

General Battery Corporation (the fourth signatory to the Decree and a major generator of waste disposed of at the Site) providing access to the Site, the Shaners' cooperation during the cleanup, permanent use restrictions on the Site and preservation of a portion of the Site as a permanent wilderness area; and (3) to waive any claims for Takings under the Fifth Amendment of the United States Constitution and claims for statutory relocation benefits. By signing the Decree, General Battery Corporation (''GBC'') has agreed: (1) To reimburse the Hazardous Substances Superfund in the amount of $3,000,000, (2) to pay $24,000 in past natural resource costs to the federal natural resources trustees (the National Oceanographic and Atmospheric Administration (''NOAA'') and the Department of Interior (''DOI'')); (3) to pay certain of EPA's future response costs; (4) to pay up to $10,000 of DOI's future costs; (5) to perform those activities required by the Record of Decision (''ROD'') for Operable Unit Two of the final Site remedy (excavating lead contaminated soil above 1000 parts per million, transport of the contaminated soil to GBC's off-Site innovative thermal treatment facility, and treatment of the deep and shallow groundwater) and complete those activities required by the ROD for Operable Unit One of the final Site remedy (constructing a fence around the property); and (6) to perform extensive work to protect natural resources at the Site as required by DOI and NOAA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Terry Shaner, et al.*, DOJ Ref. # *90–11–3–76*.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania, 19106–4476; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; and at the Consent Decree Library, 1120 G Street 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 Street NW., 4th Floor, Washington, DC 20005. In requesting a copy of the body of the proposed decree, please refer to the referenced case and enclose a check in the amount of $41.25 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library. If copies of the proposed consent decree attachments are requested, enclose $167.25 (an additional $126.00 is required for the attachments).

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–18429 Filed 7–26–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[DEA #134P]

Controlled Substances: Proposed Aggregate Production Quotas for 1996

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed aggregate production quotas for 1996.

SUMMARY: This notice proposes initial 1996 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATES: Comments or objections should be received on or before August 28, 1995.

ADDRESSES: Send comments or objections to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations.

The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) The estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1996 aggregate production quotas, the Deputy Administrator considered the following factors: (1) Total actual 1994 and estimated 1995 and 1996 net disposals of each substance by all manufacturers; (2) estimates of 1995 year-end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; and (3) projected demand as indicated by procurement quota applications filed pursuant to § 1303.12 of title 21 of the Code of Federal Regulations.

Pursuant to § 1303.23(c) of title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 1996, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 1995 year-end inventory and actual 1995 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to § 0.104 of title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes that the aggregate production quotas for 1996 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Proposed 1996 quotas
Schedule I:	
Acetylmethadol	7
Alphacetylmethadol	7
Aminorex	7
Cathinone	9
Difenoxin	14,000
Dihydromorphine	7
2,5-Dimethoxyamphetamine	10,650,000
Dimethylamphetamine	7
Ethylamine Analog of Phencyclidine	5
N-Ethylamphetamine	7
Lysergic acid diethylamide	58
Mescaline	7
Methaqualone	17
Methcathinone	9
4-Methoxyamphetamine	17
4-Methylaminorex	2
3,4-Methylenedioxyamphetamine	17
3,4-Methylenedioxy-N-ethylamphetamine	27
3,4-Methylenedioxymethamphetamine	42
3-Methylfentanyl	14

Basic class	Proposed 1996 quotas
Normethadone	7
Normorphine	7
Psilocybin	2
Psilocyn	2
Tetrahydrocannibinols	55,100
Schedule II:	
Alfentanil	8,500
Amobarbital	15
Amphetamine	1,300,100
Cocaine	550,040
Codeine (for sale)	58,395,000
Codeine (for conversion)	16,632,000
Desoxyephedrine, 1,000,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 44 kg for methamphetamine.	1,044,000
Dextropropoxyphene	118,066,000
Dihydrocodeine	60,000
Diphenoxylate	1,063,000
Ecgonine (for conversion)	650,100
Ethylmorphine	12
Fentanyl	120,100
Hydrocodone (for sale)	8,880,000
Hydrocodone (for conversion)	2,800,000
Hydromorphone	448,000
Isomethadone	12
Levo-alpha-acetylmethadol	200,000
Levorphanol	14,300
Meperidine	10,822,000
Methadone	4,551,000
Methadone (for conversion)	364,000
Methadone Intermediate (for conversion)	5,534,000
Methamphetamine (for conversion)	723,000
Methylphenidate	10,291,000
Morphine (for sale)	12,450,000
Morphine (for conversion)	76,735,000
Noroxymorphone (for sale)	2,000
Noroxymorphone (for conversion)	2,406,000
Opium	1,226,000
Oxycodone (for sale)	5,571,000
Oxycodone (for conversion)	37,300
Oxymorphone	11,200
Pentobarbital	15,100,000
Phencyclidine	40
Phenylacetone (for conversion)	5,280,000
1-Phenylcyclohexylamine	10
1-Piperidinocyclohexanecarbonitrile	12
Secobarbital	400,000
Sufentanil	1,000
Thebaine	9,217,000

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in §§ 1308.11 and 1308.12 of title 21 of the Code of Federal Regulations be established at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register,** summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: July 19, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–18407 Filed 7–26–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated May 30, 1995, and published in the **Federal Register** on June 8, 1995 (60 FR 30318), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, 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
Marihuana (7360)	I
Cocaine (9041)	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 19, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–18408 Filed 7–26–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated May 30, 1995, and published in the Federal Register on June 8, 1995, (60 FR 30319), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 19, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–18409 Filed 7–26–95; 8:45 am]

BILLING CODE 4410–09–M

Office of Juvenile Justice and Delinquency Prevention

Continuation of Funding of Children's Advocacy Centers

AGENCY: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of continuation grants.

SUMMARY: The purpose of this notice is to announce the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) intent to develop local children's advocacy centers through continuation funding to regional children's advocacy centers and the National Network of Children's Advocacy Centers.

FOR FURTHER INFORMATION CONTACT: Robin V. Delany-Shabazz, program manager, Training and Technical Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, Northwest, Room 710, Washington, DC., 20531; (202) 307–9963.

SUPPLEMENTARY INFORMATION:

Children's Advocacy Centers

With respect to the funding of Children's Advocacy Centers, pursuant to the Victims of Child Abuse Act, 42 U.S.C. 130001b - 130002, OJJDP has established a five-year project period for the Regional Children's Advocacy Center programs, effective February 21, 1995.

Given availability of funds and adequate performance, awards will be without further competition for the duration of the project period to the four grantees currently managing the Regional Children's Advocacy Centers (RCAC). They are as follows: Children's Advocacy Center, Inc. (Northeast RCAC); National Children's Advocacy Center, Inc. (Southern RCAC); LaRabida Children's Hospital and Research Center (Midwest RCAC); and Pueblo Child Advocacy Center (Western RCAC).

Funding to local Children's Advocacy Centers will continue to be administered by the National Network of Children's Advocacy Centers. The National Network will competitively subgrant funds to local Children's Advocacy Centers. A continuation grant will be awarded without competition for the purposes of grants administration to the National Network, contingent upon availability of funds and grantee performance. Interested applicants for local Children's Advocacy Center funds can contact the National Network on 202/639–0597.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–18459 Filed 7–26–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Reporting and Recordkeeping Requirements for Supply and Service Contractors; OMB Number 1215–0072; Agency Reporting/Recordkeeping Requirements To Be Reviewed by the Office of Management and Budget (OMB); Correction

AGENCY: Employment Standards Administration.

ACTION: Correction.

SUMMARY: In notice document 95–17997 beginning on page 37675 in the issue of Friday, July 21, 1995, make the following correction:

On page 37676; in the first column, the description cited 38 USC 2012. This should be changed to read 38 USC 4212.

Dated: July 24, 1995.

Margaret J. Sherrill,

Chief Branch of Management, Review and Analysis, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 95–18465 Filed 7–26–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–31, 024]

Legends Manufacturing, Inc., A/K/A Linden Dress, Throop, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 14, 1995, applicable to all workers of Legends Manufacturing, Incorporated, Throop, Pennsylvania. The notice was published in the **Federal Register** on June 27, 1995 (60 FR 33235).

New information received from the State Agency show that some of the workers at Legends Manufacturing, Incorporated had their unemployment insurance (UI) taxes paid to Linden Dress.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Legends Manufacturing, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,024 is hereby issued as follows:

''All workers of Legends Manufacturing, Incorporated, a/k/a Linden Dress, Throop, Pennsylvania who became totally or partially separated from employment on or after April 20, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC., this 17th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–18466 Filed 7–26–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00422]

General Electric Co., Rome, Georgia; Notice of Revised Determination on Reopening

On July 5, 1995, the Department, at the request of the petitioners, reopened its investigation for workers producing medium transformers at the subject facility. The initial investigation resulted in a negative determination. The notice was published in the **Federal Register** on May 25, 1995 (60 FR 27794).

The Department had issued a negative determination in the subject case because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met. Imports of medium transformers from Mexico or Canada did not contribute importantly to worker separations at the General Electric Company, Rome, Georgia facility, and there was no shift in production to Mexico or Canada.

The petitioners had alleged a shift in production by the subject firm to Mexico. An intent to outsource some production had been announced, but a final decision had not yet been made. New findings on reopening show that on June 12, 1995, General Electric Company ratified an agreement to shift some production of transformers to Mexico.

Other findings show that sales, production and employment decreased

during the relevant time periods of the investigation.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with medium transformers produced by the subject firm contributed importantly to the decline in production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers of General Electric Company, Rome, Georgia who became totally or partially separated from employment on or after March 30, 1994 are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C. this 13th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities that have submitted attestations (Form ETA 9029 and explanatory statements) to one of four Regional Offices of DOL (Boston, Chicago, Dallas and Seattle) for the purpose of employing nonimmigrant alien nurses. A decision has been made on these organizations' attestations and they are on file with DOL.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program will be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR parts 655, Subpart D, and 29 CFR part 504, (January 6, 1994). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing and those which have been rejected.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staff. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities chief executive officer also are listed to aid public inquiries. In addition, attestations and explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under the attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, D.C., this 21st day of June 1995.

John M. Robinson,

Deputy Assistant Secretary, Employment and Training Administration.

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA REGION 1 04/03/95 TO 04/09/95		
Peggy Urton Cave,Greenery Rehabilitation Center, 177 Whitewood Road, Waterbury, CT 06708, 203–757–9491 ..... ETA CONTROL NUMBER—1/218622 ACTION—ACCEPTED	CT	04/06/95
Sherwin Z. Goodblatt, Westwood Pembroke Health System, 333 Bolivar St., Canton, MA 02021, 821–6200 ..... ETA CONTROL NUMBER—1/218593 ACTION—ACCEPTED	MA	04/07/95
Morris Wiesel, Cedar Oaks Care Center, 1311 Durham Avenue, South Plainfield, NJ 07080, 908–287–9555 ..... ETA CONTROL NUMBER—1/218189 ACTION—ACCEPTED	NJ	04/06/95
Harvey Adelsberg, Daughters of Miriam, Ctr. for Aged, 155 Hazel St., Clifton, NJ 07015, 201–772–3700 ..... ETA CONTROL NUMBER—1/218586 ACTION—ACCEPTED	NJ	04/07/95
Adolfo Dela Cuesta, Health Aire Co., Inc., 711 Route 3 East, Clifton, NJ 07014, 201–777–1233	NJ	04/06/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—1/218532 ACTION—ACCEPTED		
Carol Godwin, Action Int'l Healthcare Services, 116 Chambers Street, 2nd Fl., New York, NY 10007, 212–571–3900	NY	04/07/95
ETA CONTROL NUMBER—1/218535 ACTION—ACCEPTED		
Jeanne Lee, Frances Schervier Home & Hospital, 2975 Independence Ave., Bronx, NY 10463, 718–548–1700	NY	04/07/95
ETA CONTROL NUMBER—1/218534 ACTION—ACCEPTED		
Harry Dorvilier, Harry's Nurses Registry, Inc., 169–22 Hillside Avenue, Jamaica, NY 11432, 718–739–0045	NY	04/06/95
ETA CONTROL NUMBER—1/218192 ACTION—ACCEPTED		
Elizabeth Madden, Health Care Registry, Inc., 192 Lexington Avenue, 7th Fl., New York, NY 10016, 212–532–9250	NY	04/06/95
ETA CONTROL NUMBER—1/218477 ACTION—ACCEPTED		
Judith Dicker, Hillside Manor Nursing Center, 182–15 Hillside Avenue, Jamaica Estates, NY 11432, 718–291–8200 .	NY	04/07/95
ETA CONTROL NUMBER—1/218536 ACTION—ACCEPTED		
Victor Orriola, Hollis Park Manor Nursing Home, 191–06 Hillside Ave., Hollis, NY 11423, 718–479–1010	NY	04/06/95
ETA CONTROL NUMBER—1/218207 ACTION—ACCEPTED		
Hershel Weber, N & W Nursing Registry, Inc., 461 Bedford Ave., Brooklyn, NY 11211, 718–387–7702	NY	04/06/95
ETA CONTROL NUMBER—1/218208 ACTION—ACCEPTED		
Percy Allen, II, State U/N.Y. Health Science Center, 450 Clarkson Avenue, Brooklyn, NY 11203, 718–270–1000	NY	04/06/95
ETA CONTROL NUMBER—1/218478 ACTION—ACCEPTED		
ETA REGION 1 04/10/95 TO 04/16/95		
John G. Magliaro, Columbus Hospital, 495 North 13th St., Newark, NJ 07107, 201–268–1495	NJ	04/12/95
ETA CONTROL NUMBER—1/218726 ACTION—ACCEPTED		
Marie D. Moore, Dellridge Care Center, 532 Farview Avenue, Paramus, NJ 07652, 201–261–1589	NJ	04/13/95
ETA CONTROL NUMBER—1/218776 ACTION—ACCEPTED		
Leonora Pilao-Dwyer, King David Care Ctr./Atlantic City, 166 S. South Caroline Avenue, Atlantic City, NJ 08401, 609–344–2181.	NJ	04/13/95
ETA CONTROL NUMBER—1/218775 ACTION—ACCEPTED		
Francine Ehrlich, Waterview Nursing Center, 536 Ridge Road, Cedar Grove, NJ 07009, 201–239–9300	NJ	04/13/95
ETA CONTROL NUMBER—1/218774 ACTION—ACCEPTED		
John J. Koellner, Bayside Dialysis Center, Inc., 201–10 Northern Boulevard, Bayside, NY 11361, 718–423–6638	NY	04/12/95
ETA CONTROL NUMBER—1/218695 ACTION—ACCEPTED		
Domingo Jimenez, Domingo Jimenez, M.D., 11 Springtree Boulevard, Apalachian, NY 13732, 607–625–4021	NY	04/12/95
ETA CONTROL NUMBER—1/218709 ACTION—ACCEPTED		
Abraham N. Klein, Fairview Nursing Care Center, Inc., 69–70 Grand Central Parkway, Forest Hills, NY 11375, 718–263–4600.	NY	04/12/95
ETA CONTROL NUMBER—1/218703 ACTION—ACCEPTED		
Joshua Teitelbaum, Queens Nassau Nursing Home, Inc., 520 Beach 19th Street, Apt. 1–A, Far Rockway, NY 11691, 718–471–7400.	NY	04/12/95
ETA CONTROL NUMBER—1/218697 ACTION—ACCEPTED		
Natalie George McDowell, Virgin Islands Dept. of Health, St. Thomas Hospital Estate Thomas, #48, St. Thomas, VI 00802, 809–774–0117.	VI	04/12/95
ETA CONTROL NUMBER—1/218693 ACTION—ACCEPTED		
ETA REGION 1 04/17/95 TO 04/23/95		
Maria L. Bondoc, Somerset Manor (Shady Rest Home), 1135 Hamilton Street, Somerset, NJ 08873, 908–247–1460	NJ	04/17/95
ETA CONTROL NUMBER—1/218800 ACTION—ACCEPTED		
Joan Madden, Health Care Placement Services, Inc., 192 Lexington Avenue, New York, NY 10016, 212–532–9520 .	NY	04/17/95
ETA CONTROL NUMBER—1/218798 ACTION—ACCEPTED		
Richard N. Yezzo, St Clare's Hospital & Health Ctr., 415 West 51st Street, New York, NY 10019, 212–586–1500	NY	04/17/95
ETA CONTROL NUMBER—1/218799 ACTION—ACCEPTED		
ETA REGION 10 04/03/95 TO 04/09/95		
Eden Salceda, Apache Junction Health Center, 2012 West Southern Avenue, Apache Junction, AZ 85220, 602–983–0700.	AZ	04/06/95
ETA CONTROL NUMBER—10/206676 ACTION—ACCEPTED		
Barbara Garner, North Valley, 1645 The Esplanade, Chico, CA 95926 714–544–4443	CA	04/06/95
ETA CONTROL NUMBER—10/207010 ACTION—ACCEPTED		
Lita Tsai, Orthopaedic Hospital, 2400 South Flower Street, Los Angeles, CA 90007, 213–742–1114	CA	04/06/95
ETA CONTROL NUMBER—10/206878 ACTION—ACCEPTED		
John W Wisor, Visiting Nurse Association of L.A., 520 South La Fayette Park Place, Suite 500, Los Angeles, CA 90057, 213–386–7200.	CA	04/06/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—10/206677 ACTION—ACCEPTED		
ETA REGION 10 04/10/95 TO 04/16/95		
Robert R. Schwartz, Emerald Terrace Convalescent Hosp., 1154 S. Alvarado Street, Lost Angeles, CA 90006, 213–385–1715. ETA CONTROL NUMBER—10/207119 ACTION—ACCEPTED	CA	04/14/95
ETA REGION 10 04/24/95 TO 04/30/95		
Thomas Ramsberger, Health Exchange, Inc., 5251 North Sixteenth Street, Suite B100, Phoenix, AZ 85016, 602–265–9606. ETA CONTROL NUMBER—10/207023 ACTION—ACCEPTED	AZ	04/24/95
ETA REGION 5 04/03/95 TO 04/09/95		
Lorraine Suissa, Briar Place, Ltd., 6800 Jolet Road, Indian Head Park, IL 60525, 708–246–8500 ETA CONTROL NUMBER—5/239644 ACTION—ACCEPTED	IL	04/07/95
Lisa R. Hilliard, Courtyard Terrace, 2313 N. Rockton Avenue, Rockford, IL 61103, 815–964–2200 ETA CONTROL NUMBER—5/239594 ACTION—ACCEPTED	IL	04/07/95
Judy Pitzele, Glenview Terrace Nursing Center, ATTN: Mark Hollander, 1511 Greenwood Road, Glenview, IL 60025, 708–729–9090. ETA CONTROL NUMBER—5/239632 ACTION—ACCEPTED	IL	04/07/95
Michael Elkes, Lakeview Nursing and Geriatric Ctr., 735 W. Diversey Parkway, Chicago, IL 60614, 312–348–4055 ETA CONTROL NUMBER—5/239641 ACTION—ACCEPTED	IL	04/07/95
Lucia S. Davis, R.N., Lia Home Health, Inc., 9730 S. Western, Suite 230, Evergreen Park, IL 60642, 708–229–0360 ETA CONTROL NUMBER—5/239593 ACTION—ACCEPTED	IL	04/07/95
David Stern, Sovereign Nursing Home, 6159 N. Kenmore Ave., Chicago, IL 60660, 312–761–9050 ETA CONTROL NUMBER—5/239642 ACTION—ACCEPTED	IL	04/07/95
Michael Gillman, Westshire Care Centre, 5825 W. Cermak Road, Cicero, IL 60650, 708–656–9120 ETA CONTROL NUMBER—5/239587 ACTION—ACCEPTED	IL	04/07/95
Pamela M. Orr, William L. Dawson Nursing Center, 3500 S. Giles, Chicago, IL 69653, 312–326–2000 ETA CONTROL NUMBER—5/239627 ACTION—ACCEPTED	IL	04/07/95
Jana Floyd or Liz Woods, Morton County Hospital, 445 Hilltop, P.O. Box 937, Elkhart, KS 67950, 316–697–2141 ETA CONTROL NUMBER—5/239592 ACTION—ACCEPTED	KS	04/07/95
Emelin Joy Tan, Concerned Home Care, Inc., 2233–A South Lakeshore Drive, P.O. Box 142, Harbor Beach, MI 48441, 517–479–6169. ETA CONTROL NUMBER—5/239643 ACTION—ACCEPTED	MI	04/07/95
David Koepplinger, Health Enterprises of Michigan Inc., d/b/a Clara Barton Terrace, 1801 East Atherton, Flint, MI 48507, 313–742–5850. ETA CONTROL NUMBER—5/239591 ACTION—ACCEPTED	MI	04/07/95
Deborah Howard, Hillside Lutheran Manor, 1430 Alamo, Kalamazoo, MI 49006, 616–349–2661 ETA CONTROL NUMBER—5/239588 ACTION—ACCEPTED	MI	04/07/95
Bonnie Sabuda, Luther Haven, 464 East Grand Blvd., Detroit, MI 48207–3692, 313–579–2255 ETA CONTROL NUMBER—5/239589 ACTION—ACCEPTED	MI	04/07/95
Cheryl G. Keenoy, Pines Healthcare Center, 707 Armstrong, Lansing, MI 48911, 517–393–5680 ETA CONTROL NUMBER—5/239586 ACTION—ACCEPTED	MI	04/07/95
ETA REGION 5 04/24/95 TO 04/30/95		
Jeffrey Webster, Atrium Health Care Center, 1425 W. Estes, Chicago, IL 60626, 312–973–4780 ETA CONTROL NUMBER—5/240653 ACTION—ACCEPTED	IL	4/24/95
Morris Esformes, Community Care Nursing Home, 4314 South Wabash, Chicago, IL 60653, 312–538–8300 ETA CONTROL NUMBER—5/240662 ACTION—ACCEPTED	IL	4/24/95
Morris Esformes, EMI Enterprises, Inc., 3737 West Arthur, Lincolnwood, IL 60645, 708–674–1946 ETA CONTROL NUMBER—5/240664 ACTION—ACCEPTED	IL	4/24/95
Behr Burton, Hampton Plaza Health Care Centre, 8555 Maynard Road, Niles, IL 60714, 708–967–7000 ETA CONTROL NUMBER—5/240640 ACTION—ACCEPTED	IL	4/24/95
Sally Skemp, Holy Cross Hospital, 2701 West 68th Street, Chicago, IL 60629, 312–471–8000 ETA CONTROL NUMBER—5/240649 ACTION—ACCEPTED	IL	4/24/95
Max Redmond, Hoosier Care Inc., DBA Swann Special Care Center, 109 Kenwood Road, Champaign, IL 61821, 217–356–5164. ETA CONTROL NUMBER—5/240633 ACTION—ACCEPTED	IL	4/24/95
Maila Parga, Norwegian American Hospital, 1044 N. Francisco Avenue, Chicago, IL 60622, 312–292–8200 ETA CONTROL NUMBER—5/240643 ACTION—ACCEPTED	IL	4/24/95
Jess Cole, Parkside Gardens N.H., dba Sunset House, LLC, 5701 W. 79th Street, Burbank, IL 60459, 708–636–3850.	IL	4/24/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—5/240656 ACTION—ACCEPTED		
Jackie Goken, Shabbona HealthCare Center, 409 W. Comanche St., Shabbona, IL 60550, 815–824–2194	IL	4/24/95
ETA CONTROL NUMBER—5/240639 ACTION—ACCEPTED		
Lawrence Carlson, St. Paul's House & Health Care Ctr., 3831 N. Mozart St., Chicago, IL 60618, 312–478–4222	IL	4/24/95
ETA CONTROL NUMBER—5/240655 ACTION—ACCEPTED		
Henrietta McElhone, Home Health Support Systems, Inc., 29777 Telegraph, Suite 1560, Southfield, MI 48034, 810–350–0778.	MI	4/24/95
ETA CONTROL NUMBER—5/240658 ACTION—ACCEPTED		
Steven P. Haggerty, Autumn Care of Madison, One Autumn Court, P.O. Drawer 420, Madison, VA 22727, 703–948–3054.	VA	4/24/95
ETA CONTROL NUMBER—5/240659 ACTION—ACCEPTED		
Steven P. Haggerty, Autumn Care of Portsmouth, 3610 Winchester Drive, P.O. Box 7277, Portsmouth, VA 23707, 804–397–0725.	VA	4/24/95
ETA CONTROL NUMBER—5/240661 ACTION—ACCEPTED		
Stephanie Zeman, Marshall Manor, Inc., 8645 John Marshall Highway, P.O. Box 749, Marshall, VA 22115, 703–364–1200.	VA	4/24/95
ETA CONTROL NUMBER—5/240607 ACTION—ACCEPTED		
Jane Clemente Elliott, Bel Air Health Care Center, 9350 West Fond du Lac Avenue, Milwaukee, WI 53225, 414–438–4360.	WI	4/24/95
ETA CONTROL NUMBER—5/240645 ACTION—ACCEPTED		
ETA REGION 6 04/03/95 TO 04/09/95		
Ms. Nancy F. Taylor, Cabarrus Nursing Center, Inc., 430 Brookwood Avenue, P.O. Box 748, Concord, NC 28026–0748, 704–788–4115.	NC	4/05/95
ETA CONTROL NUMBER—5/226715 ACTION—ACCEPTED		
Ms. Donna Gunter, East Texas Medical Center-Rusk, P.O. Box 317, Rusk TX 75785, 903–683–2273	TX	4/05/95
ETA CONTROL NUMBER—6/226260 ACTION—ACCEPTED		
ETA REGION 6 04/10/95 TO 04/16/95		
Ms. Frances Eddings, Integrated Health Services, 850 N.W. 9th Street, Alabaster, AL 35007, 205–663–3859	AL	04/13/95
ETA CONTROL NUMBER—6/226718 ACTION—ACCEPTED		
Ms. Precila Buffalo, Devon Gables Health Care Center, 6150 E. Grant Road, Tucson, AZ 85712, 602–296–6181	AZ	04/10/95
ETA CONTROL NUMBER—6/226536 ACTION—ACCEPTED		
Ms. Marge Evans, Broward Children's Center, 200 S. E. 19th Avenue, Pompano Beach, FL 33060, 305–943–7638 ..	FL	04/13/95
ETA CONTROL NUMBER—6/226639 ACTION—ACCEPTED		
Mr. Richard Zacher, Crystal Palms, 1710 4th Avenue N., Lakeworth, FL 33460, 407–547–0950	FL	04/13/95
ETA CONTROL NUMBER—6/226637 ACTION—ACCEPTED		
Dr. E. A. Ordonez, Dr. E. A. Ordonez M.D., P.A., 1024 B Edgewood Avenue West, Jacksonville, FL 32208, 904–764–5638.	FL	04/13/95
ETA CONTROL NUMBER—6/226635 ACTION—ACCEPTED		
Mr. Richard Bradley, G. Pierce Wood Memorial Hospital, 5847 S. E. Hwy 31, Arcadia, FL 33821, 813–494–3323	FL	04/13/95
ETA CONTROL NUMBER—6/226805 ACTION—ACCEPTED		
Ms. Freda Ebert, Halifax Convalescent Center, 820 North Clyde Morris Boulevard, Dayton Beach, FL 32117, 904–274–4575.	FL	04/13/95
ETA CONTROL NUMBER—6/226636 ACTION—ACCEPTED		
Mr. Jack Norman, Venice Hospital, 540 The Rialto, Venice, FL 34285, 813–483–7888	FL	04/13/95
ETA CONTROL NUMBER—6/226716 ACTION—ACCEPTED		
Mr. Frank A. Riddick, Jr. Alton Ochsner Medical Foundation, 1516 Jefferson Highway, New Orleans, LA 70121, 504–842–3604.	LA	04/13/95
ETA CONTROL NUMBER—6/226806 ACTION—ACCEPTED		
Ms. Florida Fuentecilla, Health & Professionals Network, Inc., 2 Canal Street, Suite 902, New Orleans, LA 70130, 504–527–0074.	LA	04/13/95
ETA CONTROL NUMBER—6/226807 ACTION—ACCEPTED		
Ms. Barbara Friday, Laurel Wood Center, 5000 Highway 39 North, Meridian, MS 39303, 601–483–6211	MS	04/10/95
ETA CONTROL NUMBER—6/226535 ACTION—ACCEPTED		
Mr. Joe Dan Edwards, Methodist Hospital of Middle MS, 1 Bowling Green Road, Lexington, MS 39095, 601–834–1321.	MS	04/13/95
ETA CONTROL NUMBER—6/226717 ACTION—ACCEPTED		
Sherwin D. Welch, Cheraw Healthcare, Inc., 114 Chesterfield Highway, P.O. Box 967, Cheraw, SC 29520, 803–537–5253.	SC	04/13/95
ETA CONTROL NUMBER—6/226633 ACTION—ACCEPTED		
Mr. Louis Milite, Life Care Center of Columbia, 2514 Faraway Drive, Columbia, SC 29206, 803–790–1999	SC	04/10/95
ETA CONTROL NUMBER—6/226429 ACTION—ACCEPTED		
Mr. James L. Dozier, Jr., Self Memorial Hospital, 1325 Spring Street, Greenwood, SC 29646, 803–227–4166	SC	04/10/95
ETA CONTROL NUMBER—6/226561 ACTION—ACCEPTED		
Mr. William R. Leake, Community Health Care, Inc., 1819 Holston River Road, Knoxville, TN 37914, 615–546–1799	TN	04/10/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/226534 ACTION—ACCEPTED		
Ms. Betty S. Leake, Your Home Visiting Nurse Serv., Inc., 5703A Broadway, Knoxville, TN 37918, 615–688–1159 ...	TN	04/10/95
ETA CONTROL NUMBER—6/226537 ACTION—ACCEPTED		
Ms. Connie Klostermann, Colonial Belle Nursing Home, 108 North Baron, P.O. Box 59, Bellville, TX 77418, 409–865–3689.	TX	04/13/95
ETA CONTROL NUMBER—6/226714 ACTION—ACCEPTED		
Mr. Stephen B. Hill, Tri-City Community Hospital, 1604 Hwy. 97E, P.O. Box 189, Jourdanton, TX 78026, 210–769–3515.	TX	04/13/95
ETA CONTROL NUMBER—6/226808 ACTION—ACCEPTED		
ETA REGION 6 04/17/95 TO 04/23/95		
Mr. James Sturgeon, Moosehaven Nursing Center, 1701 Park Avenue, Orange Park, FL 32073, 904–278–1225	FL	04/20/95
ETA CONTROL NUMBER—6/226926 ACTION—ACCEPTED		
Mr. Wayne Campbell, Palm Beach Regional Hospital, 2829 10th Avenue North, Lake Worth, FL 33461, 407–967–7800.	FL	04/20/95
ETA CONTROL NUMBER—6/226977 ACTION—ACCEPTED		
Ms. Elizabeth Camarena, West Gables Rehab Hosp/HCC, 2525 S. W. 75th Avenue, Miami, FL 33135, 305–262–1822.	FL	04/20/95
ETA CONTROL NUMBER—6/227015 ACTION—ACCEPTED		
Mr. Robert Hill, Britthaven, Inc., 1211 Hwy 258 N, P.O. Box 6150, Kinston, NC 28502–6159, 919–523–9094	NC	04/20/95
ETA CONTROL NUMBER—6/227120 ACTION—ACCEPTED		
Ms. Marie Buoniconti, Century Care of Laurinburg, Route 3, Box 95, 8900 Hasty Road, Laurinburg, NC 28352, 910–276–8400.	NC	04/20/95
ETA CONTROL NUMBER—6/226855 ACTION—ACCEPTED		
Ms. Polly Pine, Cibola General Hospital Corp., 1212 Bonita, Grants, NM 87020, 505–287–4446	NM	04/20/95
ETA CONTROL NUMBER—6/226964 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Hacienda de Salud—Bloomfield, 400 West Blanco, Bloomfield, NM 87413, 505–632–1823	NM	04/20/95
ETA CONTROL NUMBER—6/227018 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Hacienda de Salud—Silver City, 3514 Leslie Road, Silver City, NM 88061, 505–388–3127	NM	04/20/95
ETA CONTROL NUMBER—6/227019 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Hacienda de Salud—Espanola, 720 Hacienda Street, Espanola, NM 87532, 505–753–6769	NM	04/20/95
ETA CONTROL NUMBER—6/227017 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Sunshine Haven, West Railway Avenue, Lordsburg, NM 88045, 505–542–3539	NM	04/20/95
ETA CONTROL NUMBER—6/227020 ACTION—ACCEPTED		
Mr. Erik Stumpff, Texoma Manor, Inc., HC 71, Box 83, Kingston, OK 73439, 405–564–2351	OK	04/20/95
ETA CONTROL NUMBER—6/227014 ACTION—ACCEPTED		
Mr. Robert Collette, AMI Brownsville Medical Center, 1040 West Jefferson St., Brownsville, TX 78520, 210–544–1428.	TX	04/20/95
ETA CONTROL NUMBER—6/226927 ACTION—ACCEPTED		
Mr. Andrew E. Anderson, Jr., Bee County Regional Medical Center, 1500 E. Houston Highway, Beeville, TX 78102, 512–358–5431.	TX	04/20/95
ETA CONTROL NUMBER—6/226925 ACTION—ACCEPTED		
Bobby Pawelik, Canterbury Villa of Carrizo Spring, 8th & Clark Streets, Carrizo Springs, TX 78834, 512–876–5011 ..	TX	04/20/95
ETA CONTROL NUMBER—6/226854 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Doctor's Healthcare Center, 9009 White Rock Trail, Dallas, TX 75238, 214–348–8100	TX	04/20/95
ETA CONTROL NUMBER—6/227016 ACTION—ACCEPTED		
Mr. Bryan James, Hondo Skilled Nursing/Rehab Center, 3002 Avenue Q, Hondo, TX 78861, 210–426–3057	TX	04/20/95
ETA CONTROL NUMBER—6/226976 ACTION—ACCEPTED		
Ms. Edna Bingham, Oakridge Center, 615 North Ware Road, McAllen, TX 78501, 210–664–8900	TX	04/20/95
ETA CONTROL NUMBER—6/226853 ACTION—ACCEPTED		
Mr. John E. Smithhisler, Sun Belt Regional Medical Center, 13111 East Freeway, Houston, TX 77015, 713–455–6911.	TX	04/20/95
ETA CONTROL NUMBER—6/226928 ACTION—ACCEPTED		
ETA REGION 6 04/24/95 TO 04/30/95		
Vicky Worley, Integrated Health Services, 39 Hanover Cr., Birmingham, AL 35205, 205–933–1828	AL	04/27/95
ETA CONTROL NUMBER—6/227191 ACTION—ACCEPTED		
Mr. Fred D. Hirt, Mount Sinai Medical Center, 4300 Alton Road, Miami Beach, FL 33140, 305–674–2396	FL	04/27/95
ETA CONTROL NUMBER—6/226852 ACTION—ACCEPTED		
Mr. Don S. Steigman, North Ridge Medical Center, 5757 North Dixie Highway, Fort Lauderdale, FL 33334, 305–776–6000.	FL	04/27/95
ETA CONTROL NUMBER—6/227244 ACTION—ACCEPTED		
Mr. Steve Pickett, University Healthcare Systems, L C, Tulane University, 1415 Tulane Avenue, New Orleans, LA 70112, 504–588–5566.	LA	04/27/95
ETA CONTROL NUMBER—6/227234 ACTION—ACCEPTED		
Mr. Donald J. Fisher, The King's Daughters Hospital, 300 S. Washington Ave., P.O. Box 1857, Greenville, MS 38701, 601–378–2020.	MS	04/27/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/227083 ACTION—ACCEPTED		
Mr. Steven Haggerty, Autum Care of Marion, 610 Airport Road, P.O. Box 339, Marion, NC 28752, 704–652–6701	NC	04/27/95
ETA CONTROL NUMBER—6/227237 ACTION—ACCEPTED		
Mr. Steven Haggerty, Autum Care of Raeford, 1206 North Fulton Street, P.O. Box 10, Raeford, NC 28376, 910–875–4280.	NC	04/27/95
ETA CONTROL NUMBER—6/227236 ACTION—ACCEPTED		
Mr. Steven Haggerty, Autum Care of Salisbury, 1505 Bringle Ferry Road, P.O. Box 1789, Salisbury, NC 28145, 704–637–5885.	NC	04/27/95
ETA CONTROL NUMBER—6/227235 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 7010 Lee Hwy., Ste. 712, Chattanooga, TN 37421–1775, 615–892–1247.	TN	04/27/95
ETA CONTROL NUMBER—6/227240 ACTION—ACCEPTED		
Mr. Edward Hernandez, Bio-Medical Applications of McAlle, 1117 East Dallas, McAllen, TX 78501, 210–682–1259 ...	TX	04/27/95
ETA CONTROL NUMBER—6/227203 ACTION—ACCEPTED		
Ms. Elma Gomez, Canterbury Villa of Kingsville, 316 General Cavazos Blvd., Kingsville, TX 78363, 512–592–9366 ..	TX	04/27/95
ETA CONTROL NUMBER—6/227243 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 3910 Kirby Drive, Ste. 201, Houston, TX 77098, 713–528–7118	TX	04/27/95
ETA CONTROL NUMBER—6/227239 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 7610 N. Stemmons Hwy., Ste. 140, Dallas, TX 75247–4216, 214–630–1093.	TX	04/27/95
ETA CONTROL NUMBER—6/227238 ACTION—ACCEPTED		
Mr. James Kerr, Sunny Brook Health Care Center, 3050 Sunnybrook, Corpus Christi, TX 78415, 512–853–9981	TX	04/27/95
ETA CONTROL NUMBER—6/227233 ACTION—ACCEPTED		
Mr. John Wilson, Trinity Lutheran Home, 1000 E. Main, Round Rock, TX 78664, 512–255–2521	TX	04/27/95
ETA CONTROL NUMBER—6/227204 ACTION—ACCEPTED		
Jeffrey N. Rico, ULTRACARE Health Services, 1299 Main St., Ste A, Eagle Pass, TX 78852, 210–757–1823	TX	04/27/95
ETA CONTROL NUMBER—6/227194 ACTION—ACCEPTED		
ETA REGION 1 05/01/95 TO 05/07/95		
William L. Lane, Holy Family Hospital & Medical Ctr., V.P., Human Resources, 70 East Street, Methuen, MA 01844, 508–687–0151.	MA	05/05/95
ETA CONTROL NUMBER—1/219036 ACTION—ACCEPTED		
Martin Eugene Rivers, Lemuel Shattuck Hospital, 170 Morton Street, Jamaica Plane, MA 02130, 617–552–8110	MA	05/05/95
ETA CONTROL NUMBER—1/218927 ACTION—ACCEPTED		
Dwight D. Sowerby, Westwood Healthcare Center, Inc., 298 Main Street, Keene, NH 03431, 603–352–7311	NH	05/05/95
ETA CONTROL NUMBER—1/218932 ACTION—ACCEPTED		
Barbara Van Alstyne, ACGS Care Giving Services, Inc., 622 Georges Road, North Brunswick, NJ 08902, 908–246–0600.	NJ	05/05/95
ETA CONTROL NUMBER—1/218940 ACTION—ACCEPTED		
Harold Herskowitz, Freehold Rehab. & Nursing Center, 3419 US Highway 9, Freehold, NJ 07728, 908–780–0660	NJ	05/05/95
ETA CONTROL NUMBER—1/218930 ACTION—ACCEPTED		
Irwin Lam, Bialystoker Nursing Home, 288 East Broadway, New York, NY 10002, 212–475–7755	NY	05/05/95
ETA CONTROL NUMBER—1/218939 ACTION—ACCEPTED		
William Pollock, Cedar Hedge Nursing Home, 260 Lake Street, Rouses Point, NY 12979, 518–297–5190	NY	05/05/95
ETA CONTROL NUMBER—1/218937 ACTION—ACCEPTED		
William Pascocello, Florence Nightingale Nursing Home, 1760 Third Avenue, New York, NY 10029, 212–410–8700 .	NY	05/05/95
ETA CONTROL NUMBER—1/218931 ACTION—ACCEPTED		
Belen Sering, Global Employment & Management Inc., Blair House, Suite 2–H, 143–40 Roosevelt Ave., Flushing, NY 11354, 718–984–7510.	NY	05/05/95
ETA CONTROL NUMBER—1/219150 ACTION—ACCEPTED		
Sr. Helen Murphy, New York Foundling Hospital (The), 590 Avenue of the Americas, New York, NY 10011, 212–633–9300.	NY	05/05/95
ETA CONTROL NUMBER—1/219020 ACTION—ACCEPTED		
Evelyn McLaughlin, St. Thomas Hospital, 48 Sugar Estates Charlotte Amalies, St. Thomas, VI 00802, 809–776–8311.	VI	05/05/95
ETA CONTROL NUMBER—1/219018 ACTION—ACCEPTED		
ETA REGION 10 05/01/95 TO 05/07/95		
Sylvia Hadlock, NovaCare Meridian Point Rehab Hosp., 11250 North 92nd Street, Scottsdale, AZ 85260, 602–451–2702.	AZ	05/05/95
ETA CONTROL NUMBER—10/207231 ACTION—ACCEPTED		
Scott Van Brunt, Professional Nursing Services, 2001 Camelback Street #350, Phoenix, AZ 85015, 602–242–2300 ..	AZ	05/05/95
ETA CONTROL NUMBER—10/207028 ACTION—ACCEPTED		
Iheanyi Nathan, Good Shepherd Home Health Agency, 101 North Brand Boulevard, Suite 1230, Glendale, CA 91203, 818–548–2511.	CA	05/05/95
ETA CONTROL NUMBER—10/206900 ACTION—ACCEPTED		
Adelaida Q. Gerbery, International Medical Relocators, 808 Plaza Taxco, San Diego, CA 92114, 619–472–6605	CA	05/05/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—10/206955 ACTION—ACCEPTED		
Esq. lourdes Santos Tancinco, Nurse Providers, 345 Gellert Boulevard, Suite F, Daly City, CA 94015, 415–397–0808.	CA	05/03/95
ETA CONTROL NUMBER—10/207230 ACTION—ACCEPTED		
Ronald T. Tablante, Ronald T. Tablante, M.D., Unit 1–C & 1–D, GMI Building, 176 Sereno Avenue, Tamuning, GQ 96911, 671–646–6310.	GQ	05/05/95
ETA CONTROL NUMBER—10/206834 ACTION—ACCEPTED		
Susan M Hashimoto, St. Francis Medical Center, 2230 Liliha Street, Honolulu, HI 96817, 808–547–6290	HI	05/03/95
ETA CONTROL NUMBER—10/206902 ACTION—ACCEPTED		
ETA REGION 10 05/08/95 TO 05/14/95		
Tim J. Badgley, Thunderbird Health Care Center, 8825 South Seventh Street, Phoenix, AZ 85040, 602–243–6121 ...	AZ	05/12/95
ETA CONTROL NUMBER—10/206956 ACTION—ACCEPTED		
Orlando Clarizio, Sr., Arcadia Convalescent Hospital, 1601 South Baldwin Avenue, Arcadia, CA 91007–0000, 818–445–2170.	CA	05/12/95
ETA CONTROL NUMBER—10/206959 ACTION—ACCEPTED		
Barbara Garner, Brittany Healthcare Center, 3900 Garfield Avenue, Carmichael, CA 95608, 714–544–4443	CA	05/12/95
ETA CONTROL NUMBER—10/207007 ACTION—ACCEPTED		
Amelia A. Smith, Buena Ventura Care Center, 1016 South Record Street, Los Angeles, CA 90023, 213–268–0106 ..	CA	05/12/95
ETA CONTROL NUMBER—10/207021 ACTION—ACCEPTED		
Claire H. Eichinger, Courtyard Health Care Center, 1850 East Eighth Street, Davis, CA 95610, 916–756–1800	CA	05/12/95
ETA CONTROL NUMBER—10/207118 ACTION—ACCEPTED		
Joan Barlow, Hilltop Manor Convalescent Hospital, 12225 Shale Ridge Lane, Auburn, CA 95602, 916–624–6230	CA	05/12/95
ETA CONTROL NUMBER—10/207027 ACTION—ACCEPTED		
Toni B. Ong, Ridgewood Care Center, 809 Fremont Avenue, Los Altos, CA 94024, 415–941–5255	CA	05/12/95
ETA CONTROL NUMBER—10/207106 ACTION—ACCEPTED		
Alan Renaldo, Telescience International, Inc., 759 Sugarpine Street, Oceanside, CA 92054–1657, 619–721–7573	CA	05/12/95
ETA CONTROL NUMBER—10/207006 ACTION—ACCEPTED		
Joan Barlow, Westgate Gardens, 4525 West Tulare Avenue, Visalia, CA 93277, 916–624–6230	CA	05/12/95
ETA CONTROL NUMBER—10/207026 ACTION—ACCEPTED		
Cynthia Flores, Winchester Convalescent Hospital, 1250 South Winchester Boulevard, San Jose, CA 95128, 408–241–3844.	CA	05/12/95
ETA CONTROL NUMBER—10/207029 ACTION—ACCEPTED		
Joann Iverson, Woodruff Convalescent Hospital, 17836 Woodruff Avenue, Bellflower, CA 90706, 310–925–8457	CA	05/08/95
ETA CONTROL NUMBER—10/206909 ACTION—ACCEPTED		
Helen B. Ripple, Guam Memorial Hospital Authority, 850 Governor Carlos Camacho Road, Tamuning, GQ 96911, 671–646–6711.	GQ	05/08/95
ETA CONTROL NUMBER—10/206901 ACTION—ACCEPTED		
ETA REGION 10 05/15/95 TO 05/21/95		
Madeline D. Jariel, Rosecrans Care Center, 1140 West Rosecrans Avenue, Gardena, CA 90247, 310–323–3194	CA	05/19/95
ETA CONTROL NUMBER—10/207022 ACTION—ACCEPTED		
Babylyn Swiatlowski, St. Luke's Subacute Care Hospital, 1652 Mono Avenue, San Leandro, CA 94578, 510–785–8870.	CA	05/19/95
ETA CONTROL NUMBER—10/207024 ACTION—ACCEPTED		
Santi Lim, Villa Magnolia Retirement Hotel, 10537 Magnolia Boulevard, North Hollywood, CA 91601, 818–769–6400	CA	05/19/95
ETA CONTROL NUMBER—10/207032 ACTION—ACCEPTED		
ETA REGION 10 05/22/95 TO 05/28/95		
Janet Corey, Phoenix Memorial Hospital, 1201 South Seventh Avenue, Phoenix, AZ 85007, 602–238–3286	AZ	05/26/95
ETA CONTROL NUMBER—10/207162 ACTION—ACCEPTED		
Jenny Buckles, Brotman Medical Center, 3828 Delmas Terrace, Culver City, CA 90231, 310–202–4701	CA	05/23/95
ETA CONTROL NUMBER—10/207239 ACTION—ACCEPTED		
Fe Catama, Care Net Pomona Rehab Center, 2351 Town Avenue, Pomona, CA 91766, 909–628–1245	CA	05/22/95
ETA CONTROL NUMBER—10/207232 ACTION—ACCEPTED		
Fe Catama, Colonial Convalescent Center, 980 West Seventh Street, San Jacinto, CA 92585, 909–654–9347	CA	05/22/95
ETA CONTROL NUMBER—10/207233 ACTION—ACCEPTED		
Fe Catama, Palm Terrace Convalescent Center, 11162 Palm Terrace Lane, Riverside, CA 92505, 909–687–7330	CA	05/22/95
ETA CONTROL NUMBER—10/207235 ACTION—ACCEPTED		
Karen Merrill, Sebastopol Convalescent Hospital, 477 Petaluma Avenue, Sebastopol, CA 95472, 707–823–7855	CA	05/25/95
ETA CONTROL NUMBER—10/207286 ACTION—ACCEPTED		
Solomon Goldner, Sheltering Pine Convalescent Hosp., 33 Mateo Avenue, Millbrae, CA 94030, 818–986–1550	CA	05/23/95
ETA CONTROL NUMBER—10/207238 ACTION—ACCEPTED		
Fe Catama, Tustin Manor, 1051 Bryan Avenue, Tustin, CA 92680, 714–832–6780	CA	05/22/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

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CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—10/207234 ACTION—ACCEPTED		
William A. Mathies, Valley Care and Guidance Center, 9919 South Elm, Fresno, CA 93706, 209–834–5351	CA	05/26/95
ETA CONTROL NUMBER—10/207400 ACTION—ACCEPTED		
Billie Anne Schoppman, Vencor Hospital Orange County, 200 Hospital Circle, Westminster, CA 92683, 310–642–0325.	CA	05/25/95
ETA CONTROL NUMBER—10/207168 ACTION—ACCEPTED		
Robert O. Kent, Oneida County Hospital, 150 North 200 West, Malad City, ID 83252, 208–766–2231	ID	05/25/95
ETA CONTROL NUMBER—10/207197 ACTION—ACCEPTED		
ETA REGION 10 05/29/95 TO 06/04/95		
John Hoopes, Cobra Valley Community Hospital, #1 Hospital Drive, P.O. Box 3261, Claypool, AZ 85532, 520–425–3261.	AZ	05/30/95
ETA CONTROL NUMBER—10/207390 ACTION—ACCEPTED		
Leah Babula, Bellflower Home Health, Inc., 10929 South Street, #214B, Cerritos, CA 90701, 310–924–2444	CA	05/30/95
ETA CONTROL NUMBER—10/207403 ACTION—ACCEPTED		
Stanley Otake, Bellflower Medical Center, 9542 East Artesia Boulevard, Belleflower, CA 90706, 310–925–8355	CA	05/30/95
ETA CONTROL NUMBER—10/207295 ACTION—ACCEPTED		
Helen George, Beverly Hospital, 309 W. Beverly Blvd., Montebello, CA 90640, 213–889–2417	CA	05/31/95
ETA CONTROL NUMBER—10/207290 ACTION—ACCEPTED		
Ruth Jackson, Brasswell Colonial Care, 1618 Laurel, Redlands, CA 92373, 909–792–6050	CA	05/31/95
ETA CONTROL NUMBER—10/207242 ACTION—ACCEPTED		
Remy Broas, Broas Love's Rest Home, 258 Date Street, Chula Vista, CA 91911, 619–262–7701	CA	05/31/95
ETA CONTROL NUMBER—10/207293 ACTION—ACCEPTED		
Blanca Hafkamp, Newhall Community Hospital, 24237 North San Fernando Road, Newhall, CA 91321, 805–259–6300.	CA	05/31/95
ETA CONTROL NUMBER—10/207392 ACTION—ACCEPTED		
Pompeia Lurenana, Orange Coast Villa, Inc., 2619 Orange Avenue, Costa Mesa, CA 92627, 714–646–6716	CA	05/31/95
ETA CONTROL NUMBER—10/207296 ACTION—ACCEPTED		
Jean Lacombe, Restful Homes Assisted & Alzheimer, 1266 Pleiades Drive, Vista, CA 92084, 619–598–9697	CA	05/31/95
ETA CONTROL NUMBER—10/207396 ACTION—ACCEPTED		
Joan Barlow, Sierra Health Care Management, Inc., 715 Pole Line Road, Davis, CA 95616, 916–624–6230	CA	05/30/95
ETA CONTROL NUMBER—10/207297 ACTION—ACCEPTED		
Margaret Keaveney, St. Francis Medical Center, 3630 East Imperial Highway, Lynwood, CA 90262, 310–603–6930 .	CA	05/30/95
ETA CONTROL NUMBER—10/207391 ACTION—ACCEPTED		
Amy C Handscom, The Hillhaven Corp., 600 Sunrise Avenue, Roseville, CA 95661–4174, 617–861–5408	CA	05/31/95
ETA CONTROL NUMBER—10/207288 ACTION—ACCEPTED		
ETA REGION 5 05/01/95 TO 05/07/95		
June Valentine, Layton Home for Aged Persons, 300 East Eighth Street, Wilmington, DE 19801, 302–656–6413	DE	05/03/95
ETA CONTROL NUMBER—5/241092 ACTION—ACCEPTED		
Cynthia Halgard, Arbour Health Care Center, 1512 W. Fargo, Chicago, IL 60626, 312–465–7751	IL	05/04/95
ETA CONTROL NUMBER—5/241248 ACTION—ACCEPTED		
Corrine Lerman, Ballashire Hall, dba Canterbury Care Center, 1000 East Brighton Lane, Crystal Lake, IL 60012, 815–477–6400.	IL	05/04/95
ETA CONTROL NUMBER—5/241221 ACTION—ACCEPTED		
Marvin Mermelstein, Emerald Park Healthcare Center, 9125 South Pulaski, Evergreen Park, IL 60642, 708–425–3400.	IL	05/04/95
ETA CONTROL NUMBER—5/241254 ACTION—ACCEPTED		
Pam Seefurth, Goldman Home for the Aged, 6601 W. Touhy Ave., Niles, IL 60714, 708–647–9875	IL	05/04/95
ETA CONTROL NUMBER—5/241143 ACTION—ACCEPTED		
Joselito Fernandez, Liberty Hill Healthcare Center, 28 W. 141 Liberty Road, Winfield, IL 60190, 708–668–2928	IL	05/04/95
ETA CONTROL NUMBER—5/241236 ACTION—ACCEPTED		
Joselito Fernandez, Monte Cassino Healthcare Center, 101 E. Via Ghiglieri, Toluca, IL 61369, 815–452–2367	IL	05/03/95
ETA CONTROL NUMBER—5/241112 ACTION—ACCEPTED		
Joselito Fernandez, Morton Health Care, LTD., dba Morton Healthcare Centre, 190 E. Queenwood Road, Morton, IL 61550, 309–674–4732.	IL	05/04/95
ETA CONTROL NUMBER—5/241238 ACTION—ACCEPTED		
Seymour Oliven, Northwest Home for the Aged, 6300 N. California, Chicago, IL 60659, 312–973–1900	IL	05/04/95
ETA CONTROL NUMBER—5/241239 ACTION—ACCEPTED		
Linda A. Jackson, Oregon Health Care Center, 811 South 10th St., Oregon, IL 61061, 815–732–7994	IL	05/04/95
ETA CONTROL NUMBER—5/241142 ACTION—ACCEPTED		
Sherry Mauer, Park Ridge Care Center Ltd., 665 Busse Hwy., Park Ridge, IL 60068, 708–825–5517	IL	05/04/95
ETA CONTROL NUMBER—5/241230 ACTION—ACCEPTED		
Ludivina A. Pamintuan, Pro Health Care Services, Inc., 2104 Des Plaines Avenue, Des Plaines, IL 60175, 708–824–7162.	IL	05/04/95
ETA CONTROL NUMBER—5/241227 ACTION—ACCEPTED		
Jewell S. Thompson, Roseland Community Hospital, 45 West 111th Street, Chicago, IL 60628, 312–995–3000	IL	05/04/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—5/241257 ACTION—ACCEPTED		
Martin J. Bukacek, St. Joseph Home of Chicago, Inc., 2650 N. Ridgeway Avenue, Chicago, IL 60647, 312–235–8600.	IL	05/04/95
ETA CONTROL NUMBER—5/241229 ACTION—ACCEPTED		
Shirley Holt, Westmont Convalescent Center, 6501 S. Cass Ave., Westmont, IL 60559, 708–960–2026	IL	05/04/95
ETA CONTROL NUMBER—5/241261 ACTION—ACCEPTED		
Shirley Holt, Westmont Convalescent Center, 6401 S. Cass Ave., Westmont, IL 60559, 708–960–2026	IL	05/04/95
ETA CONTROL NUMBER—5/241201 ACTION—ACCEPTED		
Brian Levinson, Wood Glen Nursing & Rehabilitation, 201 West North Avenue, West Chicago, IL 60185, 708–876–8100.	IL	05/04/95
ETA CONTROL NUMBER—5/241255 ACTION—ACCEPTED		
Gary G. Waitt, Forest Haven Nursing Home, 315 Ingleside Avenue, Catonsville, MD 21228, 410–747–7425	MD	05/04/95
ETA CONTROL NUMBER—5/241223 ACTION—ACCEPTED		
Deborah Howard, Hillside Lutheran Manor, 1430 Alamo Avenue, Kalmazoo, MI 49006, 616–349–2661	MI	05/04/95
ETA CONTROL NUMBER—5/241202 ACTION—ACCEPTED		
Lloyd Kitchens, Hillside Terrace Retirement Center, 1939 Jackson Avenue, Ann Arbor, MI 48103, 313–761–4452	MI	05/04/95
ETA CONTROL NUMBER—5/241245 ACTION—ACCEPTED		
Sidne J. Mulder, St. John's Home of Milwaukee, 1840 N. Prospect Avenue, Milwaukee, WI 53202, 414–272–2022	WI	05/04/95
ETA CONTROL NUMBER—5/241243 ACTION—ACCEPTED		
ETA REGION 5 05/15/95 TO 05/21/95		
Nancy Robinson, Cherry Creek Nursing Center, 14699 E. Hampden Avenue, Aurora, CO 80014–3996, 303–693–0111.	CO	05/19/95
ETA CONTROL NUMBER—5/242181 ACTION—ACCEPTED		
Howard L. Wengrow or Sharon Hinkle, All American Nursing Home, 5448 N. Broadway, Chicago, IL 60640, 312–334–2224.	IL	05/19/95
ETA CONTROL NUMBER—5/242165 ACTION—ACCEPTED		
Leo Feigenbaum or Barry Gans, Fairhaven of Chicago Ridge, Inc., 10602 Southwest Highway, Chicago Ridge, IL 60415, 708–448–1540.	IL	05/19/95
ETA CONTROL NUMBER—5/242176 ACTION—ACCEPTED		
Howard L. Wengrow, Hickory Nursing Pavilion, Inc., 9246 S. Roberts Road, Hickory Hills, IL 60457, 708–598–4040	IL	05/19/95
ETA CONTROL NUMBER—5/242166 ACTION—ACCEPTED		
Araceli M. Henson, Hilltop Convalescent Center, 910 W. Polk, Charleston, IL 61920, 217–345–7066	IL	05/19/95
ETA CONTROL NUMBER—5/242180 ACTION—ACCEPTED		
Barbara M. Harris, Progressive Intn'l. Nursing Care, 2600 West Peterson Avenue, Ste 203, Chicago, IL 60659, 312–378–1170.	IL	05/19/95
ETA CONTROL NUMBER—5/242169 ACTION—ACCEPTED		
Ronald Campbell, Saint Bernard Hospital, 64th & Dan Ryan Expressway, Chicago, IL 60621, 312–962–4100	IL	05/19/95
ETA CONTROL NUMBER—5/242161 ACTION—ACCEPTED		
Gerry Woods, River Park Health Care, 1432 N. Waco, Wichita, KS 67203, 316–262–8481	KS	05/19/95
ETA CONTROL NUMBER—5/242167 ACTION—ACCEPTED		
W. Jean Sherman, Arnold Home Inc., 18520 W. Seven Mile Road, Detroit, MI 48219, 313–531–4001	MI	05/19/95
ETA CONTROL NUMBER—5/242175 ACTION—ACCEPTED		
Judy Bradford, Madonna Nursing Care Center, 15311 Schaefer, Detroit, MI 48227, 313–835–4775	MI	05/19/95
ETA CONTROL NUMBER—5/242163 ACTION—ACCEPTED		
Ralph Cozzens or Dan Hutson, Community Care of Amer. at Laramie, 503 South 18th Street, Laramie, WY 82070, 307–742–3728.	WY	05/19/95
ETA CONTROL NUMBER—5/242170 ACTION—ACCEPTED		
Lucy Frahm, Community Care of America, 307 Holly Street, Saratoga, WY 82331, 307–326–8212	WY	05/19/95
ETA CONTROL NUMBER—5/242177 ACTION—ACCEPTED		
ETA REGION 5 05/22/95 TO 05/28/95		
Andre Williams, Washington Cardiology Center, 110 Irving St. NW, Suite 4B1, Washington, DC 20010, 202–877–3198.	DC	05/26/95
ETA CONTROL NUMBER—5/242709 ACTION—ACCEPTED		
Alliance Home Healthcare, Inc., 6457 S. Pulaski Rd., 2nd Floor, Chicago, IL 60629, 312–585–8100	IL	05/25/95
ETA CONTROL NUMBER—5/242621 ACTION—ACCEPTED		
Diane E. Kramer, Aurora Manor Nursing Center, 1601 N. Farnsworth, Aurora, IL 60505, 708–898–1180	IL	05/26/95
ETA CONTROL NUMBER—5/242694 ACTION—ACCEPTED		
Jessica Fritz, Caseyville Nursing & Rehab Center, 601 West Lincoln, Caseyville, IL 62232, 618–345–3072	IL	05/26/95
ETA CONTROL NUMBER—5/242707 ACTION—ACCEPTED		
Jacob Bakst, Countryside Healthcare Center, Inc., 1635 East 154th Street, Dolton, IL 60419, 708–841–9550	IL	05/26/95
ETA CONTROL NUMBER—5/242681 ACTION—ACCEPTED		
Katherine Johnson, Dogwood Health Care Center, 902 E. Arnold, P.O. Box 147, Sandwich, IL 60548, 815–786–8409.	IL	05/23/95
ETA CONTROL NUMBER—5/242391 ACTION—ACCEPTED		
Leo Feigenbaum, Edgewater Care & Rehab. Center, 5838 North Sheridan Road, Chicago, IL 60660, 312–769–2230	IL	05/26/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

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CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—5/242676 ACTION—ACCEPTED		
Jacob Bakst, Fairfield of Joliet, Inc., dba Glenwood 222 North Hammes, Joliet, IL 60435, 815–725–0443	IL	05/26/95
ETA CONTROL NUMBER—5/242682 ACTION—ACCEPTED		
Leo Feigenbaum, Fairmount of Oak Park, Inc., 625 North Harlem, Oak Park, IL 60302, 708–848–5966	IL	05/26/95
ETA CONTROL NUMBER—5/242675 ACTION—ACCEPTED		
Jakob Bakst, Hillcrest Healthcare Center, Inc., 777 Draper Avenue, Joliet, IL 60432, 815–727–4794	IL	05/26/95
ETA CONTROL NUMBER—5/242679 ACTION—ACCEPTED		
Jakob Bakst, Imperial of Hazel Crest, Inc., 3300 West 175th Street, Hazel Crest, IL, 708–335–2400	IL	05/26/95
ETA CONTROL NUMBER—5/242678 ACTION—ACCEPTED		
Chester A. Plodzien, Lee Manor Health Care Residence, 1301 Lee Street, Des Plaines, IL 60018, 708–635–4000	IL	05/26/95
ETA CONTROL NUMBER—5/242686 ACTION—ACCEPTED		
Donna Carlson, Magnolia Wood Health Care Center, 900 North Market Street, Watseka, IL 60970, 815–432–5261	IL	05/25/95
ETA CONTROL NUMBER—5/242623 ACTION—ACCEPTED		
Geraldine Wagner, McAllister Nursing Home, Inc., 18300 S. Lavergne Avenue, P.O. Box 367, Tinley Park, IL 60477, 708–798–2272.	IL	05/26/95
ETA CONTROL NUMBER—5/242683 ACTION—ACCEPTED		
Erlando V. Gallermo, Midwest Nursing Services, Inc., 1831 N. Natoma Avenue, Chicago, IL 60635, 312–237–5021	IL	05/26/95
ETA CONTROL NUMBER—5/242685 ACTION—ACCEPTED		
Edith A. Brady, River Bluffs Rehabilitation & Nrsg, 3354 Jerome Lane, Cahokia, IL 62206, 618–397–4000	IL	05/25/95
ETA CONTROL NUMBER—5/242601 ACTION—ACCEPTED		
Aglae Velasco, Rush Surgicenter Ltd. Partnership, 1725 W. Harrison, Suite 556, Chicago, IL 60612, 312–563–2269	IL	05/26/95
ETA CONTROL NUMBER—5/242688 ACTION—ACCEPTED		
Grace Swanson, USA HealthPro, Inc., 5174 Cypress Court, Lisle, IL 60532, 708–964–1758	IL	05/23/95
ETA CONTROL NUMBER—5/242385 ACTION—ACCEPTED		
Mary Schroder, R.N., Clark County Health Department, Medical Arts Building, 207 Sparks Avenue, Suite 307, Jeffersonville, IN 47130, 812–282–9818.	IN	05/25/95
ETA CONTROL NUMBER—5/242625 ACTION—ACCEPTED		
Kimberly A. Schmaltz, Shady Nook Nursing Home, Inc., 36 Valley Drive, Lawrenceburg, IN 47025, 812–537–0930	IN	05/25/95
ETA CONTROL NUMBER—5/242624 ACTION—ACCEPTED		
Virginia Scifres, Washington County Memorial Hosp., 911 N. Shelby Street, Salem, IN 47167, 812–883–5881	IN	05/25/95
ETA CONTROL NUMBER—5/242613 ACTION—ACCEPTED		
Peggy Urton Cave, Indian Meadows Nursing Center, 6505 West 103rd Street, Overland Park, KS 66212, 913–649–5110.	KS	05/25/95
ETA CONTROL NUMBER—5/242609 ACTION—ACCEPTED		
Steve Wilkinson, St. Catherine Hospital, 410 East Walnut, Garden City, KS 67846, 316–272–2222	KS	05/23/95
ETA CONTROL NUMBER—5/242400 ACTION—ACCEPTED		
Henrietta McElhone, At Home Care, Inc., 29777 Telegraph, Suite 1580, Southfield, MI 48034, 810–350–0202	MI	05/25/95
ETA CONTROL NUMBER—5/242615 ACTION—ACCEPTED		
Peggy Urton Cave, Birchwood Care Center, 15140 16th Avenue, Marne, MI 49435, 616–677–1215	MI	05/24/95
ETA CONTROL NUMBER—5/242585 ACTION—ACCEPTED		
Robert Malott, Eaton Manor Nursing Center, 511 East Shephard, Charlotte, MI 48813, 517–543–4750	MI	05/26/95
ETA CONTROL NUMBER—5/242717 ACTION—ACCEPTED		
Peggy Urton Cave, Greenery—Clarkston, 4800 Clintonville Road, Clarkston, MI 48346, 810–674–0903	MI	05/24/95
ETA CONTROL NUMBER—5/242581 ACTION—ACCEPTED		
Peggy Urton Cave, Greenery—Farmington, 34225 Grand River Avenue, Farmington, MI 49335, 810–477–7373	MI	05/24/95
ETA CONTROL NUMBER—5/242583 ACTION—ACCEPTED		
Peggy Urton Cave, Greenery—Howell, 3003 West Grand River Avenue, Howell, MI 48843, 517–546–4210	MI	05/24/95
ETA CONTROL NUMBER—5/242586 ACTION—ACCEPTED		
Doris Papandrea, Health Care Personnel Alternatives, 27099 James St., Warren, MI 48092, 810–558–6680	MI	05/25/95
ETA CONTROL NUMBER—5/242620 ACTION—ACCEPTED		
Arylne E. Michael, Home Pro Care, Inc., 28091 Dequindre Road, Suite 307, Madison Heights, MI 48071, 810–547–5258.	MI	05/25/95
ETA CONTROL NUMBER—5/242619 ACTION—ACCEPTED		
Jean Newman, Hurley Medical Center, One Hurley Plaza, Flint, MI 48503, 810–257–9140	MI	05/26/95
ETA CONTROL NUMBER—5/242690 ACTION—ACCEPTED		
Lawana S. Parks, L & L Associates, dba Hilton Convalescent Home, 3161 Hilton Road, Ferndale, MI 48220, 810–547–6227.	MI	05/25/95
ETA CONTROL NUMBER—5/242602 ACTION—ACCEPTED		
Peggy Urton Cave, Lynwood Manor, 730 Kimole Lane, Adrian, MI 49221, 517–263–6771	MI	05/24/95
ETA CONTROL NUMBER—5/242588 ACTION—ACCEPTED		
Sheldon Green, Nightingale West, Inc., 8365 Newburgh Road, Westland, MI 48185, 313–416–2000	MI	05/23/95
ETA CONTROL NUMBER—5/242389 ACTION—ACCEPTED		
Catherine T. Bertolini, Saratoga Hospital, dba Father Murray Nursing, 8444 Engleman, Center Line, MI 48015, 810–755–2400.	MI	05/23/95
ETA CONTROL NUMBER—5/242420 ACTION—ACCEPTED		
Peggy Urton Cave, Silverbrook Manor, 911 South Third Street, Niles, MI 49120, 616–684–4320	MI	05/24/95
ETA CONTROL NUMBER—5/242591 ACTION—ACCEPTED		
Lori DeBoer, St. Mary's Nursing Home, 22901 E. Nine Mile, St. Clair Shores, MI 48080, 810–772–4300	MI	05/25/95
ETA CONTROL NUMBER—5/242608 ACTION—ACCEPTED		
Peggy Urton Cave, Willowbrook Manor, 4436 Beecher Road, Flint, MI 48532, 313–733–0290	MI	05/24/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

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CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—5/242595 ACTION—ACCEPTED		
Teresa Reinhart, Cloverlodge Care Center, P.O. Box B 301 N. 13th St., St. Edward, NE 68660, 402–678–2294	NE	05/25/95
ETA CONTROL NUMBER—5/242604 ACTION—ACCEPTED		
Peggy Urton Cave, Autumnwood of Sylvania, 4111 Holland-Sylvania Road, Toledo, OH 43623, 419–882–2087	OH	05/25/95
ETA CONTROL NUMBER—5/242626 ACTION—ACCEPTED		
Wendi Wells, Rocky Mountain Health Care, Bntifl, 350 S. 400 E., Bountiful, UT 84010, 801–298–2291	UT	05/25/95
ETA CONTROL NUMBER—5/242610 ACTION—ACCEPTED		
Betty G. Solomonson, Mount Vernon Nursing Center, 8111 Tis Well Drive, Alexandria, VA 22306–3297, 703–360–4000.	VA	05/25/95
ETA CONTROL NUMBER—5/242622 ACTION—ACCEPTED		
ETA REGION 5 05/29/95 TO 06/04/95		
Lois Peters, Peters Pediatric Nursing Team, Inc., 6856 Eastern Avenue, Suite 210, Washington, DC 20012, 202–291–0062.	DC	06/01/95
ETA CONTROL NUMBER—5/243061 ACTION—ACCEPTED		
Harvey Singer, Buckingham Pavilion, Inc., 2625 W. Touhy Avenue, Chicago, IL 60645, 312–973–5333	IL	06/01/95
ETA CONTROL NUMBER—5/243055 ACTION—ACCEPTED		
Marla Coquillette, Clayton Residential Home, Inc., 2026 N. Clark St., Chicago, IL 60614, 312–549–1840	IL	06/01/95
ETA CONTROL NUMBER—5/243046 ACTION—ACCEPTED		
Gregory A. Olson, Highland Hospital, Inc., 1625 South State Street, Belvidere, IL 61008, 815–547–5441	IL	06/01/95
ETA CONTROL NUMBER—5/243043 ACTION—ACCEPTED		
Dana C. Whitson, Lake Shore Nursing Centre, 7200 N. Sherican Road, Chicago, IL 60626, 312–973–7200	IL	05/31/95
ETA CONTROL NUMBER—5/243000 ACTION—ACCEPTED		
Pat Sheridan, Sharon Health Care Oaks, 3111 W. Richwood Blvd., Peoria, IL 61604, 309–685–8800	IL	05/31/95
ETA CONTROL NUMBER—5/243002 ACTION—ACCEPTED		
Susan Ledesma, Skokie Meadows Nursing Centers, Inc., 9615 N. Knox Avenue, Skokie, IL 60076, 708–679–1157 ..	IL	06/01/95
ETA CONTROL NUMBER—5/243053 ACTION—ACCEPTED		
Leticia Laxa or Lucy Morales, South Shore Surgi-Center ENTS, Inc., 8300 S. Crandon, Chicago, IL 60617, 312–721–6000.	IL	05/31/95
ETA CONTROL NUMBER—5/243004 ACTION—ACCEPTED		
Paul Breininger, Valley View Health Care Center, 333 West Mishawaka Road, Elkhart, IN 46517, 219–293–1550	IN	05/31/95
ETA CONTROL NUMBER—5/243015 ACTION—ACCEPTED		
Michael Kaplan, Liberty Nursing Center, 1200 West College, Liberty, MO 64068, 816–781–3020	MO	05/31/95
ETA CONTROL NUMBER—5/243012 ACTION—ACCEPTED		
Eileen De Cesare, Professional Healthcare Resources, 101 S. Whiting Street, Suite 307, Alexandria, VA 22304, 703–370–7474.	VA	06/01/95
ETA CONTROL NUMBER—5/243050 ACTION—ACCEPTED		
ETA REGION 6 05/01/95 TO 05/07/95		
Mr. Dennis Norton, Arbor at Tampa, 2811 Campus Hill Dr., Tampa, FL 33612, 813–972–9700	FL	05/02/95
ETA CONTROL NUMBER—6/227308 ACTION—ACCEPTED		
Mr. Joseph A. Boshart, CCHP, Inc., 1515 S. Federal Highway, Suite 210, Boca Raton, FL 33432, 800–347–2264	FL	05/02/95
ETA CONTROL NUMBER—6/227317 ACTION—ACCEPTED		
E. Cooper Shamblen, Clinical Pharmacology Associates, 2060 N.W., 22nd Ave., Miami, FL 33142, 305–634–0777 ...	FL	05/04/95
ETA CONTROL NUMBER—6/227342 ACTION—ACCEPTED		
Lois G. Collins, Lake Worth Health Center, 3599 S. Congress Ave., Lake Worth, FL 33461, 407–965–8876	FL	05/04/95
ETA CONTROL NUMBER—6/227456 ACTION—ACCEPTED		
Gloria Ceballos, Volusia Medical Center, 1055 Saxon Blvd., Orange City, FL 32763, 904–851–5090	FL	05/04/95
ETA CONTROL NUMBER—6/227353 ACTION—ACCEPTED		
Ms. Dorothy N. Key, Greene Point Health Care, 1321 Washington Highway, P.O. Box 312, Union Point, GA 30669, 706–486–2167.	GA	05/04/95
ETA CONTROL NUMBER—6/227343/ ACTION—ACCEPTED		
William Repzynski, Lynn Haven Nursing Home, Rt 1, Box 185, Hwy 11, Gray, GA 31032, 912–986–3196	GA	05/04/95
ETA CONTROL NUMBER—6/227349 ACTION—ACCEPTED		
Kenneth A. Goings, Starcrest of McDonough, 198 Hampton, P.O. Box 796, McDonough, GA 30253, 404–957–9081	GA	05/04/95
ETA CONTROL NUMBER—6/227348 ACTION—ACCEPTED		
Mr. Tom Ford, Brian Center Health & Retirement, 3000 Holston Lane, Raleigh, NC 27610, 919–231–6045	NC	05/02/95
ETA CONTROL NUMBER—6/227314 ACTION—ACCEPTED		
Ms. Paula Phillips, Charlotte Health Care Center, 1735 Toddville Road, Charlotte, NC 28214, 704–394–4001	NC	05/02/95
ETA CONTROL NUMBER—6/227316 ACTION—ACCEPTED		
Mr. Andy Mannich, Granville Medical Center, 1010 College Street, Oxford, NC 27565, 919–690–3238	NC	05/04/95
ETA CONTROL NUMBER—6/227408 ACTION—ACCEPTED		
Ms. Peggy R. Moore, Meadowbrook Manor, 5935 Mt. Sinah Road, Durham, NC 27705–9603, 919–489–2361	NC	05/04/95
ETA CONTROL NUMBER—6/227346 ACTION—ACCEPTED		
Mr. Douglas Kramer, Onslow Memorial Hospital, 317 Western Blvd., Jacksonville, NC 28541, 910–577–2392	NC	05/02/95

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ETA CONTROL NUMBER—6/227319 ACTION—ACCEPTED		
Ms. Demetria S. Montalvo, Manhattan Health Services, Inc., 250 West 57th Street Suite 1500, New York, NY 10019, 212–664–1821.	NY	05/04/95
ETA CONTROL NUMBER—6/227351 ACTION—ACCEPTED		
Ms. Elizabeth Scott, Trident Neurosciences Cntr. Inc., 9181 Medcom Street, N. Charleston, SC 29406, 803–820–7777.	SC	05/02/95
ETA CONTROL NUMBER—6/227306 ACTION—ACCEPTED		
Ms. Linda Karling, The Windsor House, 3425 Knight Drive, Whites Creek, TN 37189, 615–876–2754	TN	05/04/95
ETA CONTROL NUMBER—6/227402 ACTION—ACCEPTED		
Lucile Kiemsteadt, Azalea Manor Nursing Home, 207 N Meyer, Sealy, TX 77474, 409–885–2937	TX	05/04/95
ETA CONTROL NUMBER—6/227403 ACTION—ACCEPTED		
Neal M. Elliott, Horizon Specialty Hospital, 2301 N. Oregon, El Paso, TX 79902, 505–881–4961	TX	05/04/95
ETA CONTROL NUMBER—6/227455 ACTION—ACCEPTED		
Linda Colvin, Juliette Fowler Homes, Inc., 100 S. Fulton, Dallas, TX 75214, 214–827–0813	TX	05/02/95
ETA CONTROL NUMBER—6/227311 ACTION—ACCEPTED		
Bradly R. Anderson, Normandy Terrace Northeast, 8607 Village Dr., San Antonio, TX 78217, 210–656–6733	TX	05/02/95
ETA CONTROL NUMBER—6/227313 ACTION—ACCEPTED		
Billie Saunders, Oakland Manor Nursing Center, 1400 N. Main St., Giddings, TX 78942, 409–542–1755	TX	05/02/95
ETA CONTROL NUMBER—6/227312 ACTION—ACCEPTED		
Ms. Pam Lyle, Westridge Nursing Cntr., 1241 Westridge, Lancaster, TX 75146, 214–227–5110	TX	05/02/95
ETA CONTROL NUMBER—6/227310 ACTION—ACCEPTED		
ETA REGION 6 05/08/95 TO 05/14/95		
Mr. Richard White, Reliance H/C of Pickens, Inc., 512 Second Avenue, NW, P.O. Box 400, Reform, AL 35481, 205–375–6379.	AL	05/10/95
ETA CONTROL NUMBER—6/227646 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Tuskegee, Inc., 502 Gauthier Street, P.O. Box 599, Tuskegee, AL 36083–2633, 205–727–1945.	AL	05/10/95
ETA CONTROL NUMBER—6/227645 ACTION—ACCEPTED		
Scott Clark, Central Park Village, 9309 S. Orange Blossom Trail, Orlando, FL 32837 407–859–7990	FL	05/10/95
ETA CONTROL NUMBER—6/227699 ACTION—ACCEPTED		
Scott Clark, IHS of Central Fla. at Orlando, 1800 Mercy Drive, Orlando, FL 32808, 407–299–5404	FL	05/10/95
ETA CONTROL NUMBER—6/227700 ACTION—ACCEPTED		
Scott Clark, IHS of Winter Park, 2970 Scarlett Rd, Winter Park, FL 32792, 407–671–3030	FL	05/10/95
ETA CONTROL NUMBER—6/227702 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Starke, Inc., 808 South Coley Road, Starke, FL 32091 904–964–6220	FL	05/10/95
ETA CONTROL NUMBER—6/227648 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Thonotosassa, Inc., 12006 McIntosh Road, Thonotosassa, FL 33592 813–986–4848.	FL	05/10/95
ETA CONTROL NUMBER—6/227641 ACTION—ACCEPTED		
Mr. Bob Via, Bulloch Memorial Hospital, 500 East Grady Street, Statesboro, GA 30458, 912–764–6671	GA	05/10/95
ETA CONTROL NUMBER—6/227695 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Augusta, Inc., 2021 Scott Road, Augusta, GA 30906, 706–793–1057	GA	05/10/95
ETA CONTROL NUMBER—6/227643 ACTION—ACCEPTED		
D. Gray Angell, Jr., Meadowbrook Manor—Rockingham, 804 Long Dr., P.O. Box 1237, Rockingham, NC 28379, 910–997–4493.	NC	05/10/95
ETA CONTROL NUMBER—6/227679 ACTION—ACCEPTED		
Susan Goad, Ardmore Care Center, 1111 Thirteenth N.W., Ardmore, OK 74301, 405–223–4803	OK	05/09/95
ETA CONTROL NUMBER—6/227507 ACTION—ACCEPTED		
Susan Goad, Atoca Care Center, 323 West Sixth St., Atoca, OK 74525, 914–337–0703	OK	05/09/95
ETA CONTROL NUMBER—6/228258 ACTION—ACCEPTED		
Susan Goad, Cedar Creek Nursing Home, 600 24th Ave., Norman, OK 73069, 405–321–1111	OK	05/09/95
ETA CONTROL NUMBER—6/227510 ACTION—ACCEPTED		
Susan Goad, Grand Place, 501 East Grand Sayre, OK 73662, 405–928–3374	OK	05/09/95
ETA CONTROL NUMBER—6/227511 ACTION—ACCEPTED		
Susan Goad, Hillcrest Nursing Home, 2120 N. Broadway, Moore, OK 73160 405–794–4429	OK	05/09/95
ETA CONTROL NUMBER—6/227513 ACTION—ACCEPTED		
Susan Goad, Park Terrace Convalescent Home, 5115 East 51st St., Tulsa, OK 74135, 918–627–5961	OK	05/09/95
ETA CONTROL NUMBER—6/227512 ACTION—ACCEPTED		
Charles W. Elliott, Jr., Beaufort Memorial Hospital, 955 Ribaut Rd., Beaufort, SC 29902, 803–522–5200	SC	05/10/95
ETA CONTROL NUMBER—6/227703 ACTION—ACCEPTED		
Mr. Richard White, Continuum Care Corporation, 1200 Spruce Lane, Elizabethton, TN 37643, 625–543–3202	TN	05/10/95
ETA CONTROL NUMBER—6/227650 ACTION—ACCEPTED		
Mr. Richard White, Continuum Care Corporation, 919 Medical Park Drive, Mountain City, TN 37683, 615–727–7800	TN	05/10/95
ETA CONTROL NUMBER—6/227651 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Eastland, Inc., 701 Porter Road, P.O. Box 68049, Nashville, TN 37206, 615–226–3264.	TN	05/10/95
ETA CONTROL NUMBER—6/227640 ACTION—ACCEPTED		
Ken Holland, Richland Place, Inc., 500 Elmington Ave., Nashville, TN 37205, 615–269–4200	TN	05–10–95

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CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/227675 ACTION—ACCEPTED		
Mr. David Collins, Abilene Regional Medical Center, 6250 Highway 83/84 at Antilley Rd., Abilene, TX 79606, 915–691–2430.	TX	05–10–95
ETA CONTROL NUMBER—6/227661 ACTION—ACCEPTED		
Charles Buchert, Beaumont Regional Med. Cntr., 3080 College, Beaumont, TX 77701, 409–339–7113	TX	05–10–95
ETA CONTROL NUMBER—6/227653 ACTION—ACCEPTED		
Neal M. Elliott, Castle Hills Manor, 8020 Blanco Road, San Antonio, TX 78216, 210–344–4553	TX	05–10–95
ETA CONTROL NUMBER—6/227691 ACTION—ACCEPTED		
Mr. Randall H. Rolfe, Columbia Healthcare Systems, 1900 North Oregon St., Suite 610, El Paso, TX 79902, 915–577–9824.	TX	05–19–95
ETA CONTROL NUMBER—6/227482 ACTION—ACCEPTED		
Neal M. Elliott, Golden Plains Care Center, 15 Hospital Drive, Canyon, TX 79015, 806–655–2161	TX	05–10–95
ETA CONTROL NUMBER—6/227690 ACTION—ACCEPTED		
Neal M. Elliott, Heritage Place of Grand Prairie, 820 Small, Grand Prairie, TX 75050, 214–262–1351	TN	05–10–95
ETA CONTROL NUMBER—6/227687 ACTION—ACCEPTED		
Armand P. Capadocia, Hobby Physical Therapy, 8951 Ruthby, Ste. 2, Houston, TX 77061, 713–644–0222	TN	05–09–95
ETA CONTROL NUMBER—6/227607 ACTION—ACCEPTED		
Neal M. Elliott, Longmeadow Care Center, 120 Meadowview Drive, Justin, TX 76247, 817–648–2731	TX	05–10–95
ETA CONTROL NUMBER—6/227689 ACTION—ACCEPTED		
Neal M. Elliott, North Shores Health Center, 12350 Wood Bayou Drive, Houston, TX 77013, 713–453–0446	TX	05–10–95
ETA CONTROL NUMBER—6/227688 ACTION—ACCEPTED		
Juan R. Amell, Red Oak Cardiovascular Cntr. P.A., 17200 Red Oak Dr., Ste. 107, Houston, TX 77090, 713–893–8640.	TX	05–09–95
ETA CONTROL NUMBER—6/227605 ACTION—ACCEPTED		
Neal M. Elliott, Seven Oaks Care Center, 901 Seven Oaks Blvd., Bonham, TX 75418, 903–583–2191	TX	05–10–95
ETA CONTROL NUMBER—6/227692 ACTION—ACCEPTED		
Ms. Sharlyn Threadgill, Southwood Care Center, 3759 Valley View Road, Austin, TX 78704, 512–443–3436	TX	05–09–95
ETA CONTROL NUMBER—6/227479 ACTION—ACCEPTED		
Peter C. Kern, The Decatur Convalescent Center, 605 W. Mulberry Ave., Decatur, TX 76234, 817–627–5444	TX	05–10–95
ETA CONTROL NUMBER—6/227671 ACTION—ACCEPTED		
Danny Morten, Tri-City Health Centre, 7525 Scyene Rd., Dallas, TX 75227, 214–381–7171	TX	05–10–95
ETA CONTROL NUMBER—6/227673 ACTION—ACCEPTED		
Neal M. Elliott, Valley Grande Manor, 901 Wild Rose Ln., Brownsville, TX 78520, 210–546–4568	TX	05–10–95
ETA CONTROL NUMBER—6/227694 ACTION—ACCEPTED		
ETA REGION 6 05/15/95 TO 05/21/95		
Mr. Bryan Casey, Bay Pointe Nursing Pavillion, 4201 31st St. S., St. Petersburg, FL 33712–4051, 813–867–1104	FL	05–18–95
ETA CONTROL NUMBER—6/227831 ACTION—ACCEPTED		
Larry Flannagan, Boca Raton Rehab. Cntr., 755 Meadows Rd., Boca Raton, FL 33486, 407–391–5200	FL	05–18–95
ETA CONTROL NUMBER—6/227921 ACTION—ACCEPTED		
Deborah Markey, Hillhaven Healthcare Cntr, 950 Mellonville Ave., Sanford, FL 32771–2299, 407–322–8566	FL	05–18–95
ETA CONTROL NUMBER—6/227923 ACTION—ACCEPTED		
Edgar L. Belcher, Walton Medical Center, 330 Alcova St., Monroe, GA 30655, 404–267–8461	GA	05–18–95
ETA CONTROL NUMBER—6/227836 ACTION—ACCEPTED		
Robert Hill, Britthaven of Releight, 3609 Bond St., Raleigh, NC 27604, 919–231–8113	NC	05–18–95
ETA CONTROL NUMBER—6/227823 ACTION—ACCEPTED		
David Antle, Miner's Colfax Medical Center, 200 Hospital Drive, Raton, NM 87740, 505–445–3661	NM	05–18–95
ETA CONTROL NUMBER—6/227826 ACTION—ACCEPTED		
ETA REGION 6 05/29/95 TO 06/04/95		
Mr. Ben White, Southwestern Medical Center, 5602 Southwest Lee Blvd., Lawton, OK 73505, 405–531–4700	OK	05/18/95
ETA CONTROL NUMBER—6/227825 ACTION—ACCEPTED		
Ms. Lolita O. Cuevas, Texas Medical Services, 11767 Katy Frwy, Ste 780, Houston, TX 77079, 713–558–6609	TX	05/18/95
ETA CONTROL NUMBER—6/227919 ACTION—ACCEPTED		
Mr. David Butler, Valley Regional Medical Center, #1 Ted Hunt Blvd., Brownsville, TX 78521, 210–831–5974	TX	05/18/95
ETA CONTROL NUMBER—6/227827 ACTION—ACCEPTED		
Michael Mastej, Victoria Regional Med. Cntr., 101 Medical Drive, Victoria, TX 77904, 512–573–6100	TX	05/18/95
ETA CONTROL NUMBER—6/227924 ACTION—ACCEPTED		
ETA REGION 6 05/22/95 TO 05/28/95		
Mr. Gerald Labourene, Heartland Health Care & Rehab Ctr., 7225 Boca Del Mar Drive, Boca Raton, FL 33433, 407–362–9644.	FL	05/25/95
ETA CONTROL NUMBER—6/228021 ACTION—ACCEPTED		
Mr. Jeff Bradley, Hillhaven Convalescent Center, 5640 Rand Blvd., Sarasota, FL 34238, 813–922–8009	FL	05/26/95

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CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/228024 ACTION—ACCEPTED		
Ms. Donna Kelsey, Hillhaven Rehabilitation and HC, 616 Wade Avenue, Raleigh, NC 27605, 919–828–6251 ETA CONTROL NUMBER—6/228022 ACTION—ACCEPTED	NC	05/25/95
Dionicio Rivera, Resthaven Nursing Home, 2729 Porter Ave., El Paso, TX 79930, 915–566–3757 ETA CONTROL NUMBER—6/228028 ACTION—ACCEPTED	TX	05/26/95
Eduardo Duarte, Retama Manor West, 1200 Lane, Laredo, TX 78040, 210–722–0031 ETA CONTROL NUMBER—6/228030 ACTION—ACCEPTED	TX	05/26/95
Mr. Larry F. Parsons, Wilbarger General Hospital, 920 Hillcrest Drive, Vernon, TX 76384, 817–552–9351 ETA CONTROL NUMBER—6/228023 ACTION—ACCEPTED	TX	05/26/95
ETA REGION 6 05/29/95 TO 06/04/95		
Neal M. Elliott, Elms Haven Care Center, 12080 Bellaire Way, Thornton, CO 80241–3600, 303–450–2700 ETA CONTROL NUMBER—6/228196 ACTION—ACCEPTED	CO	06/01/95
Mr. Neal M. Elliott, Sable Care Center, 656 Dillon Way, Aurora, CO 80011, 303–344–0636 ETA CONTROL NUMBER—6/228288 ACTION—ACCEPTED	CO	06/01/95
Michael Dada, Advanced Nursing Care Svcs. Inc., 6120 Mirimar Pkwy., Miramar, FL 33023, 305–981–1147 ETA CONTROL NUMBER—6/228180 ACTION—ACCEPTED	FL	05/31/95
Ira Clark, Jackson Memorial Hospital, 1611 NW 12th Ave., Miami, FL 33136, 305–585–7142 ETA CONTROL NUMBER—6/228107 ACTION—ACCEPTED	FL	05/30/95
Kevin D. Mort, Manhattan Convalescent Cntr., 4610 S. Manhattan Ave., Tampa, FL 33611, 813–839–5311 ETA CONTROL NUMBER—6/228189 ACTION—ACCEPTED	FL	05/31/95
Ms. Carolina Calderin, Pan American Hospital, 5959 NW 7th Street, Miami, FL 33126, 305–264–1000 ETA CONTROL NUMBER—6/228347 ACTION—ACCEPTED	FL	06/01/95
David Bussone, Plantation General Hospital, 401 N.W. 42nd Ave., Plantation, FL 33317, 305–797–6450 ETA CONTROL NUMBER—6/228554 ACTION—ACCEPTED	FL	06/01/95
Larry Potter, St. Cloud Healthcare Center, 1301 Kansas Avenue, St. Cloud, FL 34769, 407–892–5121 ETA CONTROL NUMBER—6/228256 ACTION—ACCEPTED	FL	06/01/95
Ms. Donita Tannenbaum, Suwannee Health Care Center, 1620 Helvenston Street, Live Oak, FL 32060, 904–362–7860. ETA CONTROL NUMBER—6/228255 ACTION—ACCEPTED	FL	06/01/95
Jack Lord, General Health Homecase & Staffing, 6160 Perkins Rd., Ste. 130, Baton Rouge, LA 70808, 504–766–8008. ETA CONTROL NUMBER—6/228181 ACTION—ACCEPTED	LA	05/31/95
Richard E. Waller, Quitman Cnty Hosp. & Nursing Home, 340 Getwell Dr., Marks, MS 38646, 601–326–8031 ETA CONTROL NUMBER—6/228186 ACTION—ACCEPTED	MS	05/31/95
Robert Hill, Britthaven of Piedmont, 33426 Old Salisbury Rd., P.O. Box 1250, Albemarle, NC 28002, 704–983–1195 ETA CONTROL NUMBER—6/228257 ACTION—ACCEPTED	NC	06/01/95
Bruce Busby, Hillhaven Rehab. & Healthcare Cntr., 1602 E. Franklin St., Chapel Hill, NC 27514, 919–967–1418 ETA CONTROL NUMBER—6/228194 ACTION—ACCEPTED	NC	06/01/95
Hugh D. Moon, Smoky Mountain Center, P.O. Box 280, Dillsboro, NC 28725, 704–586–5501 ETA CONTROL NUMBER—6/228366 ACTION—ACCEPTED	NC	06/01/95
Vicente B. Denuna, V.B. Denuna, P.A., 28 N. Logan St., Marion, NC 28752, 704–652–5797 ETA CONTROL NUMBER—6/228367 ACTION—ACCEPTED	NC	06/01/95
Sam Jewell, Callaway Nursing Home, 1300 W. Lindsay, Sulphur, OK 73086, 405–622–2416 ETA CONTROL NUMBER—6/228074 ACTION—ACCEPTED	OK	05/30/95
Sam Jewell, Cordell Manor, 1420 N. Crider Rd., Cordell, OK 73632, 405–832–5341 ETA CONTROL NUMBER—6/228072 ACTION—ACCEPTED	OK	05/30/95
Mr. Melvin Stepp, Meadow Haven, 261 S. Herlong Avenue, Rock Hill, SC 29732, 803–366–7133 ETA CONTROL NUMBER—6/228075 ACTION—ACCEPTED	SC	05/30/95
Benny Judah, Amherst Manor, 700 Main St., Amherst, TX 79312, 806–246–3642 ETA CONTROL NUMBER—6/228073 ACTION—ACCEPTED	TX	05/30/95
Velma Cowell, Canterbury Villa of Navasota, 1405 East Washington, Navasota, TX 77868, 409–825–6463 ETA CONTROL NUMBER—6/228187 ACTION—ACCEPTED	TX	05/30/95
Velma Cowell, Columbus Care Cntr., 103 Sweet Brair Lane, Columbus, TX 78934, 409–732–5716 ETA CONTROL NUMBER—6/228184 ACTION—ACCEPTED	TX	05/31/95
Mr. H. Douglas Garner, Coronado Hospital, One Medical Plaza, Pampa, TX 79065, 806–665–3721 ETA CONTROL NUMBER—6/228244 ACTION—ACCEPTED	TX	06/01/95
Guy Bowles, Heartland at San Antonio, One Heartland Drive, San Antonio, TX 78247, 210–653–1219 ETA CONTROL NUMBER—6/228193 ACTION—ACCEPTED	TX	06/01/95
Tracy Dean, Sharyland Med. Support Serv., Inc., P.O. Box 3480, McAllen, TX 78501, 210–618–5566 ETA CONTROL NUMBER—6/228242 ACTION—ACCEPTED	TX	06/01/95
Woody Kern, Silver Pines Convalescent Cntr., Route 1, Box 1X, Bastrop, TX 78602, 512–321–6220 ETA CONTROL NUMBER—6/228192 ACTION—ACCEPTED	TX	06/01/95
Nancy Schneider, The Renaissance Care Center, Rt. 4, Box 7, Gainesville, TX 76240, 817–665–5221 ETA CONTROL NUMBER—6/228492 ACTION—ACCEPTED	TX	06/01/95
Wayne Ogburn, Titus County Memorial Hospital, 2001 N. Jefferson, Mt. Pleasant, TX 75455, 903–577–6179	TX	05/31/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/228185 ACTION—ACCEPTED		
Patrick Pfeiffer, Wesleyan Nursing Home, 2001 Scenic Dr., Georgetown, TX 78626, 512–863–9511	TX	06/01/95
ETA CONTROL NUMBER—6/228178 ACTION—ACCEPTED		
Charles Veldekens, Yale Clinic & Hospital, Inc., 510 W. Tidwell, Ste. 100, Houston, TX 77091, 713–691–1111	TX	05/31/95
ETA CONTROL NUMBER—6/228183 ACTION—ACCEPTED		

[FR Doc. 95–18468 Filed 7–26–95; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Georgia Power Company, Oglethorpe Power Corporation, Edwin I. Hatch Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NPF–5 issued to Georgia Power Company, et al. (GPC or the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment, provided by the licensee, addresses potential environmental issues related to GPC's application to amend Plant Hatch, Units 1 and 2, Operating Licenses. The proposed amendments would increase the licensed core thermal power from 2436 MWt to 2558 MWt, which represents an increase of 5 percent over the current licensed power level. This request is in accordance with the generic boiling water reactor (BWR) power uprate program established by the General Electric Company (GE) and approved by the NRC staff in a letter from W.T. Russell, NRC, to P.W. Marriott, GE, dated September 30, 1991. Implementation of the proposed power uprate at Plant Hatch will result in an increase of steam flow to approximately 106 percent of the current value, but will not require changes to the basic fuel design. Core reload design and fuel parameters will be modified as power uprate is implemented to support the current 18-month reload cycle. The higher power level will be achieved by expanding the power/flow map and slightly increasing reactor vessel dome pressure. The maximum core flow limit will not be increased over the pre-uprate value. Implementation of this proposed power uprate will require minor modifications, such as resetting of the safety relief setpoints, as well as calibrating plant instrumentation to reflect the uprated power. Plant operating, emergency, and other procedure changes will be made where necessary to support uprated operation.

The proposed action involves NRC issuance of license amendments to uprate the authorized power level by changing the Operating Licenses, including Appendix A (Technical Specifications). Appendix B of the Operating License (Environmental Technical Specifications) does not require revision as a result of power uprate.

The Need for the Proposed Action

The proposed action would authorize GPC to increase the potential electrical output of Plant Hatch by approximately 40 megawatts per unit and thus would provide additional electrical power to service GPC's grid.

Environmental Impacts of the Proposed Action

The ''Final Environmental Statement'' (FES) related to operation of Plant Hatch Units 1 and 2 (Reference 6) evaluates the nonradiological impact of operation at a maximum design reactor power level of 2537 MWt per unit. By letter dated January 13, 1995 (Reference 1), GPC submitted the proposed amendment to implement power uprate for Hatch Units 1 and 2 which is the subject of this environmental assessment. Enclosure 2 of that submittal provided information on the noradiological environmental aspects of the amendment request. Enclosure 4 was the Plant Hatch power uprate licensing report (GE report NEDC–32405P) which provided information on the radiological environmental impact of power uprate.

The proposed amendments allowing power uprate operation will not have a significant impact on the environment and the change does not constitute an unreviewed environmental question. The nonradiological and radiological effects of the proposed action on the environment are described below.

Nonradiological Environmental Assessment

Power uprate will not change the method of generating electricity nor the method of handling any influents from the environment or effluents to the environment. Therefore, no new or different types of environmental impacts are expected.

The detailed evaluation presented below and in Reference 1 concludes that nonradiological parameters affected by power uprate will remain within the bounding conditions cited in the FES, which concludes that no significant environmental impact will result from operation of Plant Hatch. This conclusion remains valid for power uprate.

The FES evaluated the nonradiological impact at a maximum design reactor power level of 2537 MWt per unit (approximately 104 percent of the current licensed power level). The parameters evaluated in the Environmental Report and the subsequent FES (References 4 through 6) were re-evaluated at 2558 MWt to determine whether the proposed change is significant relative to adverse environmental impact. Table E2–1 of Reference 1 provided a comparison of environmental-related operation parameters at rated and uprated power. Both units at Plant Hatch utilize a closed-loop circulating year system and forced air cooling towers for dissipating heat from the main turbine condenser. Other equipment is cooled by the plant service water (PSW) and residual heat removal (RHR) service water systems. The cooling towers and service water systems are operated in accordance with the requirements of the National Pollutant Discharge Elimination System (NPDES) Permit No. GA 0004120, which expires October 31, 1997. No notification changes or other action relative to the NPDES Permit are required.

The withdrawal of cooling water from the Altamaha River is expected to increase slightly, primarily due to the increase in the evaporation rate from the cooling towers. Emergency system flows are expected to remain generally unchanged. Although increased heat loads are expected for nonsafety-related loads, such as the main generator stator coolers, hydrogen coolers, and exciter coolers, heat loads will remain within the existing design heat loads of the service water systems.

The circulating water system design flow rate is the primary basis for determining makeup water for the Plant Hatch cooling towers. Other factors affecting tower makeup are tower performance and meteorological conditions. Based on the review of cooling tower performance parameters associated with power uprate, the design flow rate of the cooling towers will not change. Makeup requirements may increase slightly due to increased heat load on the towers and the associated increase in evaporation. As discussed in Enclosure 2 of Reference 1, the increase in makeup (withdrawal rate is expected to be approximately 5 percent or 500 gpm. This projected increase associated with the uprate is not significant and is enveloped by the river water withdrawal rates discussed in the FES and the rates approved under the current Georgia Surface Water Withdrawal Permit for Plant Hatch. Intake canal velocity will not be significantly affected. No measurable effects on fish impingement or plankton entrainment are expected.

Changes in cooling tower blowdown rate and cooling tower chemistry as a result of the uprate are not significant. Any changes in blowdown rate and cooling tower cycles of concentration resulting from uprated power operation are enveloped by the existing design criteria discussed in FES.

Cooling tower drift does not increase as a result of the uprate since the circulating water flow rate does not change. Cooling tower blowdown temperature associated with power uprate operation increase slightly (<1 °F), thereby producing a slight increase in river discharge temperature. A review of the increase in the river discharge temperature relative to the conclusions of the FES and thermal studies required to support licensing of the plant indicates the slight temperature increase is not significant.

The thermal plume characteristics are not expected to change significantly as a result of power uprate. Circulating water and service water flow rates remain unchanged. The discharge temperature to the cooling towers should increase by no more than 1 °F due to operation at power uprate conditions. The corresponding change in discharge temperature at the river will not significantly impact the size or characteristics of the thermal plume. Thermal plume studies conducted during original licensing and the FES conclusions relative to thermal impacts remain valid for the uprated condition.

No significant change in discharge flow rate, velocity, or chemical composition will occur due to the proposed power uprate. Power uprate does not impact the discharge characteristics upon which the NPDES Permit is based. No notification, changes, or other actions relative to the NPDES Permit are required.

No change in the groundwater withdrawal required to supply the Hatch treatment plant or fire protection system will result from the proposed uprate.

The evaluation also considered the flow rate required by the liquid radwaste system (e.g., floor and equipment drains) due to the proposed uprate. No significant change in liquid radwaste quantities or activity levels which would increase the required radwaste dilution flow are expected. Therefore, the impact on the environment from these systems as a result of operation at the uprate power levels is not significant.

Plant operation at uprated power conditions will not affect current noise levels. Major plant equipment is housed within structures located on the plant site and is not a major contributor to surrounding noise levels. Equipment, such as the main turbines/generators and the cooling towers, will continue to operate at the current speed and noise level. The generator step-up transformers will operate at an increased KVA level; however, the overall noise level will not increase significantly.

Thus, the proposed uprate will not result in any significant environmental impact and is not an unreviewed environmental question. In addition, no actions relative to the Environmental Technical Specifications (ETS), NPDES permit or other environmental documents are required.

Radiological Environmental Assessment

Georgia Power Company evaluated the impact of the proposed power uprate amendment and concluded that the applicable regulatory acceptance criteria relative to radiological environmental impacts will continue to be satisfied for the uprated power conditions. Existing Technical Specifications limits on radiological effluents will be maintained. In conducting this evaluation, GPC considered the effect of the higher power level on liquid radioactive wastes, gaseous radioactive wastes, and radiation levels both in the plant and offsite during both normal operation and post-accident.

Enclosure 4 of Reference 1 provides the power uprate safety analyses report for Plant Hatch, as well as an assessment of the radiological effects of power uprate operation during both normal and postulated accident conditions. Sections 8.1 and 8.2 discuss the potential effect of power uprate on the liquid and gaseous radwaste systems. Sections 8.3, 8.4, and 8.5 discuss the potential effect of power uprate on radiation sources within the plant and radiation levels during normal and post-accident conditions. Section 4.4 discusses the standby gas treatment system (SGTS). Section 9.2 presents the results of the calculated whole body and thyroid doses at the exclusion area boundary and the low population zone that might result from the postulated design basis radiological accidents. All offsite doses remain below established regulatory limits for power uprate operation.

The floor drain collector subsystem and the waste collector subsystem both receive inputs from a variety of sources (e.g., leakage from component cooling water system, reactor coolant system, condensate and feedwater system, turbine, and plant cooling water system). However, leakages from these systems are not expected to increase significantly since the operating pressures of these systems are either being maintained constant or are being increased only slightly due to the proposed power uprate.

The largest source of liquid radioactive waste is from the backwash of the condensate demineralizers. These demineralizers remove activated corrosion products which are expected to increase proportionally to the proposed power uprate. However, the total volume of processed waste is not expected to increase significantly, since the only appreciable increase in processed waste will be due to the slightly more frequent cleaning of these demineralizers. Based on a review of plant effluent reports and the slight increase expected due to the proposed power uprate, GPC has concluded that the slight increase in the processing of liquid radioactive wastes will not have a significant increase in environment impact and that requirements of 10 CFR part 20 and 10 CFR part 50, Appendix I, will continue to be met.

Gaseous radioactive effluents are produced during both normal operation and abnormal operation occurrences. These effluents are collected, controlled, processed, stored, and disposed of by the gaseous radioactive waste management systems which include the various building ventilation systems, the off gas system, and the SGTS. The concentration of radioactive gaseous effluents released through the building ventilation systems during normal operation is not expected to increase significantly due to the proposed power uprate since the amount of fission products released into the reactor coolant (and subsequently into the building atmosphere) depends on the number and nature of fuel rod defects and is not dependent on reactor power level. The concentration of activation products contained in the reactor coolant is expected to remain unchanged, since the linear increase in the production of these activation products will be offset by the linear increase in steaming rate. Therefore, based on its review of the various building ventilation systems, GPC has concluded that there will not be a significant adverse effect on airborne radioactive effluents as a result of the proposed power uprate.

Radiolysis of the reactor coolant causes the formation of hydrogen and oxygen, the quantities of which increase linearly with core power. These additional quantities of hydrogen and oxygen would increase the flow to the recombiners by 5 percent during uprated power conditions. However, the operational increases in hydrogen and oxygen remain within the design capacity of the system.

The SGTS is designed to minimize offsite and control room radiation dose rates during venting and purging of both the primary and secondary containment atmospheres under accident or abnormal conditions. This is accomplished by maintaining the secondary containment at a slightly negative pressure with respect to the outside atmosphere and discharging the secondary containment atmosphere through high-efficiency particulate air (HEPA) filters and charcoal absorbers. The SGTS charcoal absorbers are designed for a charcoal loading capacity of 2.5 mgI/gC for the 30-day loss-of-coolant accident (LOCA) scenario. The proposed power uprate will increase the post-LOCA iodine loading by 5 percent; however, the charcoal loading will remain within the 2.5 mgI/gC design limit. Therefore, there will be no significant increase in environmental impact.

Georgia Power Company evaluated the effects of the power uprate on in-plant radiation levels for Plant Hatch during both normal operation and post-accident. GPC's conclusions are that radiation levels during both normal operation and post-accident may increase slightly (approximately proportional to the increase in power level). The slight increases in in-plant radiation levels expected due to the proposed power uprate should not affect radiation zoning or shielding requirements. Individual worker occupational exposures will be maintained within acceptable limits by the existing as low as reasonably achievable (ALARA) program which GPC uses to control access to radiation areas. Therefore, the slightly increased in-plant radiation levels will not have a significant environmental impact.

The offsite doses associated with normal operation are not significantly affected by operation at the proposed uprated power level and are expected to remain well within the limits of 10 CFR part 20 and 10 CFR part 50, Appendix I. Existing Technical Specifications limits will not be changed due to uprate. Therefore, offsite doses due to power uprate conditions will not result in a significant environmental impact.

Georgia Power Company performed does evaluations for design basis accidents at or above 102% of the uprated power level and reported these results in Reference 1. The offsite doses remain below regulatory limits and the increase due to power uprate is 5% or less.

The NRC staff agrees with GPC's assessment of the radiological effects of the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts of plant operation, but would restrict operation of Plant Hatch to the currently licensed power level. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Plant Hatch.

Agencies and Persons Consulted

In accordance with its stated policy, on July 20, 1995, the staff consulted with the Georgia State official, James L. Setser of the Environmental Protection Division, Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 13, 1995, as supplemented by letters dated April 5 and June 20, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

References

1. Georgia Power Company HL–4724, J. T. Beckham, Jr., to NRC, ''Power Uprate Operation,'' dated January 13, 1995.

2. Georgia Power Company HL–4812, J. T. Beckham, Jr., to NRC, ''Response to Request for Additional Information—Power Uprate Submittal,'' dated April 5, 1995.

3. **Federal Register** Vol. 60, No. 41, ''Niagara Mohawk Corporation; Environmental Assessment and Finding of No Significant Impact,'' dated March 2, 1995.

4. Georgia Power Company ''Final Environmental Statement for Edwin I. Hatch Nuclear Plant Units 1 and 2,'' October 1972.

5. Georgia Power Company Edwin I. Hatch Nuclear Plant—Unit 2 Environmental Report, Operating License Stage, June 1975.

6. Georgia Power Company ''NUREG–0417,'' Final Environmental Statement Related to Operation of Edwin I. Hatch Nuclear Plant Unit No. 2, March 1978.

Dated at Rockville, Maryland, this 21st day of July 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18444 Filed 7–26–95; 8:45 am]

BILLING CODE 7590–01–M

Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration; Correction to Biweekly Notice

On June 21, 1995, the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration. On page 32374, Column 1, the third paragraph should read as follows:

The second proposed change which is applicable to all MODES of operation, allows 48 hours to restore diesel generator fuel oil inventory to the seven-day level as long as the inventory does not fall below the six-day level. The probability of a LOOP during this period is low. The 6-day fuel oil supply is calculated with adequate margin similar to the calculation of 7-day fuel oil inventory. In spite of the potential that there may be slightly less fuel available in inventory at the time of an event, actions would have been initiated to obtain replenishment within this brief period. Based on this and the low probability of an event during this brief period, it is considered that this change request does not involve a significant reduction in a margin of safety.

Dated at Rockville, Maryland, this 20th day of July 1995.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18445 Filed 7–26–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Energy Operations, Inc.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 81 to Facility Operating License No. NPF–47 issued to Entergy Operations, Inc. (the licensee), which revised the Technical Specifications for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana. The amendment is effective as of the date of issuance.

The amendment modified the technical specifications by replacing the existing technical specifications in their entirety with a new set of technical specifications based on NUREG–1434, ''Improving BWR–6 Technical Specifications,'' dated September 1992. This amendment was based on the licensee's submittal of November 30, 1993, as supplemented by letters dated January 18, June 6, June 30, and July 14, 1995.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 21, 1994 (59 FR 19030). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (60 FR 29867, dated June 6, 1995).

For further details with respect to the action see (1) The application for amendment dated November 30, 1993, and supplemented by letters dated January 18, June 6, June 30, and July 14, 1995, (2) Amendment No. 81 to License No. NPF–47, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland, this 20th day of July 1995.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Director, Project Directorate IV–I, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18443 Filed 7–26–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800.

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549

Extension

Rule 15a–4—File No. 270–7
Rule 15b6–1 and Form BDW—File No. 270–17
Rule 15Bc3–1 and Form MSDW—File No. 270–93
Rule 17a–1—File No. 270–244
Rule 17a–2—File No. 270–189
Rule 17a–3—File No. 270–26
Rule 17a–7—File No. 270–147
Rule 17f–1(g)—File No. 270–30
Rule 17Ad–6—File No. 270–151
Rule 17Ad–7—File No. 270–152

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following rules under the Securities Exchange Act of 1934:

Rule 15a–4 permits a natural person member of a securities exchange who terminates its association with a registered broker-dealer to continue to do business on the exchange while the Commission reviews his application for registration as a broker-dealer, if the exchange files a statement indicating that there does not appear to be any ground for disapproving the application. The total annual burden is 400 hours, based on approximately 50 submissions, each requiring 8 hours to complete.

Rule 15b6–1 provides that a notice of withdrawal from registration as a broker-dealer is to be filed on Form BDW. Approximately 850 respondents file 1 response per year, with each response requiring approximately half an hour, resulting in a total average annual burden of 425 hours.

Rule 15Bc3–1 and Form MSDW provide that a notice of withdrawal from registration as a bank municipal securities dealer is to be filed on Form MSDW. Approximately 20 respondents file 1 response each per year, with each response requiring approximately half an hour, resulting in a total average annual burden of 10 hours.

Rule 17a–1 requires that all national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board keep on file for a period of five years, two years in an accessible place, all documents which it makes or receives respecting its self-regulatory activities, and that such documents be made available for examination by the Commission. The average number of hours necessary for compliance with the requirements of

Rule 17a–1 is 50 hours per year. There are 25 entities required to comply with the rule: 8 national securities exchanges, 1 national securities association, 15 registered clearing agencies, and the Municipal Securities Rulemaking Board. The total number of hours required for all respondents to comply with the rule is thus 1,250 hours annually.

Rule 17a–2 requires the manager of an underwriting syndicate to retain, in a separate file, certain information relating to stabilizing purchases of a security being distributed. The rule enables the Commission to monitor compliance with Rule 10b–6 and 10b–7. Approximately 500 recordkeepers will spend 1 hour per year complying with the rule, for a total average annual burden of 500 hours.

Rule 17a–3 requires that certain records be made by exchange members, brokers, and dealers. There are approximately 6,000 exchange members, brokers, and dealers subject to the rule. Each spends an average of 1 hour per day, or 249 hours per year, complying with the rule. Therefore, the total average annual burden is 6,000 × 249 hours, or 1,494,000 hours.

Rule 17a–7 requires foreign broker-dealers registered with the Commission to retain copies of their books and records in the United States or file an undertaking agreeing to make them available upon request. It is estimated that the three foreign broker-dealers registered with the Commission will spend an average of one hour per year complying with the rule, for an annual average total burden of three hours per year.

Rule 17f–1(g) requires reporting institutions to retain all documents that are necessary for purposes of monitoring compliance with the registration, reporting, and inquiry requirements of the rule. It is estimated that there are 24,518 respondents and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (33 minutes or .55 hours). The total estimated annual burden is thus 13,484.9 hours.

Rule 17Ad–6 is needed to (1) assure that registered transfer agents are maintaining minimum records to monitor and control adequately their performance; and (2) to permit the appropriate regulatory agencies (''ARAs'') to examine those transfer agents for compliance with the Commission's rules. It is estimated that approximately 480 hours per year are used to make and keep current these records. The total burden on the estimated 1576 respondents is thus 756,480 hours per year.

Rule 17Ad–7 requires entities to retain information to (1) assure that registered transfer agents are maintaining records to monitor and control adequately their performance and (2) to permit ARAs to examine those transfer agents for compliance with the Commission's rules. It is estimated that approximately 2.2 hours per week are used to retain these records, or 114 hours per year. The total burden on the estimated 1576 respondents is thus 179,664 hours per year.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and the Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 7, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18476 Filed 7–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21223; 811–6209]

Institutional Short Duration Government Portfolio; Application for Deregistration

July 21, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Institutional Short Duration Government Portfolio.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on April 18, 1995, and amended on July 3, 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 15, 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, 520 Madison Avenue, New York, New York 10022.

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.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a trust under New York law. On November 5, 1990, applicant registered under section 8(a) of the Act on Form N–8A, and filed a registration statement on Form N–1A under section 8(b) of the Act. Applicant did not register its securities under the Securities Act of 1933 and did not make any public offerings of its securities. While in operation, applicant issued beneficial interests only to other investment companies. Applicant formerly was named the Short Duration Government Portfolio.

2. On August 2, 1993, 99.99% of applicant's total interests was held by Hyperion Institutional Short Duration Government Fund (''Hyperion''). A $100 interest in applicant was held by applicant's investment adviser, Hyperion Capital Management, Inc. (the ''Adviser''), as organizational seed money. Hyperion is a series of Hyperion Government Mortgage Trust, a diversified, open-end registered investment company organized as a Massachusetts business trust. Hyperion invested in applicant through a two-tier, master-feeder fund structure.

3. On August 3, 1993, Hyperion redeemed for cash its interest in applicant at net asset value. At a meeting held on October 5, 1993, applicant's board of trustees determined that it would terminate applicant and deregister under the Act. The trustees based their decision on the fact that Hyperion withdrew its interest in

applicant and there was no desire to market applicant further. No securityholder authorization was obtained in connection with applicant's liquidation because no securityholder vote was required by law.

4. Legal, accounting, deregistration, termination, and other expenses incurred in connection with applicant's liquidation were paid by the Adviser. The Adviser's $100 interest in applicant was used to pay expenses relating to the winding up of applicant's affairs. In addition, on August 2, 1993, the Adviser paid in full applicant's unamortized organizational expenses of $10,415.

5. At the time of the application, applicant had no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18475 Filed 7–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21222; 812–7895]

Applications, Hearings, Determinations, etc.: Morgan Stanley & Co., Inc. et al.

July 21, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Morgan Stanley & Co. Incorporated (''Morgan Stanley''), Technology Equity and Income Trust (the ''Trust''), and any future closed-end investment company underwritten by Morgan Stanley (together with the Trust, the ''Trusts'') that invests in Listed Securities (as defined below), is structured in a manner identical in all material respects to the Trust, and is authorized to write call options on its portfolio of securities.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) granting an exemption from section 17(a)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit Morgan Stanley, the principal underwriter for the Trusts, and other principal underwriters of the Trusts, to purchase call options on securities held by the Trusts.

FILING DATES: The application was filed on March 30, 1992, and amend on June 30, 1992, September 28, 1992, February 9, 1993, August 23, 1994, and March 7, 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 15, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Technology Equity and Income Trust, c/o The Bank of New York, 101 Barclay Street, 21st Floor West, New York, New York 10286; Morgan Stanley & Co. Incorporated, 1251 Avenue of the Americas, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trusts will be registered, non-diversified, closed-end management investment companies. The Trusts will hold a portfolio of securities subject to call options and stripped U.S. Treasury securities (''Treasury Securities''). The portfolio securities must be registered under section 12 of the Securities Exchange Act of 1934, and listed on the New York Stock Exchange, the American Stock Exchange (other than Emerging Company Marketplace securities (''ECM Securities'')), or traded on the NASDAQ-National Market System (provided the NASDAQ-NMS securities satisfy the listing requirements of the New York Stock Exchange or the American Stock Exchange (other than the listing requirements applicable to ECM Securities)) (Collectively, the ''Listed Securities''). Interests in the Trusts will be called STEP Units. The Trusts' objectives will be to provide current quarterly cash distributions from the proceeds of the Treasury Securities and regular cash dividends on the Listed Securities, and the potential for capital appreciation up to a disclosed maximum on the Listed Securities. The final composition of a Trust's portfolio will be determined at the close of trading on the way prior to the commencement of the offering of STEP Units (the ''Determination Date''). The Trusts will acquire their portfolios in the manner described below.

2. Each Trust will invest in Listed Securities using the gross proceeds received from the sale of its STEP Units to the underwriters. The trustees of each Trust (the ''Trustees''), with the advice of an investment adviser (the ''Investment Adviser''), will select the specific Listed Securities for the respective Trust at least one business day prior to the Determination Date. At the opening of the market on the Determination Date, the Trustees will enter market buy orders to purchase the Listed Securities with unaffiliated brokers or dealers selected by the Trustees with the advice of the Trust's Investment Adviser.

3. Immediately after the purchase of the Listed Securities, the Trusts will sell a single call option on each issue of Listed Securities (each option is referred to as a ''Contract''). Each Trust will invest the net proceeds from the sale of the Contracts in Treasury Securities which will mature on a quarterly basis over the life of the Trust. Unitholders will receive quarterly distributions which consist of the proceeds received from the Treasury Securities as they mature and regular cash dividends on the Listed Securities. The expenses of a Trust, including any underwriting commissions on the sale of STEP Units, will be deducted from the proceeds from the sale of its Contracts.

4. Each Contract will grant the Contract holder the right to purchase the Listed Securities underlying the Contract at a fixed price (the ''Exercise Price'') on a fixed date (the ''Expiration Date''). The Exercise Price for each Contract will range between 30% and 50% in excess of the current market price of the Listed Securities on the Determination Date. The Expiration Date will be no more than 3½ years after issuance.

5. The Contracts also will provide that the Exercise Price for each Listed Security be reduced dollar-for-dollar by the per share amount of (a) any Extraordinary Cash Dividend [1] and (b)

[1] An ''Extraordinary Cash Dividend'' will be defined, with respect to any Listed Security, as a dividend which exceeds the immediately preceding non-Extraordinary Cash Dividend on the Listed

any non-cash dividend or non-cash distribution on a Listed Security that is taxable to security holders under federal income tax laws valued as of the record date for the dividend or distribution. If on or prior to the Expiration Date the Exercise Price for a Listed Security has been reduced to zero or below, the Contract holder shall be deemed to have exercised its purchase rights under the Contract on that date. The Trust will deliver to the Contract holder the Listed Security and any Extraordinary Cash Dividend or non-cash dividend that caused the Exercise Price to fall below zero.

6. If on or prior to the Expiration Date, (a) a merger or consolidation of a Listed Security's issuer is consummated and the issuer is not the surviving party, or (b) a successful tender or exchange offer is made for at least a majority interest in the issuer of a Listed Security, the Contract holder for that Listed Security will have the right for five business days, beginning on the date of consummation of the merger or consolidation or the date the Security is accepted for payment under the tender or exchange offer, to accelerate its purchase rights under the Contract. After this period, the rights of the Contract holder will expire.

7. The Contracts will be sold to major broker/dealers and/or financial institutions (which may include Morgan Stanley or other principal underwriters of the Trusts) through a bidding procedure described in detail Conditions 1 and 2 below. Because all the terms of the Contracts will be set (*i.e.*, Expiration Date, Exercise Price (as a percentage of the then-current price of the underlying Listed Security), termination provisions, adjustments for extraordinary events, etc.), bidding on a Contract will consist solely of the submission of a bid price expressed as a percentage of the then-current price of the underlying security. Each bidder will be permitted to bid for all of the Contracts on an aggregate basis and/or submit a separate bid on each. Subject to certain conditions described below, the Trustees will sell the Contracts in the manner best calculated to maximize the net proceeds to the Trust.

8. The administration and operation of the Trusts will be overseen by three Trustees, none of whom are interested persons as defined in section 2(a)(19) of the Act. A bank having the qualifications described in section 26(a) of the Act will perform the daily administration of the Trusts (the ''Administrator''). In addition, the Administrator will act as the Trusts' custodian, paying agent, registrar, and transfer agent. The Administrator will not be a principal underwriter or affiliated person of the Trusts, or an affiliated person of a principal underwriter or affiliated person.

9. The Investment Adviser for each Trust will be unaffiliated with Morgan Stanley and any other principal underwriter of the Trust, will be an established entity, registered as an investment adviser under the Investment Advisers Act of 1940 and will have significant assets under its management. The Investment Adviser will advise the Trustees in connection with the composition and acquisition of the initial portfolio of the Trusts, and thereafter, the Trustees may consult with the Investment Adviser concerning the disposal of the Listed Securities in the instances described below where the Trustees have the discretion to dispose of them.

10. The Trusts will terminate on or shortly after the Expiration Date. Each Trust's prospectus will specify that the Trust intends to hold each Listed Security and any distributions thereon until the Expiration Date. However, each Trust will be required to distribute cash or dispose of any securities it receives and distribute the proceeds to unitholders if (a) an issuer of a Listed Security pays a non-cash dividend or makes a non-cash distribution that is taxable to its security holders under federal income tax laws, (b) an issuer of a Listed Security is acquired, whether in a cash merger or a merger involving the distribution of securities, or is a party to a consolidation where it is not the surviving party, (c) there is a tender or exchange offer for at least a majority interest in an issuer of a Listed Security; however, if the offer is unsuccessful, the Trust will withdraw the Listed Securities it has previously tendered, and if only a portion of the Trust's shares are purchased, the Trust will be required to sell the balance of its shares in the market, or (d) an issuer of a Listed Security declares a cash dividend or makes a cash distribution. In addition, any time security holders may elect cash consideration, the Trust will be required to elect to receive cash and distribute it to unitholders. Each Trust will retain any securities or property obtained in a stock split, reverse stock split, or tax-free non-cash dividend or distribution declared or made by any issuer of a Listed Security. Any retained securities or property will, together with the related Listed Security, be subject to purchase by the holder of the Contract related to that Listed Security.

11. The Trustees may dispose of a Listed Security and distribute the proceeds to unitholders if (a) the Listed Security's market price falls to less than 50% of its market price on the Determination Date, or (b) the issuer of the Listed Security becomes bankrupt, insolvent, or defaults on amounts due on its outstanding securities. In these instances, the Contract holders will have agreed to negotiate in good faith with the Trustees the early termination of the Contracts. Except under the above circumstances, the Contract holders will not have an opportunity to seek to negotiate an early termination of the Contracts.

Applicants' Legal Analysis

1. Applicants request an order under sections 6(c) and 17(b) exempting them from section 17(a)(2) of the Act to permit Morgan Stanley and other principal underwriters of the Trusts to purchase the Contracts. Section 17(a)(2) of the Act, in part, prohibits an affiliated person of or a principal underwriter for a registered investment company, acting as principal, from purchasing any security or other property from the registered company (except securities of which the seller is the issuer). Since the sale of an option may be viewed as a sale of the underlying security, section 17(a)(2) prohibits the Trusts' principal underwriters from purchasing the Contracts. Section 17(b) of the Act provides, however, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or any rule or regulation 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.

2. The market for the Contracts is the over-the-counter options market. Morgan Stanley believes that it is one of only a small number of firms that are

Security by an amount equal to at least 10% of the closing sale price of the Listed Security on the business day preceding the ex-dividend date for the current dividend.

active and frequent participants within the U.S. over-the-counter market segment that would include the Contracts. Applicants believe that to preclude Morgan Stanley and other principal underwriters of a Trust from bidding for the Contracts may prevent a Trust from receiving the best price because it would exclude the bid of entities who might pay a price somewhat higher than the market price since they had the most to gain from the successful marketing of the Trust, and because there would be a perceived lack of competition if independent bidders are aware that major participants in the over-the-counter options market are excluded from bidding. Applicants assert that the competitive bidding process has a direct affect on the quarterly distributions to unitholders since the amount of Treasury Securities purchased will depend upon the amount of the proceeds received from the sale of the Contracts. Accordingly, applicants submit that providing the Trusts with access to all major dealers is in the best interests of the Trusts, its holders, and is consistent with the general purposes of the Act.

3. Applicants believe that Morgan Stanley's dual role as underwriter and bidder for the Contracts would not give it an advantage in structuring the Contracts or assessing their value. The participants in the over-the-counter options market are various sophisticated, established, well-capitalized financial institutions including major investment banking firms, money center banks, insurance companies, and their affiliates. These sophisticated institutions employ almost identical valuation models and technology to price options. Prospective bidders will have a copy of a Trust's prospectus and draft of the Contract at least two business days prior to the day the final bids are due. Although the Contracts will not be typical over-the-counter options, they are not of such a customized nature to make it unlikely for other broker/dealers or financial institutions to submit bids. The Contract's form will be similar to other types of call options used in privately negotiated transactions. Since all of the Contracts' terms have been set, other than price, the bidding procedure has been made as simple as possible. Accordingly, the notice period and information provided in the bidding process are sufficient to ensure competitive, bona fide bids.

4. Applicants assert that the bidding procedures to be followed by Morgan Stanley or any other principal underwriter in purchasing the Contracts, as set forth in Applicants' Conditions below, will be consistent with the standards of sections 17(b) and 6(c). These procedures ensure that the Trusts receive the best price and execution on the sale of the Contracts and ensure against any overreaching on the part of any party concerned.

5. Lastly, each prospectus will fully disclose that the Contracts will be offered by competitive bid and that Morgan Stanley, and to the extent applicable, any other underwriter, will be among the bidders.

Applicants' Conditions

Applicants agree to the following as conditions to the requested order:

1. The Trustees will select prospective bidders on the basis of such factors as having the necessary capital to purchase Contracts, having the ability to appropriately price the Contracts and being a major participant in the over-the-counter options market. The Contracts will be offered by competitive bid to not less than four major broker-dealers and/or financial institutions who are in the business of making bids on over-the-counter options, at least three of whom are not affiliated persons or principal underwriters of a Trust or affiliated persons or a principal underwriter or affiliated person. At least two business days prior to the date and time that final bids are due, the Trustees will contact prospective bidders, indicate when bidding for the Contracts will commence and invite them to bid. The Trustees will supply prospective bidders with a draft invitation to bid summarizing the terms of the Contract, a copy of the Trust's prospectus and a draft of the Contract. On the business day before final binding bids are due, the Trustees will send a formal notice to prospective bidders. The notice will indicate where and at what time final binding bids are due. No bidder, including Morgan Stanley, will have access to any bids until after the Contracts are awarded. Subject to condition 2 below, the Trustees will sell the Contracts in the manner best calculated to maximize net proceeds to the Trust (*e.g.*, on an aggregate or individual basis).

2. No sale of Contracts by a Trust will be made to Morgan Stanley or another principal underwriter unless (a) if Morgan Stanley or another principal underwriter submits separate bids on individual Contracts, the Trustees receive and document for each Contract bid for by Morgan Stanley or the other principal underwriter at least two bona fide bids from major broker dealers and/or financial institutions who are not affiliated persons or principal underwriters of the Trust or affiliated persons of a principal underwriter or affiliated person, and (b) if Morgan Stanley or another principal underwriter submits bids for all of the Contracts on an aggregate basis, the Trustees receive and document for all Contracts in the aggregate at least two bona fid bids from major broker dealers and/or financial institutions who are not affiliated persons or principal underwriters of the Trust or affiliated persons of a principal underwriter or affiliated person, and the Trustees determine that either the bid price on an individual Contract or the aggregate bid price, as the case may be, offered by Morgan Stanley or any other underwriter will maximize net proceeds to the Trust. In the event of a tie, the bidders would be permitted to submit one last bid. If there were still a tie following submission of the last bid, the Contracts in question would not be sold to Morgan Stanley or any other principal underwriter.

3. The Administrator, under the supervision of the Trustees, will maintain sufficient records to verify compliance with the conditions of the order. Such records will include the following: (a) The basis upon which the Trustees selected prospective bidders; (b) all bidders contacted; (c) all bidders to whom a bidding form was sent; (d) all bids received; (e) the bidder who was awarded the Contracts; (f) the winning bid prices; and (g) whether the bidders were principal underwriters of the Trust, affiliated persons of the Trust, or affiliated persons of a principal underwriters or affiliated person. All records will be maintained and preserved in the same manner as records required under Rule 31a–1(b)(1) of the Act.

4. Morgan Stanley's legal department, and the legal departments of any parties relying on this order, will prepare guidelines for personnel to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the order and that the parties generally maintain arm's length relationships.

5. The underwriting allocations will be determined at least one business day prior to the day the Trustees invite financial institutions to bid and will not in any way be based on participation in the bidding process.

6. Morgan Stanley, or any party relying on this order, will not have any involvement with respect to the Trustees' selection of prospective bidders or the bids accepted by the Trustees and will not attempt to influence or control in any way the sale of the Contracts to principal

underwriters aside from placing its own bid for the Contracts.

7. The Trustees of each Trust, including a majority of noninterested Trustees, have or will have approved the Trust's participation in transactions conducted pursuant to the exemption and have or will have determined that such participation by the Trust is in the best interests of the Trust and its unitholders. The minutes of the meeting of the Board of Trustees at which this approval was or will be given reflect or will reflect in detail the reasons for the Trustee's determination.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18473 Filed 7–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21224; 811–7806]

MYA Tombstone Fund, Inc.; Notice of Application for Deregistration

July 21, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: MYA Tombstone Fund, Inc. (formerly MuniYield Arizona Fund, Inc.).

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on June 1, 1995 and amended on July 14, 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 15, 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 Fifth Street, NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, (202) 942–0565, or C. David Messman, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public References Branch.

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company organized as a Maryland corporation. On June 15, 1993, applicant registered under section 8(a) of the Act. On this same date, applicant filed a registration statement under section 8(b) of the Act and the Securities Act of 1933, whereby it registered 2,472,000 shares of its common stock. One July 23, 1993, applicant filed a pre-effective amendment to its registration statement registering an additional 58,000 shares of common stock. The registration statement was declared effective on July 23, 1993, and applicant commenced its initial public offering on that date.

2. On and after August 5, 1993, applicant filed a registration statement and pre-effective amendments thereto (the ''AMPS Registration Statement'') whereby it registered 347 shares of its auction market preferred stock (''AMPS'') with a liquidation preference of $50,000 per share and an aggregate liquidation preference of $17,350,000.[1] The AMPS Registration Statement, as amended, was declared effective on August 25, 1993, and applicant commenced its initial public offering on that date.

3. On June 17, 1994, applicant's Board of Directors approved a plan of reorganization whereby MuniYield Arizona Fund II, Inc. (''Arizona II'') would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of Arizona II common stock and shares of Arizona II Auction Market Preferred Stock, Series B (''Arizona II AMPS''). Applicant's Board of Directors determined that the reorganization could benefit applicant's shareholders by achieving lower expenses per share of common stock, greater efficiency and flexibility in portfolio management, and a more liquid trading market.

4. In accordance with rule 17a-8 of the Act, applicant's Board of Directors determined that the sale of applicant's assets to Arizona II was in the best interest of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[2]

5. On October 6, 1994, Arizona II filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on January 4, 1995. On or about January 24, 1995, proxy materials were distributed to each of applicant's shareholders of record as of December 14, 1994. At a special meeting held on March 10, 1995, shareholders of applicant approved the reorganization, in accordance with Maryland law.

6. As of the close of business on March 24, 1995, applicant had outstanding 2,519,982 shares of common stock and 694 shares of AMPS. On that date, the net asset value of applicant's common stock was $12.72 per share and applicant's aggregate net asset value attributable to the common stock was $32,044,460. Also on that date, the liquidation preference per share of AMPS was $25,000, and the aggregate liquidation preference of the AMPS was $17,350,000.

7. Pursuant to the reorganization, on March 27, 1995, applicant transferred securities and cash valued at $49,394,460 to Arizona II and received in exchange 2,562,282 shares of Arizona II common stock and 694 shares of Arizona II AMPS. Each holder of applicant's common stock received the number of shares of Arizona II common stock received by applicant with a net asset value equal to the net asset value of applicant's common stock owned by such shareholder. Each holder of applicant's AMPS received the number of shares of Arizona II AMPS received by applicant with an aggregate liquidation preference equal to the aggregate liquidation preference of applicant's AMPS owned by such shareholder.

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[1] The AMPS are shares of preferred stock sold principally at auction that entitle the holders thereof to receive dividends at a rate that may vary for successive dividend periods. On December 1, 1994, a 2-for-1 stock split of the AMPS was effected thereby increasing to 694 the number of shares of AMPS outstanding. Pursuant to the terms of the stock split, each of the 694 shares of AMPS has a liquidation preference of $25,000. The aggregate liquidation preference of the AMPS was unchanged by the stock split.

[2] Applicant and Arizona II may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

8. Applicant and Arizona II incurred approximately $219,139 in expenses in connection with the reorganization. These expenses included filing, legal, and audit fees, printing expenses, and portfolio transfer taxes (if any). All expenses of the applicant incurred in connection with the reorganization were borne by Arizona II. In addition, expenses incurred in connection with the deregistration, dissolution, and liquidation of applicant will be borne by Arizona II.

9. At the time of filing the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding up of its affairs.

10. On March 23, 1995, applicant filed Articles of Transfer with the Department of Assessments and Taxation of the State of Maryland. Applicant intends to file Articles of Dissolution with such office as soon as practical following its deregistration.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18474 Filed 7–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36002; File No. SR–Philadep–95–01]

Self-Regulatory Organizations; The Philadelphia Depository Trust Company; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change Relating to the Modification of Procedures To Implement Rule 17Ad–16

July 20, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 17, 1995, the Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by Philadep. Philadep filed amendments to the proposed rule change on March 7, 1995, and on April 11, 1995.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval to the proposed rule change through February 6, 1996.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep proposes to modify its procedures to implement the requirements of Commission Rule 17Ad–16.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 1, 1994, the Commission adopted Rule 17Ad–16[4] which requires a registered transfer agent to provide written notice to the ''appropriate qualified registered securities depository.''[5] when terminating or assuming transfer agent services on behalf of an issuer or when changing its name or address.[6] The rule also requires the appropriate qualified registered securities depository that receives such a notice from a transfer agent to deliver within twenty-four hours a copy of such notice to all ''qualified registered securities depositories'' and each qualified registered securities depository that receives such a notice to notify its participants of such transfer agent change within twenty-four hours.

To foster a timely and efficient means of disseminating such notices, Philadep has requested that the Commission designate DTC as the appropriate qualified registered securities depository to receive such transfer agent notices on behalf of Philadep.[7] Philadep and DTC have agreed that such transfer agent notices will be forwarded by DTC to Philadep using facsimile transmissions on a daily basis. To assure complete and accurate records of such transmissions, Philadep upon receipt of the notice by DTC will verify a common control number used for record-keeping purposes. Philadep will forward notice of such transfer agent changes to its participants by hand delivery, facsimile transmission, electronic means, or as Philadep and its participants may mutually agree.

Philadep's computer system currently is not able to process information, including notices of transfer agent changes, concerning issues which are not eligible for deposit at Philadep. Therefore, in order to comply with Rule 17Ad–16 during the temporary approval period, Philadep participants which are members only of Philadep and not of any other securities depository[8] will be contacted by Philadep in order that they may elect to either accept or to waive receiving such transfer agent notices.[9] As Philadep performs its daily updating of its security masterfile to reflect transfer agent changes for issues that are depository eligible at Philadep, it will make transfer agent information for issues that are not depository eligible at Philadep available to participants that have elected to receive transfer agent notices from Philadep.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letters from Sharon S. Metzker, Staff Counsel, Philadep, to Ester Saverson, Special Counsel, Division of Market Regulation, Commission (March 7, 1995, and April 11, 1995).

[3] The Commission has modified the texts of the statement submitted by Philadep.

[4] 17 CFR 240.17Ad–16. Rule 17Ad–16 took effect on February 6, 1995.

[5] Rule 17Ad–16 defines ''appropriate qualified registered securities depository'' to mean the qualified registered securities depository that the Commission so designates by order or in the absence of such designation the qualified securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date. Rule 17Ad–16 defines ''qualified registered securities depository'' to mean a clearing agency registered under Section 17A of the Act that performs clearing agency functions and that has rules and procedures concerning its responsibility for maintaining, updating, and providing appropriate access to the information it receives pursuant to Rule 17Ad–16. Philadep, The Depository Trust Company (''DTC''), and the Midwest Securities Trust Company (''MSTC'') and the three qualified registered securities depositories.

[6] Securities Exchange Act Release No. 35039 (December 1, 1994), 59 FR 63656 (December 8, 1994) (order adopting Rule 17Ad–16).

[7] Securities Exchange Act Release No. 35378 (February 15, 1995), 60 FR 9875.

[8] A majority of Philadep participants are also members of DTC and/or MSTC and will receive notices of transfer agent changes from DTC and/or MSTC. Approximately twenty of Philadep's participants are members only of Philadep. Letter from Sharon Metzker, Esq., Philadep, to Ester Saverson, Special Counsel, Division of Market Regulation, Commission (March 7, 1995).

[9] Philadep has informed the Commission that all of its participants that are not members of any other securities depository have been contacted in writing and have made their election of whether to receive or to waive receipt of notices of transfer agent changes. Letter from Sharon Metzker, Staff Counsel, Philadep, to Ester Saverson, Special Counsel, Division of Market Regulation, Commission (April 11, 1995).

In accordance with the record retention requirements of Rule 17Ad–16(d)(3), Philadep will maintain the notices sent to it by DTC for a period of not less than two years with the first six months in an easily accessible place on Philadep's premises.

B. Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impose an inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes Philadep's proposed rule change is consistent with the requirements of the Act, especially section 17A of the Act,[10] and the rules and regulations thereunder. Among other things, section 17A(b)(3)(A) requires that a clearing agency be organized and have the capacity to comply with the provisions of the Act and the rules and regulations thereunder. In its letter amendment dated April 11, 1995, Philadep requested that the Commission grant temporary approval of the proposed rule change. Between the February 6, 1995, implementation of Rule 17Ad–16 and August 6, 1995, Philadep will review the automation requirements and what system changes it must make in order for Philadep to fully comply with Rule 17Ad–16 with respect to transfer agent notices regarding issues which are not depository eligible at Philadep. After its review, Philadep will report to the Commission the results of its review and how it plans to fully comply with Rule 17Ad–16 on a permanent basis. Therefore, because the proposed rule change will allow Philadep to comply within the limits of its computer system with Commission Rules 17Ad–16, the Commission believes that the proposal is consistent with Philadep's obligation under section 17A.

Philadep also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. Because accelerated approval will permit Philadep to implement procedures enabling it to comply to the extent its computer system permits with requirements of Rule 17Ad–16 as soon as possible, the Commission finds good cause for approving the proposed rule change on an accelerated basis.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the File No. SR–Philadep–95–01 and should be submitted by August 17, 1995.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act that the proposed rule change (File No. SR–Philadep–95–01) is hereby approved on a temporary basis through February 6, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18423 Filed 7–26–95; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78q–1 (1988).

[11] Telephone conversation between Don Vinnedge, Manager of the Trust Activity Program, Board of Governors of the Federal Reserve System, and Ester Saverson, Special Counsel, and Michele Bianco, Staff Attorney, Division, Commission (July 20, 1995). The Federal Reserve concurred with the Division's decision to accelerate approval.

[12] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: La Crosse County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed north-south transportation facility in the City of La Crosse, La Crosse County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene M. Hoelker, Construction and Materials Engineer, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin, 53705: Telephone: (608) 264–5944. You may also contact Ms. Carol Cutshall, Director, Office of Environmental Analysis, Wisconsin Department of Transportation, P.O. Box 7916, Madison, Wisconsin, 53707–7916: Telephone: (608) 266–9626.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare a combined Major Investment Study (MIS)/Environmental Impact Statement (EIS) on a proposal to provide additional north-south transportation capacity in the La Crosse River Valley area between interstate 90 and South Avenue near 7th Street, a distance of about 6 miles. The proposal is being considered to address future transportation demand, to finalize the transportation component of the La Crosse River Valley Land Use Plan being prepared by the City of La Crosse, and to preserve land for a future transportation corridor. Alternatives under consideration include: (1) No build, (2) Transportation System Management (TSM) measures to improve traffic operations on existing highways, (3) expanding capacity and mass transit on existing highways, and (4) a new north-south highway link with mass transit and bicycle enhancements.

A strategic advisory committee comprised of Federal, State, and local agencies, environmental, business, and neighborhood representatives, has been established to provide input during data gathering, development and refinement of alternatives. A series of public meetings will be held in the project corridor to solicit comments from citizens and interest groups who have previously expressed, or are known to have interest in the proposal. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The MIS/Draft EIS will be available for public and agency review and comment prior to the public hearing. Agencies having an interest in, or jurisdiction regarding the proposed action will be contacted through interagency coordination meetings and mailings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the MIS/EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued July 21, 1995.

Eugene M. Hoelker,

Construction & Materials Engineer.

[FR Doc. 95–18497 Filed 7–26–95; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Mobile County, Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Mobile County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117–2018, Telephone (334) 223–7370.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alabama Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to construct a multi-lane roadway from the intersection of Schillinger Road and Lott Road to U.S. Highway 45 in Mobile, Alabama. The length of the proposed roadway is approximately 8.5 kilometers (5.3 miles). The purpose of the proposed project is to provide a connecting link for north Mobile to Interstate Highway 65, U.S. Highway 90, and Interstate Highway 10. Alternatives under construction include: (1) Alternate route location, (2) taking no action, and (3) postponing the action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to the private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public involvement meeting and a public hearing will be held in the city of Mobile. Public Notice will be given of the time and place of the meeting and hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 95–18498 Filed 7–26–95; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Logan and Payne Counties, Oklahoma

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed highway project in Logan and Payne Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Mike Herron, Planning Team Leader, Federal Highway Administration, 715 South Metropolitan Avenue, Suite 700, Oklahoma City, Oklahoma 73108, telephone (405) 945–6011.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Oklahoma Department of Transportation will prepare an EIS for a proposal to improve SH–33 from the I–35/SH–33 interchange east approximately 60 kilometers (38 miles) to the western urban boundary of the City of Cushing, Logan and Payne Counties. Improvements to this segment of SH–33 are considered necessary to provide for projected traffic demand, enhance safety, and replace structurally deficient bridge structures.

The EIS will consider several alternatives, including: taking no action, reconstruction on existing alignment and construction on new alignment. The build alternatives will consider purchasing enough right-of-way to ultimately construct a four-lane facility but with an initial two-lane reconstruction or construction as recommended in the Statewide Intermodal Transportation Plan.

The EIS process will solicit input from all appropriate federal, state, and local agencies. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: July 17, 1995.

Mike Herron,

Planning Team Leader, Oklahoma City, Oklahoma.

[FR Doc. 95–18431 Filed 7–26–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances (Poly 1,4 butyleneterephthalate); Filing of Petition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, of a petition requesting that poly 1,4 butyleneterephthalate be added to the list of taxable substances in section 4672(a)(3). Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Submissions must be received by September 25, 1995. Any modification of the list of taxable substances based upon this petition would be effective April 1, 1991.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (Petition), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on April 30, 1990. The petitioner is GE Plastics, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 3907.91.00
CAS number: 26062–94–2

Poly 1,4 butyleneterephthalate is derived from the taxable chemicals acetylene, methane, and xylene and is a solid produced predominantly by the melt polycondensation process.

The stoichiometric material consumption formula for this substance is: 176 C_2H_2 (acetylene)+702 CH_4 (methane)+175 C_8H_{10} (xylene)+352 H_2 (hydrogen)+701 O_2 (oxygen)+350 H_2O (water)+0.08 $Ti(OC_3H_7)_4$ (tetra iso-propyl titanate) -----> $HO(CH_2)_4O(C_8H_4O_2)_{175}(C_4H8O_2)_{175}$ (poly 1,4 butyleneterephthalate)+0.08 Ti (titanium)+0.32 C_3H_80 (isopropanol)+350 CH_3OH (methanol)+700 H_2O (water)+702 H_2 (hydrogen).

According to the petition, taxable chemicals constitute 53.8 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.92 per ton. This is based upon a conversion factor for acetylene of 0.1186, a conversion factor for methane of 0.2920, and a conversion factor for xylene of 0.4816.

Comments and Requests for a Public Hearing

Before a determination is made, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–18402 Filed 7–26–95; 8:45 am]

BILLING CODE 4830–01–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

NAFTA Dispute Settlement Proceeding Concerning Canadian Tariffs on Certain U.S. Agricultural Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the Free Trade Commission of the North American Free Trade Agreement (NAFTA), at the request of the United States, has established an arbitral panel to examine Canadian tariffs on several U.S. agricultural products, specifically poultry, eggs, and barley, products made from them and U.S. dairy products. USTR invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 16, 1995, in order to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESS: Comments may be submitted to the Office of the General Counsel, Attn: Canadian Tariffs Dispute, Room 223, USTR, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, Office of the General Counsel, USTR, 600 17th Street, NW, Washington, DC 20508, (202) 395–7305.

SUPPLEMENTARY INFORMATION: As part of the Agreement Establishing the World Trade Organization, the Government of Canada committed to convert to ''tariff-rate quotas'' (TRQs) the quotas and other non-tariff barriers that it maintained on imports of certain agricultural goods. These tariff-rate quotas result in significant increases in the duty rates Canada applies to these agricultural goods. Canada is, or will be, applying these higher tariffs to imports of several U.S. agricultural products, specifically poultry, eggs, and barley, on products made from them, and on U.S. dairy products.

The United States has asked for the establishment of an arbitral panel under the NAFTA to review whether Canada may apply these higher tariff rates consistent with Canada's NAFTA obligations. NAFTA Article 302 requires Canada to apply tariff rates that are lower than those that Canada is applying or will apply through the application of tariff-rate quotas to these goods.

Members of the panel are currently being selected, and the panel is expected to meet as necessary in Ottawa, Canada to examine the dispute. The panel is expected to issue its final report detailing its findings and recommendations within five months after the last panelist is selected.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute.

The provisions of 15 CFR 2006.13 (a) and (c) (providing that comments received will be open to public inspection) and 2006.15 will apply to comments received. Comments must be in English and provided in fifteen copies. Pursuant to 15 CFR 2006.15, confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page.

USTR will maintain a public file on this dispute settlement proceeding, which will include a list of comments received, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington DC. An appointment to review the docket (Docket NAFTA/D–1, ''Canada—Agricultural Tariffs''), may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public by appointment only from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Jennifer Hillman,

General Counsel.

[FR Doc. 95–18477 Filed 7–26–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 144

Thursday, July 27, 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).

RURAL TELEPHONE BANK, USDA

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, August 10, 1995.

PLACE: Room 5066, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving privatization planning; Class C stock dividend rate for fiscal year 1995; proposed amendments to the bylaws regarding Bank Board election procedures; and update on the RUS telecommunications loan program.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: 10 a.m., Friday, August 11, 1995.

PLACE: Williamsburg Room, Administration Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Swearing in new Board member.
3. Approval of Minutes of the May 9, 1995, Board meeting.
4. Report on loans approved in the third quarter of FY 1995.
5. Review third quarter financial statements for FY 1995.
6. Report of ad hoc committee on privatization of the RTB.
7. Consideration of resolution to adopt bylaw amendments modifying the Board's election procedures.
8. Consideration of resolution to set annual Class C stock dividend rate.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank (202) 720-0530.

Dated: July 24, 1995.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 95–18594 Filed 7-25–95; 12:26 pm]

BILLING CODE 3410–15–P

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 1, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

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: Wednesday, August 2, 1995 at 10: a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Regulations:

Draft Final Rules and Accompanying Explanation and Justification on Amendments to the Communications Disclaimer Requirements (11 CFR 110.11).

DATE AND TIME: Thursday, August 3, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Bush/Quayle—'92 Statement of Reasons (Primary and General) (LRA #425).

Fulani for President Notice of Initial Repayment Determination (LRA #451).

Advisory Opinion 1995–25: David A. Norcross, General Counsel, Republican National Committee.

Regulations:

Draft Final Rules and Accompanying Explanation and Justification on Amendments to the Communications Disclaimer Requirements (11 CFR 110.11).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–18639 Filed 7–25–95; 3:19 pm]

BILLING CODE 6715–01–M

federal register

Thursday
July 27, 1995

Part II

Department of Education

34 CFR Part 371

Vocational Rehabilitation Service Projects for American Indians With Disabilities; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 371

RIN 1820–AB32

Vocational Rehabilitation Service Projects for American Indians With Disabilities

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Vocational Rehabilitation Service Projects for American Indians with Disabilities program authorized under Title I, Part D, section 130 of the Rehabilitation Act of 1973, as amended (Act). Proposed changes are needed to implement section 130(b)(3) of the Act to provide greater funding continuity for tribal projects that are performing effectively by extending the normal 36-month project period for up to 24 additional months. Proposed changes are also needed to conform the purpose and outcome of the program, consistent with section 100(a)(2) of the Act as revised by the 1992 Amendments, from placement in suitable employment to placement in gainful employment consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. The Secretary also invites public comment on whether other changes to existing program regulations are needed in order to clarify program requirements, reduce grantee burden, and increase program effectiveness and flexibility.

DATES: Comments must be received on or before September 11, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fredric K. Schroeder, Commissioner, Rehabilitation Services Administration, U.S. Department of Education, 600 Independence Avenue, SW., Room 3028, Mary E. Switzer Building, Washington, DC 20202–2531. Comments may also be sent through the internet to ''American____Indians@ed.gov''.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Barbara M. Sweeney, U.S. Department of Education, 600 Independence Avenue, SW., Room 3225 Mary E. Switzer Building, Washington, DC 20202–2575. Telephone: (202) 205–9544. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations would, in part, implement section 130(b)(3) of the Act, which authorizes the Secretary to prescribe regulations that would extend the project period for certain tribal projects beyond the maximum 36 months specified in the Act. The Secretary proposes to grant, on a case-by-case basis, extensions of up to 24 months to tribal projects that meet the requirements to be established in a new § 371.5. In order to receive an extension of its project period, a tribal grantee must submit a written request for extension that contains an assurance of compliance with all program requirements and that provides satisfactory evidence that there is a continuing need for the project and that the project has been effective in meeting the rehabilitation needs of the American Indians it has served, including achieving employment outcomes that are consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

In addition, the Secretary is particularly interested in whether other changes are needed in existing program regulations in order to clarify requirements, reduce grantee burden, and increase program flexibility and effectiveness. For example, § 371.21 of the current regulations requires Indian tribes to provide evidence in their applications for grant assistance that they will comply, in carrying out their tribal projects, with certain State Vocational Rehabilitation (VR) Services Program requirements. These requirements include developing individualized written rehabilitation programs for each individual receiving services, providing an opportunity for dissatisfied service recipients to file grievances under procedures that are comparable to the fair hearing procedures required of State VR agencies, establishing minimum standards for providers of services comparable to those used by State VR agencies, and making an effort to provide a broad scope of VR services in a manner and at a level of quality comparable to the services provided by State VR agencies. Do these application requirements need to be clarified or revised in light of the changes made to the State VR Services Program by the 1992 Amendments to the Act (for example, by requiring individual choice in the selection of VR services, goals, and providers) or because these requirements may be burdensome or unfeasible for a tribal VR project, especially a developing one? In what ways should tribal projects be comparable to VR programs administered by State VR agencies, other than providing comparable rehabilitation services to the extent feasible as required by section 130(b)(1)(B) of the Act? Should Federal regulations establish additional comparability requirements or should tribal applicants be given the flexibility in their funding proposals to describe how their projects would or would not be comparable and the reasons therefor?

The Secretary also is interested in whether revisions are needed to the selection criteria for this program in § 371.30 in order to better evaluate applications for funding.

The program supports the National Education Goal that every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Executive Order 12866

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 371.5 What is the length of the project period under this program?) (4) Is the description of the regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600

Independence Avenue, SW. (Room 5121, FB–10B), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only Indian tribes and consortia of Indian tribes located on Federal or State reservations, the regulations would not have an impact on small entities. Indian tribes and consortia of Indian tribes are not defined as ''small entities'' in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 371.5 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

The governing bodies of Indian tribes and consortia of these governing bodies located on Federal and State reservations are eligible to apply for grants under these regulations. The Department needs and will use the information to give extensions of grants in which the original project period is ending. Annual public reporting burden for this collection of information is estimated to average 10 hours per response for around an average of 10 respondents each year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Laura Oliven.

Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3214 Switzer Building, 330 C Street, S.W., Washington D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 371

Education, Grant programs—education, Vocational rehabilitation.

Dated: July 19, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number: 84.250 Vocational Rehabilitation Service Projects for American Indians with Disabilities)

The Secretary proposes to amend part 371 of title 34 of the Code of Federal Regulations as follows:

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

1. The authority citation for part 371 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

2. Section 371.1 is revised to read as follows:

§ 371.1 What is the Vocational Rehabilitation Services Program for American Indians with Disabilities?

This program is designed to provide vocational rehabilitation services to American Indians with disabilities who reside on Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Secs. 100(a)(2) and 130(a) of the Act; 29 U.S.C. 720(a)(2) and 750(a))

3. A new § 371.5 is added to subpart A to read as follows:

§ 371.5 What is the length of the project period under this program?

(a) The Secretary approves a project period of up to three years.

(b) The Secretary may extend a grant for up to two additional years if the grantee includes in its extension request—

(1) An assurance that the project is in compliance with all applicable program requirements; and

(2) Satisfactory evidence that—

(i) The project has made substantial and measurable progress in meeting the needs of American Indians with disabilities on the reservation or reservations it serves;

(ii) American Indians with disabilities who have received project services have achieved employment outcomes consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice; and

(iii) There is a continuing need for the project.

(Authority: Section 130(b)(3) of the Act; 29 U.S.C. 750(b)(3))

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federal register

Thursday
July 27, 1995

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 5 et al.
Civil Money Penalties: Biologics, Drugs, and Medical Devices; Rule

Statement of Organization, Functions, and Delegations of Authority; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5, 10, 17, and 20

[Docket No. 91N–0447]

RIN 0905–AD59

Civil Money Penalties: Biologics, Drugs, and Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final regulations to establish hearing procedures for use when FDA proposes the imposition of administrative civil money penalties. This rule implements the civil money penalty provisions of several statutes: the National Childhood Vaccine Injury Act of 1986 (NCVIA), the Prescription Drug Marketing Act of 1988 (PDMA), the Safe Medical Devices Act of 1990 (SMDA), the Generic Drug Enforcement Act of 1992 (GDEA), and the Mammography Quality Standards Act of 1992 (MQSA).

EFFECTIVE DATE: August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 26, 1993 (58 FR 30680), FDA issued a notice of proposed rulemaking (NPRM) to establish procedures for hearings concerning the administrative imposition of civil money penalties by the agency. The NPRM noted that Congress had in recent years given FDA authority to impose civil money penalties in the NCVIA, the PDMA, the SMDA, and the GDEA. FDA requested that comments be filed by July 26, 1993.

Subsequently, a trade association requested an extension of time to file comments, and, in the **Federal Register** of July 27, 1993 (58 FR 40103), the agency extended the deadline for comments to August 25, 1993. In the July 27, 1993, **Federal Register**, FDA corrected an inadvertent error in the proposed rule and added a reference to civil money penalties authority provided for in the MQSA. The MQSA was added to the list of statutes covered by proposed part 17 insofar as the MQSA provided for the administrative imposition of civil money penalties.

Also, as an interim measure pending adoption of proposed part 17, FDA issued a regulation in the **Federal Register** of September 22, 1993 (58 FR 49190), under which it could temporarily conduct civil money penalties hearings pursuant to part 12 (21 CFR part 12). FDA is now revoking procedural regulations that it issued as a temporary measure pending adoption of part 17. This revocation will be effective when these part 17 regulations become effective. Specifically, § 5.99 (21 CFR 5.99) (as published at 58 FR 34212, June 24, 1993) and § 10.50(c)(21) (21 CFR 10.50(c)(21)) (as published at 58 FR 49190) were issued to allow FDA to use part 12 for civil money penalties proceedings on an interim basis. Because this delegation is no longer needed and because retention of these provisions in the Code of Federal Regulations would be confusing, FDA is revoking §§ 5.99 and 10.50(c)(21) when the new part 17 becomes effective.

As to any pending civil money penalty administrative actions that were subject to Notices of Opportunity for Hearing under part 12, when these part 17 regulations become effective, FDA will send letters to the respondents explaining that the agency intends to reinitiate the actions by the complaint and answer process of part 17. None of the pending actions has yet reached the point in the process of publication of a Notice of Hearing under 21 CFR 12.35. Since part 17 was specifically drafted to govern administrative hearings on civil money penalty assessments, its use for pending actions will not prejudice the respondents and will assure consistency in the adjudication of these matters. If, for any reason, there is a stay of the effectiveness of these part 17 regulations, the agency will proceed with the pending civil money penalty administrative actions under current 21 CFR 5.99, 10.50(c)(21), and part 12.

II. Summary of and Response to Comments

In response to FDA's NPRM, the agency received 12 public comments. Most came from device manufacturers or their representatives and device manufacturer trade associations. In addition, one consumer group and the Administrative Conference of the United States commented. What follows is a summary of and response to each comment. Most of those commenting made more than one comment. Except for those comments that are not germane to a particular proposed section of part 17, the comments are considered in connection with the proposed sections to which they are related. In addition to the changes discussed below, a number of editorial changes to the text of the final rule have been made to improve the clarity of the regulation.

A. General Comments on the Preamble

In responding to comments and formulating a final rule, FDA has balanced competing concerns: Namely, the interests of potential defendants in securing as many procedural safeguards as practicable, and the interests of the public in an efficient process that effectively implements the statutes. FDA is very conscious of the need to provide due process for companies and individuals from whom the Government is seeking civil money penalties, and the comments were carefully evaluated against this standard. At the same time, for the civil money penalty remedy to become an effective enforcement tool under the statute, the administrative process must be able to proceed with predictability and efficiency. The industry, as a whole, benefits from an efficient administrative civil penalties process in that such a system will help to maintain consistency in enforcement and thereby protect the majority of companies who stay in compliance against unfair competition from the small minority of firms that do not.

Accordingly, in developing this final rule, FDA has sought to establish an efficient, predictable system that processes cases in a fair and responsible manner, while affording defendants adequate procedural safeguards. As benchmarks, the agency has examined other existing civil money penalty processes, particularly as administered by the Environmental Protection Agency (EPA) and by the Inspector General of the Department of Health and Human Services (HHS). (See HHS regulation on Medicare Exclusions and Civil Money Penalties, 42 CFR part 1005; EPA Civil Penalties and Permit Revocation Regulation, 40 CFR part 22; Program Fraud Civil Remedies Regulation for HHS, 45 CFR part 79; and Program Fraud Civil Remedies Regulation for EPA, 40 CFR part 27).

These regulations provide a variety of procedural rights. FDA has selected from among these various provisions to create a fair hearing process. In response to comments, FDA has made over 25 changes in the final rule (see concluding section of this preamble), in addition to numerous clarifications throughout the preamble. For example, procedural safeguards under part 17 include motions for summary decisions, interlocutory appeal from rulings of the presiding officer, settlement conferences, allowing the parties to determine an appropriate settlement, and providing additional time before the

hearing for the exchange of exhibits, witness lists, and written testimony. All of the EPA and HHS regulations provide for appeal of a presiding officer's initial decision to an appeals board. EPA has an Environmental Appeals Board, while HHS has the Departmental Appeals Board (DAB). FDA has determined (see paragraph 101 below) that it would be an appropriate use of agency resources, as well as an efficient and effective means for handling appeals, to have the DAB serve as the reviewing authority for appeals of decisions by presiding officers on civil penalty actions.

The DAB is generally recognized as a fair and effective adjudicative forum. The DAB is an independent body within HHS with expertise in adjudication of civil money penalties. Accordingly, FDA will use that board, at least initially, for the adjudication of all appeals, including review of default judgments, interlocutory appeals, and appeals from initial decisions under this part. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule in which the Commissioner of Food and Drugs delegates to the DAB the authority for the adjudication of appeals.

While a number of comments to the proposed rule sought procedures virtually identical to procedural rights available in civil litigation in Federal district courts, another comment urged that FDA use a more efficient complaint and answer procedure to streamline the process. These part 17 regulations provide a level of procedural safeguards consistent with that provided in other existing civil money penalties regulations. FDA believes that these procedures afford a respondent an impartial forum for the adjudication of any contested civil money penalty assessments.

1. Two comments questioned the use of administrative civil money penalties in connection with the PDMA and the NCVIA. Those commenting argued that, without specific congressional authority, FDA may not administratively impose civil money penalties, but must seek them through court proceedings. Additionally, another comment argued that FDA may not bind any future statutory grant of civil money penalties authority to part 17 hearing procedures.

FDA disagrees with the position that civil money penalties in connection with the PDMA and the NCVIA may not be imposed administratively, for the reasons stated in the preamble to the NPRM (58 FR 30680 through 30681). FDA acknowledges that the issue has not been directly addressed by the courts, but it agrees with the comment of the Administrative Conference of the United States that ''any challenge to FDA's authority to impose penalties administratively under such statutes (as the NCVIA) should be unsuccessful, *cf., United States* v. *International Harvester,* 387 F. Supp. 1338 (D.D.C. 1974).''

As to implementation of any future civil money penalty statutory provision, FDA has reconsidered the desirability of determining in advance the use of part 17 procedures. Although the use of part 17 procedures to implement future civil money penalty legislation may be entirely appropriate, the agency prefers to preserve the flexibility to determine the procedures that will apply to specific statutory language once enacted. Section 17.1 has been modified to reflect this change.

2. One comment raised the concern that FDA has thus far not been delegated authority to impose civil money penalties by the Secretary of Health and Human Services (the Secretary). The comment's premise is incorrect. The Secretary has delegated to the Commissioner of Food and Drugs (the Commissioner) all authority given the Secretary under the Federal Food, Drug, and Cosmetic Act (the act). (See § 5.10(a)(1).) (See also section 903 of the act (21 U.S.C. 393).) In addition, the Secretary has delegated to the Commissioner authority to perform all functions vested in the Secretary by Congress under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262) concerning biologic recall orders. (See 5 CFR 5.10(a)(5).) The Secretary has granted the Commissioner authority to impose civil money penalties under the NCVIA. (See § 5.10(a)(35).) Also the Secretary delegated to the Commissioner authority granted the Secretary under the MQSA, which includes authority to impose civil money penalties. (See 21 CFR 5.10(a)(36).)

3. One comment requested FDA to correct its misquoting in the NPRM regarding the language of section 17(f) of the SMDA (21 U.S.C. 333(g)) by using ''and'' when the statute provided ''or''.

The preamble to the NPRM stated (58 FR 30680 at 30681) that ''civil money penalties are not authorized against persons who violate section 519(a) of the act (21 U.S.C. 360i(a)) * * * or section 520(f) of the act (21 U.S.C. 360j(f)) * * * unless the violation constitutes a significant *and* knowing departure from such requirements or a risk to the public health.'' [emphasis added.] In the July 27, 1993, **Federal Register** (58 FR 40103 through 40104), FDA corrected its inadvertent misquote. Section 17(f) of the SMDA (21 U.S.C. 333(g)(1)(B)) states that civil money penalties shall not apply to any person who violates the requirements of section 519(a) or 520(f) ''* * * unless such violation constitutes (I) a significant *or* knowing departure from such requirements, or (II) a risk to public health * * *.'' [emphasis added]

Conversely, another comment argued that FDA had been inadvertently correct and that the legislative history shows that Congress had actually intended that the violations in question constitute significant *and* knowing departures in order to be punishable by civil money penalties. FDA rejects this argument because Congress' intent is clear from the language of the statute. The legislative history contained in the Conference Report on the SMDA also supports FDA's interpretation (H. Conf. Rept. 959, 101st Cong., 2d Sess. 29 (1990)).

4. Another comment stated that FDA should make clear that civil money penalties are in addition to other remedies available under law, not in lieu of them. FDA agrees that the agency has the authority to use civil money penalties in addition to other judicial and administrative remedies, if appropriate.

5. One comment asserted that violations of medical device reporting, current good manufacturing practice (CGMP), and tracking regulations should be enforced through civil money penalties. FDA agrees that these violations, as well as others, are suitable candidates for civil money penalty actions where authorized by the SMDA. FDA does not intend to rule out the use of civil money penalties in any situation provided for by law. Nor does FDA believe that civil money penalties need be the only remedy it may use to enforce these violations.

6. A comment urged the use of civil money penalties in lieu of warning letters for serious violations of law. FDA advises that its normal practice is to give prior notice by a warning letter or other means before taking more significant enforcement action. However, in the case of very serious violations or other special circumstances, the agency can and will continue to initiate judicial enforcement actions, as may be appropriate with or without the customary prior notice. Civil money penalties were not intended to take the place of warning letters; rather, civil money penalties were intended to assist the agency in safeguarding the regulatory system.

On April 21, 1995, President Clinton directed agencies to use discretion to modify penalties for small businesses. FDA's traditional approach, by which the agency usually provides written

warning to encourage voluntary correction of violations before undertaking the imposition of regulatory sanctions, is in keeping with the President's directive. Also, as discussed in paragraph 25, in addition to establishing the respondent's liability, FDA must prove the appropriateness of the penalty under the applicable statute in administrative civil money penalty actions.

7. One comment requested that the agency set forth specific examples of what will constitute substantial compliance with device tracking regulations such as assigning a percentage of trackable devices that would constitute ''substantial compliance.'' Until FDA has gathered more information on how and to what extent industry has complied with the device tracking regulations, it would be premature for the agency to present such specific, defining examples. FDA declines to do this at this time.

8. Yet another comment proposed that all civil money penalty proposals be cleared through the Department of Health and Human Services prior to implementation. Because the Commissioner of Food and Drugs has been delegated authority to impose civil money penalties as noted in comment 2 of section II.A. of this document, the agency declines to adopt the comment's suggestion. However, as previously noted in the preamble and in paragraph 101 below, FDA has selected the DAB, at least initially, as the reviewing authority for appeals of civil penalty matters. Thus, the DAB's decision will constitute final agency action on contested FDA civil money penalties matters.

9. Several comments noted the absence of any prohibition against ex parte communications with the presiding officer. FDA agrees that restrictions on communications with the presiding officer concerning matters involved in part 17 hearings would be appropriate. Therefore, the agency has added § 17.20 to provide restrictions on ex parte communications.

10. Another comment requested that FDA specifically state that its part 17 regulation does not provide for a private right of action. FDA advises that only Congress can create a private right of action. FDA's regulations are not intended to create such a right.

11. One comment requested that FDA make explicit the authority of the parties and of the presiding officer to use alternative dispute resolution (ADR) in resolving a dispute under part 17. FDA agrees that settlement discussions should be encouraged. Therefore, the presiding officer has been given authority to require the parties to attend settlement conferences, which could include a conference held before an impartial third party, including the presiding officer, another administrative law judge, or a professional mediator. This change is reflected in revised § 17.19, and the agency believes it is a sufficient authorization for the use of ADR procedures.

12. The same comment suggested that FDA clarify whether an appeal to the Commissioner after an initial decision is required before a respondent may seek judicial review. The comment noted that in *Darby* v. *Cisneros*, 113 S.Ct. 2539 (1993), the Supreme Court determined that agency regulations that permit, but do not require, an aggrieved party to seek administrative review of a presiding officer's decision, allow parties to forego the option of administrative review and proceed directly to court. The comment stated a preference for requiring that a party seek administrative review of a presiding officer's decision before going to court, asserting that to be a sensible allocation of responsibilities between courts and agencies. FDA agrees and accepts the suggestion that FDA recast the regulation to ensure that a respondent must request administrative review, which is now made to the DAB, before seeking judicial review. Section 17.51(c) has been revised accordingly.

13. One comment criticized the proposal on grounds that the new part 17 will limit respondents' ability to reasonably contest the agency's allegations, but did not provide specifics to support the assertion. Absent any specific concerns raised by the comment, FDA can only reiterate that the agency believes these procedures reasonably accord due process and offer respondents a fair opportunity to contest the Center's allegations before an impartial presiding officer.

14. One comment took issue with that portion of the preamble of the NPRM which establishes FDA headquarters in Rockville, MD, as the ''venue of choice for hearing procedures.'' The author of the comment urged that hearings take place in the FDA district office in whose jurisdiction the violations are alleged to have occurred. The author further argued that the burden of proof for change of venue from the districts where the alleged violations occurred should rest with the Center rather than the respondent. FDA believes this comment would be more persuasive if the presiding officer were an FDA official from the pertinent district office. However, since the administrative law judge's principal office is in Rockville, MD, and other types of administrative hearings are held there (e.g., hearings under part 12 of FDA's procedural regulations), Rockville, MD, is the most logical and appropriate venue in most cases. FDA notes that the presiding officer has ample discretion to change the venue of the hearing when the Rockville location would present a significant hardship to the respondent.

15. Another comment recommended that FDA establish an internal procedure such as an intra-agency council of senior compliance officials and representatives from the Office of the Chief Counsel to assure the fair exercise of prosecutorial discretion in choosing which civil penalty cases to bring and how large a penalty to seek.

FDA agrees that it is important to exercise enforcement discretion in a fair and reasonable manner. Due to the newness of the civil penalties authority and the lack of FDA precedents in this area, the Office of Regulatory Affairs, Office of Enforcement, will establish coordinating procedures to help assure consistent policies in exercising civil money penalties authority agencywide. This will augment FDA's existing multilevel process that reviews all compliance actions proposed by the field and Centers, including civil money penalties, and which includes review by the Office of the Chief Counsel. If FDA determines that additional review procedures are appropriate after further experience assessing civil money penalties, it can establish those as a matter of internal agency procedure and not regulation.

B. Comments on Specific Sections

Section 17.3—Definitions

16. One comment noted that proposed § 17.3 defined several terms including ''defective,'' ''knowing departure,'' ''significant departure,'' and ''minor violations,'' used in the SMDA, but that the defined terms were not used elsewhere in the proposed rule and, therefore, were unnecessary. The comment urged that it should be made clear that the purpose of the definitions section is to define certain terms used in the SMDA, not terms used in 21 CFR part 17.

FDA agrees that the final rule should clarify that these defined terms apply to specific acts giving rise to civil money penalties, and has revised § 17.3 to reflect these changes. The agency has also modified the definition of ''person'' or ''respondent'' in § 17.3(b) to provide additional examples of potential respondents. Finally, FDA has included by reference in § 17.3 definitions from the act, Title 21, Code of Federal

Regulations, and the PHS Act as they may be used in part 17 proceedings.

17. Another comment took issue with FDA's interpretation of the phrase ''significant departure'' as that term is used at 21 U.S.C. 333(g)(1)(B)(i), which applies to certain recordkeeping and reporting requirements for devices (21 U.S.C. 360i(a)) and to CGMP requirements for devices (21 U.S.C. 360j(f)). Proposed § 17.3(c), which is now § 17.3(a)(1), defined significant departure as a ''departure from requirements which is neither isolated nor inconsequential.'' The comment contended that this definition is likely to be met more often than not in the case of CGMP violations. The comment further argued that this result was contrary to the intent of Congress.

FDA notes that the comment cited no statutory language or legislative history regarding the definition of ''significant departure,'' although a review of the conference report (H.R. Conf. Rep. No. 959, 101st Cong., 2d Sess. 29 (1990)) indicates that Congress did not limit a ''significant departure'' as the comment advocated. FDA believes, however, that the proposed definition could be improved to state that a significant departure includes a single major incident or a series of incidents that collectively are consequential. Section 17.3 has been amended to reflect this interpretation and to clarify that ''significant departure'' is being defined for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(i).

The agency emphasizes that it will not seek assessments of civil money penalties for trivial violations. FDA cannot list all violations that it regards as ''inconsequential,'' and believes that it can and will make reasonable judgments about the importance of violations.

18. One comment requested that the definition of ''knowing departure'' be revised. The author would have ''knowing'' limited to actual knowledge. FDA's proposed definition stated that ''knowing departure means actual knowledge of departure from requirements, or acting in deliberate ignorance of such departure, or acting in reckless disregard of such departure.'' FDA disagrees with the comment. Part 17 defines ''knowing'' consistently with the definitions of ''knowingly'' or ''knew'' in the act as amended by the GDEA in 1992 (now 21 U.S.C. 321(bb)). Nothing in the SMDA or its legislative history suggests that the definition of ''knowing'' in 21 U.S.C. 333(g)(1)(B)(i) was intended to be more restrictive than the definitions of ''knowingly'' or ''knew'' that were added to the act by the GDEA in 1992. FDA has revised the definition of ''knowing'' to clarify that it is being defined for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(i).

19. Another comment maintained that the specific acts giving rise to civil money penalties are defined much too broadly. For example the author of the comment maintained that ''minor violations'' is too broadly defined. In proposed § 17.3, the term ''minor violations'' was defined as ''violations which are isolated and inconsequential.''

The term ''minor violations,'' as used in 21 U.S.C. 333(g)(1)(B)(ii), prohibits the assessment of civil money penalties for minor violations against a person who demonstrates substantial compliance with the requirements of 21 U.S.C. 360i(e) and (f), which relate to device tracking and correction reports. FDA believes that the term ''minor violations'' was used by Congress to prohibit the assessment of civil penalties when a departure from requirements does not rise to a level of single major incident or a series of incidents that are collectively consequential. FDA has revised the final rule (§ 17.3(a)(3)) accordingly and has clarified that ''minor violations'' is being defined for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(ii). FDA notes that this definition of ''minor violation'' is the converse of that adopted for significant departure as used in 21 U.S.C. 333(g)(1)(B).

20. FDA received several comments on the definition of ''defective.'' As proposed, § 17.3(a)(4) defined defective to include ''any defect in performance, manufacture, construction, components, materials, specifications, design, installation, maintenance, service, or any defect in mechanical, physical and chemical properties in a device.'' The comments expressed concern about possible broad implications of the proposed definition. In the final rule, FDA has generally retained the proposed definition but clarified that it is included in the defined terms solely for the purpose of interpreting 21 U.S.C. 333(g)(1)(B)(iii), which pertains to the very narrow area of devices that may be prepared, packed or held under insanitary conditions.

One comment argued that the inclusion of ''performance'' in the definition of ''defective'' is overly broad because it includes potential user error in the operation of the device. The comment suggested ''performance'' should be eliminated from the definition.

The intent of 21 U.S.C. 333(g)(1)(B)(iii) was to exempt, from potential assessment of civil penalties, those violations that may result from preparing, packing, or holding devices under insanitary conditions but that do not involve ''defective'' devices.

FDA agrees that performance failures based solely on user error unrelated to the conditions stated in 21 U.S.C. 351(a)(2)(A) or unrelated to problems with the device itself would not be considered a ''defect in performance'' of the device. The agency has revised the definition to make it clearer that ''defect in performance'' refers to ''defect in performance of a device,'' not to defect in performance of a user.

21. The same comment also recommended that the definition of ''defective'' in § 17.3 be amended to add the following statement: ''Defective service and maintenance are included within the scope of this definition only to the extent that such defects are the result of negligence.''

FDA does not believe that a different standard should be applied to service and maintenance than to other activities covered by the definition, such as manufacture and construction. Therefore, the agency is not adopting the suggested amendment to the definition. FDA notes that it does not envision minor deviations from established maintenance or service schedules as being the basis for a civil money penalty action. FDA has clarified the definition of ''defective'' to substitute ''or'' for ''and'' in the phrase ''any defect in the mechanical, physical, or chemical properties of a device,'' since a defect in any one of these properties would cause the device to be ''defective.''

22. Another comment requested that the definition of ''defective'' for purposes of civil money penalty actions incorporate the concept that a device is defective only if the device could reasonably be expected to pose a risk of some harm or not to function as intended because of the defect.

FDA disagrees. FDA will not seek civil money penalties because of trivial defects. However, defects are deviations that can affect the quality or performance characteristics of a device. To require a showing that the deviation is expected to cause harm or malfunction would shift the standard to allow more deviations and to provide less public health protection. The civil money penalty remedy is intended to promote the public health and the adopted definition of ''defective'' for purposes of 21 U.S.C. 333(g)(1)(B)(iii) supports this goal.

Section 17.5—Complaint

23. A comment remarked that § 17.5 does not contain any safeguards to ensure that FDA will only bring actions

in those instances where it believes in good faith after properly conducting an investigation that violations have occurred sufficient to warrant civil money penalties. The comment did not identify what those safeguards should be. Although FDA declines to change § 17.5, as the answer to comment 15 makes clear, FDA's review process for assessing civil money penalties should ensure that the agency will bring such actions only under the circumstances stated in the comment.

24. One comment argued that a complaint should specify ''all facts'' on which FDA is relying. FDA believes that the requirement regarding the contents of the complaint filed under part 17, as proposed, is consistent with other civil processes. For example, a complaint filed under Rule 8(a) of the ''Federal Rules of Civil Procedure,'' requires only ''* * * (2) a short and plain statement of the claim showing that the pleader is entitled to relief * * *.'' The requirements for a complaint are also consistent with the previously cited EPA and HHS Program Fraud Civil Remedies regulations.

FDA intends to file complaints that provide a reasonable description in sufficient detail for a respondent to have a fair understanding of the bases for the action. Moreover, the regulations requiring production of documents (§ 17.23) and exchanges of witness statements and exhibits (§ 17.25) provide for detailed presentations of factual information.

25. The same comment argued that the complaint should justify the amount of civil penalties being sought in accordance with factors identified in § 17.34. Again, FDA believes that a complaint filed under part 17 satisfies the requirements of notice pleading.

FDA recognizes that under the Administrative Procedure Act (APA) (5 U.S.C. 556(d)), as interpreted by the Supreme Court in *Director, OWCP* v. *Greenwich Collieries,* 114 S. Ct. 2251, 2257 (1994), the agency has the burden of proof on the respondent's liability and on the appropriateness of the penalty in light of the factors specified in the statute to be taken into account in determining the penalty. However, the proof that is required by the APA and specified in § 17.33(b) is to be presented by the Center at the time of the hearing, not, as the comment suggests, in the complaint. In order to clarify that the burden of proof referenced in the APA requires the Center to prove the respondent's liability and the appropriateness of the penalty under the applicable statute, § 17.33(b) has been revised to state that ''in order to prevail, the Center must prove respondent's liability and the appropriateness of the penalty under the applicable statute by a preponderance of the evidence.''

26. This same comment called for ''the intervention of [an] impartial, non-investigating party regarding whether an administrative complaint is sustainable.'' FDA believes that part 17 already provides for such an ''impartial non-investigating party'' in the form of a presiding officer, who is an administrative law judge qualified under 5 U.S.C. 3105.

27. Another comment objected that the regulation does not provide for a separation of investigatory and adjudicatory functions and stated that civil money penalty proceedings should be among those hearings to which separation of functions applies. FDA has added § 17.20 to provide restrictions on ex parte communications with the presiding officer. Since the DAB will be adjudicating appeals in civil money penalties proceedings, there is no need to adopt separation-of-functions rules in these proceedings.

28. Yet another comment complained that § 17.5(a) fails to identify anyone in FDA management who must approve the decision to impose a civil money penalty. Further, the author of the comment stated a belief that an initial determination of whether or not civil money penalties should be imposed should be made prior to the service of a complaint.

FDA advises that such an initial determination is in fact made. As described in paragraph 15, FDA has an established review procedure for enforcement cases, and that process will have added coordination for civil money penalties cases due to the newness of the authority and the lack of FDA precedents. However, since this is an institutional decision, it is not appropriate to designate a single individual as the agency's decisionmaker.

29. Yet another comment argued that notice pleading such as that provided for in § 17.5(b)(1) is inappropriate in light of the limited discovery provided for under these regulations. The comment called for either a more detailed notice in the complaint or greater discovery.

As discussed in paragraphs 24 and 61, FDA believes expanded discovery and pleading are not necessary. FDA intends to file complaints that provide a reasonable description in sufficient detail for respondents to have a fair understanding of the bases for the action.

30. One comment requested that FDA first put a respondent on notice via a warning letter before it files a claim for civil money penalties. FDA advises that as with FDA's judicial enforcement remedies, it will normally give prior notice by a warning letter or other means, although there may be exceptional circumstances where no prior warning would be given.

Section 17.7—Service of Complaint

31. One comment stated that an affidavit as proof of service should suffice only when service is made by personal delivery. FDA agrees that an affidavit is most appropriate when service is made by personal delivery, and has amended § 17.7(b)(1) to refer to ''personal delivery.''

32. A comment expressed concerns about the costs to be incurred by both the Center and the respondent as a result of these administrative procedures. FDA was mindful of the costs of litigation when it proposed part 17, and has sought to draft these procedures to minimize costs to all concerned. For example, providing for written direct testimony rather than oral direct testimony will significantly reduce the time and costs associated with hearings before the presiding officer.

Section 17.9—Answer

33. One comment argued that § 17.9 should provide for amendments to an answer after submission. FDA advises that it intends that complaints and answers may be amended on motion of the parties throughout the proceeding to conform to proof as justice may require. The ''Federal Rules of Civil Procedure'' follow this method for amendment of pleadings, allowing the motions to be ruled on by the district judge. Similarly, the presiding officer has been given this authority, which is so provided in the final rule (§ 17.9(d)).

34. A comment argued that 30 days is not sufficient to file an answer and that 60 days should be allowed for this purpose. FDA advises that if 30 days is not sufficient, a respondent may apply for more time upon a showing of good cause. (See § 17.9(c).)

35. One comment observed that § 17.9(c) provides for a request for an extension of time within which to file an answer, which request is to be ruled on by the presiding officer, who at that stage will not have been appointed. Under proposed § 17.12, the presiding officer is appointed only after the respondent has answered. The comment requested that the final rule change the procedure.

FDA agrees and is changing the rules to eliminate § 17.12, which is unnecessarily repetitious, to include the

definition of ''presiding officer'' in § 17.3, and to add a provision to § 17.5(d) for the assignment of the presiding officer upon the filing of the complaint.

36. Another comment objected that the proposed rules allow for the default of a respondent who fails to answer a complaint because extraordinary circumstances prevented it from responding within a particular timeframe.

FDA believes the regulation, as proposed, adequately addresses this point. Section 17.9(c) provides for an extension of time within which to file an answer when the respondent can show good cause. Additionally, a respondent may file a motion to reopen a default judgment on the grounds that extraordinary circumstances prevented the respondent from filing an answer. This should provide the relief that the comment requested.

Section 17.11—Default Upon Failure to File An Answer

37. A comment argued that § 17.11 should apply an ''excusable neglect'' standard, not an ''extraordinary circumstances'' test, for determining when relief from default for failure to answer should be granted. FDA prefers the ''extraordinary circumstances'' test, which, although somewhat harder to meet, is justified by the need to encourage respondents to respond in a timely fashion. Additionally, both EPA's and HHS's Program Fraud Civil Remedies regulations use an ''extraordinary circumstances'' test for determining whether to set aside a default judgment.

38. Another comment recommended that the language set forth in § 17.11(a) be modified to contain a requirement for the Commissioner to stay the initial decision of default upon a showing of extraordinary circumstances. FDA has changed § 17.11 regarding the issuance of a decision based upon default to allow the presiding officer to issue the initial decision rather than the Commissioner. The determination of whether to set aside a default judgment is an administrative matter that is better suited for initial review by the presiding officer, and which would be subject to appeal to the DAB.

39. The same comment stated that it is imperative that the term ''extraordinary circumstances'' be fully defined. FDA disagrees. To attempt to define and thus limit the circumstances which will be deemed ''extraordinary'' would be futile. FDA could not possibly anticipate all ''extraordinary circumstances.'' Indeed, such an attempt would probably not be in the interest of respondents as a group, since it would necessarily limit the kinds of circumstances that could be considered ''extraordinary'' and, therefore, in which a default decision could be set aside.

40. Yet another comment requested that no time limit be imposed on the remedy set forth in proposed § 17.11(c) concerning late filing of an answer. FDA disagrees. It is difficult to conceive of ''extraordinary circumstances'' that would justify extending the period for filing an answer or motion before the initial decision becomes final and binding. The regulation sets forth a reasonable procedure for the presiding officer to set aside a default judgment upon the showing of extraordinary circumstances by the respondent.

41. A comment requested that, in order for a default judgment to be entered for failure to answer a complaint, the Center should be required to prove that the complaint was received by the respondent. FDA agrees and has amended § 17.11 accordingly.

42. A comment advocated a provision authorizing a party to move to disqualify a presiding officer in order to assure a fair and impartial hearing. The agency advises that such a motion, carefully documented and based upon good cause, may be filed without a provision in these rules specifically authorizing it. The APA (5 U.S.C. 556(b)) authorizes disqualification of a presiding officer based on the filing in good faith of a timely and sufficient affidavit.

Section 17.13—Notice of Hearing

43. One comment argued that § 17.13 should contain clear standards, with reasonable timeframes, for setting the date, time, and place of the hearing or prehearing conference. Further, the comment suggested that the rules should clarify that the presiding officer sets all hearing dates.

FDA believes that it is currently clear that the presiding officer sets all hearing dates. However, FDA disagrees that the rules should set timeframes for a hearing or prehearing conference. Scheduling depends on many variables, including the schedule of the presiding officer, the length of the hearing, the number of witnesses, etc. The presiding officer needs flexibility to schedule prehearing conferences, testimony, and briefing within the limits set forth in the regulation. Accordingly, additional specific time limitations are not being added to the regulations.

44. One comment requested that § 17.13 explicitly provide that either the notice of hearing or the complaint state specifically and in detail each violation alleged and the factual basis for it. The complaint is required to state the allegations of liability against the respondent, including the statutory basis for liability, to identify the violations that are the basis for the alleged liability, and to state the reasons that the respondent is responsible for the violations. In addition, the notice of hearing requires a statement as to the nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held, as well as a description of the procedures for the conduct of the hearing.

FDA declines to make the requested change. The agency believes that the regulations, including § 17.5(b), require that a complaint provide a respondent with a reasonable description in sufficient detail for a respondent to have a fair understanding of the bases for the action and the issues for the hearing. FDA has clarified in § 17.13 that the notice of hearing is to be served on the respondent after the answer has been filed.

45. Another comment expressed the view that proposed § 17.13(f), which is now § 17.13(e), allows ex parte communications between the Center and the presiding officer without participation or comment by the respondent. The comment requested that ex parte communications not be permitted.

As noted in comment 9 above, § 17.20 has been added to restrict ex parte communications under part 17. However, FDA believes that ex parte contacts are necessary with respect to scheduling of the hearing or prehearing conference, and are contemplated for such administrative purposes. Ex parte scheduling contacts are common at agencies throughout the Federal Government and are not improper under § 17.20. All scheduling decisions made before the notice of hearing is served are subject to change on motion of the respondent, in any event.

Section 17.15—Parties to the Hearing

46. One comment argued that § 17.15 should specify that parties may settle issues prior to the hearing without admitting liability. FDA advises that there is no need to specifically state that the parties can stipulate that a settlement does not carry with it an admission of liability.

The regulation provides that the parties may agree to a settlement of all or a part of the matter. It would be inappropriate to limit by regulation the issues that may or may not be covered in a settlement agreement. The final rule allows for wide latitude in settlement agreements.

47. Another comment requested that FDA specifically state that respondent's counsel may be present and participate at the hearing. FDA agrees, and has amended the regulation to add § 17.15(c) accordingly.

48. A comment recommended that the final rule state whether a settlement pursuant to § 17.15(b) is to be incorporated in the initial decision or is instead to be an independent agreement between the parties. The comment went on to state that, if the settlement is to be incorporated in an independent agreement, the complaint should be dismissed.

FDA advises that a settlement agreement is to be an independent agreement. However, FDA believes that it is not necessary to require the dismissal of the complaint upon the filing of a settlement agreement, as the case will be considered resolved and closed by the filing of the settlement agreement, and the agreement will so provide.

Section 17.17—Summary Decisions

49. A comment objected to the inclusion of a summary decision procedure in proposed part 17. FDA affirms the desirability of summary decision procedures in this context. In many situations, the facts will be undisputed and the only question to be decided is one of law. In such cases, time and money can be saved through a summary decision procedure.

50. The author of the same comment urged that, if summary decision procedures are retained, time to respond to a motion for summary decision should be 30 days, not 10. FDA agrees that 10 days is a short time in which to respond. Therefore, FDA is extending from 10 to 30 days the period in which to respond to a motion for summary decision.

51. Another comment argued that summary judgment for the Center should never be granted without the filing of an affidavit prior to the motion being filed. The comment asserts that failure to require an initial affidavit prior to a motion for summary decision denies the respondent the opportunity to verify the facts set forth in the complainant's pleadings.

The language in § 17.17 setting forth the use of affidavits in filing for a motion for summary decision is virtually identical to the language in Rule 56 of the ''Federal Rules of Civil Procedure.'' Respondent may oppose the motion for summary decision with specific facts or opposing affidavits. The presiding officer may only grant the motion if the pleadings, affidavits, and other material in the record show that there is no genuine issue as to any material fact. Additionally, the presiding officer may direct further evidentiary proceedings on facts still at issue. Accordingly, FDA believes the rule provides adequate safeguards for the due process rights of the respondent.

52. Another comment asked the following: (1) Whether or not a proceeding will be stayed pending an interlocutory appeal granting partial summary decision, and (2) whether judicial review of such a decision is a prerequisite to interlocutory relief.

The decision to stay a proceeding pending appeal is within the discretion of the presiding officer, who will make such a decision based on the facts before him or her at the time. Similarly, FDA believes that in some circumstances it would not be necessary or appropriate to have an interlocutory appeal of a presiding officer's partial summary judgment decision on civil money penalties. A decision by a district court granting partial summary judgment is usually not reviewable by the court of appeals on an interlocutory basis. (See, e.g., *King* v. *California Co.,* 224 F.2d 193 (5th Cir.), *cert. denied,* 352 U.S. 1007 (1955); *Marino* v. *Nevitt,* 311 F.2d 406 (3rd Cir. 1963); *Acha* v. *Blame,* 570 F.2d 57 (2nd Cir. 1978).)

53. Another comment suggested that respondents should be given an opportunity to conduct discovery before FDA may bring a motion for summary decision. FDA advises that the presiding officer has the discretion to deny the motion, grant the motion, or order a continuance to permit affidavits or additional evidence to be obtained under § 17.23(a).

54. Another comment argued that a party should have the option of taking an interlocutory appeal on a partial summary decision order or appealing the issue after a final disposition of the entire matter. FDA believes that a party should be permitted to request interlocutory appeal and has amended § 17.17 and added § 17.18 accordingly.

Economy of effort dictates that partial summary decisions not be appealed routinely to the entity designated by the Commissioner to decide appeals (currently the DAB) on an interlocutory basis, but FDA has agreed to provide the option to permit interlocutory appeal within the discretion of the presiding officer and the entity hearing the appeal. In general, appeal of all issues after a final disposition of the entire matter would reduce unnecessary review time for resolution of civil money penalty cases.

55. One comment expressed a concern about language in the preamble of the proposed rule to the effect that the SMDA permits FDA to bypass the administrative hearing procedure and pursue the imposition of civil money penalties in Federal court. FDA has reconsidered the language stated in the NPRM.

The statute authorizes assessment of civil money penalties in an administrative procedure under the SMDA (21 U.S.C. 333(g)(2)), and this is the most efficient manner of imposing civil money penalties. Judicial review would only occur in the United States Court of Appeals as initiated by the respondent (21 U.S.C. 333(g)(3)).

Section 17.19—Authority of the Presiding Officer

56. A comment objected that § 17.19 does not set forth criteria upon which the presiding officer is to base the assignment of a hearing date. This hearing date, according to the comment, should be within at least 30 days of the giving of written notice in all hearings.

FDA does not believe it is necessary to set forth such criteria. The presiding officer will set dates based upon factors such as his or her own schedule, the length of the hearing, and the number of witnesses. FDA hopes that hearings will be completed expeditiously, but a 30-day period from notice until actual hearing may not be enough time in complex hearings.

57. A comment complained that proposed § 17.19(b)(14), which is now paragraph (b)(15), does not define ''related or similar proceedings.'' FDA chose not to define this phrase because of the difficulty of anticipating all proceedings that might be ''related or similar.'' The comment provides no help in defining the phrase, and the agency does not believe that a definition is necessary.

58. A comment argued that FDA should not have the power to subpoena documents because this would impermissibly broaden FDA's enforcement powers. FDA disagrees. Congress has specifically provided that FDA may subpoena documents under certain circumstances in civil money penalty proceedings. (See 21 U.S.C. 333(g)(2)(A) and 21 U.S.C. 335(b)(1)(A)). This statutory authority is similar to that granted to, and exercised by, other Federal entities, such as the EPA and the HHS Inspector General, and the agency expects to use this authority to the extent provided by law. (See paragraph 60 below.)

59. Yet another comment complained that proposed § 17.19(b)(16), which is now paragraph (b)(17), which permits the presiding officer to ''waive, suspend, or modify any rule,'' gives too much discretion to the presiding officer. The

comment urged that this language be deleted. FDA disagrees. Under 21 CFR 12.70(m), the presiding officer in formal FDA evidentiary hearings has had this authority for many years, and there have been few, if any, allegations that this authority has been abused.

60. One comment opposed the authorization in § 17.19(b)(5) for issuance of subpoenas by the presiding officer in proceedings under section 303(g)(2)(A) of the act (21 U.S.C. 333(g)(2)(A)). The author of the comment stated that this section of the SMDA authorizes only an investigative subpoena, not a hearing subpoena.

FDA disagrees with the comment's interpretation of the SMDA, which, in pertinent part, reads as follows: ''In the course of any investigation, the Secretary may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to matters under investigation.'' FDA interprets this to allow the agency to issue subpoenas related to a civil money penalty proceeding at any time, including during the adjudication of the penalty. The legislative history indicates that the agency was given authority to subpoena records and witnesses relevant to the civil penalty proceeding. In addition, the statutory phrase ''attendance and testimony of witnesses and the production of evidence'' reflects an intention that the testimony and documents be useable at the hearing itself.

Section 17.23—Discovery

61. A comment stated that FDA should authorize depositions, written interrogatories, and requests for admissions. The comment argued that, while brevity and economy are worthwhile goals, respondents need fuller discovery. The comment asserts that discovery depositions are necessary tools in the formation of a response to a civil money penalties complaint. Specifically, the comment objects to the presentation of hearing testimony orally without the opportunity to depose witnesses before the hearing.

FDA disagrees, and does not believe that additional forms of discovery are necessary for due process to be accorded to respondents. EPA and HHS adjudicative procedures provide these discovery mechanisms under their regulations enacted pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3801, *et. seq.*). However, 31 U.S.C. 3803(g)(3)(B)(ii) requires that discovery be authorized to the extent allowed by the presiding officer. The program statutes that these part 17 provisions implement do not require that discovery be provided and FDA is not required to provide for discovery under the APA, which governs these procedures. (See *Pacific Gas and Electric Co.* v. *F.E.R.C.*, 746 F.2d 1383, 1387 (9th Cir. 1984); *McClelland* v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979).)

FDA has discretion to determine the extent of discovery to which a party is entitled in an administrative hearing. In order to allow the parties to present a witness' testimony in the event that a witness would be unavailable for the hearing, FDA has added § 17.23(e) to provide for depositions in limited circumstances. Specifically, the presiding officer may order depositions upon a showing that the information sought is not available by alternative methods and there is a substantial reason to believe that relevant and probative evidence may not otherwise be preserved for presentation by a witness at the hearing.

In order to provide advance notice of each witness' testimony prior to cross-examination at the hearing, FDA has changed § 17.37(b) to require that direct testimony of witnesses be submitted in written form. Section 17.25(a) requires that parties exchange written testimony at least 30 days before the hearing. This should eliminate any concern that a party may be unfairly surprised by a witness' testimony presented at a hearing. Section 17.19(b)(10) has also been changed to authorize the presiding officer to recall a witness for additional testimony upon a showing of good cause. The failure of a party to provide written direct testimony of a witness before a hearing will result in exclusion of the witness' testimony.

The prehearing production of documents and exchange of exhibits by both parties, coupled with the right to cross-examine witnesses at the hearing and recall witnesses upon a showing of good cause, obviates the need for routine depositions, written interrogatories, and requests for admission. Recent changes to the ''Federal Rules of Civil Procedure'' have significantly reduced the number of depositions available to parties in Federal court litigation because of their expensive and time consuming nature (Fed. R. Civ. Proc. 30(a)(2)). FDA believes that its provision for written direct testimony is more cost effective for all concerned. Additionally, to ensure timely exchange of documents between the parties, § 17.23(a) has been changed to require that requests for production of documents be answered 30 days after the request, and that the request be made no later than 60 days before the hearing, unless otherwise ordered by the presiding officer.

62. Another comment argued that § 17.23 should specifically authorize the presiding officer to grant protective orders for trade secrets and confidential commercial information.

FDA agrees and has added a new paragraph to § 17.19(b)(18) to the final rule authorizing the presiding officer to issue protective orders for the protection of trade secrets and confidential commercial information. In order to reflect this change and to eliminate any confusion that resulted from the proposed rule, FDA has revised §§ 17.28, 17.33, and 17.41 to more clearly state the disclosure rules related to part 17 hearings. Additionally, in § 17.23(d)(3) FDA has added that the burden of showing that a protective order is necessary is on the party seeking the order.

63. A comment argued that § 17.23 should specifically exempt ''privileged'' information from access by FDA, even under a protective order. The comment expressed concern that the subsection authorizing the presiding officer to grant a protective order does not address trade secrets and confidential commercial information.

The agency believes that it would not be appropriate for FDA to be denied access to such information. FDA typically has broad access to confidential documents through its regulatory activities and carefully safeguards the confidentiality of those documents. As discussed in comment 62, the presiding officer is authorized to issue a protective order that will prevent public disclosure of such information.

Section 17.25—Exchange of Witness Lists, Witness Statements, and Exhibits

64. A comment took issue with the harshness of the ''extraordinary circumstances'' test for relief for failure to exchange witness lists, statements, and exhibits. The author argued that this relief should be granted only when a party did not substantially comply or noncompliance was in bad faith.

FDA disagrees with the comment's interpretation of proposed § 17.25(b)(2). However, the agency has clarified that § 17.25 (b)(2) and (b)(3) refer to the timely exchange of witness lists under § 17.25(a). The exclusion of other evidence not exchanged in accordance with § 17.25(a) is within the discretion of the presiding officer as noted in § 17.25(b)(1). The agency believes that it is fair and appropriate to grant relief from sanctions for failure to follow the requirements for the timely exchange of witness lists only if there are ''extraordinary circumstances.''

To provide additional time for the parties to prepare for the hearing, FDA has changed the deadline for the exchange of witness lists, exhibits, and prior written statements of witnesses from 15 days to 30 days before the hearing. Section 17.25(c) has also been changed to add that objections to authenticity of documents, exchanged pursuant to § 17.25(a), must be made no later than 5 days before the hearing, or the documents will be deemed authentic.

Section 17.27—Hearing Subpoenas

65. A comment argued that the authority of the presiding officer under § 17.27 to subpoena witnesses broadens FDA's power and is not authorized under the PDMA and the NCVIA. FDA agrees that because neither the PDMA nor the NCVIA grants FDA subpoena powers, § 17.27 should not be made applicable to hearings under these statutes.

FDA is altering § 17.27 to clarify that subpoenas may only be issued by the presiding officer to the extent authorized by law. In order to ensure that a party can prove that a witness has been served with a subpoena, FDA has deleted the provision on service of subpoenas by first-class mail. Revised § 17.27(e) provides that subpoenas shall be served in the manner prescribed for service of a complaint in § 17.7.

Section 17.30—Computation of Time

66. Another comment contended that the ''less than 7 days'' time period stated in proposed § 17.30(b) should be changed to be ''less than 11 days'' if the summary decision response time in § 17.17 remains at 10 days. The comment explained that Rule 6(a) of the ''Federal Rules of Civil Procedure'' uses the ''less than 11 days'' rule specifically to avoid routine requests for extension of the 10-day time for responding to most motions, a period that may include only 5 business days. FDA is changing the summary decision response time to 30 days (see paragraph 50), which should obviate the need for routine requests for extension of the time for responding to motions for summary decision.

Section 17.33—The Hearing and Burden of Proof

67. A comment urged that the presiding officer be required to exclude from the public portion of a hearing all evidence involving what he or she has determined to be trade secrets or confidential commercial information. FDA believes that this is unnecessary.

The agency has revised § 17.33(d) to clarify the scope of information that may be presented in a closed hearing. Under § 17.33 the presiding officer will apply existing laws and regulations to protect trade secrets and confidential commercial information from public disclosure.

68. Yet another comment urged that the Center be required to prove its case by ''clear and convincing evidence'' in light of what the comment refers to as the extremely broad definitions of punishable acts in § 17.3, rather than by a ''preponderance of evidence'' as provided for in the proposal.

FDA believes that the definitions in § 17.3 as revised provide adequate explanation of the defined terms. The acts for which civil money penalties may be assessed, however, are delineated in the various statutory schemes for civil penalties to which part 17 applies. The ''preponderance of evidence'' test is common in many civil proceedings, and is the appropriate standard of proof to be applied by the presiding officer under 5 U.S.C. 556(d). (See *Sea Island Broadcasting of S.C.* v. *Federal Communications Commission*, 627 F.2d 240 (D.C.Cir.), *reh. den., cert. denied*, 449 U.S. 834 (1980).) FDA rejects the comment.

Section 17.34—Determining the Amount of Penalties and Assessments

69. Two comments urged that FDA include ''degree of culpability'' as a factor in determining the amount of a civil money penalty under § 17.34. The degree of culpability is listed as a factor to be considered in 21 U.S.C. 333(g)(2)(B). Because the statutory civil money penalty provisions implemented by this regulation differ, FDA has referenced the statutory scheme under which the penalty is assessed for purposes of determining the amount of penalty, rather than listing factors in § 17.34. Accordingly, FDA rejects the comment.

70. Another comment argued that FDA should factor in the degree to which a respondent has cooperated with FDA. FDA believes that the presiding officer could properly consider the extent of cooperation under the authority provided in § 17.34(c).

Section 17.35—Sanctions

71. Another comment argued that the sanctions section (§ 17.35) is unclear, unnecessarily harsh, and goes beyond the authority delegated to FDA. The comment urged FDA to describe the types of misconduct to which the section applies and to limit sanctions. Such sanction provisions are not novel. For example, they are included in regulations used by EPA and HHS to implement statutory civil money penalty provisions and are designed to enable the presiding officer to manage proceedings effectively. FDA cannot anticipate all types of misbehavior and misconduct that could give rise to sanctions. Further, FDA cannot anticipate what sanctions may be appropriate for particular conduct in a particular situation. The presiding officer must have discretion in this area, and § 17.35 is consistent with the discretion that may be delegated to the presiding officer under the APA (5 U.S.C. 556(c)). FDA therefore declines to accept the comment.

72. A comment argued that FDA needs to provide a means of appeal of an order of the presiding officer imposing sanctions. FDA agrees. Sanctions should be subject to requests for interlocutory appeal. Section 17.18 has been added to allow for interlocutory appeal of matters certified by the presiding officer to need immediate review. However, the rule does not contain a provision for the automatic stay of proceedings before the presiding officer pending appeal.

73. A comment argued that the sanctions listed in § 17.35 are too harsh and that financial penalties might be more appropriate than the loss of the right to defend against or prosecute a civil money penalty claim.

FDA disagrees. The sanctions imposed in § 17.35 are similar to sanctions available under Rule 37 of the ''Federal Rules of Civil Procedure,'' as well as under the Program Fraud Civil Remedies regulations of EPA and HHS, and are a justifiable means of compelling the parties to adhere to the orders and rulings of the presiding officer. As in a proceeding before a judge in Federal court, a party's recalcitrance in disobeying a presiding officer's order in an administrative hearing should not be tolerated. The wide range of sanctions listed in § 17.35 provide flexibility for the presiding officer who might be presented with a party's failure to comply with an order through refusal or neglect.

74. In connection with appellate rights, one comment urged that the parties be afforded the right of judicial review of sanctions imposed during a part 17 hearing.

FDA advises that it has no authority to provide for an appeal to the courts before the agency's final decision is issued. Under § 17.51, the final decision constitutes final agency action which is subject to judicial review. The entire record that forms the basis of the final decision would be available to the reviewing Court of Appeals.

75. Another comment disagreed with proposed § 17.35(g), which provides

that the presiding officer may order a party to pay expenses. This remedy, the author argued, is unenforceable and outside the authority of the Government to provide.

FDA does not agree that it lacks the authority or that such an order of the presiding officer is unenforceable. However, because of the wide range of other sanctions available to the presiding officer for regulating the conduct of the hearing, FDA has made the change requested by the comment and eliminated § 17.35(g) as proposed.

Section 17.37—Witnesses

76. One comment took issue with what was viewed as a requirement that a cross-examining party pay a witness' travel expenses in a situation where direct testimony was submitted in writing. This was not FDA's intention in drafting § 17.37. FDA advises that it intends that a party submitting a witness' testimony in writing is responsible for paying the travel and other expenses of that witness on cross-examination at the hearing. FDA has added § 17.37(g) to clarify its intention.

77. A comment objected to § 17.37 because it could be interpreted to permit rebuttal witnesses and evidence to be submitted without any provision for discovery or identification, as provided for in connection with a party's presentation of its case in chief. FDA advises that, because rebuttal testimony and other rebuttal evidence are limited in scope and in quantity, requirements for notice and discovery are not necessary. Thus, FDA is not specifically providing for discovery or notice of a rebuttal witness' appearance. However, § 17.39(g) allows the presiding officer to permit the parties to introduce rebuttal witnesses and evidence. Implicit in this authority is the authority to set the terms of rebuttal testimony, as justice may require.

78. Yet another comment argued that § 17.37(e) is unduly broad in permitting cross-examination of witnesses on matters other than those within the scope of his or her direct examination. The comment recommended that the rules for cross-examination be predicated upon the ''Federal Rules of Evidence.''

FDA disagrees. In the interest of truth seeking in general and in the interest of procedural economy, FDA prefers § 17.37(e) as proposed. This provision is similar to what EPA and HHS provide in their Program Fraud Civil Remedies of regulations, which give the presiding officer discretion to allow cross-examination of witnesses beyond the scope of their direct examination, rather than limiting cross-examination to only those matters within the scope of direct examination. Otherwise, the opposing party would have to request that a subpoena be issued to a witness by the presiding officer, making the witness its own in a manner that unnecessarily wastes time.

Section 17.39—Evidence

79. One comment objected to § 17.39 to the extent that it renders privileged information nondiscoverable. Section 17.39 is similar to Rule 45 of the ''Federal Rules of Civil Procedure,'' which allows privileged information to be withheld by a person responding to a subpoena. FDA rejects the comment.

80. Another comment objected to language in § 17.39(b), which allows the presiding officer discretion to apply the ''Federal Rules of Evidence.'' According to the comment, the presiding officer is given authority to invoke the ''Federal Rules of Evidence'' in an arbitrary and capricious fashion, which, the comment alleges, abridges the due process rights of both parties. The comment does not, however, provide any details to support its assertion.

FDA disagrees with the comment. To the contrary, under § 17.39(b) the presiding officer is allowed to apply the ''Federal Rules of Evidence'' *when appropriate* which is similar to what EPA and HHS provide in their Program Fraud Civil Remedies regulations. Section 17.39(f) has been changed to substitute the relevant language of Rule 408 of the ''Federal Rules of Evidence'' in place of the reference to Rule 408 in the proposed rule.

Section 17.41—The Administrative Record

81. A comment suggested that § 17.41 should include an explicit exemption to the ''open record'' provision, not subject to the discretion of the presiding officer, if the officer has determined that a portion of the record contains trade secrets or confidential commercial information.

FDA believes this to be a good suggestion, and has so provided. Trade secrets, confidential commercial information, information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or other information that would be withheld from public disclosure under 21 CFR part 20 are to be protected from disclosure by order of the presiding officer. Additionally, FDA is amending 21 CFR 20.86, concerning disclosure of information in administrative proceedings, to include part 17.

82. Another comment was concerned that the proposal does not contain a provision authorizing the correction of the hearing transcript and recommended that a provision similar to that contained in 21 CFR 12.98(d) be included in § 17.41. FDA has made the requested change in § 17.41(a).

Section 17.43—Posthearing Briefs

83. A comment objected to the requirement that briefs be filed simultaneously and be limited to 30 pages. According to the comment, these restrictions may prejudice respondents, however, the comment does not state how respondents may be prejudiced.

Under § 17.43, a party may file a longer brief if the presiding officer has found that the issues in the proceeding are so complex or the administrative record is so voluminous as to justify longer briefs. In the absence of a showing that simultaneous briefs will prejudice a party unfairly, FDA sees no reason to change this requirement. Additionally, parties may file proposed findings of fact and conclusions of law. FDA has added to § 17.43 that proposed findings of fact and conclusions of law are also limited to 30 pages unless the presiding officer orders otherwise.

84. Another comment requested that § 17.43 be clarified to state whether the 30-page limitation includes exhibits and attachments. FDA advises that the 30-page limitation does not include exhibits and attachments unless some material is made part of an exhibit or attachment to avoid the 30-page limitation when the material should reasonably have been included in the main portion of the brief itself.

Section 17.45—Initial Decision

85. One comment complained that requiring the presiding officer to decide the case within 90 days will inherently increase the risk of an incorrect result, thereby allegedly denying due process. FDA disagrees. Ninety days should be an ample amount of time for a presiding officer to decide most part 17 hearings. If the presiding officer needs more time, he or she may request that the entity deciding the appeal set a new deadline under § 17.45(c). As stated in the preamble, the DAB will be deciding, at least initially, appeals to the Commissioner for presiding officer decisions under this part, including a presiding officer's request for extending deadlines.

86. Another comment urged FDA to include timeframes for extensions of deadlines for rendering an initial decision. This would assure a speedier process, according to the comment. FDA disagrees. It is difficult if not impossible to set forth in a regulation the criteria for extending timeframes in issuing

hearing decisions. FDA believes that attempting to do so would be unworkable.

87. Yet another comment urged that the initial decision be required to include a discussion of the reasons for the findings and conclusions upon which the decision is based. However, § 17.45 already requires that the initial decision shall contain findings of fact, conclusions of law, and the amount of any penalties imposed. Section 17.45(b) further elaborates on this requirement. In FDA's view, the regulation as proposed does not permit a ''conclusory'' initial decision as the comment seems to presuppose. FDA declines to make the requested change.

88. One comment requested that § 17.45 provide that the initial decision be automatically stayed pending disposition of an appeal or motion for reconsideration. FDA disagrees. The agency does not believe that such a provision is necessary since no civil money penalty can be imposed until there has been final agency action. The initial decision would not become final agency action until any appeal has been acted on, the appeal time has expired, or the respondent has stated an intention not to seek an appeal.

89. Another comment recommended that the word ''may'' (in § 17.45(c)), as it applies to the Commissioner's authority to set a new timeframe for issuing the initial decision, be changed to ''shall.'' This, the comment alleges, would preclude indefinite delay in the issuance of an initial decision. FDA declines to adopt this comment. As indicated under comment 86, FDA believes it would be unworkable to specify all the criteria for determining when timeframes for issuing initial decisions may be extended. FDA reaffirms its intention that all such decisions be made promptly.

Section 17.47—Appeals

90. A comment suggested that § 17.47 should be modified to explicitly provide for an automatic stay of a decision pending an appeal or motion for reconsideration. As stated in a prior response (see paragraph 88 above), such an automatic stay is not necessary.

91. A comment requested that FDA make clear that the Commissioner's decision, which has been delegated to the DAB, not to consider an appeal or the affirmation of the presiding officer's decision on appeal constitutes final agency action subject to judicial review. FDA agrees with the comment and affirms that such events do constitute final agency action. However, the agency sees no reason to amend any regulation to accomplish this. This statement in the preamble should suffice.

92. A comment urged that oral argument of an appeal to the entity designated by the Commissioner to decide appeals (currently the DAB) be allowed. FDA disagrees. Oral argument would not provide the DAB with any additional information that could not be included in the briefs allowed to be filed by the parties under § 17.47. The time required to conduct oral argument does not justify any advantage that might be gained from it.

93. A comment urged that FDA allow 60 days for submission of an appellate brief, especially considering the complexity of likely issues. The comment cites the part 12 practice of allowing 60 days for an appellate brief. FDA disagrees with the comment. The agency believes that issues raised in part 17 hearings will generally be less complex and the volume of testimony smaller than is the case concerning part 12 hearings. Thus, 30 days should be sufficient. If not, § 17.47 provides for extensions upon a showing of good cause.

94. A comment alleged that proposed § 17.47(f), which has been redesignated as § 17.47(g), favors appellees (which it alleges will usually be the Center) by allowing the appellee to make any argument based on the record in support of the initial decision or decision granting summary decision. This, the comment alleges, is unfair because the appellant does not have as much leeway.

FDA disagrees. The appellant has the discretion to determine the specific exceptions to the initial decision that are to be urged on appeal. Section 17.47(c) has been changed to clarify that in the notice of appeal the appellant must identify and support specific exceptions with citations to the record and explain the basis for the exceptions. Since the appellant may urge whatever exceptions it finds appropriate, FDA sees no prejudice in allowing the appellee to make arguments on matters contained in the record. If the entity deciding the appeal (currently the DAB) reverses on issues that the presiding officer considered pivotal, it may still affirm on other grounds if the appellee has raised such other grounds below. There should be no prejudice to either side as both sides have the record before them and can brief on appeal all issues raised in it. As explained in paragraph 95 below, FDA is amending § 17.47(h) to allow the DAB to request additional briefing when an issue has not been adequately briefed by the appellant.

95. Similar objection was raised to § 17.47(g), relating to the appellee's right to make any argument based on the record. The comment stated that if the purpose of this provision is to allow the appellee to anticipate sua sponte decisions by the Commissioner favorable to the appellant, the regulation would be better if recast as allowing the Commissioner to request both parties to address issues not raised by the appellant but determined to be important by the Commissioner.

As previously discussed, the Commissioner has initially designated the DAB to conduct appeals of civil money penalty proceedings under this part. FDA advises that the purpose of the provision in § 17.47(g) is to allow the DAB or other entity deciding the appeal to affirm a decision based on issues raised before the presiding officer but that did not serve as a basis for the presiding officer's decision. This will allow the entity deciding the appeal to overrule the presiding officer on an issue considered pivotal by the presiding officer, but nevertheless to decide the matter in favor of the appellee on other issues based on evidence adduced at the hearing. However, FDA agrees with the comment that the entity deciding the appeal may wish to decide an issue that is not fully briefed by both parties. Therefore, FDA is amending § 17.47(h) to allow that entity discretion to request additional briefing if it: (a) Proposes to affirm an initial decision based on arguments not fully briefed by appellant, and (b) believes that additional briefing is necessary.

96. One comment took issue with the review standard of ''substantial evidence on the whole record'' in § 17.47. The comment argued that the standard of substantial evidence on the whole record is applicable for appellate court review of agency action, but should not be applied by an agency head when the agency does not preside at the evidentiary hearing under the APA, 5 U.S.C. 557(b). The comment went on to state that the burden of proof by a preponderance of the evidence rests upon the complainant under 5 U.S.C. 556(d).

FDA agrees that the appropriate burden of proof before the presiding officer is a preponderance of the evidence, as explained in paragraph 68 above. However, the agency may limit review of the initial decision by the presiding officer if the powers of review have been limited by rule. See 5 U.S.C. 557(b).

FDA has provided that an administrative law judge serve as the fact finder in its civil money penalty actions. As the fact finder, the presiding officer is required to make his or her

findings based on the preponderance of the evidence standard.

When an appeal is made to the DAB under part 17, the DAB, if it decides to review the initial decision, will review disputed issues of fact based on the standard of whether the initial decision is supported by substantial evidence on the whole record. Additionally, the final regulation in § 17.47 has set the standard of review on a disputed issue of law to be whether the initial decision is erroneous. These standards of review are similar to the HHS regulation on appeals of Medicare exclusions, 42 CFR part 1005. The purpose of limiting the scope of the DAB's review of appeals from the presiding officer is to allow the presiding officer to serve as the fact finder and to limit the DAB's reviewing powers to be similar to that of an appellate court. The APA permits the standards of review set forth in § 17.47 for the DAB's review of initial and summary decisions by the presiding officer.

97. Another comment suggested that only the respondent should be permitted to appeal an adverse initial decision. The comment supports its argument by noting that FDA's proposed procedures did not follow the EPA model, which precludes appeals by any party other than the defendant. However, as the comment points out, the EPA provision tracks the statute, 31 U.S.C. 3803(i)(2)(A)(i), with procedures that are statutorily imposed on EPA.

In enacting the civil money penalty provisions in the statutes to which this regulation applies, Congress did not choose to prescribe, other than in a general manner, the administrative procedures to be followed in FDA's assessment of civil money penalties. FDA therefore does not believe the Center should be precluded from requesting the DAB to review an initial decision with which the Center disagrees.

The comment questioned the fairness of allowing the Center to appeal an initial decision in favor of the respondent. Because FDA has revised the appeals provisions in the final rule to designate the DAB, at least initially, to make the decision for the Commissioner, the independent review by the DAB should eliminate speculation of possible bias of the reviewing authority. FDA notes that in civil cases where the United States is a party plaintiff, district court decisions that are adverse to the plaintiff may be subject to appeal by the plaintiff.

For example, the act (21 U.S.C. 360pp(a)) provides that Federal district courts shall have jurisdiction over civil penalties arising from prohibited acts (21 U.S.C. 360oo) pertaining to the regulation of electronic products. If the United States disagrees with a district court judgment as to the amount or lack of penalty, the Federal Rules of Appellate Procedure (Rule 4) authorize an appeal. Under part 17, the Center's right to appeal an initial decision to the DAB is consistent with appellate review authorized for civil cases in Federal district courts.

In cases that are appealed to the DAB, the DAB will normally issue a decision within 60 days. In circumstances where that is not practicable, the DAB will notify the parties of the anticipated time period for ruling on the appeal. Accordingly, § 17.47(j) has been changed to add ''if practicable'' to the 60-day timeframe for the DAB's decision.

98. A comment requested that the time to file an appeal be set at 60 days and that the time to submit a brief be set by the presiding officer. FDA disagrees. The only reason given by the author of the comment for this extension of time is that the issues involved are likely to be more factually and legally complex than those in the typical civil penalty adjudications by other agencies. Further, the comment suggested that a change in the deadlines would avoid routine requests for extension of time.

The agency believes that it is far from clear that the issues involved in part 17 hearings will be more factually and legally complex than those in ''typical civil penalty adjudication.'' However, in order to alleviate the concerns expressed by the comment, FDA changed § 17.47(b)(2) to provide that the 30-day time limit to file the notice of appeal may be extended by the Commissioner or the entity designated by the Commissioner to hear appeals (currently the DAB), within his or her discretion, upon request of the appealing party for good cause shown. In order to ensure that a party has adequate time to respond to the brief filed in support of the appeal, § 17.47(d) has also been changed to allow the entity deciding appeals, within his or her discretion, to extend the time limit for the filing of a brief in opposition to the appeal upon request of the party and a showing of good cause.

99. Another comment recommended that § 17.47(d) not prohibit an appellant's reply brief. The comment stated that, on a practical level, motions for leave to reply will regularly be filed typically accompanied by a brief. Further, the comment argues that, based on past practice, such briefs will be routinely read and considered in any case. FDA agrees and is amending § 17.47 to allow for a short (no more than 10 pages) reply brief.

100. One comment requested that FDA explain more clearly what FDA means in proposed § 17.47(i), which is § 17.47(j) in the final rule, for the Commissioner to ''decline to review the case.'' Indeed, FDA agrees, as the comment presupposes, a decision to decline to review the case has the same legal effect as a decision to affirm the initial decision summarily without further comment. Such a summary decision may be issued without findings of fact or conclusions of law.

In § 17.47(j), FDA has added that a decision by the DAB to decline to review the case shall be the final decision, rendering the initial decision final and binding on the parties 30 days after the declination. For clarification of the possible actions by the entity designated by the Commissioner to decide the appeal, currently the DAB, FDA has changed § 17.47(j) in the final rule to authorize the entity to reverse the initial decision or decision granting summary decision. The proposed § 17.47(i) only provided that the Commissioner could reverse the penalty, but did not explicitly state that the initial decision could be reversed.

101. Another comment opposed any form of summary affirmance of a decision appealed by the Center. The author of the comment alleged that a respondent is entitled to an explanation, however concise, of the reasons why the Commissioner agrees with the presiding officer. According to the comment, the right to omit such an explanation invites cursory review and inappropriately relieves the Commissioner of the burden of responsibility that accompanies the authority to penalize a manufacturer.

FDA rejects the comment and, in so doing, notes that summary affirmances are routinely used by the courts of appeals. Additionally, the EPA and HHS regulations on program fraud that were previously cited provide for similar affirmance of an initial decision by the presiding officer, as does the HHS regulation on Medicare exclusions and civil penalties. FDA continues to believe that a summary disposition is appropriate in various circumstances, such as where issues are not complex and where the evidence heavily favors the appellee.

Underlying the comment may be the concern that the Commissioner might be biased in favor of the Center, when deciding an appeal and using summary affirmances to do so. In order to provide the parties with an independent review of civil penalty appeals, eliminate speculation of possible bias by the reviewing authority, and to allow for

more efficient and effective use of the Commissioner's resources, FDA has elected to designate the DAB to decide appeals under this part, at least initially.

The DAB serves as the reviewing authority for HHS administrative hearings in the previously cited regulations, as does the Environmental Appeals Board for EPA. These Boards have the training and resources to review appeals of civil penalty actions, whereas the Commissioner would be required to set up a separate process for handling civil penalty appeals. The DAB is the logical choice, at least initially, to review appeals of decisions rendered by the presiding officer in part 17 matters, while efficiently and effectively using agency resources.

FDA will use the DAB to decide appeals under part 17 for at least a 4-year period. After 4 years, FDA will evaluate the DAB's role and the Commissioner will determine whether to maintain or alter the delegation to the DAB.

Section 17.49—Delegated Functions

102. A comment suggested that § 17.49 should contain criteria for selecting and delegating authority to an individual under that section. Because FDA is initially providing that the DAB be designated as the entity to decide any appeals under this part, § 17.49 has been eliminated.

103. A comment alleged that § 17.49 allows the Commissioner to assign an agency party with an interest in the litigation to make the final decision on appeal, as long as the individual was not assigned to advise the Center. As noted in paragraph 101, appeals will initially be handled by the DAB. Therefore, any concern about an agency party's influence on the final decision should be eliminated.

104. A comment argued that all civil money penalty assessments should be finally decided by the Commissioner without delegation to another FDA official. As noted in the preceding paragraphs, FDA has provided, at least initially, for appeals to the DAB for a variety of reasons. Therefore, FDA rejects the comments.

Section 17.51—Judicial Review

105. A comment urged that FDA should not be allowed to seek judicial review of an adverse decision. Only a respondent should be allowed to do so, according to the comment. FDA agrees. Section 17.51 should not be interpreted to provide for the Center to seek judicial review. Once a final decision is rendered denying civil money penalties, this becomes the decision of the agency from which there is no judicial appeal by FDA or any of its Centers. Section 17.51 is being amended to clarify this issue.

III. Summary of Changes

1. In § 17.1, concerning the scope of the regulation, the reference to future statutory civil money penalty authority has been deleted. (See comment paragraph 1.)

2. In § 17.3(a), (b), (d), (e), and (f), references to definitions in the applicable statutes and regulations have been added. In § 17.3(a) the definition of ''significant departure'' has been changed to either a single major incident, or a series of incidents that are collectively consequential (paragraph 17). In section 17.3(a) the definition of ''minor violations'' has been changed to ''departures from requirements that do not rise to a level of a single major incident or a series of incidents that are collectively consequential'' (paragraph 19). Section 17.3(a)(4) has been revised to clarify that ''* * * defect in performance * * *'' refers to ''* * * defect in performance, * * * or service of a device,'' (paragraph 20). In § 17.3(b) scientific or academic establishment or governmental agency or organizational unit has been added to the definition of ''person or respondent'' (paragraph 16). In § 17.3(c) the definition of ''presiding officer'' has been added (paragraph 35). In § 17.3(g) the definition of Departmental Appeals Board has been added (paragraph 101).

3. Section 17.5(c) has been revised to provide for the right of the Center to amend its complaint (paragraph 33). Section 17.5(d) has been revised to provide that the presiding officer is assigned to the case upon filing of the complaint (paragraph 35).

4. Section 17.9(a) is revised to add that the respondents may answer without requesting a hearing. Section 17.9(b) is revised to add that allegations not denied are deemed to be admitted, and that all defenses must be stated in the answer (paragraph 33). Section 17.9(d) was added to provide that respondents may amend their answers (paragraph 33).

5. Section 17.11(a) is revised to add a requirement for proof of service and the authority of the presiding officer to enter default judgments and hold hearings on motions to reopen default judgments (paragraph 38). In § 17.11(a) the reference to the Commissioner has been deleted (paragraph 38).

6. Section 17.12 has been eliminated because the presiding officer is now appointed when the complaint is filed (paragraph 35).

7. Section 17.13 was changed to clarify that the notice of hearing is to be served on a respondent after an answer has been filed (paragraph 44).

8. Section 17.15(b) was revised to add a provision that settlement agreements are to be filed in the docket and do not require ratification by the presiding officer (paragraph 48). Section 17.15(c) was added to clarify that parties may be represented by counsel at the hearing (paragraph 47).

9. In § 17.17(a) the response time to motions for summary judgment has been extended from 10 days to 30 days (paragraph 50). Section 17.17(b) was changed to clarify that summary decision shall be granted when there is no genuine issue as to any material fact (paragraph 51). Section 17.17(e) now limits the ability of a party to obtain interlocutory review of a partial summary decision and refers to the DAB as, currently, the reviewing authority (paragraph 52).

10. New § 17.18 was added to provide for interlocutory appeal from a ruling of the presiding officer (paragraph 54).

11. Section 17.19(b)(3) was changed to authorize the presiding officer to require parties to attend conferences for settlement (paragraph 11). A new § 17.19(b)(10) was added to authorize the presiding officer to allow a witness to be recalled for additional testimony (paragraph 61). Proposed § 17.19(b)(10) through (b)(17) have been renumbered. For consistency of language, in § 17.19(b)(13) (proposed § 17.19(b)(12)) summary ''judgment'' now reads summary ''decision'' when there is no ''genuine'' issue of material fact. A new § 17.19(b)(18) has been added to authorize the presiding officer to issue protective orders (paragraph 62).

12. New § 17.20, has been added to provide restrictions on ex parte communications (paragraph 9).

13. Section 17.21(c)(8) now includes discussion of ''scheduling dates for completion of discovery'' as an authorized use of a prehearing conference (paragraph 61). Section 17.21(d) has been changed to require the presiding officer to issue an order after a prehearing conference (paragraph 61).

14. In § 17.23(a) a requirement has been added that requests for ''production, inspection, and copying'' of documents be made no later than 60 days before the date of the hearing, unless otherwise ordered by the presiding officer.

The party served with the request must respond no later than 30 days after the request has been made (paragraph 61). In § 17.23(c) a reference to new § 17.23(e) has been added. A new § 17.23(d)(3) now places the burden of showing that a protective order is necessary on the party seeking the order

(paragraph 62). Proposed § 17.23(d)(3) has been renumbered (d)(4). Section 17.23(e) has been added to provide for oral depositions under limited circumstances (paragraph 61).

15. Section 17.25(a) has been revised to change the deadline for the exchange of witness lists, prior written statements, and exhibits from 15 days to 30 days before the hearing (paragraph 64). For clarification, § 17.25(b)(2) and (b)(3) have been changed to specifically clarify that the paragraphs concern the admission of testimony by any witness whose name does not appear on the witness lists exchanged under § 17.25(a). Section 17.25(c) now imposes a deadline of ''5 days'' prior to the hearing for objection to authenticity of documents (paragraph 64).

16. Section 17.27(a) now explicitly limits the issuance of subpoenas to when such issuance is ''authorized by law'' (paragraph 65). For ease of proving service, § 17.27(e) has been changed to delete the provision on service of subpoenas by first class mail (paragraph 65).

17. Section 17.28(b) was revised to clarify that a protective order may be issued to protect information that would be withheld from public disclosure under the agency's public information regulations in 21 CFR part 20 (paragraph 63).

18. For clarification, § 17.31(b) was changed to provide that an opposing party must be served with a copy of a document no later than when the document is filed in the docket. Section 17.32(a) now requires that the presiding officer also be served with a copy of documents filed with the Dockets Management Branch.

19. For clarification, in § 17.33(b) and (c) ''is to'' was replaced with ''must''.

Section 17.33(b) has been clarified to add that the Center has the burden of proof to establish that the proposed penalty is appropriate under the applicable statute (paragraph 25). Section 17.33(d) was revised to include a reference to information that would be withheld from public disclosure under 21 CFR part 20.

20. Section 17.34 has been changed to refer to the statute under which the penalty is assessed for purposes of determining the amount of the penalty. The DAB has been referenced as the entity currently designated by the Commissioner to decide appeals under this part in § 17.34(a) and (c) (paragraph 101).

21. Proposed § 17.35(g), which authorized the presiding officer to order the payment of costs as a sanction, has been deleted (paragraph 75). New § 17.35(g) now provides for interlocutory appeal to the entity designated by the Commissioner to decide appeals (currently the DAB) of sanctions imposed by the presiding officer (paragraph 72).

22. Section 17.37(b) now requires, rather than permits, that direct testimony of witnesses be submitted by written declaration under penalty of perjury. The proposed provision in § 17.37(b) on ''sufficient time for other parties to subpoena witness'' has been deleted in light of the addition of new § 17.37(g) (paragraph 76). For clarity, § 17.37(f)(2) was modified to explain more clearly that an officer or employee of a party who is ''designated to be the party's sole representative for purposes of the hearing'' may not be excluded from hearing the testimony of other witnesses. Section 17.37(f)(3) has also been revised to make clear that each party may also have an individual, such as an expert witness, present at the hearing who would not be excluded from hearing other witnesses' testimony. New § 17.37(g) was added to clarify that a cross-examining party need not subpoena the witness, and to require that a sponsoring party produce a witness at its own expense (paragraph 76).

23. In § 17.39(f), a modified version of the language of Rule 408 of the ''Federal Rules of Evidence'' has been substituted for the proposed reference to Rule 408 (paragraph 80). For clarification, in § 17.39(g) a reference to the discretion of the presiding officer was added.

24. In § 17.41(a) a provision has been added to allow for corrections for transcription errors (paragraph 82). Section 17.41(b) has been changed to reference the DAB as the entity currently designated by the Commissioner to decide appeals under this part. Section 17.41(c) has been revised to clarify that upon motion of any party the presiding officer shall protect from disclosure documents that would be withheld from public disclosure under the agency's public information regulations at 21 CFR part 20 (paragraph 81).

25. Section 17.43 has been revised to add a page limit provision for filing of proposed findings of fact and conclusions of law (paragraph 83).

26. Section 17.45(c) has been changed to reference ''the Commissioner or the entity deciding the appeal.''

27. Section 17.47 has been changed to authorize appeals to the DAB instead of to the Commissioner (paragraph 101). Section 17.47(b)(2) now provides that the Commissioner or other entity designated by the Commissioner to hear appeals (currently the DAB) has discretion to extend the 30-day time limit to file an appeal upon request of a party and a showing of good cause.

Section 17.47(c) has been revised to add a page limitation for briefs in support of appeals and a requirement that exceptions listed in the notice of appeal be explicitly supported by citations to the record (paragraph 94). The prohibition on the filing of an appellant's reply brief in proposed § 17.47(d) has been deleted. Section 17.47(d) has been changed to allow the Commissioner or the entity designated by the Commissioner to hear appeals, currently the DAB, to extend the 30-day time limit for the filing of a brief opposing the appeal upon request of the party and a showing of good cause. New § 17.47(e) has been added to provide the right of an appellant to file a reply brief within 10 days of being served with the appellee's brief (paragraph 99). Section 17.47(h) has been renumbered as § 17.47(k) and has been revised to add that the standard of review on a disputed issue of law is whether the initial decision is erroneous (paragraph 101). Proposed § 17.47(e) through (i) have been renumbered. New § 17.47(h) has been added to authorize the entity deciding the appeal (currently the DAB) to request additional briefing by the parties (paragraph 95). Section 17.47(j) has added ''if practicable'' to the 60-day deadline for the decision on appeal. For consistency of language, ''summary judgment'' was changed to ''summary decision'' in § 17.47(j), which was proposed § 17.47(i). In § 17.47(j) explicit language authorizing the entity deciding the appeal (currently the DAB) to reverse the initial decision or decision granting summary decision has been added (paragraph 100). Section 17.47(j) now clarifies that a decision by the entity deciding the appeal (currently the DAB) to decline to review the case shall be the final action of the agency and the initial decision shall be final and binding on the parties 30 days after the declination.

28. Section 17.48 has been changed to reference the DAB as the entity currently designated by the Commissioner to decide appeals under this part.

29. Section 17.49 has been deleted.

30. Section 17.51(a) now states that only a respondent may petition for judicial review or file a petition for stay of a decision by the Commissioner (paragraph 105). New § 17.51(c) makes explicit that exhaustion of an appeal to the entity deciding the appeal (currently the DAB) is a jurisdictional prerequisite to judicial review (paragraph 12).

31. Section 17.54 has been revised to state amounts assessed under part 17 are to be delivered to the Director of FDA's

Division of Financial Management and then deposited in the U.S. Treasury.

32. In addition, the following revisions have been made to other regulations:

a. Section 5.99, regarding issuance of notices and orders relating to civil money penalties, has been deleted (see the Background section of this document).

b. Section 10.50(c)(21), regarding opportunities for a hearing under 21 CFR part 12, has been deleted (paragraph 9).

c. Section 20.86, regarding disclosure of data and information in administrative proceedings, has been revised to include part 17 (paragraph 81).

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

V. Analysis of Impacts

FDA has examined the impacts of the final 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 final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final 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. The final rule specifies the procedures to be followed by persons who have the right to a hearing on the administrative imposition of civil money penalties by the agency. As such, the rule does not impose any burden on regulated industry. Because the procedures themselves are protections and do not impose significant costs beyond what the underlying statute imposes, the agency certifies that the final 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.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 17

Administrative practice and procedure, Animal drugs, Biologics, Civil money penalties hearings, Drugs, Generic drugs, Prescription drugs samples, Medical devices.

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, Title 21, Chapter 1 of the Code of Federal Regulations is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

§ 5.99 [Removed]

2. Section 5.99 *Issuance of notices and orders relating to the administrative imposition of civil money penalties under various statutes* is removed.

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

3. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 551–558, 701–721; 28 U.S.C. 2112.

§ 10.50 [Amended]

4. Section 10.50 *Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing* is amended by removing paragraph (c)(21).

5. New part 17 is added to read as follows:

PART 17—CIVIL MONEY PENALTIES HEARINGS

Sec.

17.1 Scope.
17.3 Definitions.
17.5 Complaint.
17.7 Service of complaint.
17.9 Answer.
17.11 Default upon failure to file an answer.
17.13 Notice of hearing.
17.15 Parties to the hearing.
17.17 Summary decisions.
17.18 Interlocutory appeal from ruling of presiding officer.
17.19 Authority of the presiding officer.
17.20 Ex parte contacts.
17.21 Prehearing conferences.
17.23 Discovery.
17.25 Exchange of witness lists, witness statements, and exhibits.
17.27 Hearing subpoenas.
17.28 Protective order.
17.29 Fees.
17.30 Computation of time.
17.31 Form, filing, and service of papers.
17.32 Motions.
17.33 The hearing and burden of proof.
17.34 Determining the amount of penalties and assessments.
17.35 Sanctions.
17.37 Witnesses.
17.39 Evidence.
17.41 The administrative record.
17.43 Posthearing briefs.
17.45 Initial decision.
17.47 Appeals.
17.48 Harmless error.
17.51 Judicial review.
17.54 Deposit in the Treasury of the United States.

Authority: Secs. 301, 303, 307, 501, 502, 505, 510, 513, 516, 519, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 333, 337, 351, 352, 355, 360, 360c, 360f, 360i, 360j, 371); sec. 351, 354, 2128 of the Public Health Service Act (42 U.S.C. 262, 263b, 300aa-28); 5 U.S.C. 554, 555, 556, 557.

§ 17.1 Scope.

This part sets forth practices and procedures for hearings concerning the administrative imposition of civil money penalties by FDA. Listed below are the statutory provisions that as of August 28, 1995, authorize civil money

penalties that are governed by these procedures.

(a) Section 303 (b)(2) through (b)(4) of the Federal Food, Drug, and Cosmetic Act (the act) authorizing civil money penalties for certain violations of the act that relate to prescription drug marketing practices.

(b) Section 303(g) of the act authorizing civil money penalties for certain violations of the act that relate to medical devices.

(c) Section 307 of the act authorizing civil money penalties for certain actions in connection with an abbreviated new drug application or certain actions in connection with a person or individual debarred under section 306 of the act.

(d) Section 351(d)(2)(B) of the Public Health Service Act (the PHS Act) authorizing civil money penalties for violations of biologic recall orders.

(e) Section 354(h)(2) of the PHS Act, as amended by the Mammography Quality Standards Act of 1992, authorizing civil money penalties for failure to obtain a certificate, failure to comply with established standards, among other things.

(f) Section 2128 of the PHS Act authorizing civil money penalties for intentionally destroying, altering, falsifying, or concealing any record or report required to be prepared, maintained, or submitted by vaccine manufacturers pursuant to that section of the PHS Act.

§ 17.3 Definitions.

The following definitions are applicable in this part:

(a) For specific acts giving rise to civil money penalty actions brought under 21 U.S.C. 333(g)(1):

(1) *Significant departure,* for the purpose of interpreting 21 U.S.C. 333(g)(1)(B)(i), means a departure from requirements that is either a single major incident or a series of incidents that collectively are consequential.

(2) *Knowing departure,* for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(i), means a departure from a requirement taken: (a) With actual knowledge that the action is such a departure, or (b) in deliberate ignorance of a requirement, or (c) in reckless disregard of a requirement.

(3) *Minor violations,* for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(ii), means departures from requirements that do not rise to a level of a single major incident or a series of incidents that are collectively consequential.

(4) *Defective,* for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(iii), includes any defect in performance, manufacture, construction, components, materials, specifications, design, installation, maintenance, or service of a device, or any defect in mechanical, physical, or chemical properties of a device.

(b) *Person* or *respondent* includes an individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit thereof, or other legal entity, or as may be defined in the act or regulation pertinent to the civil penalty action being brought.

(c) *Presiding officer* means an administrative law judge qualified under 5 U.S.C. 3105.

(d) Any term that is defined in the act has the same definition for civil money penalty actions that may be brought under that act.

(e) Any term that is defined in Title 21 of the Code of Federal Regulations has the same definition for civil money penalty actions that may arise from the application of the regulation(s).

(f) Any term that is defined in the PHS Act has the same definition for civil money penalty actions that may be brought under that act.

(g) *Departmental Appeals Board (DAB)* means the Departmental Appeals Board of the Department of Health and Human Services.

§ 17.5 Complaint.

(a) The Center with principal jurisdiction over the matter involved shall begin all administrative civil money penalty actions by serving on the respondent(s) a complaint signed by the Office of the Chief Counsel attorney for the Center and by filing a copy of the complaint with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

(b) The complaint shall state:

(1) The allegations of liability against the respondent, including the statutory basis for liability, the identification of violations that are the basis for the alleged liability, and the reasons that the respondent is responsible for the violations;

(2) The amount of penalties and assessments that the Center is seeking;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the respondent's right to request a hearing by filing an answer and to retain counsel to represent the respondent; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the proposed amount of penalties and assessments, as provided in § 17.11.

(c) The Center may, on motion, subsequently amend its complaint to conform with the evidence adduced during the administrative process, as justice may require.

(d) The presiding officer will be assigned to the case upon the filing of the complaint under this part.

§ 17.7 Service of complaint.

(a) Service of a complaint may be made by:

(1) Certified or registered mail or similar mail delivery service with a return receipt record reflecting receipt; or

(2) Delivery in person to:

(i) An individual respondent; or

(ii) An officer or managing or general agent in the case of a corporation or unincorporated business.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit or declaration under penalty of perjury of the individual serving the complaint by personal delivery;

(2) A United States Postal Service or similar mail delivery service return receipt record reflecting receipt; or

(3) Written acknowledgment of receipt by the respondent or by the respondent's counsel or authorized representative or agent.

§ 17.9 Answer.

(a) The respondent may request a hearing by filing an answer with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, within 30 days of service of the complaint. Unless stated otherwise, an answer shall be deemed to be a request for hearing.

(b) In the answer, the respondent:

(1) Shall admit or deny each of the allegations of liability made in the complaint; allegations not specifically denied in an answer are deemed admitted;

(2) Shall state all defenses on which the respondent intends to rely;

(3) Shall state all reasons why the respondent contends that the penalties and assessments should be less than the requested amount; and

(4) Shall state the name, address, and telephone number of the respondent's counsel, if any.

(c) If the respondent is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the respondent shall, before the expiration of 30 days from service of the complaint, file a request for an extension of time within which to file an answer that meets the requirements of paragraph (b) of this

section. The presiding officer may, for good cause shown, grant the respondent up to 30 additional days within which to file an answer that meets the requirements of paragraph (b) of this section.

(d) The respondent may, on motion, amend its answer to conform with the evidence as justice may require.

§ 17.11 Default upon failure to file an answer.

(a) If the respondent does not file an answer within the time prescribed in § 17.9 and if service has been effected as provided in § 17.7, the presiding officer shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under the relevant statute, the presiding officer shall issue an initial decision within 30 days of the time the answer was due, imposing:

(1) The maximum amount of penalties provided for by law for the violations alleged; or

(2) The amount asked for in the complaint, whichever amount is smaller.

(b) Except as otherwise provided in this section, by failing to file a timely answer, the respondent waives any right to a hearing and to contest the amount of the penalties and assessments imposed under paragraph (a) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(c) If, before such a decision becomes final, the respondent files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the respondent from filing an answer, the initial decision shall be stayed pending a decision on the motion.

(d) If, on such motion, the respondent can demonstrate extraordinary circumstances excusing the failure to file an answer in a timely manner, the presiding officer may withdraw the decision under paragraph (a) of this section, if such a decision has been issued, and shall grant the respondent an opportunity to answer the complaint as provided in § 17.9(a).

(e) If the presiding officer decides that the respondent's failure to file an answer in a timely manner is not excused, he or she shall affirm the decision under paragraph (a) of this section, and the decision shall become final and binding upon the parties 30 days after the presiding officer issues the decision on the respondent's motion filed under paragraph (c) of this section.

§ 17.13 Notice of hearing.

After an answer has been filed, the Center shall serve a notice of hearing on the respondent. Such notice shall include:

(a) The date, time, and place of a prehearing conference, if any, or the date, time, and place of the hearing if there is not to be a prehearing conference;

(b) The nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held;

(c) A description of the procedures for the conduct of the hearing;

(d) The names, addresses, and telephone numbers of the representatives of the government and of the respondent, if any; and

(e) Such other matters as the Center or the presiding officer deems appropriate.

§ 17.15 Parties to the hearing.

(a) The parties to the hearing shall be the respondent and the Center(s) with jurisdiction over the matter at issue. No other person may participate.

(b) The parties may at any time prior to a final decision by the entity deciding any appeal agree to a settlement of all or a part of the matter. The settlement agreement shall be filed in the docket and shall constitute complete or partial resolution of the administrative case as so designated by the settlement agreement. The settlement document shall be effective upon filing in the docket and need not be ratified by the presiding officer or the Commissioner of Food and Drugs.

(c) The parties may be represented by counsel, who may be present at the hearing.

§ 17.17 Summary decisions.

(a) At any time after the filing of a complaint, a party may move, with or without supporting affidavits (which, for purposes of this part, shall include declarations under penalty of perjury), for a summary decision on any issue in the hearing. The other party may, within 30 days after service of the motion, which may be extended for an additional 10 days for good cause, serve opposing affidavits or countermove for summary decision.

The presiding officer may set the matter for argument and call for the submission of briefs.

(b) The presiding officer shall grant the motion if the pleadings, affidavits, and other material filed in the record, or matters officially noticed, show that there is no genuine issue as to any material fact and that the party is entitled to summary decision as a matter of law.

(c) Affidavits shall set forth only such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated. When a motion for summary decision is made and supported as provided in this regulation, a party opposing the motion may not rest on mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must set forth specific facts showing that there is a genuine issue of material fact for the hearing.

(d) If, on motion under this section, a summary decision is not rendered on all issues or for all the relief asked, and if additional facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings on facts still at issue. The facts specified not to be at issue shall be deemed established.

(e) Except as provided in § 17.18, a party may not obtain interlocutory review by the entity deciding the appeal (currently the DAB) of a partial summary decision of the presiding officer. A review of final summary decisions on all issues may be had through the procedure set forth in § 17.47.

§ 17.18 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section, rulings of the presiding officer may not be appealed before consideration on appeal of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the entity deciding the appeal (currently the DAB) if the presiding officer certifies on the record or in writing that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any participant, or substantial harm to the public interest.

(c) When an interlocutory appeal is made, a participant may file a brief on the appeal only if specifically authorized by the presiding officer or the entity deciding the appeal (currently the DAB), and if such authorization is granted, only within the period allowed by the presiding officer or the entity deciding the appeal. If a participant is authorized to file a brief, any other participant may file a brief in opposition, within the period allowed by the entity deciding the appeal (currently the DAB). The deadline for filing an interlocutory appeal is subject to the discretion of the presiding officer.

§ 17.19 Authority of the presiding officer.

(a) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The presiding officer has the authority to:

(1) Set and change the date, time, and place of the hearing on reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable time;

(3) Require parties to attend conferences for settlement, to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery consistent with § 17.23;

(8) Regulate the course of the hearing and the conduct of the parties;

(9) Examine witnesses;

(10) Upon motion of a party for good cause shown, the presiding officer may allow a witness to be recalled for additional testimony;

(11) Receive, rule on, exclude, or limit evidence;

(12) Upon motion of a party or on the presiding officer's own motion, take official notice of facts;

(13) Upon motion of a party, decide cases, in whole or in part, by summary decision when there is no genuine issue of material fact;

(14) Conduct any conference, argument, or hearing on motions in person or by telephone;

(15) Consolidate related or similar proceedings or sever unrelated matters;

(16) Limit the length of pleadings;

(17) Waive, suspend, or modify any rule in this part if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;

(18) Issue protective orders pursuant to § 17.28; and

(19) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this part.

(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

§ 17.20 Ex parte contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 17.21 Prehearing conferences.

(a) The presiding officer may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The presiding officer may use a prehearing conference to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of the other party) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery and scheduling dates for completion of discovery;

(9) The date, time, and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The presiding officer shall issue an order containing all matters agreed upon by the parties or ordered by the presiding officer at a prehearing conference.

§ 17.23 Discovery.

(a) No later than 60 days prior to the hearing, unless otherwise ordered by the presiding officer, a party may make a request to another party for production, inspection, and copying of documents that are relevant to the issues before the presiding officer. Documents must be provided no later than 30 days after the request has been made.

(b) For the purpose of this part, the term ''documents'' includes information, reports, answers, records, accounts, papers and other data and documentary evidence. Nothing contained in this section may be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system must be produced in a form readily accessible to the requesting party.

(c) Requests for documents, requests for admissions, written interrogatories, depositions, and any forms of discovery, other than those permitted under paragraphs (a) and (e) of this section, are not authorized.

(d)(1) Within 10 days of service of a request for production of documents, a party may file a motion for a protective order.

(2) The presiding officer may grant a motion for a protective order, in whole or in part, if he or she finds that the discovery sought:

(i) Is unduly costly or burdensome,

(ii) Will unduly delay the proceeding, or

(iii) Seeks privileged information.

(3) The burden of showing that a protective order is necessary shall be on the party seeking the order.

(4) The burden of showing that documents should be produced is on the party seeking their production.

(e) The presiding officer shall order depositions upon oral questions only upon a showing that:

(1) The information sought cannot be obtained by alternative methods, and

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

§ 17.25 Exchange of witness lists, witness statements, and exhibits.

(a) At least 30 days before the hearing, or by such other time as is specified by the presiding officer, the parties shall exchange witness lists, copies of prior written statements of proposed witnesses, and copies of proposed hearing exhibits, including written testimony.

(b)(1) If a party objects to the proposed admission of evidence not exchanged in accordance with paragraph (a) of this section, the presiding officer will exclude such evidence if he or she determines that the failure to comply with paragraph (a) of this section should result in its exclusion.

(2) Unless the presiding officer finds that extraordinary circumstances justified the failure to make a timely exchange of witness lists under paragraph (a) of this section, he or she must exclude from the party's hearing evidence the testimony of any witness whose name does not appear on the witness list.

(3) If the presiding officer finds that extraordinary circumstances existed, the presiding officer must then determine whether the admission of the testimony of any witness whose name does not appear on the witness lists exchanged under paragraph (a) of this section would cause substantial prejudice to the objecting party. If the presiding officer

finds that there is not substantial prejudice, the evidence may be admitted. If the presiding officer finds that there is substantial prejudice, the presiding officer may exclude the evidence, or at his or her discretion, may postpone the hearing for such time as is necessary for the objecting party to prepare and respond to the evidence.

(c) Unless a party objects within 5 days prior to the hearing, documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic for the purpose of admissibility at the hearing.

§ 17.27 Hearing subpoenas.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may, when authorized by law, request that the presiding officer issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 20 days before the date fixed for the hearing unless otherwise allowed by the presiding officer, upon a showing by the party of good cause. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed for service of a complaint in § 17.7.

(f) If a party or the individual to whom the subpoena is directed believes a subpoena to be unreasonable, oppressive, excessive in scope, or unduly burdensome, or if it wishes to raise any other objection or privilege recognized by law, the party or individual may file a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service. Such a filing will state the basis for the motion to quash. The presiding officer may quash or modify the subpoena or order it implemented, as justice may require.

§ 17.28 Protective order.

(a) A party or a prospective witness may file a motion for a protective order with respect to discovery sought by a party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) When issuing a protective order, the presiding officer may make any order which justice requires to protect a party or person from oppression or undue burden or expense, or to protect trade secrets or confidential commercial information, as defined in § 20.61 of this chapter, information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or other information that would be withheld from public disclosure under 21 CFR part 20. Such orders may include, but are not limited to, one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery provided for by this part other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That the contents of discovery or evidence be sealed;

(6) That the information not be disclosed to the public or be disclosed only in a designated way; or

(7) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

§ 17.29 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in a United States District Court. A check for witness fees and mileage shall accompany the subpoena when served.

§ 17.30 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act or event, and includes the last day of the period, unless either such day is a Saturday, Sunday, or Federal holiday, in which event the time includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation.

(c) When a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

§ 17.31 Form, filing, and service of papers.

(a) *Form*. (1) Documents filed with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, shall include an original and two copies.

(2) The first page of every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the Office of the Chief Counsel, and designation of the pleading or paper (e.g., ''motion to quash subpoena'').

(3) Every pleading shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the pleading was filed, or his or her counsel.

(4) Pleadings or papers are considered filed when they are received by the Dockets Management Branch.

(b) *Service.* A party filing a document with the Dockets Management Branch under this part shall, no later than the time of filing, serve a copy of such document on every other party. Service upon any party of any document, other than service of a complaint, shall be made by delivering a copy personally or by placing a copy of the document in the United States mail or express delivery service, postage prepaid and addressed, to the party's last known address. When a party is represented by counsel, service shall be made on such counsel in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the time and manner of service, shall be proof of service.

§ 17.32 Motions.

(a) Any application to the presiding officer for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, delivered to the presiding officer, and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The presiding officer may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the presiding officer, any party may file a response to such motion.

(d) The presiding officer may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or

following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

§ 17.33 The hearing and burden of proof.

(a) The presiding officer shall conduct a hearing on the record to determine whether the respondent is liable for a civil money penalty and, if so, the appropriate amount of any such civil money penalty considering any aggravating or mitigating factors.

(b) In order to prevail, the Center must prove respondent's liability and the appropriateness of the penalty under the applicable statute by a preponderance of the evidence.

(c) The respondent must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the presiding officer, who may order closure only to protect trade secrets or confidential commercial information, as defined in § 20.61 of this chapter, information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or other information that would be withheld from public disclosure under part 20 of this chapter.

§ 17.34 Determining the amount of penalties and assessments.

(a) When determining an appropriate amount of civil money penalties and assessments, the presiding officer and the Commissioner of Food and Drugs or entity designated by the Commissioner to decide the appeal (currently the DAB) shall evaluate any circumstances that mitigate or aggravate the violation and shall articulate in their opinions the reasons that support the penalties and assessments imposed.

(b) The presiding officer and the entity deciding the appeal shall refer to the factors identified in the statute under which the penalty is assessed for purposes of determining the amount of penalty.

(c) Nothing in this section shall be construed to limit the presiding officer or the entity deciding the appeal from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 17.35 Sanctions.

(a) The presiding officer may sanction a person, including any party or counsel for:

(1) Failing to comply with an order, subpoena, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including, but not limited to, those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with a discovery order, including discovery and subpoena provisions of this part, the presiding officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(3) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) The presiding officer may exclude from participation in the hearing any legal counsel, party, or witness who refuses to obey an order of the presiding officer. In the case of repeated refusal, the presiding officer may grant judgment to the opposing party.

(e) If a party fails to prosecute or defend an action under this part after service of a notice of hearing, the presiding officer may dismiss the action or may issue an initial decision imposing penalties and assessments.

(f) The presiding officer may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion or in compliance with the rules of this part.

(g) Sanctions imposed under this section may be the subject of an interlocutory appeal as allowed in § 17.18(b), provided that no such appeal will stay or delay a proceeding.

§ 17.37 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) Direct testimony shall be admitted in the form of a written declaration submitted under penalty of perjury. Any such written declaration must be provided to all other parties along with the last known address of the witness. Any prior written statements of witnesses proposed to testify at the hearing shall be exchanged as provided in § 17.25(a).

(c) The presiding officer shall exercise reasonable control over the manner and order of questioning witnesses and presenting evidence so as to:

(1) Make the examination and presentation effective for the ascertainment of the truth;

(2) Avoid undue consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The presiding officer shall permit the parties to conduct such cross-examination as may be required for a full disclosure of the facts.

(e) At the discretion of the presiding officer, a witness may be cross-examined on relevant matters without regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, a witness may be cross-examined on relevant matters with regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the presiding officer may order witnesses excluded so that they cannot hear the testimony of the other witnesses. This rule does not authorize exclusion of:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated to be the party's sole representative for purposes of the hearing; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by a party engaged in assisting counsel for the party.

(g) If a witness' testimony is submitted in writing prior to cross-examination, the cross-examining party need not subpoena the witness or pay for his or her travel to the hearing. The sponsoring party is responsible for producing the witness at its own expense, and failure to do so shall result in the striking of the witness' testimony.

§ 17.39 Evidence.

(a) The presiding officer shall determine the admissibility of evidence.

(b) Except as provided in this part, the presiding officer shall not be bound by the ''Federal Rules of Evidence.'' However, the presiding officer may apply the ''Federal Rules of Evidence'' when appropriate, e.g., to exclude unreliable evidence.

(c) The presiding officer shall exclude evidence that is not relevant or material.

(d) Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue

delay or needless presentation of cumulative evidence.

(e) Relevant evidence may be excluded if it is privileged under Federal law.

(f) Evidence of furnishing or offering or promising to furnish, or accepting or offering or promising to accept, a valuable consideration in settling or attempting to settle a civil money penalty assessment which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the civil money penalty or its amount. Evidence of conduct or statements made in settlement negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of settlement negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness or opposing a contention of undue delay.

(g) The presiding officer may in his or her discretion permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the presiding officer pursuant to § 17.28.

§ 17.41 The administrative record.

(a) The hearing will be recorded and transcribed. Witnesses, participants, and counsel have 30 days from the time the transcript becomes available to propose corrections in the transcript of oral testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections. Transcripts may be obtained following the hearing from the Dockets Management Branch at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing and all papers and requests filed in the proceeding constitute the administrative record for the decision by the presiding officer and the entity designated by the Commissioner of Food and Drugs to decide the appeal, currently the DAB.

(c) The administrative record may be inspected and copied (upon payment of a reasonable fee) by anyone unless otherwise ordered by the presiding officer, who shall upon motion of any party order otherwise when necessary to protect trade secrets or confidential commercial information, as defined in § 20.61 of this chapter, information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or other information that would be withheld from public disclosure under part 20.

§ 17.43 Posthearing briefs.

Any party may file a posthearing brief. The presiding officer shall fix the time for filing such briefs (which shall be filed simultaneously), which shall not exceed 60 days from the date the parties received the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The presiding officer may permit the parties to file responsive briefs. No brief may exceed 30 pages (exclusive of proposed findings and conclusions) unless the presiding officer has previously found that the issues in the proceeding are so complex, or the administrative record is so voluminous, as to justify longer briefs, in which case the presiding officer may set a longer page limit. Proposed findings of fact and conclusions of law shall not exceed 30 pages unless the presiding officer has previously found that the issues in the proceeding are so complex, or the administrative record is so voluminous, as to justify longer proposed findings and conclusions, in which case the presiding officer may set a longer page limit.

§ 17.45 Initial decision.

(a) The presiding officer shall issue an initial decision based only on the administrative record. The decision shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the allegations in the complaint are true, and, if so, whether respondent's actions identified in the complaint violated the law;

(2) Whether any affirmative defenses are meritorious; and

(3) If the respondent is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors that he or she finds in the case.

(c) The presiding officer shall serve the initial decision or the decision granting summary decision on all parties within 90 days after the time for submission of posthearing briefs and responsive briefs (if permitted) has expired. If the presiding officer believes that he or she cannot meet the 90-day deadline, he or she shall notify the Commissioner of Food and Drugs or other entity designated by the Commissioner to decide the appeal of the reason(s) therefor, and the Commissioner or that entity may then set a new deadline.

(d) Unless the initial decision or the decision granting summary decision of the presiding officer is timely appealed, the initial decision or the decision granting summary decision shall constitute the final decision of FDA and shall be final and binding on the parties 30 days after it is issued by the presiding officer.

§ 17.47 Appeals.

(a) Either the Center or any respondent may appeal an initial decision, including a decision not to withdraw a default judgment, or a decision granting summary decision to the Commissioner of Food and Drugs or other entity the Commissioner designates to decide the appeal. The Commissioner has currently designated the Departmental Appeals Board (DAB) to decide appeals under this part. Parties may appeal to the DAB by filing a notice of appeal with the DAB, rm. 637–D, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201, and the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, in accordance with this section.

(b) (1) A notice of appeal may be filed at any time within 30 days after the presiding officer issues an initial decision or decision granting summary decision.

(2) The Commissioner or the entity designated by the Commissioner to hear appeals may, within his or her discretion, extend the initial 30-day period for an additional period of time if the Center or any respondent files a request for an extension within the initial 30-day period and shows good cause.

(c) A notice of appeal shall be accompanied by a written brief of no greater length than that allowed for the posthearing brief. The notice must identify specific exceptions to the initial decision, must support each exception with citations to the record, and must explain the basis for each exception.

(d) The opposing party may file a brief of no greater length than that allowed for the posthearing brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief, unless such time period is extended by the Commissioner or the entity designated by the Commissioner to hear appeals on request of the opposing party for good cause shown. Any brief in opposition to exceptions shall be filed with the Dockets

Management Branch and the DAB (addresses above).

(e) The appellant may file a reply brief not more than 10 pages in length within 10 days of being served with appellee's brief.

(f) There is no right to appear personally before the Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB).

(g) The entity deciding the appeal will consider only those issues raised before the presiding officer, except that the appellee may make any argument based on the record in support of the initial decision or decision granting summary decision.

(h) If on appeal the entity deciding the appeal considers issues not adequately briefed by the parties, the entity may ask for additional briefing. However, no such additional briefs will be considered unless so requested.

(i) If any party demonstrates to the satisfaction of the entity deciding the appeal (currently the DAB) that additional evidence not presented at the hearing is relevant and material and that there were reasonable grounds for the failure to adduce such evidence at the hearing, the entity deciding the appeal may remand the matter to the presiding officer for consideration of the additional evidence.

(j) The Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB) will issue a decision on the appeal within 60 days, if practicable, of the due date for submission of the appellee's brief. In the decision, the entity deciding the appeal may decline to review the case, affirm the initial decision or decision granting summary decision (with or without an opinion), or reverse the initial decision or decision granting summary decision, or increase, reduce, reverse, or remand any civil money penalty determined by the presiding officer in the initial decision. If the entity deciding the appeal declines to review the case, the initial decision or the decision granting summary decision shall constitute the final decision of FDA and shall be final and binding on the parties 30 days after the declination by the entity deciding the appeal.

(k) The standard of review on a disputed issue of fact is whether the initial decision is supported by substantial evidence on the whole record. The standard of review on a disputed issue of law is whether the initial decision is erroneous.

§ 17.48 Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in any act done or omitted by the presiding officer or by any of the parties is grounds for vacating, modifying, or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the presiding officer or the Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB) to be inconsistent with substantial justice. The presiding officer and the entity deciding the appeal at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

§ 17.51 Judicial review.

(a) The final decision of the Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB) constitutes final agency action from which a respondent may petition for judicial review under the statutes governing the matter involved. Although the filing of a petition for judicial review does not stay a decision under this part, a respondent may file a petition for stay of such decision under § 10.35 of this chapter.

(b) The Chief Counsel of FDA has been designated by the Secretary of Health and Human Services as the officer on whom copies of petitions for judicial review are to be served. This officer is responsible for filing the record on which the final decision is based. The record of the proceeding is certified by the entity deciding the appeal (currently the DAB).

(c) Exhaustion of an appeal to the entity deciding the appeal (currently the DAB) is a jurisdictional prerequisite to judicial review.

§ 17.54 Deposit in the Treasury of the United States.

All amounts assessed pursuant to this part shall be delivered to the Director, Division of Financial Management (HFA–100), Food and Drug Administration, rm. 11–61, 5600 Fishers Lane, Rockville, MD 20857, and shall be deposited as miscellaneous receipts in the Treasury of the United States.

PART 20—PUBLIC INFORMATION

7. The authority citation for part 20 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

§ 20.86 [Amended]

8. Section 20.86 is amended by revising the first sentence to read as follows:

§ 20.86 Disclosure in administrative or court proceedings.

Data and information otherwise exempt from public disclosure may be revealed in Food and Drug Administration administrative proceedings pursuant to parts 10, 12, 13, 14, 15, 17, and 19 of this chapter or court proceedings, where data or information are relevant. * * *

Dated: July 12, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18325 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

Notice is hereby given that I have delegated to the Chair and Members of the Departmental Appeals Board authority to review administrative civil money penalty decisions pursuant to part 17 (21 CFR part 17). This authority was delegated to me by the Secretary of Health and Human Services under: The Federal Food, Drug, and Cosmetic Act, 21 CFR 5.10(a)(1); section 351 of the Public Health Service Act (42 U.S.C. section 262) concerning biologic recall orders, 21 CFR 5.10(a)(5); the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. section 300aa-28) concerning authority to impose administrative civil money penalties, 21 CFR 5.10(a)(35); and the Mammography Quality Standards Act of 1992 (42 U.S.C. section 263b(h)(2)), 21 CFR 5.10(a)(36). This authority concerns making final determinations with respect to the imposition of administrative civil monetary penalties on review of, or by declining to review, initial decisions and decisions granting summary decisions of Administrative Law Judges, as set forth in 21 CFR part 17.

This delegation becomes effective August 28, 1995.

Dated: July 20, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–18326 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–F

federal register

Thursday
July 27, 1995

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310 and 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use, Combination Bronchodilator Drug Products Containing Theophylline and Proposed Amendment of Monograph for OTC Bronchodilator Drug Products; Final Rule and Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 76N–052G]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Combination Bronchodilator Drug Products Containing Theophylline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that cough-cold combination drug products containing theophylline are not generally recognized as safe and effective and are misbranded for over-the-counter (OTC) use. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC cough-cold combination drug products containing theophylline that have come to the agency's attention. Also, this final rule lists in a regulation all OTC bronchodilator ingredients that have been found to be not generally recognized as safe and effective and are misbranded. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: January 29, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. The Panel recommended that theophylline as a single ingredient be Category I (generally recognized as safe and effective) (41 FR 38312 at 38373 and 38374). The Panel also recommended that combinations containing an oral sympathomimetic bronchodilator (e.g., ephedrine hydrochloride) and an oral bronchodilator (theophylline) be Category I (41 FR 38312 at 38326). Interested persons were invited to submit comments by December 8, 1976. Reply comments in response to comments filed in the initial comment period could be submitted by January 7, 1977.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

In the **Federal Register** of December 10, 1976 (41 FR 54032 at 54033), the agency announced that it did not agree with the Panel's recommendation that theophylline be classified in Category I and be made available for OTC use as a single ingredient because additional information, not available during the Panel's deliberations, indicated that the Panel's recommended therapeutic dose for theophylline may be toxic to some individuals. The new information suggested that the safe and effective use of theophylline requires careful dosage titration based on theophylline serum concentrations. The agency reaffirmed its decision to restrict single-ingredient theophylline preparations to prescription use only in the tentative final monograph for OTC bronchodilator drug products (47 FR 47520 at 47521, October 26, 1982). In the final monograph for OTC bronchodilator drug products (51 FR 35326 at 35331, October 2, 1986), the agency stated that it would address theophylline combinations in the tentative final monograph for OTC cough-cold combination drug products, in a future issue of the **Federal Register**.

In the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30544 to 30546, August 12, 1988), combination drug products containing theophylline and ephedrine were reclassified from Category I to Category II (not generally recognized as safe and/or effective). Additionally, the agency classified in Category II any OTC combination drug product that contains theophylline. Interested persons were invited to submit written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs (the Commissioner) and on the agency's economic impact determination for the proposal by December 12, 1988. New data could have been submitted by August 14, 1989, and comments on the new data by October 12, 1989.

In response to the OTC cough-cold combination drug products tentative final monograph, two manufacturers submitted comments and data on theophylline combination drug products, and two physicians submitted a case study related to a theophylline-ephedrine-phenobarbital combination product. Another comment reported injuries it considered to be caused by theophylline toxicity. Although that comment was submitted after the administrative record had closed, the agency considered it important and has addressed it in this final rule. Copies of the comments are on public display in the Dockets Management Branch (address above).

In this final rule, the agency is declaring OTC cough-cold combination drug products containing theophylline to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing drugs for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). In this final rule, the agency is amending part 310 (21 CFR part 310) (nonmonograph conditions) by adding to § 310.545(a)(6) new paragraph (iv) to include any cough-cold combination drug products containing theophylline.

In the advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products (41 FR 38312), the agency stated that the conditions for products excluded from the monograph (Category II) should be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph in the **Federal Register**, regardless of whether further testing is undertaken to justify their future use. The agency also stated that conditions included in the monograph (Category I) should be effective 30 days after the date of publication of the final monograph in the **Federal Register**. In the tentative final monograph for OTC cough-cold combination drug products, the agency extended this 30-day period to 12 months in order to provide a reasonable

period of time for relabeling and reformulation of products covered by the monograph (53 FR 30522 at 30523).

In the case of OTC combination bronchodilator drug products containing theophylline, the agency has determined that no combination is generally recognized as safe and effective for this use. Accordingly, the agency is not establishing any monograph conditions for these combination drug products. Thus, there is no need for a 12-month period for relabeling and reformulation of these products. As stated in the advance notice of proposed rulemaking, these conditions should be eliminated from OTC drug products effective 6 months after the date of publication of this final rule. Therefore, on or after January 29, 1996, no OTC cough-cold combination drug products containing theophylline may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application. Any such OTC drug product in interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

In the final rule for OTC bronchodilator drug products (51 FR 35326 at 35338), the agency listed a number of nonmonograph bronchodilator ingredients. At that time, § 310.545 had not been established. Thus, none of these nonmonograph bronchodilator ingredients are listed in that regulation.

Accordingly, at this time, the agency is also listing in § 310.545(a)(6)(iv) all of the nonmonograph bronchodilator active ingredients discussed in that final rule. The effective date of nonmonograph status for these ingredients, which did not apply to combinations containing theophylline, was October 2, 1987. The date of nonmonograph status of combinations containing theophylline will be January 29, 1996.

II. The Agency's Conclusions on the Comments

1. One comment requested that the agency ban theophylline in OTC drug products. The comment mentioned the growing body of medical literature highly critical of theophylline's safety record. The comment contended that theophylline can be a dangerous drug and its use should be tailored (by a physician) to the individual patient. The comment mentioned 26 incidents of theophylline-caused injuries, most of which involved young asthma patients who sustained brain damage from seizures or died as a result of using theophylline. The comment emphasized the need for greater understanding of the use of theophylline, especially when used by children or anyone suffering from fever or a viral infection, such as the flu.

Another comment reported a case involving a 6-year-old child who had been admitted to the hospital with a diagnosis of complex febrile seizures (Ref. 1). Because such febrile seizures often do not reoccur, the child was not placed on anticonvulsant medication, but was observed over time. Several months later, when the child was readmitted with gastroenteritis presumably of viral etiology, the physician discovered that the child had been taking an OTC drug product containing 130 milligrams (mg) theophylline, 24 mg ephedrine, and 8 mg phenobarbital twice daily for asthma prophylaxis. The comment indicated that the presence of phenobarbital in this product could have affected the patient's clinical course and/or recognition of reoccurring seizures. The comment urged the agency to remove this type of combination product from the OTC marketplace.

The agency agrees with the comments that theophylline-containing combination drug products should no longer be available OTC. In the OTC cough-cold combination tentative final monograph (53 FR 30522 at 30544 to 30546), the agency stated its awareness of the increase in adverse effects associated with the use of theophylline and ephedrine combination drug products. Moreover, the agency concluded that whether theophylline is administered as a single ingredient or in combination with other drugs, it is essential that a physician titrate theophylline dosage based on individual patient measurements of theophylline serum levels. Thus, the agency classified any OTC combination drug product containing theophylline as Category II (not generally recognized as safe and/or effective) and reaffirmed its position that theophylline should be administered under professional supervision.

More recent data also support the conclusion that theophylline is not safe for OTC use. These include:

(1) Twenty-six incidents of theophylline-caused injury between 1980 and 1991 (involving mostly young asthma patients), including 6 deaths (likely causally related), 15 cases of brain damage (not otherwise defined), 4 seizures and/or coma, and 1 rapid heartbeat (Ref. 2); (2) FDA adverse reaction reports for the years 1969 to March, 1994 (Ref. 3); and (3) the American Association of Poison Control Centers National Data Collection System (Refs. 4 through 7).

The agency's adverse reaction reporting system (Ref. 3) includes 116 adverse reactions associated with theophylline-containing combination drug products. Twenty-two of these reactions were serious: 4 resulted in death; 15 resulted in hospitalization; and 3 were disabling. These reports include both prescription and OTC use of theophylline combination drug products. Adverse reaction reports involving single ingredient theophylline drug products include 2,175 cases. Of these, 782 were serious, 111 resulted in death, 5 others were considered life-threatening, 4 required medical intervention to prevent impairment, 698 resulted in hospitalization, and 27 were disabling (Ref. 3).

The annual reports of the American Association of Poison Control Centers for the years 1990 to 1993 (Refs. 4 through 7) concerning theophylline exposures state the following: (1) In 1990, there were 6,527 theophylline exposures resulting in 36 deaths, 93 major (severe) outcomes, 622 moderate outcomes, and 2,039 minor outcomes; (2) in 1991, there were 6,744 theophylline exposures resulting in 38 deaths, 138 major outcomes, 619 moderate outcomes, and 2,101 minor outcomes; (3) in 1992, there were 5,735 theophylline exposures resulting in 35 deaths, 113 major outcomes, 596 moderate outcomes, and 1,343 minor outcomes; and (4) in 1993, there were 4,473 theophylline exposures resulting in 27 deaths, 120 major outcomes, 782 moderate outcomes, and 1,026 minor outcomes. The agency notes that these reports do not differentiate theophylline exposure as resulting from prescription or OTC drug products; nor do the reports differentiate exposure as resulting from drug products containing theophylline as a single ingredient or in combination with another active ingredient.

Tsiu et al. (Ref. 8) reported 1,570 published cases of theophylline-induced toxicities from 1973 through 1988, which included 198 seizures, 525 cardiovascular complications, and 63 deaths. The study indicates that many patients suffered serious and frequently fatal side effects, despite receiving ''standard'' prescription doses of theophylline. This type of reporting emphasizes the narrow therapeutic index of theophylline and the need to determine individual dose titration levels.

Sessler (Ref. 9) examined the clinical and pharmacokinetic characteristics of

5,557 theophylline-related toxicity reports from two hospitals over a 2-year period. Ten percent of the reported cases had serum theophylline concentrations above the therapeutic range, while 2 percent of these cases reported serum theophylline concentrations greater than 30 micrograms per milliliter (µg/mL). Of the 116 cases having serum theophylline concentrations greater than 30 µg/mL, 12 percent were due to acute overdose and 88 percent due to chronic overmedication. Sessler stated that cases of theophylline-induced toxicity are relatively common in hospital emergency departments, result primarily from patient and physician dosing errors, and cause a broad range of toxic manifestations of varying severity. Sessler indicated that the most common single cause of toxicity is inappropriate drug administration by the patient, i.e., additional doses administered for the relief of bronchospasm and/or dyspnea (difficulty in breathing).

In a recent prospective study (Ref. 10), Shannon evaluated major theophylline toxicity of 249 subjects with acute theophylline intoxication: 119 subjects with acute intoxication who were not receiving theophylline therapy, 92 subjects with chronic intoxication due to overmedication, and 38 subjects who ere acutely intoxicated while on theophylline therapy. The study pointed out that chronic overmedication is responsible for the high rate of morbidity and mortality in elderly subjects with theophylline intoxication. Shannon concluded that the data support the admonition that theophylline should be used cautiously, if at all, in elderly patients, and that close patient monitoring is necessary.

The data discussed above demonstrate an incidence of theophylline-related, life-threatening events and deaths, and a narrow therapeutic window for the safe use of theophylline. Accordingly, the agency concludes that theophylline should be administered under professional supervision and not be available OTC. Therefore, all OTC cough-cold combination drug products containing theophylline are considered nonmonograph.

References

(1) Comment No. C211, Docket No. 76N–052G, Dockets Management Branch.

(2) Letter from M. Maher, Association of Trial Lawyers of America, to J. S. Benson, FDA, dated October 25, 1990, in OTC Vol. 04THFM, Docket No. 76N–052G, Dockets Management Branch.

(3) Department of Health and Human Services, Food and Drug Administration, ''Spontaneous Reporting System, Line Listing of Adverse Reports: Theophylline Adverse Drug Event Profile,'' January 1969 to March 1994, in OTC Vol. 04THFM, Docket No. 76N–052G, Dockets Management Branch.

(4) Litovitz, T.L. et al., ''1990 Annual Report of the American Association of Poison Control Centers National Data Collection System,'' The American Journal of Emergency Medicine, 9:488, 1991.

(5) Litovitz, T.L. et al., ''1991 Annual Report of the American Association of Poison Control Centers National Data Collection System,'' The American Journal of Emergency Medicine, 10:480, 1992.

(6) Litovitz, T.L. et al., ''1992 Annual Report of the American Association of Poison Control Centers Toxic Exposure Surveillance System,'' The American Journal of Emergency Medicine, 11:530, 1993.

(7) Litovitz, T.L. et al., ''1993 Annual Report of the American Association of Poison Control Centers Toxic Exposure Surveillance System,'' The American Journal of Emergency Medicine, 12:580, 1994.

(8) Tsiu, S.J. et al., ''Theophylline Toxicity: Update,'' Annals of Allergy, 64:241–257, 1990.

(9) Sessler, C.N., ''Theophylline Toxicity: Clinical Features of 116 Consecutive Cases,'' The American Journal of Medicine, 88:567–576, 1990.

(10) Shannon, M., ''Predictors of Major Toxicity after Theophylline Overdose,'' Annals of Internal Medicine, 119:1161–1167, 1993.

2. Two comments disagreed with the agency's Category II classification of any OTC cough-cold combination drug product containing theophylline (53 FR 30544 at 30546). One comment stated that OTC combination bronchodilator drug products containing theophylline and ephedrine provide the same benefit to asthmatics as either single active ingredient when used for temporary relief of symptoms associated with episodic asthma. The comment asserted that low dose theophylline and ephedrine combinations have an extensive marketing history and a record of safe and effective use. The comment submitted two clinical studies (Refs. 1 and 2) in support of the therapeutic benefit of both theophylline and ephedrine and the additive effect(s) when both ingredients are taken in combination in fixed dosage. The comment contended that the two clinical studies confirm the following: (1) Low dose theophylline in combination products is therapeutically effective; (2) addition of low dose theophylline enhances the effectiveness of ephedrine; and (3) significant clinical benefit is achieved from using the combination product. The comment concluded that these studies provide substantial evidence to adequately support a final determination by the agency that low dose theophylline in combination with ephedrine is generally recognized as safe and effective as an OTC combination bronchodilator drug product.

The second comment stated that adequate and well-controlled clinical studies and 50 years of successful OTC use in the management of reversible bronchospastic disorder have demonstrated the safety and effectiveness of its OTC combination bronchodilator drug product containing 130 mg theophylline, 24 mg ephedrine, and 8 mg phenobarbital. In support of the additive effects and benefits from combining theophylline with ephedrine, the comment submitted data, literature reviews, and affidavits from several health care providers (Refs. 3 through 50). The comment stated that the data presented show that the combination drug product containing theophylline and ephedrine is a rational drug combination by virtue of the synergistic effects of the two bronchodilators, and that the reduction in the dosage of each component reduces the risk of toxicity from either ingredient. The comment added that such combination drug products provide mild to moderate chronic and stable asthmatic individuals with safe and effective medication that is convenient and cost-effective.

The agency has reviewed the submitted data and information, considered other pertinent information, and determined that the existing data do not support the safety and effectiveness of OTC combination drug products containing theophylline and ephedrine. The agency notes that on July 20 and 21, 1981, the FDA Pulmonary-Allergy Drugs Advisory Committee (the Committee) met and concluded that there was insufficient evidence to demonstrate the additive effect for combination drug products containing theophylline and ephedrine (Ref. 51). The Committee met again on November 4, 1982, and stated that it did not favor the continued OTC or prescription marketing of theophylline and ephedrine fixed combination drug products (Ref. 52). In the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30545 to 30546), the agency agreed with the Committee that: (1) Insufficient evidence exists to support the use of theophylline and ephedrine in combination; (2) ephedrine adds little benefit to the theophylline and ephedrine combination when theophylline is given in a dosage titrated for the individual patient; (3) individual dosage titration for theophylline is needed; and (4) an increase in adverse effects has been associated with the use of theophylline and ephedrine combination drug products.

The additional data submitted by the comments do not change the agency's position. One unpublished study (WM–339) (Ref. 1) addressed the therapeutic benefit of a combination containing 130 mg theophylline and 24 mg ephedrine. This randomized, double-blind, placebo-controlled, four-way crossover study compared the bronchodilator effects of single doses of theophylline, ephedrine, theophylline with ephedrine, and placebo in 30 subjects with reversible bronchospasm. According to the comment, the study demonstrates that ephedrine is an effective single ingredient bronchodilator and that combination drug treatment with theophylline plus ephedrine is significantly more effective than treatment with either single ingredient in providing relief from reversible airway obstruction attributable to bronchial asthma.

The agency finds that study WM–339 (Ref. 1) does not provide substantial evidence that both ingredients in the combination drug product make a contribution to the claimed effects. According to the authors, effectiveness of the two single ingredient products (130 mg theophylline and 24 mg ephedrine), the combination product (both theophylline and ephedrine), and placebo (inert tablet) was compared using the following endpoints: (1) Results of spirometric measurements of forced expiratory volume in 1 second (FEV_1) and the peak expiratory flow rate, (2) subjective evaluations of test subjects, and (3) incidence of therapeutic failure. The authors concluded that the combination therapy was superior to both placebo and to the single ingredients for spirometric measurements at several time points and for subjective patient global responses. Although significantly fewer failure rates were reported for the combination treatment group than for the placebo group, there was no significant difference in treatment failures between either individual ingredient and the combination product.

Flaws in the design and analysis of this study preclude substantiation of the authors' conclusions. First, the agency does not consider a single-dose, crossover study sufficient to establish effectiveness of both components of this fixed combination that would be used for multiple doses in a dynamic illness. Treatment-by-sequence effects, possible carryover effects, and dynamic changes in the subject's baseline disease over time could not be assessed because individual subject information was not provided.

Second, the agency considers inappropriate the method utilized to specify and analyze all effectiveness data recorded for treatment failures. Treatment failures were defined by inability to record at least one FEV_1 measurement with a minimum 15 percent improvement during the first 2 hours, and dropouts after the first 2 hours of observation. The planned analysis specified proper handling of treatment failure dropouts. However, 88 percent (15 of 17) of the subjects with at least a single treatment failure at the 2-hour observation point were allowed to finish the same 6-hour study period and were included in the evaluation of effectiveness. Some of these subjects may have received the allowed 2-hour rescue medication generating ''improved'' data for observation points between 2 and 6 hours, which cannot be attributed to the assigned study drug.

Finally, beta-agonist aerosol rescue medication was allowed by the study protocol at the single 2-hour observation point. This caused effectiveness results to be compromised by inclusion of further data in the analysis of effectiveness whether or not use of the rescue medication was considered a treatment failure.

The agency discussed the Sims et al. study (Ref. 2), submitted by one comment, in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30544). During two phases in that study, several combination products, including one containing 130 mg theophylline and 25 mg ephedrine, were compared to single doses of theophylline and ephedrine in 10 adults with mild but continuously symptomatic asthma and in 10 nonsmoking healthy adults. Reported results were that: (1) A single dose of 130 mg theophylline combined with 25 mg ephedrine produced a bronchodilator effect in subjects with mild to moderate asthma; (2) the theophylline and ephedrine combination caused more side effects (i.e., tremor, nervousness, nausea) than either ingredient alone; and (3) one theopylline and ephedrine combination was more effective than either drug alone, but there was no improvement in bronchodilator effectiveness for another combination despite higher theophylline blood levels achieved after 2 weeks of multiple dosing with a combination product containing theophylline, ephedrine, and phenobarbital. To explain the observed lack of improved lung function after multiple dosing with higher theophylline blood levels, the authors suggested the development of tolerance to theophylline, ephedrine, or both. The agency considers this two-phase study insufficient to support the claim that the combination of theophylline and ephedrine is more effective than either single active ingredient alone for the treatment of mild, continuously symptomatic asthma. The agency concludes that this study does not provide sufficient data to support the use of OTC combination drug products containing theophylline and ephedrine.

The agency has also reviewed the other studies (Refs. 3 through 50) and determined that the data do not substantiate the safe and effective use of OTC combination drug products containing theophylline. References 3 through 6 were previously addressed in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30544). Reference 7 reported superior effects of a combination of two drugs (theophylline and ephedrine) over single ingredient products (theophylline or ephedrine) in ameliorating exercise-induced bronchospasm. However, a three ingredient combination drug product (theophylline, ephedrine, and hydroxyzine hydrochloride) was used in these studies. Further, the side effects (drowsiness, tremors, nausea, insomnia, and palpitations) made the theophylline-ephedrine combination product unacceptable to almost one-half of the subjects in the study.

References 8 and 9 suggested that combinations are more effective than their individual components in controlling induced bronchospasm and modifying both early asthmatic response and late asthmatic response. However, two other reports (Refs. 49 and 50) indicated that oral theophylline has no effect on airway hyperresponsiveness even at dose levels greater than the fixed dose (780 mg per day) currently available OTC.

Reference 10 noted that in some studies additive effects of the combination drug product containing theophylline are recorded and in other studies they are not. Reference 11 was a double-blind, placebo-controlled, randomized cross-over study of a combination of three ingredients (theophylline, ephedrine, and hydroxyzine), another combination of three ingredients (theophylline, ephedrine, and phenobarbital), and a single ingredient product containing ephedrine. The authors reported that both combinations were more effective than ephedrine alone, but the study did not include a single ingredient product containing theophylline. Therefore, the study was unable to evaluate the contribution of ephedrine.

References 12 and 13 indicated that the prescription drugs metaproterenol

(Ref. 12) and terbutaline (Ref. 13) produced additive effects when given with theophylline. However, these data concerning additive effects of prescription drugs are irrelevant to OTC use of ephedrine. Reference 14 involved a comparison of a three ingredient combination drug product containing 130 mg theophylline, 24 mg ephedrine, and 8 mg phenobarbital to a single ingredient product containing 300 mg theophylline, given four times a day. The investigators recorded similar pulmonary function responses for the two products. However, it is difficult to assess these results because the two products contained different amounts of theophylline. The appropriate study to establish effectiveness would have been to compare the combination product to a single ingredient product containing the same amount of theophylline.

None of the other reports (Refs. 15 through 48) contains information to demonstrate safety and effectiveness. References 15 through 26 provided general information only. References 27 through 31 do not contain any clinical trials, and references 32 through 48 involved the comment's sustained action formulation. Some of these studies employed either a placebo control (Ref. 33) or a beta-agonist control other than ephedrine (Refs. 35 through 38). Two other studies (Refs. 32 and 34) compare the safety and effectiveness of a theophylline-containing sustained action dosage form and a theophylline-containing immediate release dosage form. References 39 through 48 lack study controls and are some of the early 1976 trials in Europe that dealt with a variety of disease entities.

The affidavits contained statements from several health care providers that the combination therapy of 130 mg theophylline and 24 mg ephedrine in fixed doses provides safe and effective therapy for the treatment of mild asthma. However, none of the affidavits included any new scientific data to support the safety and effectiveness of any OTC combination drug product containing theophylline and ephedrine.

The agency concludes that the submitted data do not support any combination bronchodilator drug products containing theophylline as safe and effective for OTC use, particularly with regard to effectiveness at steady state. Substantial evidence has not been provided to demonstrate that each ingredient in the combination of theophylline and ephedrine makes a contribution to the claimed effects as noted in § 330.10(a)(4)(iv) (21 CFR 300.10(a)(4)(iv)). Accordingly, in this final rule, combination bronchodilator drug products containing theophylline are not generally recognized as safe and effective and are considered misbranded for OTC use.

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III. Analysis of Impacts

An analysis of the cost and benefits of this regulation, conducted under Executive Order 12291, was discussed in the tentative final monograph of August 12, 1988 (53 FR 30522). No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (53 FR 30522 at 30560), and the substance of that analysis has not changed. Executive Order 12291 has been superseded by Executive Order 12866.

FDA has examined the impacts of the final 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 final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency concludes that there is no basis for the continued marketing of any OTC combination cough-cold drug products containing theophylline with claims or directions for use as a bronchodilator and/or antiasthmatic drug product. In the interim, manufacturers may be able to reformulate to single ingredient ephedrine drug products. However, elsewhere in this issue of the **Federal Register**, the agency is proposing to remove the ingredients ephedrine, ephedrine hydrochloride, ephedrine sulfate, and racephedrine hydrochloride from the bronchodilator final monograph and to require premarket approval for any OTC drug product containing these ingredients. If that proposal is finalized, manufacturers will not be able to market any OTC bronchodilator drug products containing theophylline or ephedrine without obtaining an approved application.

Early finalization of the nonmonograph status of OTC cough-cold combination drug products containing theophylline will benefit consumers by early removal from the marketplace of drug products for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Bronchodilator drug products containing epinephrine will continue to be available for consumers to use on an OTC basis to treat bronchial asthma. Based on the information above, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

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

At the time that the final monograph for OTC bronchodilator drug products was published in the **Federal Register** of October 2, 1986 (51 FR 35326), the agency had not established § 310.545, which lists certain active ingredients that are not generally recognized as safe and effective for certain OTC drug uses. Therefore, bronchodilator ingredients that were found to be nonmonograph in 1986 are not currently included in § 310.545. In this final rule, the agency is listing in new § 310.545(a)(6)(iv) all nonmonograph bronchodilator ingredients. New § 310.545(a)(6)(iv)(A) includes the following ingredients: Aminophylline, belladonna alkaloids, euphorbia pilulifera, metaproterenol sulfate, methoxyphenamine hydrochloride, pseudoephedrine hydrochloride, pseudoephedrine sulfate, and theophylline preparations (theophylline, anhydrous; theophylline calcium salicylate; theophylline sodium glycinate). New § 310.545(a)(6)(iv)(B) includes any combination drug product containing theophylline (e.g., theophylline and ephedrine, or theophylline and ephedrine and phenobarbital). The agency is also amending § 310.545(d) to add new paragraphs (d)(19) and (d)(20) to list the effective dates for the ingredients in new § 310.545(a)(6)(iv)(A) and (a)(6)(iv)(B), respectively.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraphs (a)(6)(iv), (d)(19), and (d)(20) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(iv) *Bronchodilator drug products*—

(A) *Approved as of October 2, 1987.*

Aminophylline
Belladonna alkaloids
Euphorbia pilulifera
Metaproterenol sulfate
Methoxyphenamine hydrochloride
Pseudoephedrine hydrochloride
Pseudoephedrine sulfate
Theophylline, anhydrous
Theophylline calcium salicylate
Theophylline sodium glycinate

(B) Approved as of January 29, 1996. Any combination drug product containing theophylline (e.g., theophylline and ephedrine, or theophylline and ephedrine and phenobarbital).

* * * * *

(d) * * *

(19) October 2, 1987, for products subject to paragraph (a)(6)(iv)(A) of this section.

(20) January 29, 1996, for products subject to paragraph (a)(6)(iv)(B) of this section.

* * * * *

Dated: July 5, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–18449 Filed 7–26–95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 341

[Docket No. 95N–0205]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Monograph for OTC Bronchodilator Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) bronchodilator drug products to remove the ingredients ephedrine, ephedrine hydrochloride, ephedrine sulfate, and racephedrine hydrochloride and to classify these ingredients as not generally recognized as safe and effective for OTC use. This action is being taken in response to a request from the U.S. Department of Justice, Drug Enforcement Administration (DEA) to restrict OTC availability of ephedrine because of its illicit use as the primary precursor utilized in the synthesis of the controlled substances methamphetamine and methcathinone. This action is also based on new information that shows that the misuse and abuse of OTC ephedrine drug products has the potential for causing harm and on comments made by FDA's Pulmonary-Allergy Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee on November 14, 1994. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments or objections by August 28, 1995; written comments on the agency's economic impact determination by August 28, 1995. FDA is proposing that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 9, l976 (41 FR 38312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The Panel recommended that ephedrine preparations be Category I (generally recognized as safe and effective) for OTC bronchodilator use (41 FR 38312 at 38370 and 38371, September 9, 1976). The agency concurred with the Panel in the bronchodilator tentative final monograph (47 FR 47520 at 47527, October 26, 1982) and included ephedrine preparations in the final monograph for OTC bronchodilator drug products (51 FR 35326 at 35339, October 2, 1986).

II. Recent Developments

Since publication of the final monograph for OTC bronchodilator drug products, the agency's views about OTC ephedrine-containing bronchodilator drug products have changed for several reasons: (1) A large-scale diversion of OTC ephedrine-containing drug products to illicit use in the manufacture of the controlled substances methamphetamine and methcathinone, (2) new information that ephedrine may be unsafe for OTC use and has the potential for causing harm as a result of misuse and abuse, due to widespread and easy availability as an OTC drug, and (3) the consensus of FDA's Pulmonary-Allergy Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee (the Committee) on November 14, 1994, that the use of oral ephedrine drug products as an OTC bronchodilator to relieve the symptoms of asthma can no longer be justified when the drug's potential for illicit use and misuse is considered.

III. Illicit Use of OTC Ephedrine Drug Products

FDA has received correspondence and inquiries from consumers, U.S. Senators, DEA, and others (Ref. 1) concerning the need for additional controls on the distribution of OTC ephedrine-containing drug products. The ''Domestic Chemical Diversion Control Act of 1993, Pub. L. 103–200'' was signed into law on December 17, 1993, to control the diversion of certain chemicals (e.g., ephedrine) used in the illicit production of controlled substances such as methcathinone and methamphetamine. The law became effective on April 16, 1994, and removed the exemption from the definition of a ''regulated transaction'' that had existed for single entity ephedrine drug products legally marketed under the Federal Food, Drug, and Cosmetic Act (the act). Thus, drugs that were previously marketed lawfully under the act are no longer exempt from chemical precursor controls. The new law was intended to close this loophole and help eliminate the availability of ephedrine as a raw material source in the clandestine synthesis of methamphetamine and methcathinone.

In the **Federal Register** of October 11, 1994 (59 FR 51365), DEA issued a final rule eliminating the threshold for ephedrine and subjecting all transactions involving bulk ephedrine and single entity ephedrine drug products to the applicable provisions of the Controlled Substances Act (21 U.S.C. 801). The final rule eliminated the threshold (an amount of a listed chemical that determines if a transaction such as receipt or sale of the chemical is a regulated transaction under part 1310 (21 CFR part 1310)) for single entity ephedrine drug products. The final rule established that all transactions involving ephedrine, regardless of size, are subject to recordkeeping and reporting requirements set forth in part 1310 and the notification provisions of part 1310 (21 CFR part 1313). However, the final rule did not apply to combination drug products containing ephedrine.

At the Committee meeting on November 14, 1994, the Committees discussed OTC bronchodilator drug products. DEA had submitted a comment (Ref. 2) to the Committee expressing its concern that, although the recent legislation and proposed regulations (59 FR 12562, March 17, 1994) (now final regulations (59 FR 51365)) adequately address the ability to control single ingredient ephedrine products, DEA is aware that laboratories may turn to combination drug products containing ephedrine and guaifenesin that would be exempt from the final rule.

The comment stated that the illicit use of OTC ephedrine drug products is contributing to a serious public health problem that is an extremely critical

issue requiring further action at the Federal level. The comment added that the OTC marketing status and broad distribution of these products is hindering efforts to prevent this illicit use of ephedrine and urged the Committees to restrict the OTC availability of this ingredient.

The agency has also received comments from county, State, and Federal Government organizations; pharmacists' associations; and consumers who object to the continued marketing of OTC ephedrine drug products because some manufacturers are promoting these products for misuse as stimulant, weight control, and muscle enhancement products (Ref. 3). The comments contended that this promotion has resulted in extensive and extremely dangerous misuse and abuse of such products, particularly in teenaged children.

IV. Misuse and Abuse of OTC Ephedrine Drug Products

The agency has received a number of reports (Ref. 4) of young people abusing OTC ephedrine drug products. In one case, nine junior high school students took three to eight ephedrine 25 milligram (mg) tablets for added energy and experienced rapid heart beats. One female who took eight tablets had 200 heart beats per minute 2 hours after taking the tablets. The student was able to purchase the ephedrine tablets from a product display at a local convenience store without being questioned about the reason for its use. Another report (Ref. 5) indicated that three 15-year-old girls had consumed 24 to 33 tablets of ephedrine-containing OTC drugs for ''kicks.''

The agency is aware of numerous other reports involving young people who have overdosed by using OTC ephedrine products promoted as a stimulant or for weight control, or by using such products for recreational purposes in high doses and on a regular basis. One report (Ref. 5) involved a 17-year-old male who died after ingesting a toxic or lethal amount of ephedrine. The youth apparently took the ephedrine to increase alertness, strength, and physical stamina. In another case (Ref. 4), a 21-year-old female developed respiratory problems (trouble breathing) after taking three to four 25 mg ephedrine tablets, purchased OTC, every other hour (and then every hour) over an 8-hour period and consuming alcoholic beverages. Hospitalization resulted from this recreational use of ephedrine.

In another case (Ref. 4), a 22-year-old female took OTC ephedrine tablets because her friends had told her they would act as ''uppers.'' The woman's job required her to work long hours, and she felt she needed a chemical pick-up to get through the day. She presented to a hospital emergency room with headache, nausea, anxiety, and blood pressure of 170/110 millimeters mercury. She was treated, with no permanent adverse effects.

FDA's Spontaneous Reporting System also contains a number of reports of ephedrine misuse and abuse (Ref. 4), some of which have resulted in death due to an overdose of ephedrine. In one case, a 52-year-old male took 10 to 15 ephedrine tablets (believed to be 50 mg) over the previous 24 hours. In another case, a 24-year-old male who died of an overdose had a blood level of ephedrine over 30 times the usual therapeutic range. In another overdose case, the reporting pharmacist commented that ''ephedrine is becoming a drug for abuse—would recommend to withdraw OTC status.'' In another case, the reporting hospital pharmacist noted that the ephedrine overdose (in a 19-year-old female) was the second incident observed this year for these ephedrine/caffeine products sold at convenience markets and ''not FDA regulated.''

Interested consumers and state regulatory officials (e.g., health departments, boards of pharmacy) have expressed concern about OTC ephedrine drug products being sold under brand names that reflect a use other than as a bronchodilator (e.g., use as a stimulant or for weight control); about products being readily available at convenience stores, truck stops, gas stations, and mini-marts with little, or no, restriction on their sale; and about products being purchased and used by children and adolescents, on an ever increasing basis, with a continuing increase in the number of reported adverse events.

One director of an addictions program informed FDA (Ref. 6) that his locality (in Indiana) is experiencing a surge of adverse responses or reactions to the use of OTC ephedrine being abused for its stimulant effect. He reported that a number of people abusing ephedrine have demonstrated stimulant dependence characterized by compulsion, obsession, or preoccupation, and that ephedrine abuse has induced or worsened mental disorders such as depressive anxiety and different thought disorders. He stated that people are obtaining the drug OTC as ephedrine (not in combination with other drugs) under different brand names, some of which are advertised as an ''energizer.'' He mentioned that the age group abusing ephedrine ranges from teenagers to people who are in their 40's.

A nurse reported her daughter's adverse experience with an OTC ephedrine product (Ref. 4) and mentioned that within the last year the child's pediatrician had treated several adolescents who had overdosed on ephedrine. The nurse added that many emergency room physicians are seeing behavior similar to schizophrenia occurring in young adults as a result of ephedrine obtained OTC. The nurse questioned why this drug was readily purchasable by unsuspecting teenagers.

The agency concludes that these reports show that OTC ephedrine drug products are marketed in ways that are misleading, that promote misuse and abuse, and that can be dangerous. The agency believes that these reports represent only a small percentage of the actual number of adverse events that have occurred and that ephedrine misuse and abuse are a widespread problem in the United States.

According to one source (Ref. 7), at least 14 states have placed additional controls and restrictions on ephedrine to address the abuse problem. These controls include, in at least five states (Florida, Idaho, New Mexico, Oregon, and Washington), switching the products to prescription only status. In Michigan, possession of more than 4 grams of ephedrine requires a prescription. Six states (Arizona, Missouri, Nevada, Ohio, Oklahoma, and Wisconsin) have scheduled ephedrine as a controlled substance. The agency is aware that Kentucky, Massachusetts, and Virginia have introduced bills to tighten ephedrine controls and that other states are also considering similar actions.

The agency concludes that the misuse and abuse of OTC ephedrine drug products have the potential for causing harm as shown by the many reports submitted to the agency. FDA has determined that action is needed to eliminate this misuse/abuse potential. FDA's proposed action, when finalized, will eliminate the need for future action by individual states.

V. Advisory Committee Comments

At a meeting of FDA's Pulmonary-Allergy Drugs Advisory Committee and Nonprescription Drugs Advisory Committee (the Committee) held on November 14, 1994, the Committee members heard presentations from private citizens and state officials concerning the misuse and abuse of OTC ephedrine drug products (Ref. 8). The Committee members expressed concern about the reports of abuse and illicit diversion of ephedrine. One Committee member mentioned that removal of ephedrine from the OTC

marketplace by FDA or DEA regulatory action would cause no harm and, indeed, would do some amount of good. Although the Committee did not hear from manufacturers of OTC ephedrine drug products and was not asked the specific question whether these products should be removed from the OTC market, there was a consensus that the benefit of OTC ephedrine does not justify its continued use as an OTC bronchodilator active ingredient when the potential for illicit use and misuse is considered (Ref. 9).

FDA received comments from manufacturers in response to the notice for the Committee meeting (59 FR 34847, July 7, 1994). Two manufacturers opposed the marketing of any OTC bronchodilator drug product (Ref. 10). One manufacturer submitted a ''Profile of Asthma Sufferers and Users of Nonprescription Epinephrine (Mist) and Ephedrine Combination (Tablets)'' in support of its position these drug products remain available OTC (Ref. 11). Another manufacturer supported the continued marketing of legitimate OTC ephedrine-containing bronchodilator drug products (Ref. 12). This manufacturer briefly discussed the abuse potential for single ingredient ephedrine-containing products, particularly those that are deliberately labeled to imply nonmonographed usage. The manufacturer stated that the extent of any abuse is unclear and potentially exaggerated by a small number of highly publicized abuse instances. The comment noted that a number of states have enacted legislation to discourage abuse, in response to this situation. The comment mentioned that most states have generally made provisions to ensure continued OTC availability of legitimate combination asthma products, such as its product containing ephedrine sulfate and guaifenesin, an expectorant.

The agency has considered the manufacturers' views in developing this proposal. As discussed above, the agency believes that the misuse/abuse problem is widespread and much broader than one manufacturer suggested. Continued OTC availability of combination products containing ephedrine and guaifenesin would not alleviate this problem. Large quantities of guaifenesin are generally safe, and the combination product would not stop people from taking large amounts for the effects of the ephedrine. Further, DEA has informed FDA that it is aware that ephedrine can readily be isolated from such combinations for illicit manufacture (Ref. 13). Accordingly, FDA concludes that the best resolution for this misuse/abuse problem is for ephedrine, singly or in combination products, not to be available OTC.

VI. References

The following references are 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) Correspondence in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

(2) Comment No. C6, Docket No. 94N–0232, Dockets Management Branch.

(3) Comments No. C5, C6, C10, C11, C12, C17, C19, C20, APE8, APE10, APE13, and LET142, Docket No. 94N–0232, Dockets Management Branch.

(4) Adverse reaction reports in OTC Vol. 04BPEA, Docket No. 95N-0205, Dockets Management Branch.

(5)Comment No. C10, Docket No. 94N–0232, Dockets Management Branch.

(6)Letter from B. B. Rohrer, The Addictions Program, to FDA, dated June 24, 1993, in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

(7)National Association of Boards of Pharmacy Foundation, Inc. Newsletter, October 1994, pp. 2–3, in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

(8)Transcript of a Joint Meeting of the Pulmonary-Allergy Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee, November 14, 1994, pp. 56–84, in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

(9)Transcript of a Joint Meeting of the Pulmonary-Allergy Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee, November 14, 1994, pp. 235, 236, 258, 259, 264, 265, 270, 271, and 272, in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

(10) Comments No. C8, APE1, and C11, Docket No. 94N–0232, Dockets Management Branch.

(11) Comment No. LET144, Docket No. 94N–0232, Dockets Management Branch.

(12) Comment No. C18, Docket No. 94N–0232, Dockets Management Branch.

(13) Memorandum of a telephone conversation between D. Snyder, DEA, and G. Rachanow, FDA, dated April 20, 1994, in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

VII. Summary of the Agency's Proposed Change

The agency is proposing that ephedrine, ephedrine hydrochloride, ephedrine sulfate, and racephedrine hydrochloride should no longer be included in the final monograph for OTC bronchodilator drug products based on their extensive use in illicit drug manufacture and their potential for causing harm as a result of misuse and abuse due to their widespread and easy availability as an OTC drug. This proposed amendment removes the ingredients ephedrine, ephedrine hydrochloride, ephedrine sulfate, and racephedrine hydrochloride from the final monograph for OTC bronchodilator drug products (21 CFR part 341). It does not affect the monograph status of epinephrine-containing drug products when used in a hand-held rubber bulb nebulizer. Such products will remain in the final monograph for OTC bronchodilator drug products.

This proposal would remove all oral systemically acting bronchodilator drug products from the OTC market. Thus, the agency is proposing to amend § 341.16 of the final monograph for OTC bronchodilator drug products to remove § § 341.16(a), (b), (c), and (f) for ephedrine ingredients and to redesignate § 341.16(d), (e), and (g) as § 341.16(a), (b), and (c), respectively. Also, the agency is proposing to amend § 341.76(c) to remove paragraph (5), to revise the heading for paragraph (6), and to redesignate paragraphs (6)(i), (6)(ii), and (6)(iii) as paragraphs (5)(i), (5)(ii), and (5)(iii), respectively. In addition, the agency is proposing to amend § 341.76(d) to remove paragraph (1), to redesignate paragraph (2) as paragraph (1), to revise the heading in new paragraph (1), and to reserve paragraph (2). The agency is also proposing to amend § 341.90 by removing paragraph (a) that pertains to ephedrine and redesignating paragraphs (b) through (q) as paragraphs (a) through (p), respectively. Furthermore, the agency is proposing to amend the list of ingredients that are not generally recognized as safe and effective for specified uses in § 310.545 (21 CFR 310.545) by adding new paragraphs (a)(6)(iv)(D) and (d)(27) for ephedrine preparations.

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, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory

options that would minimize any significant impact of a rule on small entities. This rule would eventually stop the marketing of OTC bronchodilator drug products containing ephedrine, ephedrine hydrochloride, ephedrine sulfate, or racephedrine hydrochloride. The agency has determined that legitimate drug manufacturers have little or no interest in single ingredient OTC ephedrine drug products. However, some manufacturers may have an interest in combination drug products containing ephedrine.

The agency acknowledges that this proposed rule, if finalized, would have an impact on consumers who legitimately use OTC bronchodilator drug products containing ephedrine to relieve their bronchial asthma. They will no longer be able to purchase these products without a doctor's prescription. However, all OTC bronchodilator drug products must bear a label warning that states ''Do not use this product unless a diagnosis of asthma has been made by a doctor.'' Therefore, it is presumed that legitimate users of these products have seen a doctor and are under a doctor's occasional care for the treatment of their asthma. These consumers will be able to obtain an ephedrine drug product upon a doctor's prescription if the doctor determines that ephedrine is the drug that should be used to treat the condition. These consumers will also be able to purchase OTC epinephrine for inhalation to treat their bronchial asthma without a doctor's prescription. At its November 14, 1994, meeting, the Committee recommended that epinephrine for inhalation remain available OTC for self-treatment of asthma under certain conditions. The agency has weighed the consequences of this proposed rule as it might adversely impact some legitimate users of these OTC ephedrine drug products. However, these consumers will have access to another drug without a prescription and could continue to obtain ephedrine products on a doctor's prescription. The agency has determined that as a result of the widespread misuse and abuse of OTC ephedrine drug products, especially by many young people and people up to in their 40's, that it is in the best interest of all consumers (especially parents) to remove from the OTC market ingredients that are used extensively in the manufacture of illicit drugs and that have widespread misuse and abuse with the potential to cause harm. Further, the agency is not aware of a widespread marketing of legitimate OTC bronchodilator drug products containing ephedrine, although several manufacturers could be adversely affected by this proposed rule. Accordingly, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC bronchodilator drug products that contain ephedrine, ephedrine hydrochloride, ephedrine sulfate, or racephedrine hydrochloride. Comments regarding the impact of this rulemaking on these drug products should be accompanied by appropriate documentation. A period of 30 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for development and submission of comments on this subject. Because of the existing serious public health problem identified by DEA and a number of states, and the many reports of misuse and abuse of OTC ephedrine drug products that FDA has received, the Commissioner has determined that there is good cause for a shortened comment period. FDA will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

IX. Environmental Impact

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

Interested persons may, on or before August 28, 1995, submit to the Dockets Management Branch (address above) written comments or objections regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before August 28, 1995. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310 and 341 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraphs (a)(6)(iv)(D) and (d)(27) and by revising paragraph (d) introductory text to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(iv) *Bronchodilator drug products.* * * *

(D) Approved as of August 28, 1995.

Ephedrine
Ephedrine hydrochloride
Ephedrine sulfate
Racephedrine hydrochloride

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(27) of this section.

* * * * *

(27) August 28, 1995, for products subject to paragraph (a)(6)(iv)(D) of this section.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and

Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 341.16 [Amended]

4. Section 341.16 Bronchodilator active ingredients is amended by removing paragraphs (a), (b), (c), and (f) and by redesignating paragraphs (d), (e), and (g) as paragraphs (a), (b), and (c), respectively.

5. Section 341.76 is amended by removing paragraph (c)(5); redesignating paragraph (c)(6) as paragraph (c)(5); and revising the heading for newly redesignated paragraph (c)(5); by removing paragraph (d)(1); by redesignating paragraph (d)(2) as paragraph (d)(1); by reserving paragraph (d)(2); and by revising the heading in newly redesignated paragraph (d)(1) to read as follows:

§ 341.76 Labeling of bronchodilator drug products.

* * * * *

(c) * * *

(5) For products containing epinephrine, epinephrine bitartrate, or racepinephrine hydrochloride identified in § 341.16(a), (b), and (c). * * *

* * * * *

(d) * * *

(1) For products containing epinephrine, epinephrine bitartrate, or racepinephrine hydrochloride identified in § 341.16(a), (b), and (c). * * *

(2) [Reserved]

* * * * *

§ 341.90 [Amended]

7. Section 341.90 *Professional labeling* is amended by removing paragraph (a) and redesignating paragraphs (b) through (q) as paragraphs (a) through (p), respectively.

Dated: July 5, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–18448 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–F

federal register

Thursday
July 27, 1995

Part V

Department of Defense

Corps of Engineers, Department of the Army

Issuance of Nationwide Permit for Single-Family Housing; Notice

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Issuance of Nationwide Permit for Single-Family Housing

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: As a part of our effort to improve the regulatory program, the Army Corps of Engineers is hereby issuing a new nationwide general permit (NWP) under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act for single-family residential housing activities. As announced by the President on July 12, 1995, the NWP will provide for effective protection of the aquatic environment while substantially reducing regulatory burdens on landowners.

In August 1993, the Clinton Administration announced a comprehensive package of improvements to the Federal wetlands program that identified measures to enhance the fairness, flexibility, and effectiveness of the wetlands program. A major focus of the Administration's Wetlands Plan is intended to address the concerns of landowners by streamlining the Section 10 and Section 404 permitting programs, where possible, while maintaining needed environmental protection.

EFFECTIVE DATE: September 25, 1995.

ADDRESS: Information can be obtained by writing to: The Chief of Engineers, U.S. Army Corps of Engineers, ATTN: CECW–OR, Washington, C 20314–1000.

FOR FURTHER INFORMATION, CONTACT: Ms. Kelly Enright or Mr. Sam Collinson at (202) 761–0199.

SUPPLEMENTARY INFORMATION: On August 24, 1993, the White House Office on Environmental Policy announced the President's Wetlands Plan (Plan). The 40-point Plan set forth a comprehensive package of improvements to the Federal wetlands protection programs. A major goal of the Plan is to ensure that programs are fair, flexible, and effective. To achieve this goal, the Corps regulatory program must continue to provide effective protection of wetlands while conveying to the public a clear understanding of regulatory requirements. In its implementation, the regulatory program must be administratively efficient, flexible yet predictable, and avoid unnecessary impacts to private property and the regulated public.

We are issuing this new NWP to support the objectives in the President's Wetlands Plan. The new NWP will authorize activities in wetlands related to the construction or expansion of a single-family home. This would allow, for example, a couple to build a retirement home on wetlands property they own without applying for an individual Section 404 permit. The NWP includes limits and conditions to minimize impacts on the aquatic environment.

There is a perception by many in the country that the regulatory process has become too burdensome on small landowners simply desiring to build a home. This NWP has been developed to reduce the regulatory burden on small landowners proposing to build or expand a single-family home while simultaneously maintaining environmental safeguards. This NWP seeks to strike this balance by allowing a landowner to build or expand a home with minimal regulatory oversight while protecting the aquatic resource through specific limitations. The new NWP will allow the Corps to focus better its resources on areas that have the potential for greater environmental impacts. Furthermore, as the Corps realizes workload savings resulting from this NWP, service to other sectors of the regulated public (e.g., large developments), should be improved.

On March 23, 1995, the Corps published its proposed single-family housing NWP in the **Federal Register**. We received approximately 450 comments responding to the proposed NWP. In response to these comments, we made a few revisions to the NWP as discussed below. Issuance of this NWP should result in continued protection of the aquatic environment, reduced regulatory burden on the small landowner and an overall decrease in workload. Any workload savings will be devoted to more efficient individual permit evaluations and increased enforcement and compliance activities.

This nationwide permit for single-family housing activities issued today becomes effective on September 25, 1995. During this 60-day period, the States must make their final determination on issuance of State Section 401 water quality certification or, where appropriate, whether they agree with our CZM consistency determination. The NWP will remain in effect for 5 years from the effective date unless sooner revoked, modified, or reissued.

Discussion of Public Comments and Changes

We requested comments on the following specific issues:

1. Maximum Acreage

This topic received a large number of comments; specifically, commenters suggested increasing, decreasing, or retaining the proposed acreage figure. Several commenters supported the 0.5 acre limit. They stated that such an acreage figure was appropriate, reasonable and sufficient for a single-family residence with attendant features.

Several commenters were in favor of an increased acreage threshold. Some stated that the acreage figure should be increased to 10 acres to remain consistent with that of the NWP 26. One commenter suggested a 5-acre limit to correspond with the Department of the Interior's proposal to lessen Endangered Species Act restrictions on individuals owning 5 acres or less. The majority of those who encouraged a higher acreage amount, recommended a 1-acre threshold. One of these commenters equated this figure to the 1-acre threshold of the NWP 26 below which the Corps does not require notification. One commenter expressed concern over the proportionality of impacts versus the overall size of the parcel of land to be impacted. This commenter recommended increasing the maximum acreage threshold so that a more proportional impact to wetlands could be allowed. For example, if a landowner owns a 10-acre parcel, he should be authorized to fill 5 acres of wetlands and one who owns a 1-acre parcel should be allowed to fill 0.5 acre of wetlands. The commenter did not offer a specific ratio or threshold. Another commenter recommended that wetlands of lower value should have a higher acreage threshold while higher quality wetlands should be allowed more minor impacts. Again, this commenter did not offer specific thresholds.

The majority of the comments on the acreage limit were in favor of a lesser acreage. Many commenters maintained that the acreage proposed was excessive and a lesser acreage would encourage prospective permittees to avoid and minimize impacts. Several commenters compared the acreage threshold to that allowed in their respective states for single-family housing activities. Those states had a lower acreage threshold. Many commenters suggested that the NWP should only apply to individuals who had some usable uplands on their property. By using some uplands the property owner would need less fill in wetlands to have a homesite, and therefore a lower acreage limit could be established. These commenters indicated that the NWP should not apply to those who own only wetlands

since they would need to fill more to achieve their project purpose. One commenter stated that there should be a distinction made between residential expansion and completely new construction. That commenter suggested that an individual developing a new lot should be afforded a greater authorization than one expanding a developed lot, but that both acreages should be less than 0.5 acre.

A few commenters questioned the logic used in the selection of the 0.5 acre threshold. Several commenters suggested that the NWP should apply only to lots of a certain size but greater than 0.5 acre (e.g., the NWP should apply only to parcels that are greater than 5 acres).

Review of statistical data from the U.S. Department of Commerce and the U.S. Department of Housing and Urban Development reveals that approximately 90% of residential landowners in the United States own parcels that are 0.5 acre in size or less. This includes all residential land; wetlands comprise a very small subset of these lands. From this data we conclude that construction on 0.5 acre of land is consistent with what the public believes to be adequate for single-family housing activities. Furthermore, this data demonstrates that this 0.5 acre threshold would satisfy the vast majority of the public's need for a homesite. Additionally, approximately 60% of landowners own parcels that are less than 0.25 acre in size. Adopting this lower acreage threshold may eliminate a large portion of the public who could benefit from this NWP. However, we anticipate that most landowners, regardless of the size of their property, will require impacts less than 0.25 acre for their single-family housing activities.

We believe that relating the size of the impact to the upland acreage would add unnecessary confusion to the applicability of the NWP without additional, commensurate aquatic resource protection. We are concerned with the impacts to the aquatic environment and are therefore measuring those impacts. When we review the Pre-Construction Notification (PCN), we will consider the availability of uplands at the site and cumulative impacts. Therefore, we are not establishing a limitation on the size of the parcel for which this NWP is applicable. With regard to State acreage thresholds, a Corps permit does not obviate the need for a State permit. Therefore, a permittee can only impact the lowest acreage threshold allowed by either the State or the Corps. Additionally, the Corps will encourage its district offices to adopt the State's equivalent authorization, where appropriate, and regionally condition this NWP to adhere to that threshold. The Corps is issuing the NWP with the 0.5 acre threshold for the single-family housing NWP. In an effort to simplify this permitting process, the Corps will allow no more than 0.5 acre of impact for non-tidal wetlands. There will be no automatic exclusions based on wetland value. However, the Corps will determine on a case-by-case basis, if a specific area should be exempted from this NWP based on functions or values. Upon review of the comments, statistical data, a survey of Corps district offices to determine need for the permit, and our experience and judgement concerning the potential for adverse effects on the environment associated with the various acreage limits, we concluded that the 0.5 acre threshold was appropriate. The 0.5 acre limit strikes a balance that will reduce unnecessary regulatory burdens on most residential landowners while providing for individual permit review of those single-family housing activities with the potential for more than minimal impacts on the aquatic environment. While the NWP provides for up to 0.5 acre of impacts to wetlands, we believe that compliance with the permit requirement to avoid and minimize on-site impacts will result in most homesites affecting less than 0.25 acre. The PCN will provide for Corps district offices to ensure compliance with this requirement as well as to review cumulative impacts. Finally, we will monitor this NWP and will revoke or modify the NWP, if necessary, to further reduce unacceptable impacts to the aquatic environment.

One commenter questioned how the Corps could ever justify denying proposals for impacts due to larger developments when this NWP will authorize equivalent impacts for several individual homesites in a given area.

The Corps does issue and will continue to issue individual permits for large developments. These often involve mitigation for impacts. The Corps also denies and will continue to deny permits for large developments, when appropriate. This NWP will not affect those decisions. When reviewing the PCN for a single-family housing activity, the Corps will consider cumulative impacts of the proposed homesite with other potential homesites. In some cases, the Corps Division Engineers may exercise their discretionary authority which will result, in a given area, in the requirement for individual permits and/or for mitigation for the individual homesites to address cumulative impacts. Therefore, we expect that similar considerations and requirements would be imposed for both large developments and for many individual homesites in a given area. Furthermore, this NWP does not apply to individual parcels subdivided on or after November 22, 1991, where the aggregate total of impacts exceeds 0.5 acre.

2. Pre-Construction Notification:

The comments on the Pre-Construction Notification (PCN) requirement for this NWP addressed a wide range of issues including, the need for the pre-construction notification, the criteria for when a PCN should be required, the 30-day timeframe, the need for agency coordination, and the wetland delineation requirements. The majority of the commenters supported the requirement for a PCN in some form, while a few commenters opposed a PCN entirely or in certain circumstances.

Several commenters recommended that PCNs should be required in all cases. Reasons given include: to maintain consistency, to avoid potential violations, to assist applicants in avoiding impacts on their property, to allow the Corps to ensure that the permittee has minimized to the greatest extent practicable, and to aid in evaluating cumulative impacts. Several commenters indicated the PCN should only be required in certain situations. One commenter suggested that any discharge occurring after March 6, 1995, should require a PCN but that activities occurring prior to this date should not. Some commenters suggested flexibility when the area of effect is a lesser acreage; specifically, sizes of 0.1 and 0.25 acre were referenced as dimensions warranting no notification. Another commenter suggested that the Corps require a PCN for all projects, regardless of size, for the first 3 years after implementation of this NWP; afterwards, adopt a size limit regarding PCNs, if practicable. Several commenters recommended that the notification process be eliminated completely. One commenter stated that the PCN procedure was cumbersome and undermines the intent of the general permit program. Some other reasons given include reducing the regulatory workload, reducing the required recordkeeping, reducing agency spending, avoiding delay and expense to the landowner, and serving as an incentive for landowners to reduce the area of impact. One commenter suggested that the PCN would result in subjective treatment of the regulated public. A few commenters stated that no notification would be consistent with the notification procedures governing the existing NWPs. One commenter

recommended adopting existing PCN requirements rather than a modified PCN only for this NWP, to avoid confusion by both the regulated public and the resource and regulatory agencies.

We continue to believe that the PCN process is necessary for the Corps to examine projects on a case-by-case basis to determine compliance with the single-family housing NWP and to ensure that the impacts are minimal. Furthermore, the PCN will maintain nationwide consistency and continue to provide adequate environmental protection. At this time we are requiring the PCN for all activities qualifying for this NWP. However, we will monitor the NWP use and, if appropriate, will propose, at a later date, any necessary thresholds below which the PCN would not be required. Although having two notification procedures may seem confusing, the PCN process for this NWP is simpler than the existing PCN and will result in less burdens on the applicant. We believe that the PCN process for this NWP should be different from the existing PCN for the reasons discussed below.

A few commenters addressed the 30-day timeframe. Specific concerns were that Corps personnel may not be able to adhere to this limiting factor, thus, verifying projects that would not otherwise qualify for authorization under this NWP; the 30-day timeframe will discourage case-by-case review and site visits to independently monitor impacts; and the Corps will have to verify authorization prior to State water quality and CZMA certification being issued or denied. One recommendation was that the Corps should detail how the PCN process will be undertaken to ensure that only a minimum number of projects exceed the 30-day limit. A few commenters stated that the 30-day timeframe was inadequate and should be extended; one suggested a 90-day timeframe. One commenter questioned whether the District Engineer will send notification to the permittee as to the date that notification was received. Another commenter suggested that the permittee should be able to rely on the 30-day timeframe for the Corps to raise issues and that the District Engineer should not be able to intervene after that point.

The Corps believes that the 30-day timeframe is sufficient, based on the nature of these activities and the information required to be submitted by the permittee, to review and determine if an activity qualifies for this NWP. Currently, the Corps reviews approximately 40,000 general permit activities and reaches a decision in an average of 16 days. State 401 water quality certification and CZMA consistency determinations will not be affected by the 30-day timeframe. Permittees may proceed under the NWP upon verification by the Corps, if the State issues 401 certification or 401 certification conditions for the NWP. However, if the State denies 401 certification for the NWP, the Corps will verify the activity within the 30-day timeframe, subject to the permittee individually obtaining 401 certification from the State. Until then, authorization for the activity is denied without prejudice. (This also applies to CZMA consistency determinations.) Therefore, during the 30-day timeframe the Corps will only verify that authorization under the NWP will be valid if the permittee dose successfully obtain State water quality certification or waiver thereof and/or CZMA concurrence or presumed concurrence, where applicable. Some Corps districts may have some mechanism in place whereby permittees are informed that their notification has been received. However, there is no requirement that the districts send such notification. Permittees may use certified mail to document receipt of their notice by the Corps district office. The Corps expects to evaluate all activities under this NWP, on a case-by-case basis. However, we do not believe that minor activities will require on-site inspections in every situation. If, subsequent to verification, the Corps discovers that false information has been furnished, then appropriate action will be taken. Finally, if the Corps does not respond within the 30-day timeframe, then the permittee may proceed with the project.

Many commenters expressed their views concerning the proposal to not notify the Federal and State resource agencies as part of the notification procedures. Several commenters disagreed that notifying the resource agencies would result in significant increases in permit processing time. Many stated that review of the public notice was insufficient consultation and that notification with the agencies should be retained. However, the issue of greatest concern was the belief that the Corps' would be in violation of Section 404(q) of the Clean Water Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, associated Memoranda of Agreement, and the National Historic Preservation Act. Many commenters stated that the modified PCN process provided inadequate evaluation of fish and wildlife impacts, impacts to threatened and endangered species, and all potential adverse impacts in general. One commenter stated that the Corps lacks the expertise to protect fish and wildlife resources as its primary responsibility and, therefore, coordination with resource agencies should be required. One commenter recommended that coordination should be maintained if the activity is within close proximity to an ''endangered species area.'' A few commenters suggested establishing a process by which the USFWS and a representative State agency coordinates review of activities which could potentially impact Federally threatened or endangered species. A few commenters questioned how the Corps intends to implement the NWP general conditions that prohibit jeopardizing endangered species and impacting historic resources. Also offered were recommendations that the Corps should notify agencies who issue building permits about proposed projects and the Corps should notify the NRCS of any agricultural projects. One commenter posed several questions in an effort to justify the need for notification with the resource agencies. Specifically, the commenter asked if the Corps had examined statistics on the number of homes to be built under this NWP, amount of ground disturbance, and amount of impacts to known archaeological sites. Another commenter recommended that a review for the presence of archaeological resources be conducted prior to commencement of the activity. One commenter stated that not requiring a PCN will reduce the accuracy of USFWS' records of wetland losses for its national status and trends report. One commenter stated that the NWP limits the States' involvement in reviewing proposed activities that may affect State resources. Other commenters stated that the public should have the opportunity to comment on projects in areas under developmental pressure; the public should have the opportunity to comment on all projects (e.g., rescind all NWPs); PCNs should include notification to all adjacent property owners within 500 feet of the project site; and the Corps should not only require resource agency coordination but also include a provision that allows any Federal resource agency the authority to require an individual permit.

The purpose of NWPs is to authorize activities having minimal impacts, with little or no review, in a timely manner. Based on our experience, third party involvement adds little to the review process, but decreases the efficiency of

Corps staff who could be focusing their resources on areas that have the potential for greater environmental impacts. Due to reduced agency resources, resource agency comments frequently merely cite regulations or policies governing alternatives analysis and/or mitigation policy and do not provide site-specific comments. Furthermore, we believe that the interdisciplinary Corps regulatory staff is extremely knowledgeable of resource values and fully capable of evaluating impacts resulting from NWP activities. Over 70% (700) of the Corps regulatory personnel, nationwide, are natural resource scientists, many with advanced degrees. Regarding endangered species and historic properties, 33 CFR 330.4(f) and (g) outline the procedures regarding adverse impacts to threatened or endangered species or critical habitat, and impacts to historic properties. The permittee must follow these standard conditions in order to be in compliance with the NWP; failure to adhere to these conditions results in a violation of the permit on the permittee's part. It has been our experience that requiring notification to the resource agencies places an additional burden on the applicant and the regulator, with very little benefit. We do not believe that this NWP will reduce the USFWS' ability to monitor losses of the nation's wetlands. Further, other mechanisms can be implemented to assist the USFWS with the task of tracking cumulative impacts. The States may impose conditions on the NWP or review each project with regard to water quality certification and coastal zone management consistency, where applicable. The Corps disagrees that case-by-case notification with the resource agencies is necessary for these minor activities. However, it is the Corps' belief that notification to the Corps is necessary to ensure that impacts are minimal.

A few commenters stated that the Corps should outline under what circumstances a wetland jurisdictional delineation will be necessary. It was also recommended that we require a wetland delineation to ensure that the proposed project impacts comply with the acreage threshold. One commenter questioned the requirement for the permittee to identify the project's direct and indirect adverse environmental effects, likening this condition to an environmental impact statement (EIS) such as those required for large scale projects. Additional comments received regarding PCNs include: PCNs should contain evidence of avoidance and minimization on the part of the applicant; permittees should complete a standard individual permit application form for all projects; PCNs should include scaled site plans with existing and proposed development, slopes and elevation; PCNs should include a legal description of the project site and a certified statement as to whether the parcel is part of a real estate subdivision; and a copy of the PCN should be sent to the clerk or secretary of the appropriate local municipality.

For the purpose of clarification, a formal wetland delineation is a routine or comprehensive delineation as described in the Corps' 1987 wetland delineation manual. We have determined that if the entire parcel owned by the NWP applicant is 0.5 acre or less in size, no formal on-site wetland delineation will be required. Therefore, such individuals will not be required to hire a consultant to perform a detailed field investigation for the purpose of determining Federal jurisdiction. A general indication of the amount and/or location of the wetlands would be sufficient. Permittees who own parcels greater than 0.5 acre must have a formal wetland delineation prepared in accordance with the current method required by the Corps. Conditions will be incorporated stating this and allowing applicants to request that the Corps perform the delineation with the understanding that such requests may cause some delay in the permitting process. Approximately 90% of the landowners in the United States own less than 0.5 acre of land; therefore, this condition should not prove to be a burden on most applicants. We disagree that the permittee's responsibility to identify adverse environmental effects is in anyway similar to preparing an EIS.

The Corps only requires a clear and concise statement regarding the proposed project's direct and indirect adverse environmental effects; such a requirement can be undertaken by the permittee or done in consultation with Corps staff. We do not expect a study or detailed analysis of such impacts. We disagree that the aforementioned proposals should be required in all cases. These options are certainly available to each applicant and in some cases may expedite the permitting process, but will not be required. This NWP is a general permit; as such, it authorizes activities with minimal environmental effects and requires minimal effort on the part of the applicant. The Corps will require that applicants avoid and minimize impacts wherever practicable on-site.

3. Mitigation

Numerous comments were received regarding mitigation. Many of these comments concerned compensatory mitigation and include: mitigation should be in-kind and on-site except in extreme cases of hardship; permittees should mitigate for the lost acreage, functions, and values; the Corps should justify mitigation based on the wetland loss and not the applicant type (small landowner); compensatory mitigation should be required for impacts to high quality systems and for impacts resulting from construction of attendant features; and compensatory mitigation should be required for impacts exceeding 0.1 acre. Several commenters recommended mitigation ratios ranging from 1:1 to 10:1, compensatory mitigation to impacts. One commenter recommended that mitigation requirements should be established at the Corps district level based on local resource needs and should be made in consultation with other resources agencies. One commenter recommended that all remaining wetlands on a parcel in which this NWP is used should be placed into a deed restriction.

Many suggestions were made to utilize mitigation banking. Some of the justifications presented were because it has been successful in creating sizeable wetland resources, is affordable, can assist in maintaining a no net loss policy, can aid in avoiding the problems with compensatory mitigation for small impacts, and would give permittees predictability with regard to mitigation costs. Some stated that the mitigation bank should be utilized on a sub-watershed basis. Some have recommended only allowing application of the NWP in watersheds where mitigation banks have been legally established. A few suggestions were offered to have permittees make donations to a recognized wetland conservation project.

The no net loss of wetlands policy was a recurring theme in comments regarding mitigation requirements for this NWP, as well as a long-term goal of increasing the quality and quantity of wetlands.

Some commenters recommended that no mitigation be required. Some of the reasons presented include: the requirement is too burdensome on individual property owners; no significant loss of wetlands will result from this NWP, mitigation is too costly for the Corps to track; mitigation limits the landowner's ability to construct a home in the most desirable location; mitigation is too costly for the landowner; and the creation of non-tidal wetlands is difficult and results in questionable success. Many believe that compensatory mitigation should not be required if avoidance and minimization

are undertaken on-site. One commenter stated that compensatory mitigation should not be used in lieu of avoidance and minimization. One commenter offered that NWPs are supposed to apply only to actions having minimal individual and cumulative effects and the Corps' consideration of mitigation suggests that the Corps does not believe the activity covered by this NWP is minor.

If cumulative impacts become more than minimal or a wetland system proposed to be impacted through the use of this NWP is of such high quality or importance, in terms of functions, that compensation is warranted, the District Engineer will so notify the applicant, who may offer compensatory mitigation to offset the adverse environmental effects. However, a standard ratio to establish the amount of compensation required per amount of impact will not be established in this NWP. The decision regarding the quantity of mitigation that is required will be made by the District Engineer on a case-by-case basis, if mitigation is determined to be necessary. The District Engineer also has the authority to require an individual permit in which the need for mitigation would be more closely examined. The Corps Division Engineers have the authority to regionally condition the single-family housing NWP to exclude certain geographical areas, where applicable. The Corps does not believe that placing a deed restriction provision on all small landowners is necessary, warranted or follows the intent of this NWP. A permit would be necessary for activities in the remaining wetlands, and we would address any adverse effects for such a permit. Furthermore, we do not believe it is appropriate to require mitigation beyond the adverse impacts that are being caused by the permittee.

The Corps agrees that mitigation banks, wetland trusts, and other conservation projects offer a solid means for compensating for lost wetland functions and values. However, we do not believe that such compensation is warranted for every impact covered by this NWP, nor is it a practicable option for every district, since many areas do not have mitigation banks or other conservation projects established. These options will be considered and encouraged where cumulative impacts are a concern.

The Administration's policy of no net loss of wetlands is a national goal that calls for no net loss overall, not on a case-by-case basis. This policy also recognizes that the Corps Regulatory Program will support but not meet this goal in every permit case and provides for other programs to help meet the goal. Thus, compensation associated with standard and general permits is not the only means by which the nation attains the goal of no net loss of wetlands. Some other examples of means by which a no net loss of wetlands goal is achieved include State comprehensive watershed management plans, State and local programs that require compensation for residential development, and the Wetland Reserves Program.

This NWP is not a guarantee that every landowner who owns 0.5 acre of wetlands will be authorized to impact the entire parcel. One of the specific conditions of this NWP is that the permittee takes necessary actions to minimize on-site and off-site impacts of the discharge. Such evidence will be provided and evaluated in the notification procedure. Compensatory mitigation will generally not be accepted in lieu of on-site avoidance and minimization. Although the Corps agrees that compensatory mitigation is not warranted for every single-family housing activity authorized by this NWP, we do regard on-site avoidance and minimization as necessary steps in all cases to ensure that there are only minimal environmental effects.

Several commenters questioned how the Corps intends to ensure that permittees will minimize impacts. One commenter stated that the existing NWPs have proven that general permits do not include even a minimum level of review. A few commenters stated that this NWP would eliminate the requirement for landowners to avoid and minimize impacts. One commenter recommended that the District Engineer should be able to condition the NWP to require further minimization of impacts.

Many stated that the NWP should not be utilized where alternatives exist. One commenter questioned whether the Corps would require an alternatives review to determine if the permittee owns a non-wetland parcel. Another stated that it appears that the Corps considers single-family housing activities to have no alternative. One commenter stated that individual permits are now more flexible than this NWP, given the recent flexibility guidance. A few commenters suggested that the failure to require compensatory mitigation for this NWP would be contrary to the sequencing requirements outlined in the 404 (b)(1) Guidelines and the MOA between the EPA and the Corps. Another disagreed and stated that sequencing requirements do not apply to any other general permit and questioned why it should apply to this NWP.

The issue of water dependency was raised by a few commenters. These commenters specifically stated that existing regulations require a project to be water dependent to qualify for a Section 404 permit and that this NWP could remove the water dependency standard for all 404 permitting.

One commenter stated that, with regard to on-site adjustment of the home to avoid flooding of adjacent property owners, the Corps implied that a wetland can be altered as long as no harm is caused to another man-made structure. Another commenter asked if this NWP allowed the partial filling of a lake to construct a home, if one owned property adjacent to a lake.

The modified notification condition will require that the permittee notify the Corps prior to discharging fill. The District Engineer will then be responsible for determining whether the proposed activity would result in more than minimal individual or cumulative adverse environmental effects. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, he will so notify the applicant and present his options (e.g., offer mitigation to reduce impacts or apply for an individual permit). While this review is not as extensive as that for an individual permit, we have determined that it is sufficient to make the ''minimal effect'' determination.

In March 1995, the Corps issued a Regulatory Guidance Letter regarding individual permit flexibility for small landowners. This guidance indicated that the Corps will presume that small landowners have no practicable alternatives on property not owned by the landowner. This guidance is to be used for activities affecting up to 2 acres of non-tidal wetlands for the construction or expansion of a single-family home and attendant features, or a farm building, or for the expansion of a small business facility. In accordance with 40 CFR 230.7, consideration of alternatives is not directly applicable to general permits. Other existing NWPs require compensatory mitigation where the individual or cumulative impacts from a discharge are more than minimal. We believe that the activities covered by this NWP will have minimal impacts. However, there may be cases where the cumulative impacts within a particular watershed become more than minimal. In these instances, the District Engineers have the authority to require compensatory mitigation. Additionally, on-site avoidance and minimization will be required in all cases for the entire parcel.

Water dependency criteria under the section 404(b)(1) Guidelines establishes

a rebuttable presumption that other, less environmentally damaging, practicable alternatives exist for the proposed project. It does not, however, as suggested by some commenters, allow authorization of only water dependent projects. Further, as indicated above, the alternative test does not apply to general permits. Additionally, we believe that for single-family housing activities qualifying for this NWP, other practicable alternatives normally do not exist for these homeowners. We do not agree that issuance of this NWP will affect the water dependency standard of other 404 permitting procedures.

We did not intend to imply that a wetland can be altered as long as there are no impacts to another man-made structure. Rather our intent was to give an example of when it may be necessary to relocate a fill. In addition, it is highly unlikely that an applicant will need to discharge fill into a lake to construct a single-family house and therefore, use of this NWP would normally not be authorized in such cases. One term of this NWP is that the permittee will minimize on-site and off-site impacts of the discharge. We believe that this NWP will have only minimal environmental adverse effects. However if, on an individual basis, the impacts are determined to be more than minimal, then the NWP does not apply.

4. Subdivisions

The comments indicated there was some confusion regarding the subdivision provision. There were several requests for an overall clarification of the subdivision clause. A few commenters requested that a clear definition of a subdivision be provided, not only for the purposes of understanding but to ensure that the circumstances the Corps is trying to guard against do not surface as a problem. A few commenters requested a more encompassing definition of subdivision. Other commenters advised the Corps to carefully word the conditions surrounding the subdivision date to prevent misinterpretation and misuse.

''Real estate subdivision'' shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial, or other real estate subdivision, including all parcels and parts thereof. The definition of the term ''real estate subdivision'' is the same as the existing definition of that term that applies to NWP 26. However, the date of the subdivision provision is different for this NWP and NWP 26 as discussed below.

Several commenters agreed that March 6, 1995, was an appropriate date regarding the subdivision provision of the NWP. Several commenters questioned how the March 6, 1995, date was selected. A few commenters argued that the March 6, 1995, date penalizes developers who subdivided their property after October 5, 1984, since under existing regulations they were required to avoid and minimize impacts for the entire subdivision but would not under the new NWP. Some of the commenters further said that these developers may have realized greater profits if they had not followed the regulations. Many commenters recommended that the date be changed to October 4, 1984. Some of the reasons given to justify this date include remaining consistent with NWP 26, avoiding complicated regulations when we are supposedly simplifying, avoiding greater individual and cumulative impacts in subdivisions created prior to March 6, 1995, and avoiding negation of previous wetland master planning efforts. Other reasons were centered around the large number of subdivisions created since 1984, and because property owners were made aware, at that time, of the need for Section 404 permits to develop lots. One commenter stated that modifying the date to October 5, 1984, would penalize existing single lot owners who purchased lots in subdivisions in the last 10 years. Another commenter questioned how the NWP would apply in a situation where the subdivision is approved and lots are being sold but are not completely sold by March 6, 1995; the question was whether or not early lot owners would be treated differently. One commenter suggested allowing this NWP to apply to individuals who purchased property prior to October 5, 1984. One commenter recommended that this NWP should not apply in cases where property was platted prior to 1984, but is currently undeveloped and under one ownership. One commenter stated that modifying the subdivision provision to allow for the later date could create legal conflict in existing subdivisions where the developer has placed restrictive covenants on property that has been sold and developed because the property owners would seek authorization for expansion. Several commenters recommended that the date be modified to the effective date of the permit so as to maximize the number of individuals who may take advantage of the permit.

March 6, 1995, was the date that this NWP was proposed. November 22, 1991, is the date in which the current NWP program regulations, including issuance of, reissuance of and modifications to the existing NWPs were published in the **Federal Register**. It was in these regulations that the terms surrounding subdivisions for the purpose of NWP 26 were outlined and awareness of the subdivision clause was heightened. With few exceptions, we believe this date would be fair to all parties. We do not believe that the November 22, 1991, date will penalize any one group of individuals. The subdivision date issue centers on when a parcel is subdivided into smaller parcels, not when the subdivided smaller parcels are sold. Therefore, individual parcel owners will not be penalized based on when they purchased property. Furthermore, we understand that this NWP may not appear to address all possible scenarios similarly. However, we will encourage Corps districts to use consistency when reviewing any project under this new NWP and to give consideration to existing authorizations a property owner may have. Upon review and consideration of the comments, we determined that the appropriate date regarding subdivision creation should be November 22, 1991.

Any subdivisions or lots that were platted, developed, sold, or purchased in the past were done so under regulations in place at that time. This NWP does not apply to wetlands in developed subdivisions where restrictive covenants have been employed to preserve such wetlands. If the subdivision was platted on or after November 22, 1991, the aggregate total of impacts within the subdivision cannot exceed 0.5 acre. Similarly, if a parcel was subdivided prior to November 22, 1991, each lot owner may use this NWP, regardless of when he purchased the property. However, any previously permitted fill must be added to any fill proposed under this NWP such that the aggregate total impacts for the lot does not exceed 0.5 acre.

This NWP will not be modified to exempt situations such as the aforementioned where property was platted prior to 1984, but is currently undeveloped and under one ownership. We realize that under this authorization, impacts in such a scenario have the potential to become unacceptable. However, NWPs do not apply in cases where cumulative impacts are more than minimal. Furthermore, Corps Division Engineers may exercise their discretionary authority to require individual permits or mitigation for the

individual homesites to address cumulative impacts. Additionally, we do not believe that such situations are prevalent and therefore will not present a problem.

With regard to dealing with property owners who subdivided their parcel prior to November 22, 1991, and either acquired a Department of the Army permit or did not, we understand that this NWP may not appear to address the 2 scenarios similarly. However, we will encourage Corps districts to use consistency when reviewing any project under this new NWP and to give consideration to existing authorizations a property owner may have. For example, if the district has previously required a permittee to provide the total plan of development including infrastructure and lot fill, then we would expect the district to require such information of all permittees under this NWP.

One commenter stated that there is no limit on how much area could be impacted within a subdivision. Another commenter questioned to what size subdivisions the NWP would apply, specifically, a few buildable lots subdivided from a small parcel or several lots complete with infrastructure. Another commenter questioned how the Corps would address a situation where landowners create parcels one at a time over a period of time. One commenter suggested that this NWP might lead to many smaller subdivisions, thus making cumulative impact tracking more difficult. One commenter stated that the NWP should not apply to residential or commercial developments but rather to single-family developments in private family ownership. Another commenter stated that the NWP would probably be used more for large landowners seeking to build a large subdivision rather than small landowners, for which the permit was intended.

Regarding use of this NWP, there is no threshold on parcel size. The 0.5 acre limit applies to all single-family housing activities complying with this NWP. The use of Corps district databases will be utilized to assist in one-time, per lot usage and cumulative impact tracking. The size or number of subdivisions within a watershed should not affect this mechanism. It is anticipated, based on the aggregate acreage threshold, that this NWP will not be utilized for many residential developments created on or after November 22, 1991, and commercial developments are not permitted under this NWP. Furthermore, it is anticipated that landowners will choose to receive verification under NWP 26, where applicable, since the acreage threshold under the single-family housing NWP is more restrictive. The Corps believes that large landowners seeking to build a single-family residence will generally have more options with regard to where they place a homesite, thereby, negating the large landowners' need for this NWP. Nevertheless, the maximum acreage of impacts to non-tidal wetlands under this NWP is 0.5 acre regardless of whether the landowner owns a large parcel and intends to subdivide or owns a small parcel for a single residence. The term of this NWP which is applicable to subdivisions states that the discharge must be part of a single and complete project and that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of 0.5 acre for the entire subdivision.

A few commenters questioned how the Corps will track each landowner in a development, determine if the NWP has been used, track the number of times a parcel has been subdivided and when a parcel was subdivided. Another commenter questioned what requirements will be placed on permittees to provide evidence that demonstrates that the project meets this provision of the NWP.

Each Corps district has a computer database to assist with the task of tracking pertinent information. The Corps districts will continually monitor their tracking mechanisms and make adjustments, as necessary, to ensure production of the most reliable data. Additionally, the Corps must depend on facts presented by the applicant during the notification process and will verify such information, as needed, using available data. Taking all of this information together, the Corps makes the final determination on whether an activity complies with the NWP.

5. One-Time Use

Many questions surrounded the issue of one-time use. One commenter stated that this condition was too ambiguous and asked for clarification. Many commenters suggested clarifying this term of the NWP by stating that it is to be used once per individual and once per lot. A few commenters questioned whether a successive parcel owner can fill an additional 0.5 acre. One commenter stressed the importance of explaining that, within a subdivision, the landowner cannot use his or her one-time allowance if the 0.5 acre loss for the subdivision has already occurred through another landowner's or the subdivision developer's action. A few commenters raised the issue of whether a loophole exists when a developer subdivides a parcel after March 6, 1995, then sells lots to individuals who may then use this NWP. The commenter stated that the developer may legally defend that each project is single and complete. However, the cumulative impacts would be more than minimal. A few commenters inquired about how this NWP applies to property owners who own more than one lot or who move to a new lot. One commenter suggested that because farming operations may need more than one single-family housing NWP, the one-time allowance should be determined on a case-by-case basis. A few said the NWP should be allowed to be used an unlimited number of times. One commenter stated that the NWP should only be available to individuals who own a specific piece of property at the time the permit becomes effective.

Several commenters recommended eliminating this one-time use provision because of enforcement difficulties and the idea that permits should apply to projects, not individuals. Some questioned how tracking of this condition would be accomplished. One commenter raised the issue that since the permittee does not have to own the property, another individual could apply for the NWP on behalf of the property owner who has already used his one-time allowance. Several other commenters inquired about transferring one-time use to others and how this would be prevented.

This NWP was developed to address situations where land was subdivided into homesites or where individuals purchased homesites for the purpose of building a single-family home. We did not intend to limit its use to land that an individual owns on a given date. We also did not intend the NWP to be used for further subdivision of property for residential development in wetlands. By applying the NWP to aggregate impacts in subdivisions created on or after November 22, 1991, we encourage the use of individual permits for such development. Therefore, we do not believe that the NWP should be restricted by the date on which an applicant purchased a piece of property or be limited to only those individuals who own the land at the time this NWP becomes effective. In an effort to hold cumulative impacts to a minimum, we proposed the one-time usage clause. Upon further consideration and review of the comments, the Corps decided to restrict use to an individual who may use this NWP only for a single-family home for a personal residence. As an example, an individual could choose to

construct a single-family homesite for a seasonal (e.g., summer) residence, or for both an East Coast and West Coast residence. Such an individual may use this NWP in each situation with the stipulations that the home is for a personal residence and all other terms and conditions are met. However, we believe that the vast majority of individuals would only need this NWP once in their lifetime. Additionally, we determined that the one-time usage provision of this NWP should apply to the lot for a single-family housing activity. Thus, successive property owners cannot fill additional 0.5 acre fragments of a lot using the NWP. The total impacts for a specific lot cannot exceed the 0.5 acre threshold whether filled by a previous owner, developer, or an individual within a subdivision created on or after November 22, 1991. Consequently, when determining if a single-family housing activity is authorized by this NWP, any fill material currently permitted for the lot must be added to any proposed fill such that the total impacts do not exceed 0.5 acre. We believe that applying this usage restriction to both individuals and the lot is necessary to ensure that the impacts will be minimal and that the NWP will be used for the type of housing for which it was developed.

We have addressed many of the enforcement issues raised by adding several requirements to the PCN. Enforcement will be accomplished by requiring that the applicant submit a statement declaring that the single-family housing activity is for a personal residence of the permittee, stating how many times this NWP has been used, and listing other property owned by the applicant in the vicinity of the proposed single-family homesite. The Corps will use district databases to monitor use of this NWP, and if this provision is abused, we will consider appropriate action to address the abuse.

6. Attendant Features

A few commenters requested a more encompassing definition of ''attendant features'' beyond those examples that were listed in the proposed **Federal Register** notice. One commenter stated that such an ambiguous term may prompt a prospective permittee to assert that anything is an attendant feature. Several commenters recommended including amenities such as yards, pools, tennis courts, barns, stables, in addition to housepads, driveways, and septic systems. However, the majority of the commenters disagreed with the idea of authorizing fill for non-essential amenities such as tennis courts, swimming pools, ponds, and gazebos, some stating that such accommodations were non-water dependent. Some of these commenters recommended limiting fill to foundations only, while others approved of the need for additional fill for driveways and garages. While some commenters included septic fields as an essential feature for the construction of a single-family residence, many specifically disagreed with allowing fill for septic fields. Some of the reasons given were water quality impacts, discrepancies with existing state and local regulations, and the existence of other available options for wastewater treatment.

A few commenters also singled out disallowing fill for a yard because of the adverse impacts associated with fertilizers and pesticides. One commenter suggested such attendant features be authorized on a regional basis if they are standard for a particular area. One commenter stated that if attendant features were not included in this NWP authorization, then the permittee would have to endure individual permit processing for minor, additional work.

The purpose of this NWP is to reduce the regulatory burden associated with the construction of single-family homes while maintaining environmental protection. When building single-family homes we recognize that, besides the foundation of the house itself, there are activities associated with a house that are considered necessary, customary, or normal to homesites. We believe these ''attendant features'' should normally be authorized with the house. We would not accomplish the purpose of this NWP if we were to authorize the house only and process an individual permit for the attendant features. Attendant features for the purpose of this NWP, include features that are reasonable, necessary appurtenances constructed in conjunction with single-family housing activities. Examples include a garage, driveway, storage shed, septic field, and yard. Examples of inappropriate attendant features not covered by this NWP include a barn, which may be covered by NWP 40, or a small business. Such features would not be directly related to a single-family home. While we believe that a yard is an appropriate attendant feature of a single-family home, we have not identified a size that would be acceptable. Corps districts will work with the applicant to ensure that acceptable, but not excessive, yards are authorized. This NWP only authorizes activities from the perspective of the Corps regulatory authorities; other Federal, state, and local permits, approvals, or authorizations may also be required. The permittee would be responsible for obtaining all necessary authorizations, including building permits, prior to placing a septic system, yard, or any other fill in wetlands. Additionally, water quality is a concern addressed by applicable state agencies as well as the Corps. It is the permittee's responsibility to obtain any necessary water quality approvals or authorizations prior to the discharge of fill. Furthermore, while properly designed, constructed, and operated septic systems can be placed on fill in many wetlands, the septic system must be approved by the appropriate state or local agency. The Corps has determined the extent of the attendant features to be applied on a nationwide basis. If an individual district concludes that a particular feature should not be authorized under this NWP, then the Division Engineer must regionally condition the NWP to exclude the feature. Furthermore, additional restrictions may be placed by states in 401 water quality certification or CZM consistency determination. On a case-by-case basis, where a particular feature is not appropriate at a specific site, the District Engineer may condition the NWP or require an individual permit.

Other concerns were raised during the comment period on the following specific issues:

7. Permit Applicability

We received a wide range of recommendations to both increase and decrease the applicability of the single-family housing NWP. Many commenters raised the issues regarding the geographic scope of waters of the United States. Several others offered suggestions to expand the category of activities to which this NWP would be applicable. Several commenters raised the issue of the definition of non-tidal waters and how it applies to this NWP. One commenter stated that with this NWP, the Corps is broadening their authority beyond that allowed under Section 404 of the Clean Water Act, specifically by regulating excavation, flooding, and draining.

With regard to decreasing the applicability of this NWP, several commenters replied by listing a variety of geographic areas from which this NWP should not apply. Different commenters suggested limiting the scope of the NWP to isolated systems only, wetlands only, and wetlands above the headwaters. Other areas suggested to be disallowed by this NWP include threatened and endangered species habitats, sensitive or important wildlife and fisheries habitats, highly developed areas, non-riverine wetlands,

riparian or lacustrine wetlands, areas on state and national scenic rivers, national park areas, national wildlife refuges, bogs, ferns, springs, forested wetlands, rivers, streams, lakes containing anadromous or native fish, and wetlands identified as high value in state or Federal land management plans or wetland inventories. With regard to increasing the applicability of this NWP, one commenter recommended expanding the authorization to include tidal as well as non-tidal wetlands. Several other commenters made no recommendation regarding the applicability of certain systems, but simply inquired as to whether marine waters, surface waters, estuaries, riparian zones, streams, ponds, non-wetland special aquatic sites and freshwater riverine systems were included.

Many commenters raised the issue of analyzing the functions and values of wetlands. Some stated that higher quality wetlands warrant a more rigorous review than do lower quality wetlands and that non-tidal systems were not necessarily less valuable than tidal systems. Several recommendations were made to develop a functions and values rating system and some suggested that such functions could be better evaluated at the local level. One commenter stated that man-made wetlands should be exempt from all environmental regulations, while another commenter made a more general statement that certain wetlands having no real value should be exempt from regulations.

The Corps of Engineers regulates the discharge of dredged or fill material under Section 404 of the Clean Water Act. The discharge of dredged material includes discharges incidental to any activity including mechanized landclearing, ditching, channelization, or other excavation. Furthermore, in evaluating permit applications and pre-construction notifications, the Corps considers the effects of flooding and draining with respect to the proposed project. However, the Corps includes excavation, flooded and drained areas in measuring the acreage of loss to ensure that the impacts of the proposed project are minimal.

Limiting this NWP to many of the aforementioned suggestions would negate the need for the permit due to existing authorizations that cover these categories. In some areas listed above, the Division and District Engineers have the authority to regionally condition the NWP to exempt these systems or require an individual permit, if warranted. Discharges of fill in tidal waters for residential development are generally not reasonable or practicable since contiguous, more suitable property is usually available. Furthermore, the individual permit process is available to those who desire to request authorization to discharge fill in tidal wetlands. We determined that applying this NWP to non-tidal waters of the United States, including non-tidal wetlands, is appropriate and assists in achieving the goal of targeting a large group of people desiring to construct a single-family homesite with minimal impacts.

At this time, the Corps has not adopted a functions and values rating system for wetlands. While it is the Corps' responsibility to regulate all Federally jurisdictional wetlands regardless of their value unless specifically exempted by section 404(f), we do take into account the relative functions of the resource when deciding how to regulate. It is anticipated that single-family residential construction is not going to occur in aquatic ecosystems of the highest value. We recognize, however, that there are circumstances where authorization in a specific area under this NWP would not be appropriate. In those cases, the Division or District Engineer may assert discretionary authority to add regional conditions or revoke the NWP authorization for activities in such areas. We believe that the Division and District Engineers are more familiar with the wetlands and other aquatic resources in their area and can best determine which of those resources should be subject to individual permit evaluations or regional conditions.

Several commenters recommended specific activities to which this NWP should apply. Some of these activities include agricultural uses, apartments, and commercial uses. One commenter suggested expanding the permit to include residential buildings for a maximum of four families. A few commenters argued that the impact to the resource is the same regardless of use; therefore, land use should not be a factor in the permit. Other categories that commenters suggested be excluded from this permit include subdivisions with lots for commercial use and significant areas conserved through an enforceable instrument.

This NWP was created for single-family housing activities. Allowing this authorization to encompass all possible land uses would dramatically increase cumulative impacts and surpass the intended scope of this NWP. Furthermore, adopting many of the aforementioned suggestions would be an unacceptably extensive change. Such a modification to this NWP would require additional public notice and opportunity for comment. The restrictive category of activities for which this NWP applies remains as proposed.

The primary activity associated with this NWP is private residential development. No commercial uses will be allowed. Any area conserved through an enforceable instrument, such as a legal conservation easement, is subject to the restrictions existing within the document. For example, if this NWP is appropriate for use on a parcel of land with the exception that development is prohibited on the parcel by other restrictions, then the NWP would not apply.

Several commenters requested clarification of the definition of non-tidal waters. One question was whether or not this NWP will apply to wetlands adjacent to tidal waters. Another question was the extent of tidal influence. One commenter interpreted the definition of non-tidal as areas above mean high water, excluding all coastal areas supporting halophytes and all freshwater wetlands subject to tidal influences. One commenter pointed out that the terms ''waters of the United States'' and ''wetlands'' were used interchangeably and questioned which was appropriate. Another commenter questioned if salinity characteristics in the water column would be used to define tidal waters. One commenter asked if areas blocked by tide gates and man-made berms would be considered tidal waters. Another commenter inquired as to whether the NWP cover activities within wetlands as defined in 40 CFR 230.3(s) and 40 CFR 230.3 (t).

The definition of tidal waters can be found in 33 CFR 328.3(f) and is defined as those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects. The limits of jurisdiction in non-tidal waters of the United States can be found in 33 CFR 328.4(c). This regulation does not mean that wetlands adjacent to tidal wetlands are also tidal wetlands, but rather that in coastal areas, Corps jurisdiction extends to the limits of these ''non-tidal wetlands'' that are adjacent to tidal wetlands. Consequently, this NWP is applicable to wetlands that are adjacent to tidal wetlands. Areas blocked by tide gates may modify the area behind the tide gate so as to no longer meet the definition of tidal waters. The Corps district office would make this decision

on a case-by-case basis. However, in any case, such tide gates would not remove Section 10 jurisdiction.

8. Relationship of this NWP to other NWPs

Several commenters questioned the applicability of existing NWPs as they relate to the single-family housing permit. One commenter questioned the 0.1 acre threshold of the NWP 18 and how it compares to this new NWP. One commenter observed that this NWP might amend or supersede NWP 18 since NWP 18 only authorizes 0.1 acre of fill for minor discharges. Many commenters stated that NWP 26 completely covers the activity to be included in this NWP. A few commenters suggested expanding the application of either the existing NWP 26 or NWP 18 in lieu of issuing a new NWP. Many other questions were raised about the combined use of NWPs. A few commenters expressed that it is redundant to have two NWPs that authorize the same type of activity. Several commenters recommended not allowing combination of authorizations in an effort to avoid more than minimal impacts, and suggested that if there is a need for more than one NWP per project, then the project should be evaluated under an individual permit process. Several commenters recommended that projects authorized with this NWP should not be provided additional coverage under any other individual permit or NWP.

Each NWP is issued to authorize certain types of activities. However, in some cases a particular activity may qualify for more than one NWP or a combination of NWPs.

Consequently, some single-family housing activities could qualify for either NWP 18 or NWP 26. For example, NWP 18 could authorize 0.1 acre of fill in any wetland; NWP 26 could authorize up to 10 acres of fill in a wetland above the headwaters or an isolated wetland, while this NWP could authorize up to 0.5 acre of fill in a non-tidal wetland. Therefore, it is possible that a single-family home involving 0.1 acre of fill in a wetland above the headwaters could qualify for either NWP 18, NWP 26, or this NWP. Our regulations provide for multiple use of NWPs (but each one only once for a single and complete project) provided that the combined impacts are minimal. Furthermore, if an NWP authorized activity is an integral part of a larger project which requires an individual permit, then that NWP will not be valid for that portion of the larger project and an individual permit is required for the entire project, including the NWP portion. This NWP is intended to authorize single-family housing, including attendant features where the maximum impact on waters of the United States does not exceed 0.5 acre. We did not intend this NWP to authorize a portion of a single-family housing activity that was in excess of 0.5 acre. Therefore, if such a single-family housing activity, including attendant features, is being proposed that exceeds 0.5 acre, this NWP cannot be used in conjunction with other NWPs, regional general permits, or individual permits to authorize the project. We further believe this restriction may be confusing and could cause some inadvertent violations of the NWP. Therefore, to clarify this point we have added a condition to the NWP to indicate that it cannot be used with NWPs 26, 18, and 14. Furthermore, Division Engineers will add regional conditions to ensure that it is not used with any similar regional general permits.

9. Cumulative Impacts

Many commenters stated, in general terms, that the proposed NWP would result in detrimental cumulative impacts on the aquatic environment. Many other commenters were specifically concerned with the cumulative loss of wetland functions, specifically, fish and wildlife resources, endangered species, filtration, groundwater recharge and stormwater retention. Concerns over increased flooding potential were the most often stated.

A few commenters stated that limiting the aggregate loss of wetlands to 0.5 acre for the entire subdivision only in real estate subdivided after March 6, 1995, does nothing to protect wetlands in already existing subdivisions. They gave examples of existing, platted subdivisions, comprised of dozens, hundreds, and thousands of lots which could amount to substantial cumulative impacts within a given watershed.

One commenter questioned how cumulative impacts would be addressed without the full review of the individual permit process. One commenter stated that such a permit would allow for an entire, large wetland system to be destroyed since there is no limit on the number of 0.5 acre sites that may be located on it.

Because the activity associated with the use of the NWP could be located within the floodplain of a waterbody, there is potential for increased flooding and reduced flow. The modified notification process will allow the District Engineer to evaluate the proposed impacts, including potential flooding impacts, compare them to existing impacts within the wetland system or watershed, and determine if the project has more than minimal individual or cumulative effects. The District Engineer has the discretionary authority to place conditions upon a proposed activity to avoid or minimize these potential impacts. If the activity is determined to be more than minimal, the District Engineer can require mitigation or an individual permit. With regard to this and other potential cumulative wetland functions impacts, this NWP will be subject to the conditions that apply to all NWPs. The district and division offices may identify specific geographic areas, such as a subdivision, where there may be concerns over cumulative impacts to a watershed, and revoke this NWP in specific geographic areas or develop regional conditions that apply to that specific area. Many districts and divisions have already revoked NWPs or imposed such regional conditions in many geographic areas or wetland or water types.

10. Regulatory Burden

Several commenters supported this NWP because it would reduce the regulatory burden on the public by simplifying the process to obtain approval of single-family housing activities and would reduce the Corps regulatory workload. An equal number of commenters were opposed to the NWP. The principal reason for such opposition was a perception that the NWP would result in less environmental protection. Also, a few commenters believed the NWP is not necessary either because the current individual permit process is not a burden on the public, existing NWPs are adequate to cover single-family housing activities, or because the NWP is motivated only by politics. One commenter felt the NWP would encourage poor construction practices (e.g. the construction of structures on wetland fills). A few commenters indicated that, rather than this NWP, state programs would be a better mechanism to reduce burden on the public and the Corps. Programs such as State assumption, State Programmatic General Permits (SPGP), and State stewardship workshops assist landowners in utilizing their lands in an environmentally sensitive manner and reduce inconsistencies among federal, state and local regulations. Many commenters believed that we were increasing the regulatory burden on the public based on their understanding that we were proposing, for the first

time, to begin regulating single-family housing activities.

We believe this NWP will be applicable to over 95% of all single-family housing activities. Statistical data from the U.S. Department of Commerce and the U.S. Department of Housing and Urban Development reveals that approximately 90% of residential landowners in the United States own parcels that are 0.5 acre in size or less. Furthermore, most houses are less than 2000 square feet while few exceed 10,000 square feet. Therefore, we believe that virtually all single-family houses could easily fit on less than 0.25 acre. This would allow in excess of 0.25 acre for attendant features. We believe this would be sufficient for all but a few single-family homes. Currently, the Corps regulates the discharge of dredged or fill material for many single-family housing activities by the individual permit process. A number of single-family housing activities are also currently authorized by regional general permits or other NWPs, such as NWP 26. Our proposal will allow us to regulate, with this NWP, the vast majority of single-family housing activities that are not now covered by other general permits. Virtually all individual permit applications for single-family housing activities are issued. This NWP provides a quick approval process while, through the notification process, we would ensure that impacts are minimal and on-site impacts will be avoided or minimized to the extent practicable. However, some single-family housing activities would continue to be authorized by other NWPs or Regional General Permits which, in many cases, would be less burdensome. Where State mechanisms are available, and are determined to provide equivalent environmental safeguards, the Corps district and division offices will consider regional conditions or revocations of this NWP to reduce any unnecessary regulatory burden on the public. For example, our New England Division has proposed to revoke this NWP in the State of New Hampshire, because an existing State regulatory program and a Corps SPGP already adequately regulate single-family housing activities in that state. Therefore, in New Hampshire, single-family housing activities that qualify for a State permit would be authorized by the Corps SPGP. Other districts and divisions are proposing or considering similar State mechanisms to reduce unnecessary regulatory burdens. In conclusion we believe that this NWP in conjunction with other NWPs and Regional and SPGPs will provide for an expedited decision for all but the most atypical or extremely large single-family housing activities. Therefore, over 90% of single-family housing activities would now qualify for a general permit, which should reduce the average permit processing time from a little over 100 days to less than 30 days.

Several commenters stated that this NWP would be inconsistent with either state or local wetland protection programs. Several of these commenters asserted that the NWP would be more lenient than state or local wetland protection programs and would tend to weaken state and local positions regarding wetland protection. In some of those cases where NWPs have been revoked in conjunction with SPGPs, the involved states were concerned that this NWP would add complexity and confusion to the process. A few commenters stated that the NWP preempts state and local wetland protection laws and building codes. These commenters, in general, also asked that all permittees be notified of the requirements to obtain other state and local required permits and approvals. A few commenters suggested that some other agency be responsible for administering and implementing the 404 wetlands program.

In those States where NWPs have been suspended or revoked in conjunction with SPGPs, the districts have the authority to suspend or revoke this NWP as well, and we anticipate they will give serious consideration to such action. As discussed in 33 CFR 330.4 of the NWP Program Regulations, NWPs do not obviate the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law; nor do they grant any property rights or exclusive privileges. We believe that this NWP does not represent a relaxing of Federal protection for wetlands, but rather strengthens our capability to deal effectively with those cases involving greater than minor impacts. The Corps currently has the responsibility for implementing and administering the Section 404 program and will continue to uphold this responsibility until otherwise directed.

One commenter stated that improved service to landowners can be addressed by hiring adequate staff. Another stated that workload savings is not a justifiable reason to relax regulation of nationally important resources.

Budgetary constraints are continually a source of concern. Therefore, other avenues must be pursued to improve service to the public and make the program more efficient. The Corps agrees that regulatory requirements protecting wetlands should not be relaxed to facilitate workload savings at the expense of needed environmental protection. The same aquatic systems will be regulated, but in an expedited manner. In an attempt to relieve the regulatory burden on small landowners, this new NWP is designed to streamline the process for such individuals desiring to build a residence, and we believe it will be successful to this extent.

11. Enforcement

Several issues regarding enforcement of distinct aspects of this NWP were raised. A few commenters expressed concern that permittees may not use the NWP for the construction of a home but for some other use and that they may exceed the allowed impact acreage. A few commenters raised the issue of enforcement regarding the flooding of adjacent property as a result of fill material authorized by this NWP. One commenter questioned how the Corps can determine adverse effects from flooding and drainage without reviewing necessary hydrologic information; how the Corps can ensure maintenance of structures without reviewing engineering analyses and design calculations; and who is responsible for infrastructure failures. One commenter specified enforcement of the notification requirement, specifically, that permittees will be tempted to fill first then notify the Corps or not notify the Corps at all. Many commenters discussed general enforcement of both the existing NWPs and the proposed NWP, claiming that the Corps fails to enforce compliance with general permits. All commenters questioned how compliance with the NWP conditions would be enforced.

Corps regulations at 33 CFR part 326 detail the Corps' enforcement procedures for all general and standard permits. Additionally, the Corps district offices have enforcement and compliance procedures in place which they implement at the district level. Furthermore, generally the Corps staff has the expertise to assess the adverse effects from flooding and drainage without reviewing detailed hydrologic information. However, this data can be obtained and examined when necessary. It is not anticipated that single-family housing activities covered under this NWP will require such detailed analysis except when considering cumulative impacts. It is not the Corps', but the permittee's, responsibility to maintain the structural integrity of his or her dwelling and attendant features. No new enforcement issues have been raised that the Corps hasn't encountered in the

past. Enforcement and compliance violations such as those mentioned by the commenters will occur. When they do, we will resolve the violations in the most expeditious and equitable manner possible.

12. Public Hearing

Many commenters requested that a public hearing be held. For the most part, commenters did not specify reasons for holding a hearing. However, some commenters did present more definitive reasons, which included increasing community awareness of the proposal, discussing in greater detail the individual and cumulative effects, and allowing property owners a chance to address the proposal in an open forum. A few others stated that a change in permitting procedures of this magnitude warranted a public hearing.

A public hearing is held when there is a need to acquire new information to consider in evaluating a proposed Department of the Army permit action. Upon close scrutiny of the comments in response to this NWP, we concluded that it was unlikely that new information regarding the single-family housing NWP would be obtained through a public hearing. Therefore, a public hearing will not be held for the NWP. Public hearing requests for local and regional issues, regional conditions, and regional modifications, will be evaluated by Corps district and division offices, which will determine if a public hearing is warranted locally.

13. Need for Environmental Impact Statement

Several commenters requested that an environmental impact statement be completed. One commenter recommended that a systematic scientific study be undertaken to determine the degree of potential impacts. Other commenters stated that the NWP is inconsistent with the 404(b)(1) Guidelines.

Environmental documentation has been prepared for the NWP and includes an environmental assessment and Section 404(b)(1) Guidelines compliance review. Copies of this document are available for inspection at the office of the Chief of Engineers and at each Corps district office. The document demonstrates that this NWP complies with the requirements for issuance under general permit authority. This includes consideration that, because some projects that may be authorized by the NWP may have a potential to cause more than minimal adverse effects on the environment, the NWP has been conditioned to require notification to the District Engineer. Furthermore, there are several conditions imposed on the NWP to further minimize impacts of single-family housing activities. In this way, we have ensured that activities will not occur under the NWP which would cause more than minimal adverse effects on the environment. Furthermore, although secondary and cumulative impacts, in general, have been considered in the documentation, the notification requirement will allow for further consideration of these impacts. The Corps has made a final determination that this action does not constitute a major Federal action significantly affecting the quality of the human environment.

14. Miscellaneous

A few commenters recommended a checklist, document or booklet be established that would outline what permits are necessary, the purposes, identify the entity processing the permit, timeframes associated with processing, and a fee schedule. One commenter suggested that many landowners would not know the answers to many issues that will need to be addressed in utilizing this NWP, nor will they be inclined to hire a consultant to assist them. Concurrent with this **Federal Register** notice, Corps district offices will issue local public notices. These public notices will include regional information about the NWP and how to notify the district offices. We agree that additional information regarding this and other NWPs would be useful to landowners. We will begin developing a manual or booklet to address this. One commenter requested that the Corps quantify, by district, the ''large number of permit applications'' for single-family housing activities referenced in the proposal for this NWP, because the need for such a permit may not be nationwide. The Corps conducted an internal survey of Corps districts requesting information on the number of permit applications for which this NWP would apply to determine the need for such a permit. The results warranted the proposal of a single-family housing NWP. One commenter stated that no information was provided about the wetlands potentially affected by this NWP or about the general, special and regional conditions of this NWP. Another commenter questioned if the existing general conditions apply to this NWP. The type of wetlands, specifically non-tidal, were identified in the public notice. The NWP general conditions and Section 404 conditions were not rewritten but were referenced in this NWP proposal. All general conditions pertaining to the other NWPs also apply to this NWP, with the exception of notification condition which still applies but has been modified for the purpose of this NWP only. For clarity, the NWP conditions are published in this **Federal Register** notice below. Furthermore, regional conditions will be added by the Division Engineer, where appropriate, for a specific area; and special conditions will be added by the District Engineer on a case-by-case basis, where applicable. A few commenters stated that the NWP does not involve activities similar in nature, and therefore, does not qualify as a NWP. One commenter raised the issue of the Corps' failure to discuss, in the environmental assessment, that the activities are similar in nature and will cause minimal individual and cumulative adverse impacts. We believe that we have narrowly defined the scope of this NWP for activities similar in nature. The only activities authorized by this NWP are construction or expansion of a single-family homesite with attendant features. In the preliminary environmental assessment, we discussed, in detail, both the individual and cumulative impacts likely to result from this NWP. One commenter stated that the public notice made no reference to an expiration date for public comment. The expiration date of May 8, 1995, was published in the **Federal Register**; that publication was to be accompanied by a public notice from each Corps district that reiterated the date. Another commenter asserted that the permit language refers only to states and not to sovereign Tribal Nations and to Public interest but not Tribal interest. We do consider Tribal interest in addition to public interest where concerns are raised. General condition number 8 addresses Tribal rights and requires that they be considered. A few commenters declared that the nationwide would not be in compliance with Executive Orders 11988 and 11990. The NWP does not encourage the destruction of wetlands or development within the floodplain, but rather is a tool designed to reduce regulatory burdens while maintaining appropriate levels of protection. This NWP would not be in conflict with Executive Orders 11988 or 11990. A few commenters provided general recommendations related to the economics of the program. One recommended that we provide financial incentives for wetland protection; one recommended that the program be based on the applicant's resource capability, not tax status; one recommended that everyone involved in the Corps evaluation process be held

financially liable for their actions in conjunction with each permit processed; and one commented that we need to recognize the public cost of environmental degradation. A few commenters expressed general opposition to the federal government's regulation of private lands and expressed the belief that if the government prohibits the filling, the owner should be compensated. Such issues are beyond the scope of this proposal and would require additional proposed regulations with opportunity for public comment or even legislative changes. Therefore, they are not addressed in this notice. In an effort to simplify the program, one commenter recommended applying this NWP to all activities at a lesser acreage, thereby justifying the revocation of many of the other NWPs. One commenter suggested that we rework the entire NWP program. Another commenter questioned if this NWP will be included in the forthcoming NWP review process. At this time, we are not proposing the reissuance, modification, or revocation of all other NWPs but will do so prior to their expiration date of January 21, 1997. Comments regarding this entire NWP package may be submitted at that time. However, regarding the proposal for the entire NWP package, we will propose that this NWP be reissued with all other NWPs. At this time, our intent is to simply extend the expiration date of this NWP so that it coincides with all other NWPs for administrative purposes.

Accordingly, a Nationwide Permit for single-family housing activities is issued as follows:

Dated: July 19, 1995.

Approved:

Stanley G. Genega,

Major General, Director of Civil Works.

Nationwide Permit and Conditions

A. Nationwide Permit

Single-Family Housing. Discharges of dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands, for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an individual permittee provided:

a. The discharge does not cause the loss of more than ½ acre of non-tidal waters of the United States, including non-tidal wetlands;

b. The permittee notifies the District Engineer in accordance with the ''Notification for single-family housing NWP'' general condition;

c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on the parcel to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of ½ acre for the entire subdivision;

e. An individual may use this nationwide permit only for a single-family home for a personal residence;

f. This nationwide permit may be used only once per parcel; and,

g. This nationwide permit may not be used in conjunction with NWP 14, NWP 18, or NWP 26, for any parcel.

For the purposes of this nationwide permit, the acreage of loss of waters of the United States includes any filled area previously permitted, the proposed filled area, and any other waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. This nationwide permit authorizes activities only by individuals; for this purpose, the term ''individual'' refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this nationwide permit, a parcel of land is defined as ''the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or his or her spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual and/or his or her spouse in any form of ownership.'' (Sections 10 & 404)

B. Nationwide Permit Conditions

General Conditions: The following general conditions must be followed in order for any authorization by a nationwide permit to be valid:

1. *Navigation.* No activity may cause more than a minimal adverse effect on navigation.

2. *Proper maintenance.* Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. *Erosion and siltation controls.* Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date.

4. *Aquatic life movements.* No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

5. *Equipment.* Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.

6. *Regional and case-by-case conditions.* The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4(e)) and any case specific conditions added by the Corps.

7. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system, while the river is in an official study status. Information on Wild and Scenic Rivers may be obtained from the National Park Service and the U.S. Forest Service.

8. *Tribal rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. *Water quality certification.* In certain states, an individual state water quality certification must be obtained or waived (see 33 CFR 330.4(c)).

10. *Coastal zone management.* In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived. (see 33 CFR 330.4(d)).

11. *Endangered Species.* No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service. (see 33 CFR 330.4(f)).

12. *Historic properties.* No activity which may affect Historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).

13. *Notification for single-family housing NWP.*

(a) The prospective permittee must notify the District Engineer with a Pre-Construction Notification (PCN) as early as possible and shall not begin the activity authorized by this NWP:

(1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified by the District or Division Engineer that an individual permit is required; or

(3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) The Pre-Construction Notification must be in writing and include the following information:

(1) Name, address and telephone number of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any past use of this NWP by the individual permittee and/or his or her spouse; any other NWP(s), regional general permit(s) or individual permit(s) used in the past or intended to be used to authorize any part of the proposed project or any related activity;

(4) A statement that the single-family housing activity is for a personal residence of the permittee;

(5) A description of the entire parcel, including its size, and a delineation of wetlands. (See paragraph (e) below.)

(6) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or his or her spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed.

(c) The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN for this NWP and must include all of the information required in (b) (1)–(6) of this General Condition.

(d) In reviewing the Pre-Construction Notification for the proposed activity, the District Engineer will determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, the District Engineer will notify the permittee and include any agreed upon special conditions and/or mitigation. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant that the project does not qualify for authorization under the NWP. Furthermore, the District Engineer will explain the procedures that are available to seek authorization, which will include the following options: apply for an individual permit, obtain authorization under any other applicable general permits, or modify the project to qualify for the NWP.

(e) *Wetlands Delineations:* For the purpose of this NWP, parcels of land measuring 0.5 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 0.5 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the wetland. However, there may be some delay if the Corps does the delineation, and the 30-day period (see paragraph 13(a)(3) above) will not start until the wetland delineation has been completed.

Section 404 Only Conditions: In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material and must be followed in order for authorization by the nationwide permit to be valid:

1. *Water supply intakes.* No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

2. *Shellfish production.* No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by nationwide permit 4.

3. *Suitable material.* No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

4. *Mitigation.* Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e. on-site), unless the DE has approved a compensatory mitigation plan for the specific regulated activity.

5. *Spawning areas.* Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

6. *Obstruction of high flows.* To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

7. *Adverse impacts from impoundments.* If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

8. *Waterfowl breeding areas.* Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

9. *Removal of temporary fills.* Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

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